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**Competition Act 2010 [Act 712]**

**Decision of the Competition Commission**

**Finding of Non-Infringement under Section 39 of the Competition Act 2010 of Avery Dennison Materials Sdn. Bhd. and UPM Raflatac Sdn. Bhd.**

**7 February 2017**

**(Reference No.: MyCC(ED)700-1/1/38/2015)**

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## 1. INTRODUCTION

1. On 25 March 2015, the Commission received a complaint submitted online from Mr. Lim Kok Siong (“the Complainant”) who at the material time was making the complaint on behalf of his company, Mega Label and Stickers Sdn. Bhd. (“Mega Labels and Stickers”) [Company Registration Number: 190144-X] which is engaged in the business of manufacturing of labels and stickers.
2. The Complainant alleged that the Target Enterprises, namely Avery Dennison Materials Sdn. Bhd. (“Avery Dennison”) and UPM Raflatac Sdn. Bhd. (“UPM Raflatac”) are engaged in the business of manufacture and supply of labelling and packaging materials and solutions (otherwise known as label stock), were engaged in price fixing after his company, Mega Labels and Stickers which is a customer to both Target Enterprises, had received memos from the Target Enterprises on the same date with similar contents informing an increase in price for their products (i.e. the label stock).
3. The two memos dated 13 March 2015 had cited the weakened exchange rate of the Malaysian Ringgit against the US Dollar by more than 13% since August 2014 which in turn has a direct impact on the components and raw materials purchased by the Target Enterprises used for the production of their products as a reason to announce a price increase of between 7% and 16% for all orders placed or goods

delivered from 13 April 2015 (“UPM Raflatac”) and 16 April 2015 (“Avery Dennison”) respectively.

4. Pursuant to the investigation conducted by the Commission, the Commission found that there was insufficient evidence to suggest that there was a horizontal agreement entered into by both UPM Raflatac and Avery Dennison to engage in a price fixing in relation to the selling and purchasing of label stock materials.
5. Both UPM Raflatac and Avery Dennison are therefore not liable for an infringement under the Act.

## **2. PARTIES SUBJECT TO THE PROCEEDINGS**

### **2.1 The Complainant**

6. The Complainant is an individual by the name of Mr. Lim Kok Siong who held the position of General Manager at Mega Label and Stickers at the time the complaint was made. On 11 April 2016, the Complainant expressed that he no longer wished to pursue the matter as he had already left the employment of Mega Labels and Stickers as well as the label making industry.
7. The Complainant further mentioned that his company was not aware that he had lodged a complaint on its behalf with the Commission and that the company would be unwilling to pursue the complaint further if engaged by the Commission.

### **2.2 The Target Enterprises**

#### **a) UPM Raflatac Sdn. Bhd.**

8. UPM Raflatac Sdn. Bhd. [Company Registration Number: 391361-M] is a company engaged in the business of manufacture and supply of labelling and packaging materials and solutions (label stock).
9. The company has its principal business address at P PLO 434, Jalan Perak 4, Kawasan Perindustrian Pasir Gudang, 81700, Pasir Gudang, Johor, Malaysia.

**b) Avery Dennison Materials Sdn. Bhd.**

10. Avery Dennison Materials Sdn. Bhd. [Company Registration Number: 1868-A] is a company engaged in the business of manufacture and supply of labelling and packaging materials and solutions, otherwise known as label stock.
  
11. The company has its principal business address at Lot 6, Jalan P/2, Kawasan Perusahaan Bangi, 43650, Bandar Baru Bangi, Selangor, Malaysia.

### **3. PROCEDURE**

12. Pursuant to the complaint received, the Commission conducted an extensive investigation under section 15(1) of the Act.
13. During the course of the investigation, as of 9 September 2016, the Commission had issued five (5) notices pursuant to sections 18(a) and (b) of the Act to require the provision of information and/or documents and to make a statement based on the information and documents requested or in relation to any queries made by the Commission officers to five (5) parties, all of which are label makers and printers operating in the downstream level of the label making industry.
14. Besides issuing notices pursuant to section 18 of the Act, the Commission had also issued questionnaires to several label stock manufacturers who operate in the upstream level of the label making industry in order to obtain their feedback on the said industry.
15. The Commission has also met with the Malaysia Printers Association (“MPA”) to have a better understanding of the label making industry and to assess if the alleged infringement was affecting the downstream players in the said industry.

