

MyCompetition NEWS

Promoting Competition, Protecting You



We've Got You Covered

Discussing Fair Business Practices

MESSAGE



“We have been effectively demonstrating why competition should be regarded as a must for corporations and industrial associations in Malaysia.”

This past year has been an eventful one for the Malaysia Competition Commission (MyCC) as we have further consolidated our role and position as an integral part of the nation's regulatory framework. Although the MyCC is nearly three years old, the *Competition Act 2010* was only enforced by 2012, hence the concept of competition law is still relatively new in Malaysia. Therefore, 2013 should be marked as the year when the MyCC has 'come of age' through our advocacy and outreach programmes.

However, we are glad that we are not entirely alone when it comes to implementing and enforcing competition law. We readily exchange knowledge and expertise with our peers in other jurisdictions, mutually benefitting the MyCC and our partners. This is why bilateral and multilateral cooperation is extremely important for the advancement of competition commissions and similar regulatory bodies.

At the MyCC, we have shown our commitment to this sharing of knowledge through visits to similar authorities in neighbouring countries like Indonesia and Singapore, while also participating in international events organised by the International

Competition Network (ICN), ASEAN and the Organisation for Economic Cooperation and Development (OECD).

We are also proud to have successfully organised the *1st MyCC Competition Law Conference* on the 25th and 26th September, which attracted key competition law experts from around the world, as well as representatives from various Malaysian industries. The success of this forum, which also coincided with the launch of the *Competition Act 2010: Compliance Guidelines* handbook, has strengthened the position of the MyCC as an active contributor to the discussion of best practices in competition law.

The MyCC plans to keep growing in strength and we look forward to an even more memorable 2014, when we will continue to drive competitiveness and underscore its importance to the nation's development agenda. In conclusion, I offer my thanks to our Commissioners, CEO Shila Dorai Raj and her team, as well as to every one of our partners and collaborators, both local and international.

Tan Sri Dato' Seri Siti Norma Yaakob

Chairman, Malaysia Competition Commission

Editorial Board

Advisors

Tan Sri Dato' Seri Siti Norma Yaakob
Tan Sri Dato' Dr Michael Yeoh

Managing Editor

Shila Dorai Raj

Editor

Rowena Wong

News Team

Corporate Communication Unit

For editorial submissions and enquiries,
please email ccu@mycc.gov.my

Publisher & Distributor

Malaysia Competition Commission (MyCC)
Level 15, Menara SSM@Sentral,
No 7, Jalan Stesen Sentral 5,
Kuala Lumpur Sentral
50623 Kuala Lumpur

For further details on the MyCC, please visit:

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www.mycc.gov.my



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Damansara Perdana, 47820 Petaling Jaya,
Selangor Darul Ehsan, Malaysia
Tel: +603 7729 4886
Fax: +603 7729 4887

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For enquiries, please email enquiries@mycc.gov.my, call +603-2272 2293 or fax +603-2272 1692.

Q&A

Have a question on the procedures and policies of the Malaysia Competition Commission? **MyCompetition News** reproduces some of the most asked questions that members of the public and businesses pose to the MyCC.

Q *I am a procurement official who suspects bidders of collusion. What are some telltale signs to look out for?*

A Some common examples of suspicious activity include large price differences between winning and losing bids, unexpected withdrawals from bidding, certain bidders never winning and losing bidders being consistently subcontracted by successful bidders. As for submitted documentation, some of the most obvious signs of bid rigging include identical spelling errors, stationery or miscalculations.

As these are just some examples, procurers should refer to the more exhaustive list available in the OECD's *Guidelines for Fighting Bid Rigging in Public Procurement*. This publication is presently being translated into Bahasa Malaysia and will soon be available on the websites of both MyCC and the OECD.



Q *I run an industry association where members have become accustomed to sharing price information. What should I do?*

A Associations should review their admission rules, terms and conditions, codes of conduct and certification schemes for anti-competitive conditions that exclude players from the market.

While joint decisions on pricing schemes are categorically prohibited by the Competition Act 2010 (CA2010), the sharing of industry data and statistics should not raise compliance issues, provided that the data is aggregated and made anonymous, meaning enterprises are unable to identify the charges imposed by individual members.

The MyCC does not want to see the excellent work of Malaysian associations hampered by an overly cautious approach to the CA2010 and encourages all associations to adopt compliance policies that are distributed to all current and prospective future members.

Requiring members to undertake competition law training will also go a long way towards ensuring compliance with the CA2010. Together, these steps will particularly benefit SMEs, which predominantly rely on associations for guidance on good industry practices and access to relevant industry training.

