

NEWS RELEASE

PIAM AND INSURERS CASE: MyCC IS WEIGHING ITS OPTIONS ON THE DECISION ISSUED BY THE COMPETITION APPEAL TRIBUNAL

KUALA LUMPUR, 13 SEPTEMBER 2022 – The Malaysia Competition Commission (MyCC) refers to the media articles published recently commenting on the decision by the Competition Appeal Tribunal (CAT) in relation to MyCC's decision. The recent articles on this case do not do justice to the decision of the CAT as they do not depict a complete picture of the said decision. It should be noted that in 2017¹ and again in 2020², both Bank Negara Malaysia (BNM) and Persatuan Insurans Am Malaysia (PIAM) had asserted that the infringing agreement was made based on a directive by BNM. In fact, this was a defence that was put strongly by the insurers before the CAT, which was supported by BNM.

MyCC would like to emphasize that the CAT held that MyCC, by its nature and function as a quasi-judicial body, is empowered to interpret a provision of law whether it is relevant or otherwise. The mere fact that the outcome of the interpretation of the law affects another regulator's power could not preclude MyCC from exercising its duties.

Further, the CAT ruled that the letters issued by BNM which were relied heavily by PIAM and the insurers cannot be construed as a directive. In fact, the CAT is of the considered view that the impugned letters which BNM alluded to be a direction or directive fall short of precise language to amount to a direction or directive. It was further held that in all impugned letters before the CAT, BNM did not state in clear terms that it was directing PIAM and the insurers to enter into the infringing agreement. Consistent with MyCC's findings in its final decision, the CAT ruled that the letters are merely letters urging the parties to resolve the commercial dispute, expedite negotiation and reach an agreement on the issues raised.

¹ <https://www.bnm.gov.my/-/mycc-s-proposed-decision-against-piam-and-its-22-members;https://piam.org.my/blog/2017/03/01/piams-statement-on-the-proposed-decision-by-mycc/>

² <https://www.bnm.gov.my/-/mycc-s-final-decision-against-piam-and-its-22-members;https://piam.org.my/blog/2020/09/30/piam-expresses-profound-disappointment-at-myccs-decision/>

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The timing of BNM's first mention of its position that the said impugned letters were a direction or directive was also taken into consideration by the CAT in reaching its decision. The CAT was of the view that if BNM had indeed issued a direction in 2011, it would have stated so in 2015, at the earliest possible opportunity when investigations by MyCC commenced. On the contrary, BNM only mentioned that the said letters were a direction or directive just around a month before MyCC issued its proposed decision in 2017. On this basis, the CAT dismissed BNM's appeal.

“On other aspects of the decision, MyCC is currently analysing and weighing its options, which includes filing a judicial review. This is because the decision by the CAT may create ambiguity on how the law in relation to anti-competitive agreements made through associations is interpreted. Concurrently, MyCC will continue to strive to execute its mandate efficiently and effectively with a commitment to ensure competition culture remains conducive and markets work well for consumers, businesses, and the economy”, said Mr. Iskandar Ismail, Chief Executive Officer of MyCC.

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About the Malaysia Competition Commission (MyCC)

Established in June 2011, MyCC 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 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 10th year anniversary on 1 April 2021 and announced the launch of its rebranding and redesigned logo to elevate its corporate identity. The Logo embodies the culture and colours of the organization as well as its strengths and work values. The symbol of the butterfly is globally known to represent endurance, change, hope and life. This new look also shows simplicity at its finest, signifying the changes and maturity of MyCC itself.

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