### **4. BACKGROUND TO THE ALLEGATIONS**

16. On 25 March 2015, the Commission received a complaint from the Complainant who at the material time was making the complaint on behalf of his company, Mega Label and Stickers, a company engaged in the business of manufacturing of labels and stickers.
17. The Complainant alleged that the two Target Enterprises, namely Avery Dennison and UPM Raflatac are engaged in the business of manufacture and supply of labelling and packaging materials and solutions (otherwise known as label stock), were engaged in price fixing after his company, Mega Labels and Stickers which is a customer to both the Target Enterprises, had received memos from the Target Enterprises on the same date with similar contents informing them of a price increase in their products.
18. The two memos dated 13 March 2015 cited the weakened exchange rates of the Malaysian Ringgit against the US Dollar by more than 13% since August 2014 which in turn has a direct impact on the components and raw materials purchased by the Target Enterprises used for the production of their products. This is the basis used by the Target Enterprises to announce a price increase of between 7% and 16% for all orders placed or goods delivered from 13 April 2015 (UPM Raflatac) and 16 April 2015 (Avery Dennison) respectively.
19. The market affected by the alleged complaint is the label making industry whereby the upstream market comprises of manufacturers of



labelling and packaging materials and solutions, otherwise known as label stock, which is the raw material from which the downstream market, comprising of label makers, uses to manufacture several varieties of labels depending on the type of label stock raw material used.

## **5. FINDINGS OF THE INVESTIGATION**

## 5.1 Meeting with the MPA

20. During the course of the investigation, the Commission met with the representatives of the MPA to have a better understanding of the label making industry and to assess if the alleged infringement is affecting the downstream players.
21. From the said meeting, the Commission was informed by one MPA's representative for the label making industry namely Mr. Tee Teck Hock, who is the director of CKW Mark Sdn. Bhd., a company specializing in stickers, labels and printing solutions, that there are around 200 label printers a.k.a. label converters in Klang Valley alone.
22. On the upstream level, the Target Enterprises make up around 60% while the remainder, which consists of 3M Malaysia Sdn. Bhd. ("3M"), Central Industrial Corporation, KK Enterprise, Symbio Materials (M) Sdn. Bhd. ("Symbio") and several others make up the remaining 40% of market share.
23. It is to be noted that even though the Target Enterprises hold the majority of the market share, they may not supply certain material which other suppliers may supply.
24. In relation to the justification raised that the price increases were due to foreign exchange rates, the representative mentioned that the label stock cost, especially from the United States of America, will always be

affected by the foreign exchange rates as well as the price of oil due to oil derivative chemicals.

25. Furthermore, the said representative also mentioned that the price of label stock in the market is considered to be very close to each other. All suppliers, regardless of the size of their market shares, will set their prices according to the market trend depending on the above-mentioned factors. Typically, prices will be reviewed every six (6) months or so unless there is a sudden change in the market. Most label converters will buy their label stock three (3) to six (6) months in advance to ensure they have sufficient stock to meet their customers' demands.
26. Lastly, the representative was of the opinion that the label making industry is competitive and conditions to price fix, especially among label stock suppliers, is difficult to meet due to the competitive nature of the market. Label converters will always attempt to find alternative suppliers if they find their current suppliers' prices are too high.

## **5.2 Meeting with the Downstream Players**

27. During the course of investigation, the Commission also met with several representatives of the downstream market, namely Permara Label (Malaysia) Sdn. Bhd., MCC Labels (Kuala Lumpur) Sdn. Bhd., General Labels and Labeling (M) Sdn. Bhd., Mega Labels (Malaysia) Sdn. Bhd. and Mega Labels and Stickers (the above five (5)

downstream players are collectively referred to as “the Downstream Players”).

28. At the said meeting, the representatives from the Downstream Players provided the Commission with a copy of four (4) memos from the Target Enterprises, two (2) of which were issued by the Target Enterprises dated 13 March 2015, one (1) from Avery Dennison dated 27 August 2015 and one (1) from UPM Raflatac dated 3 September 2015. All memos announced a price increase in the respective Target Enterprises’ products citing the declining exchange rates of the Malaysian Ringgit to the U.S Dollar.
29. The representatives of these Downstream Players stated that the reason they had chosen Avery Dennison and UPM Raflatac as their suppliers was due to the fact that it made more commercial sense for them to do so as both Target Enterprises have plants in Malaysia which act as the regional hub for Asia and that the delivery of label stock to the said companies is very fast. Besides that, buying from other suppliers from overseas is considered to have higher risks due to the transactions being in different currencies with different exchange rates and longer waiting time.
30. Furthermore, the representatives of the Downstream Players also mentioned that they sometimes do not have a choice as to which supplier they can purchase the label stock from as they are specified to use a certain brand of label stock by their customers in their orders.