HIGHLIGHTS

A round-up of some of the events and activities organised or attended by the Malaysia Competition Commission in the course of its duties.

Procurement Protection

In June, the MyCC organised a three-day Workshop on Fighting Bid-Rigging, in collaboration with the Organisation for Economic Cooperation and Development (OECD) and Korea Policy Centre (KPC).

The workshop addressed tender fraud from the perspectives of both competition authorities and public procurement officials. It was attended by 30 representatives of national authorities and 60 procurement officials from various Malaysian government agencies.

The objective of the seminar was to equip all participants with knowledge on the latest investigation and enforcement strategies used to detect and eliminate bid-rigging.



MyCC CEO Shila Dorai Raj speaking to participants during a competition authority session of the Workshop on Fighting Bid-Rigging.



Cluing-In Companies

In early September, the MyCC launched a guidebook for the private sector titled *Competition Act 2010: A Guide for Business*. Dato' Hasan Malek, Minister of Domestic Trade, Co-operatives and Consumerism officiated at the event, alongside MyCC Commissioner Tan Sri Dato' Dr Michael Yeoh and CEO Shila Dorai Raj.

The publication of this guide is a part of the MyCC's ongoing efforts to educate members of the public, especially business owners and operators on the *Competition Act 2010* and how to bring practices in line with the provisions of the law.

From left: MyCC Commissioner Abd Malek Ahmad, CEO Shila Dorai Raj, Minister of Domestic Trade, Co-operatives & Consumerism Dato' Hasan Malek, and Commissioners Tan Sri Dato' Dr Michael Yeoh, Datuk Dr Rebecca Fatima Sta Maria and Prof Datin Dr Hasnah Haron, pose with the newly launched guide.



From left: MyCC CEO Shila Dorai Raj, Commissioner Tan Sri Dato' Dr Michael Yeoh and Head of the Legal Unit Dhaniah Ahmad at the dialogue session with business chambers after the launch of the *Competition Act 2010: A Guide for Business*.

Engaging Enterprises

Following the MyCC's launch of its *Competition Act 2010: A Guide for Business*, the Commission held a dialogue session with members of business chambers. It was moderated by MyCC Commissioner Tan Sri Dato' Dr Michael Yeoh, who said that business chambers play an important role in disseminating information to their members. As such, the MyCC was taking advantage of the network, to spread awareness on competition issues.

MyCC CEO Shila Dorai Raj also revealed that since the gazetting of the *Competition Act 2010* in January 2012, the MyCC has initiated investigations into 26 cases out of the 40 complains it has received so far, as the remaining are outside the Commission's jurisdiction.

Cultivating Competitiveness

On the 25th and 26th September, the *1st MyCC Competition Law Conference* was held at the Kuala Lumpur Convention Centre (KLCC). Opened by Deputy Prime Minister Tan Sri Muhyiddin Mohd Yassin, the Conference attracted over 20 industry and legal experts and more than 500 participants from almost every business sector in Malaysia.

During the two days, various talks and seminars were held, encompassing issues such as bid-rigging, vertical agreements, market sharing and competition enforcement. Each discussion on the different areas of competition law featured both legal and financial considerations.



From left: Minister of Domestic Trade, Co-operatives & Consumerism Dato' Hasan Malek, Deputy Prime Minister Tan Sri Muhyiddin Mohd Yassin, MyCC CEO Shila Dorai Raj and Chairman Tan Sri Dato' Seri Siti Norma Yaakob at the launch of the *Competition Act 2010: Compliance Guidelines* during the *1st MyCC Competition Law Conference*.



Advancing Advocacy

As part of its participation in the ASEAN Experts Group on Competition (AEGC), the MyCC was in Bangkok on the 10th and 11th October for the third meeting of the *Working Group on Developing Strategy and Tools for Regional Advocacy*.

During the two days, various advocacy materials were discussed and conceptualised, including pamphlets, brochures and handbooks on the benefits of competition policy and law.

The Chairman of the Working Group and the AEGC Vice-Chair, flanked by consultants, the ASEAN Secretariat and delegates from ASEAN member states. Representing the MyCC were Rowena Wong (second row, sixth from left), Head of Corporate Communications, and Strategic Planning and International Affairs Division Executive Ayuda Sari Ismail.

Investigating Competition

In late October, the MyCC awarded eight successful applicants with funds amounting to RM200,000 under the MyCC Research Grant Programme (RGP), which was established in December 2012.

