

NEWS RELEASE

RM415 MILLION PENALTY IMPOSED AGAINST FIVE CHICKEN FEED MILLERS FOR PRICE FIXING CARTEL

KUALA LUMPUR, 22 DECEMBER 2023 – The Malaysia Competition Commission (MyCC) has issued its much-awaited Final Decision against the following five (5) enterprises for infringing section 4 of the Competition Act 2010 (Act 712) through formation of price fixing cartel for poultry feed:

- i. Leong Hup Feedmill Malaysia Sdn. Bhd. (Leong Hup);
 - ii. FFM Berhad (FFM);
 - iii. Gold Coin Feedmills (Malaysia) Sdn. Bhd. (Gold Coin);
 - iv. Dindings Poultry Development Centre Sdn. Bhd. (Dindings Poultry); and
 - v. PK Agro-Industrial Products (M) Sdn. Bhd. (PK Agro).
- (the above are hereinafter referred to as “the enterprises”)

Supply Chain of the Chicken Industry

It is worth understanding that the chicken industry's supply chain for the chicken industry comprises three main tiers; upstream, midstream and downstream:

- i. In the upstream sector, key activities include importing raw materials for poultry feed, operating poultry feed mills and engaging in poultry feed trading. Stakeholders in this sector include independent feed mill operators (Gold Coin), raw material importers and also integrators which are involved in the upstream, midstream and downstream sectors who participate in feed production, contract farming, distribution and sale of chicken products.
- ii. The midstream sector focuses on broiler and egg production, involving activities such as operating breeder farms, broiler farms, hatcheries and layer farms.
- iii. In the downstream tier, the emphasis is on chicken processing, including slaughtering, packaging, distribution and the sale of chicken products to the public.

The chicken industry's structure involves a collaborative effort among different players, with each tier contributing to the overall production and distribution of chicken products. The upstream sector ensures the availability of poultry feed, which is vital for the broiler and egg production activities in the midstream tier.

Based on the investigation by MyCC, it was discovered that poultry feed stands out as a significant cost factor in poultry farming, constituting a substantial 72.8% of the overall expenses. Consequently, any distortions or imbalances in competition within the poultry feed market can have a ripple effect across the entire supply chain of the industry and the impact will eventually reaches the consumers. This is concerning especially given that serves as the primary source of protein for most consumers in Malaysia.

This had led to MyCC deciding to focus our investigation on the upstream segment of the chicken industry's supply chain, with a specific emphasis on chicken feed millers to address the root cause of the issues affecting the poultry feed market.

Timeline of investigation, representation and decisions

From November 2021 to June 2022, an extensive investigation was commenced under Section 14(1) of Act 712, whereby MyCC had suspected that these enterprises had engaged in price fixing agreements and/or concerted practices concerning the quantum of poultry feed price in Malaysia. On 1 February 2022, MyCC had formed a special task force to specifically investigate competition related issues in the chicken and eggs industry. Throughout the investigation, MyCC had carried out dawn raids, statement taking, requests for information, and in-depth analysis of relevant data that it had gathered.

Following this, from July to October 2022, MyCC had issued a Proposed Decision, Amended Proposed Decision and Supplementary Proposed Decision. From December 2022 to January 2023, these enterprises had submitted their written representations, with MyCC granting them extension for the submission deadline as requested by the enterprises due to the complexity of the matter. Subsequently, from May to July 2023, the enterprises were given the opportunity to present their defence to MyCC via oral representation.

Cartel cases in other jurisdictions

Cartel cases particularly in sectors which directly impact the cost of living like food and agriculture sectors are facing increased scrutiny by authorities globally. Notable instances worldwide involve substantial fines imposed by relevant authorities in response to anticompetitive practices in the food and agriculture industries. Some examples of cartel cases involving imposition of substantial amount of fines are as follows:

- i. In the USA, Tyson Foods settled a 2018 case involving a conspiracy to fix prices for broiler chicken, agreeing to pay \$90 million (equivalent to RM418.59 million) to the Department of Justice (DOJ);
- ii. In a 2020 case in Singapore, the Competition Consumer Commission found 13 fresh chicken suppliers guilty of market sharing and price fixing cartel, imposing a penalty of S\$27 million (equivalent to RM94.42 million);
- iii. In a 2022 case in the USA involving Tyson Foods, National Beef Packing Company, and Cargill in a beef cartel resulted in a settlement of \$52.5 million (equivalent to RM244 million);
- iv. South Korea witnessed a 2022 case where 15 poultry-processing companies engaged in a 12-year-long cartel, fixing broiler chicken meat prices. The penalty

imposed was €129.7 million (equivalent to RM660 million), with criminal prosecutions against five of the companies; and

- v. In Brazil, a 2017 meat cartel case affecting EU, China, and Hong Kong led to a penalty of R\$10.3 billion (equivalent to RM9.745 billion).

Evidence obtained from the investigation

Investigation by MyCC covered the period between January 2020 and March 2022 has unravelled the distortion in the poultry feed market. The same reveals a series of multiple evidences in the form of price announcement, pricing pattern and communication among the enterprises.