Besides, the majority of them are of the opinion that the products of the Target Enterprises have the best quality in the market.

31. Apart from the Target Enterprises, the representatives of the Downstream Players also mentioned that they also purchase label stock from the other suppliers namely Symbio, Yenom Label (M) Sdn. Bhd. ("Yenom"), 3M, KK Enterprise, SEA Label, Lintac, Kintec and several other label stock manufacturers.
32. In relation to the abovementioned memos from the Target Enterprises, most of them mentioned that they had received them via email from the Target Enterprises. When informed of the price increase, all of them had negotiated with the Target Enterprises verbally. A majority of the representatives mentioned that the Target Enterprises did not decrease their prices but were willing to negotiate on the implementation of the price increase by extending the quotation period for orders to a later date.
33. The Commission was also informed that the Target Enterprises had previously increased the price of their individual products before but the price increase in March and September 2015 was a general increase for all their products across the board.
34. Other than the Target Enterprises, several other label stock manufactures namely the competitors of the Target Enterprises have

also increased the prices of their products around the same time as the Target Enterprises, citing similar reasons.

35. There has been a general price increase by most label stock suppliers due to the general economic downturn of the market which in turn impacts the exchange rates of the US Dollar and the Malaysian Ringgit. Due to the price increases, label makers and printers have had no choice but to increase their prices and this has resulted in the loss of customers for some of the downstream players. This also resulted in a loss of profit as the purchase of raw material for label printing makes up a major part of the costs for label printing.

### **5.3 Meeting with the Upstream Players**

36. On 4 October 2016, the Commission sent out questionnaires via email to the upstream players namely Symbio, Yenom and 3M to obtain their feedback on the said alleged conduct by the Target Enterprises. From the results of the questionnaires, the Commission concluded that there has been a general price increase by most label stock suppliers due to the general economic downturn of the market which in turn impacts the exchange rates of the US Dollar and the Malaysian Ringgit.

## **6. LEGAL ASSESSMENT**

### **6.1 Application of Section 4 of the Act**

37. Section 4 of the Act states that:

- “(1) 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.*
- (2) Without prejudice to the generality of subSection (1), a horizontal agreement between enterprises which has the object to-*
- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;*
  - (b) share market or sources of supply;*
  - (c) limit or control-*
    - (i) production;*
    - (ii) market outlets or market access;*
    - (iii) technical or technological development; or*
    - (iv) investment; or*
  - (c) perform an act of bid rigging, is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.*
- (3) Any enterprise which is a party to an agreement which is prohibited under this Section shall be liable for infringement of the prohibition.”*

38. By virtue of section 4(1) of the Act, a horizontal or vertical agreement between enterprises is prohibited so far as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

39. Section 4(2)(a) of the Act further provides that without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to fix, directly or indirectly, a purchase or selling price or any other trading conditions is deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services.
40. Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for an infringement of the prohibition under section 4(3) of the Act.
41. Based on the facts of the case as well as the statements and documents obtained during the course of the investigation as indicated above, there was insufficient evidence to suggest that there was a horizontal agreement by the Target Enterprises, to engage in a price fixing in relation to the selling and purchasing of label stock materials which is contrary to the Act.
42. During the course of the investigation, it was found by the Commission that there has been a general price increase by most label stock suppliers due to the general economic downturn of the market which in turn impacts the exchange rate of the US Dollar and the Malaysian Ringgit.
43. Due to the price increases, the company has had no choice but to increase its prices and as a result the company has lost several



customers. This also resulted in a loss of profit to the company as the purchase of raw material for label printing makes up a major part of the costs for label printing.

44. This further disproves the allegation made against UPM Raflatac and Avery Dennison which does not support the allegation of a price fixing between them.

## **7. CONCLUSION**

45. Based on the above, there was insufficient evidence to suggest that there was a horizontal agreement entered into by the Target

Enterprises to engage in a price fixing in relation to the selling and purchasing of label stock materials which is contrary to the Act.

46. Therefore, the Commission concludes that there is no infringement of a prohibition under Part II of the Act.