Research findings generated by the RGP will expand knowledge on competition issues in the MyCC Strategic Research Areas and create a clearer picture of the competitiveness of Malaysian enterprises.

Applications to the RGP were open from January to April 2013 with invitations sent to universities, research institutes, think tanks and civil society organisations. The MyCC is currently planning grant allocations for 2014.



Front, from left: MyCC Commissioners Abd Malek Ahmad and Prof Dato' Dr Sothi Rachagan and CEO Shila Dorai Raj with grant recipients from Malaysian and international universities.

ASEAN Awareness

In November, the MyCC attended the 12th bi-annual AEGC meeting in Cebu, Philippines, along with competition authorities from across the region.

The event saw the launch of the *ASEAN Competition Policy and Law* website, which digitally distributes the AEGC's advocacy materials and provides updates on regional competition cases and rulings. The resource is a key deliverable of the ASEAN Economic Community (AEC) 2015 Blueprint, and can be found at www.aseancompetition.org.

Chairperson Heiddi Venecia R. Barrozo (seated, third from right), the Director of the Office for Competition at the Department of Justice, Philippines with AEGC delegates including MyCC representatives Mohd Aidil Tupari (seated, far left), Director of the Strategic Planning and International Affairs Division and Valerie Mohan, an Executive in the same division.





Clockwise from top:

From left: MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob and Wan Ahmad Uzir Wan Sulaiman, Sarawak's Director of Domestic Trade, Co-operatives & Consumerism, during the launch in Kuching.

From left: MyCC Commissioner Tan Sri Dato' Dr Michael Yeoh, MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob and Assistant Director of Domestic Trade, Co-operatives & Consumerism of Sabah Shevena Jumin Jeffrey at the launch of the guide.

Eastern Outreach

November marked an exciting double-ceremony for MyCC's informative guidebook in the East Malaysian states of Sabah and Sarawak. *Competition Act 2010: A Guide for Business* explains the rules and compliance requirements for businesses, and following its successful September launch in Kuala Lumpur, the guide was unveiled in Kuching and Kota Kinabalu, on the 28th and 29th November respectively.

A dialogue and consultation roundtable session with business chambers, moderated by MyCC commissioners Tan Sri Dato' Dr Michael Yeoh, Mohd Aidil Tupari and Suren Rajah, was also part of the launch proceedings.



MyCC CEO Shila Dorai Raj (back row, seventh from left), Mohd Aidil Tupari (back row, sixth from right), Director of the Strategic Planning and International Affairs Division, and Iskandar Ismail (back row, third from right) Director of the Investigation and Enforcement Division with Division and Unit Heads and other MyCC staff.

Retreat, Review, Reinvigorate

Langkawi, Kedah was the chosen destination for the Commission's annual Strategic Planning Retreat, which provides the MyCC an opportunity to refine its strategies, assess its progress to date and formulate an action plan for the year ahead.

Held from the 5th to 8th December, the three-day island retreat also included a team-building programme, setting the tone for another effective year of promoting and cultivating competition in Malaysia.

For the latest events, log on to www.myc.gov.my. Please forward your requests for seminars on the *Competition Act 2010* to the Strategic Planning & International Affairs Division at spiad@mycc.gov.my.

COMPETITION STANDARDS

The recently concluded 1st MyCC Competition Law Conference was a resounding success, attracting over 500 participants from Malaysia and its ASEAN neighbours, as well as other countries around Asia. The event hosted more than 20 veteran industry and legal experts on competition law, who have regulated and practiced in nearly 60 jurisdictions and almost every region around the world.



From left: MyCC Commissioner Dato' Saripuddin Kasim, Minister of Domestic Trade, Co-operatives & Consumerism Dato' Hasan Malek, Deputy Prime Minister Tan Sri Dato' Muhyiddin Mohd Yassin, MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob, MyCC CEO Shila Dorai Raj and MyCC Commissioner Tan Sri Dato' Dr Michael Yeoh at the launch of the MyCC's latest publication, the *Competition Act 2010: Compliance Guidelines*, following the conference's official opening.



“Getting the fines right should be a priority. In many jurisdictions, fines levied on companies violating the law are so low that they are considered a licensing fee to break the law; they have no deterrent value. [The MyCC] needs to be sensitive to that.”

Dr Shyam Khemani – Principal Economist of Microeconomic Consulting & Research Associates (MiCRA), on key strategies for developing competition regimes, as discussed during his breakout session on the competitive effects of resale price maintenance.