(A) Price announcement and price movement similarities:

The investigation uncovered evidence of identical increment in the quantum of poultry feed prices between the parties between January 2020 and June 2022. It was later discovered that a calculated strategy employed by the enterprises to create the illusion of rising poultry feed costs due to increased raw material expenses.

Adding to the complexity, despite variations in the composition of main ingredients, such as soybean and maize, used in each enterprise's poultry feed formula, the enterprises implemented identical quantum increases in prices simultaneously although the unique formulations should naturally result in distinct cost structures for each enterprise for the determination of price. This deliberate collective alignment in price increment, considering the differences in raw material composition, raises further concerns about the concerted practices by these enterprises.

To cast further doubt on the same quantum of price increase implemented by the enterprises, MyCC had also identified several instances where the cost of the raw materials had decreased and despite this decline, the enterprises still opted to increase the quantum of the poultry feed price at the same level. This recurring patterns strongly substantiate the existence of price fixing practices by the enterprises.

(B) Correlation with communication records:

The investigation includes extensive examination of the communication channels used by representatives of the enterprises. WhatsApp conversations and call logs recovered during the investigation correlated significantly with the dates of the price announcements. This correlation strengthens the case for a connection between communication practices and pricing decisions. The alignment between communication records and the increase of poultry feed prices suggests a deliberate effort to synchronise their actions, compromising the competition within the chicken poultry feed market.

(C) Notes of Meeting and Witness Statements:

MyCC found that the representatives of these enterprises had attended meetings organised by the Malaysian Feedmillers Association (MFA). Although official meeting minutes did not explicitly record any exchange of sensitive price and cost information, MyCC had found the personal notes of the representative of one of the enterprises that suggests the presence of an agreement and/or concerted practices in relation to the quantum of poultry feed. Witness statements have unequivocally reaffirmed that there was indeed an oral exchange of pricing information for raw materials before, during and subsequent MFA meetings.

Financial Penalty and Directions

MyCC may impose a financial penalty of not more than 10% of the worldwide turnover and/or any other direction deemed suitable under Act 712. MyCC in determining the financial penalty in a particular case will refer to our Guidelines on Financial Penalty whereby only relevant turnover gained during the infringement period will be used to calculate the penalty. In the same Guidelines, mitigating and aggravating factor will be considered, if any.

In this instance, MyCC had identified that there are 3 separate infringement periods involving different five (5) feed millers:

Infringement Periods	Enterprises
31 January 2020 – 31 March 2020	PK Agro, Gold Coin, FFM and Leong Hup
1 October 2020 – 31 January 2021	PK Agro, Gold Coin, FFM and Leong Hup
1 February 2021 – 30 June 2022	PK Agro, Gold Coin, FFM, Leong Hup and Dindings

Based on the detailed calculation made by MyCC, the enterprises have been imposed the following financial penalties totalling around **RM415,495,696.49**.

No.	Enterprises	Amount
1.	FFM	RM42,689,583.64
2.	Gold Coin	RM97,511,670.48
3.	Leong Hup	RM157,470,027.02
4.	PK Agro	RM47,800,793.00
5.	Dindings	RM70,023,622.35
Grand Total		RM415,495,696.49

In addition to these financial penalties, MyCC had also issued directions to be adhered to by the enterprises as follows:

- i. Cease and Desist Order – enterprises to cease participation in poultry feed cartel;
- ii. Monthly Reporting on Poultry Feed Prices – enterprises to submit on poultry feed price increases and decreases;

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- iii. Review and Enhance Compliance Training Programs – FFM, Gold Coin, and Dindings to enhance their competition law compliance training program and enrol employees and board members for the program;
- iv. Implementation of Compliance Programs – PK Agro and Leong Hup to enrol employees and board members in a competition law compliance program; and
- v. Recognition of Competition Law Infringements as Misconduct – enterprises to include a provision in their respective Code of Conduct recognising involvement in Competition Law infringements as misconduct.

“Cartel is a supreme evil in competition law and a form of economic sabotage at the highest level, more so in a public interest case. MyCC has been tasked by the government to eradicate cartels and we will continue to do so without fear or favour. As we have intimated before, we are still monitoring the chicken industry since the recent government decision to discontinue subsidies and price control on chicken. We hope the lesson learnt from this case will be a deterrent to all in particular cartels-to-be,” said Iskandar Ismail, Chief Executive Office of MyCC.

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About the Malaysia Competition Commission (MyCC)

Established through the Competition Commission Act 2010 in April 2011, MyCC is an independent body responsible for enforcing the Competition Act 2010 (the Act), which was implemented to create protect the process of competition which would, in turn, stimulate productivity, continuous entrepreneurship and innovation amongst businesses, 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 of 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.

MyCC celebrated its 12th anniversary on 1 April 2023 and to date MyCC has taken decisive action against almost 250 companies relating to cartels and abuse of dominant positions resulting in a cumulative penalty of more than RM150 million. MyCC's current priorities include amending the Act to introduce merger control regime, actively targeting bid rigging cartels and cartels in the food and agriculture sectors as well as focusing on the challenges brought by the digital economy to competition law and policy.

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