“[If] tenders are designed in a way that makes it impossible for an SME to deliver the entire contract, the MyCC can work with government procurers to assist with improving tender design, to allow for the maximum number of participants.”

Hilary Jennings – Head of the Global Relations Programme, Competition Division of the Organisation for Economic Co-operation and Development (OECD), during her breakout session on discouraging bid-rigging among SMEs.



Deputy Prime Minister Tan Sri Dato' Muhyiddin Mohd Yassin officiated at the opening ceremony of the conference which was held on the 25th and 26th September at the Kuala Lumpur Convention Centre. Introductory remarks were also delivered by MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob

and the Minister of Domestic Trade, Co-operatives & Consumerism Dato' Hasan Malek.

In his address, Tan Sri Dato' Muhyiddin Yassin told the attendees that perpetration of anti-competitive practices is akin to theft and thus no segment of industry should be

exempt from any provision of the Competition Act 2010 (CA2010). The Deputy Prime Minister also stressed that strict compliance would result in various benefits to consumers and businesses, including lower prices, higher quality, and improved innovation and productivity.

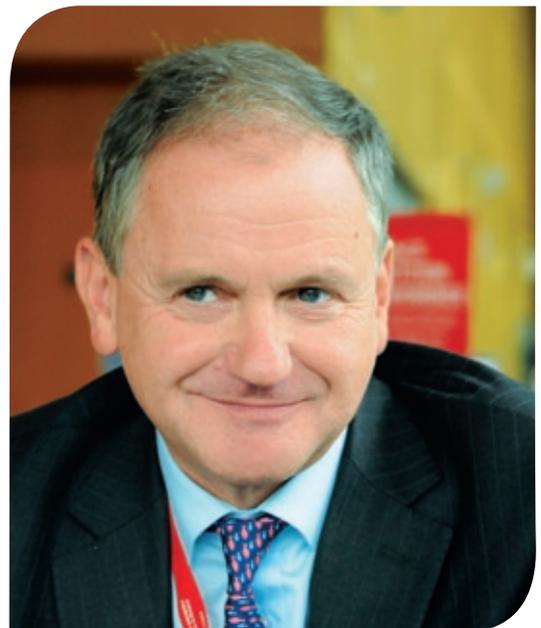


“[The MyCC and the Competition Commission of Singapore] have shared many ideas that both authorities have implemented. A lot of sharing also happens on the ASEAN Expert Group on Competition (AEGC) platform where authorities come together and discuss the direction in which each is going.”

Yena Lim – Chief Executive and Commissioner of the Competition Commission of Singapore, speaking about collaboration between competition authorities during her plenary session on ensuring compliance with competition law.

“One always has to undertake a sensible economic analysis of any particular agreement or practice – there is no escape from that. You get some infringements which are fairly obvious, and then you can have other infringements that involve very complicated legal and economic analysis.”

Prof Richard Whish – Former Professor of Law at King’s College, London, sharing his thoughts on the relationship between legal and economic considerations in competition law, as discussed during his breakout session on vertical agreements.



“We need to make it easy for [SMEs] to understand [the law] in really straightforward language as well as make it easy for them to comply with it; and we need to recognise that they’re not big businesses and it’s much harder for them to do these things.”

Dr Michael Schaper – Deputy Chair of the Australian Competition & Consumer Commission, speaking on how to promote SME compliance during his breakout session on the impacts of competition law on SMEs.





Following the event's formal opening, Tan Sri Dato' Muhyiddin Yassin and Tan Sri Dato' Seri Norma Yaakob also launched the *Competition Act 2010: Compliance Guidelines*. According to Tan Sri Dato' Seri Norma Yaakob, the guidelines were published to provide businesses with a general indication of the steps essential to setting up internal initiatives which promote compliance with the CA2010. She also emphasised the need for companies to review their agreement-forming procedures, which would minimise the likelihood of contravening the act.



Clockwise from top:

MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob (third from right) with Deputy Prime Minister Tan Sri Dato' Muhyiddin Mohd Yassin (on her right) and other MyCC Commissioners.

The Minister of Domestic Trade, Co-operatives and Consumerism, Dato' Hasan Malek, gave the audience some historical background on the efforts to establish rigorous competition regulations in Malaysia.

David Stallibrass, Competition Economist for the UK Office of Fair Trading, shared some economic perspectives on the potential benefits and threats to competition posed by fee scales.

MyCC Commissioner Prof Dato' Dr Sothi Rachagan set the tone for the conference, comprehensively recapping the development of competition law in Malaysia.



Top to bottom:

From left: MyCC Commissioner Ragunath Kesavan, former Competition Hearing Officer of the European Commission Michael Albers, Chairman of the Commission for the Supervision of Business Competition, Indonesia (KPPU) Ir Muhammad Nawir Messi and Dean of the Australia & New Zealand School of Government Prof Allan Fels addressed the differences in implementation of competition law in each of their jurisdictions.

From left: Legal Director-South East Asia & Australasia, CD/Competition Law-Asia Unilever Asia Saswata Mukherjee, Senior Counsel - European Competition Law, Government Affairs & Policy General Electric Company Kaarli Harry Eichhorn, Dean of the Australia & New Zealand School of Government Prof Allan Fels and General Counsel of Exxon/Mobil, Exploration and Production Malaysia (EMEPM) Lee Bao Keng discussed contravention and various approaches to enforcement.

Prof Dr Iwakazu Takahashi, Professor of Law at the Graduate School of Law, Meiji University gave participants an overview of bid-rigging activity in Japan, including instances initiated by government officials, as well as the preventative measures introduced such as selective competitive bidding.



The 1st MyCC Competition Law Conference was a landmark event in the implementation of competition law in the region, with numerous practitioners from mature jurisdictions helping participants gain invaluable insights on the CA2010, as well as the ways in which the MyCC interprets certain issues.

CASE STUDIES

Since the beginning of 2012 when the Competition Act 2010 came into force, the MyCC has investigated several incidents of anti-competitive practice. In the following section, we highlight some recent examples and report the actions taken by the MyCC to uphold the spirit of competition in Malaysia.

TWO BIRDS, ONE STONE

Malaysia Airlines
and AirAsia



Malaysian Airlines (MAS) and AirAsia, the two passenger airline market leaders in Malaysia, were found to have engaged in a market-sharing agreement in the form of their Comprehensive Collaboration Framework, inked in August 2011.

The airline operators were revealed to have carved out and divided domestic

routes among themselves. After a thorough process to determine if there was any infringement of competition rules, both airlines were found to have infringed section 4(2)(b) of the *Competition Act 2010* (CA2010). "Market sharing is considered a serious infringement under the CA2010 as it is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods and services," said MyCC Chairman, Tan Sri Dato' Seri Siti Norma Yaakob regarding the case. "When businesses agree to share markets, they are agreeing to stop competing at the expense of the consumers," she added.

A proposed fine of RM10m was levied on each of the airlines, taking into consideration their cooperation in investigations as well as their voluntary removal of the routes and market focus stated in the airlines' Collaboration Agreement in their Supplemental Agreement dated 2nd May 2012.

BREAKING THE IRON GRIP

Megasteel

On the 1st of November, Megasteel was found to be infringing Section 10(1) of the *Competition Act 2010* (CA2010) by abusing its dominant position. The company manufactures both Hot Rolled Coil (HRC) and Cold

Rolled Coil (CRC) but has a monopoly on HRC production.

Megasteel prices CRC below all of its competitors, while pricing HRC – a vital input for CRC production

– disproportionately high. This results in a practice referred to as 'margin squeezing' and is deemed unlawful under the CA2010.

The MyCC issued a proposed decision to impose a fine of RM4.5m on the steel manufacturer. This figure was determined after considering the nature of the product, the market structure, Megasteel's market share, entry barriers, the effects of Megasteel's actions and the seriousness of the infringement.

SAILING THE HIGH SEAS

Malaysia Shipowners Association (MASA), Shipping Association of Malaysia (SAM) and Federation of Malaysian Port Operators Council (FMPOC)



In response to an application by various shipping and port operators' associations under MASA, SAM and FMPOC, the MyCC announced plans to issue a Block Exemption Order (BEO) for liner shipping agreements in February 2013. The Proposed BEO was drafted based on studies conducted on the industry, and after consultations with the relevant government agencies. A series of public consultations was held following the announcement and submissions from stakeholders were taken into account in re-drafting the proposal.

Under Section 8 of the *Competition Act 2010* (CA2010), the MyCC has the authority to grant BEOs, but can only do so when specific conditions are satisfied. This includes the realisation of significant

efficiency gains which must be otherwise unachievable. Also, the agreement's negative effects must be proportionate to the gains and the BEO must not allow companies to eliminate competition entirely.

One important caveat is that the BEO does not apply to Section 10 of the CA2010, meaning liner operators found to be abusing their dominant position will still be liable for prosecution. Additionally, it does not cover inland carriage and warehousing of goods.

A subject of heated debate, the final BEO will be announced once all aspects, including stakeholder submissions, have been studied and due processes have been carried out.

The MyCC will continue to investigate such cases and dispense warnings or penalties where necessary, as part of its ongoing drive to rid Malaysia of anti-competitive practices. By enforcing the Competition Act 2010, the MyCC hopes to enhance competition for the benefit of businesses, consumers and the economy.

ATTACHMENTS

Cross-border collaboration between competition commissions is important as it helps strengthen capabilities and enhance knowledge. One key way of doing so is through secondment and attachment programmes.

Geoffrey Williams

Former General Manager of Enforcement Operations, ACCC

From September to December, the MyCC played host to Geoffrey Williams, the retired General Manager of Enforcement Operations at the Sydney-based New South Wales branch of the Australian Competition and Consumer Commission (ACCC).

His experience in managing and facilitating investigation as well as litigation of cartel cases and abuses

of dominance has helped the MyCC focus and streamline its enforcement procedures.

During his time, Williams trained, mentored and advised MyCC staff on market definition and enforcement issues. In addition, he also introduced plans to focus and organise investigations to meet defined objectives and timelines.

"The attachment has been one of mentoring and training. I hope and expect that as both organisations grow, a deep collaborative relationship will come to fruition."

Pakeeza Mohd Junus

Investigation and Enforcement Officer, MyCC

MyCC Investigation and Enforcement Officer Pakeeza Mohd Junus went on secondment to the Canberra and Brisbane branches of the Australian Competition and Consumer Commission (ACCC) from August to November.

As part of the MyCC's learning and growth initiative under its strategic plan for 2012/2013, the collaboration has strengthened ties between the two bodies.

During her time there, Pakeeza undertook courses in basic investigation training as well as on how to handle evidence, utilise search warrants and record witness statements. Her experiences will enhance the MyCC's investigative capacity and also bring a fresh perspective on competition.

"The collaboration has benefited both the ACCC and the MyCC, allowing them to gain, retain and share knowledge on competition issues and cases."

COMPLIANCE FOR SMEs

Although there are over 700,000 SMEs in Malaysia, comprising more than 97% of domestic businesses, the degree of special attention they require is a topic of contention among legal practitioners, economists and competition regulators. However, there is a consensus that competition law benefits SMEs. In balancing their rights and responsibilities, SMEs are not exempt from the law, which at the same time protects them from predatory behaviour by competitors with greater market power.

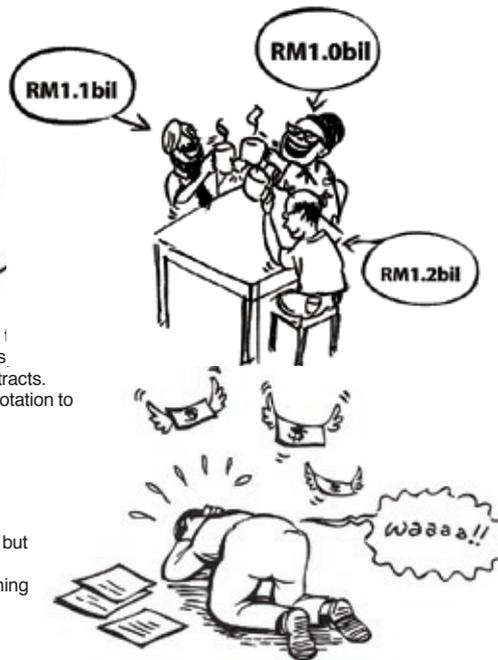
How Bid-Rigging Works

Companies conspire to submit bids at unacceptably high prices and withdraw their bids upon agreement.



Pre-selected enterprise wins! then rewards those who conspire by awarding them sub-contracts. Enterprises may also go on rotation to take turns to win bids.

Potential employers/buyers have no choice but to hire the winning bidder at a higher cost, which is passed onto the consumers – draining the resources of the economy, consumers and enterprises.



Bid-rigging is a serious offence under the CA2010 and occurs when SMEs collude with larger competitors and submit unreasonably high bids in exchange for sub-contract offers.

Under the *Competition Act, 2010* (CA2010), Malaysian SMEs do not benefit from any special dispensations from competition law. Hard-core cartel activities like price-fixing, market-sharing, limiting production and bid-rigging, are considered serious infringements and will result in heavy penalties regardless of the size of the

enterprise. This is sure to impact SMEs more severely than larger competitors.

According to MyCC CEO Shila Dorai Raj, the sharing of price information is also a large area of concern for the Commission, with industry associations traditionally facilitating these exchanges.

While the MyCC does not want to hinder the work of associations in providing members with industry data and statistics, information on best practices and access to relevant training, associations and their members should familiarise themselves with the types of information they can and cannot share.

In addition, SMEs should ensure that employees understand how the CA2010 applies to their business and identify the risk areas relevant to their specific enterprise. Operators should then ensure that compliance procedures are tailored to these particular areas. In this respect, associations can provide assistance as SMEs in the same industry are likely to face the same risks of contravening the law.

Clarity and Sensibility

Dr Michael Schaper, the Deputy Chair of the Australian Competition & Consumer Commission, acknowledges that SMEs are not granted any special immunity from the law, but maintains that authorities should keep certain factors in mind when dealing with SMEs. Paramount among these is the fact that SMEs often lack adequate legal counsel on competition issues, and it may be more difficult for them to understand and comply with the law as a result.

“We need to explain the rules and do so in really straightforward language that they can understand,” he says, adding that proportionality of enforcement actions – to both the seriousness of the offence and the size of the business – is essential.

Dr Schaper advocates a sensible approach to enforcement, especially in the early days of competition policy. One example he gave was the recent price fixing case involving the Cameron Highlands Floriculturist Association. In that scenario, a cease and desist warning proved to be enough to adequately enforce the law.

Level Playing Field

On the other hand, Dr Shyam Khemani, Principal Economist of Washington, D.C. based Microeconomic Consulting

& Research Associates, points out that in exchange for access to the same markets as larger players, SMEs should also be subject to the same compliance requirements.

“The policy towards SMEs should be that they have the same opportunities to participate in the market that large companies have and if it turns out that they win the contract on their merits then so be it,” he says.

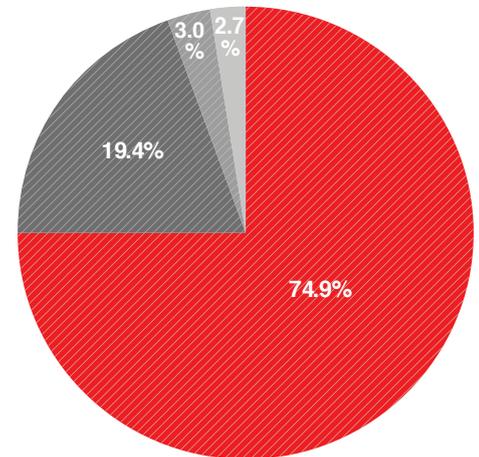
Granted that SMEs may not wholly have the individual capacity to successfully tender for contracts, Dr Khemani recommends that they pool their resources and submit joint-bids to overcome disadvantages of size. “Malaysian law, as well as those of many countries, allows this but it has to be open and transparent,” he adds.

Still, the design of tenders may present restrictive barriers to entry for SMEs in certain circumstances. Hilary Jennings, Head of the Global Relations Programme, Competition Division of the Organisation for Economic Co-operation and Development (OECD) emphasises that to promote competition, tender design should prioritise maximising the number of potential applicants.

“For SMEs, one of the problems with participating in a tender is that it can be costly, and also tenders are often designed in a way that makes it impossible for one SME to deliver the entirety of a contract,” she says.

She recommends that very large contracts are broken up into smaller segments, allowing SMEs with limited capacity to still compete and participate in the open market. While competition policy should never favour any specific group of competitors, Jennings maintains that improving tender design is a worthy pursuit towards increasing the overall number of possible competitors.

Malaysian Enterprises by Size



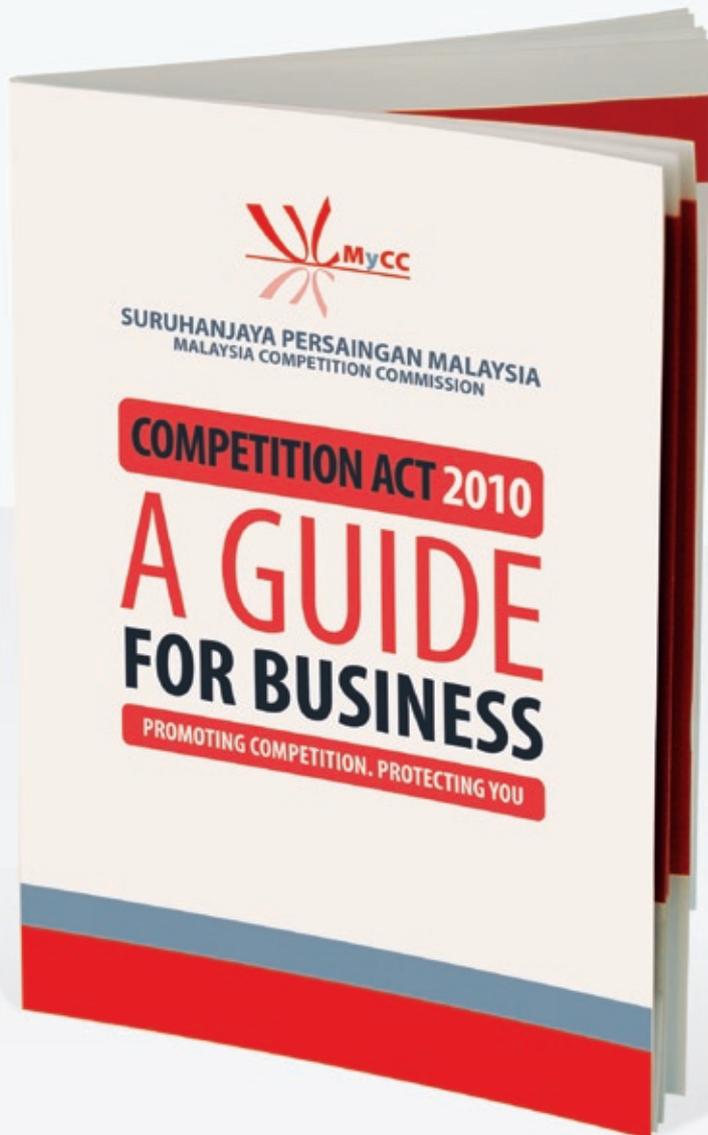
Size Category	Number of Enterprises
Micro-enterprises	496,458
Small firms	128,787
Medium-sized firms	19,891
Large firms	17,803

Department of Statistics, Malaysia (2012) *Economic Census 2011: Profile of Small and Medium Enterprises*

Like interpretation of the law itself, there are many perspectives on the roles of both competition commissions and business operators in promoting compliance with the Competition Act 2010. Entrepreneurs should always remain mindful of their legal obligations, and while Malaysian law does not prescribe immunities for SMEs, they often benefit from strict enforcement of the law.

FROM THE MyCC

Early in September, the MyCC published a comprehensive guide to the Competition Act 2010 (CA2010) and its implication on businesses that interact with the Malaysian market. As the powers of the CA2010 extend to deals transacted internationally which affect Malaysia, The Competition Act 2010: A Guide For Business is useful for many enterprises throughout the world.



The Guide for Business has a glossary of key terminology, which will greatly benefit companies without in-house legal counsel such as small and medium enterprises. In addition, it also highlights the role of the MyCC, prohibited areas of activity and the consequences of infringing the CA2010, as well as business rights and responsibilities.

Owners and operators of all Malaysian businesses and those affecting Malaysian markets would be well served in attaining a copy of *Competition 2010: A Guide for Business*.

As businesses are expected to take more responsibility in ensuring compliance with the law themselves, The Competition Act 2010: A Guide For Business is a crucial and timely resource, promising to raise the calibre of business in Malaysia.

Released on 25th September, The Competition Act 2010: Compliance Guidelines is the MyCC's latest publication, showcasing to business the benefits of developing a compliance programme with specific, practical recommendations on how this can be achieved. It is written in clear and straightforward language to facilitate easy understanding of the information it contains.

The guide provides an overview, defining what is entailed in forming a compliance programme, the benefits of adopting one, and ways to identify and assess the risk areas relevant to a business, as well as the most essential components that should be included in every compliance programme.

As all companies, big and small, are subject to the provisions of the *Competition Act 2010*, there is an urgent need for every enterprise in Malaysia to enact comprehensive compliance programmes. Small businesses, which typically have limited legal expertise, will particularly benefit from these guidelines. In addition, the guide also offers tips on key issues that should be kept in mind and applied in the specific context of businesses in various industries.

Having published numerous guidelines and compliance manuals, the MyCC has taken all of its experience and applied it in a way that has resulted in a most convenient and user-friendly publication. At 19 pages, the guide is a breeze to get through and can be studied in detail within just one hour.

Compliance officials in all businesses would do well to obtain a copy of these competition guides through the MyCC website (www.mycc.gov.my).

