

MyCompetition NEWS

Promoting Competition, Protecting You

An agency under



MDTCC

Ministry Of Domestic Trade,
Cooperative And Consumerism



Ensuring Fair Play

Showing Bid Rigging The Red Card



MESSAGES



To facilitate Malaysia's economic growth, public procurement continues to play as vital a role as ever, enabling the government to secure and maintain assets and infrastructure that are essential to sustain national development. Compared with other member countries of the Organisation of Economic Cooperation and Development (OECD) – which allocate 10% to 20% of national spending on

such areas – Malaysia has committed 24% to 33% of its GDP to public procurement expenditure over the past 10 years, illustrating the government's strong emphasis on infrastructural capability.

As such, it is clear that bid rigging practices, which are anti-competitive in nature and has been made an enforcement priority by the MyCC, are particularly detrimental. This is because such negative acts drive up the prices of individual procurements – substantially raising costs for individuals, the government, and the public at large – while also having the potential to upset the balance and compromise the delivery of vital projects and services.

In order to prevent this and other anti-competitive practices such as price-fixing and market sharing, the *Competition Act 2010* (CA 2010) and the MyCC were both formed nearly

four years ago to ensure a more open and equitable domestic marketplace.

Thanks to the Commission's ceaseless efforts to advocate and build awareness on relevant national policies, competition has become an increasingly familiar topic in Malaysia. The MyCC has also taken steps to assist companies in assuming greater responsibility over compliance, producing conducive and effective materials which help identify potentially troublesome business areas and mitigate the risk of contravention.

While I congratulate the MyCC on the commendable milestones it has achieved thus far, I am eager to see it reach even greater heights, and wish the entire team the very best in their tireless endeavours.

Dato' Sri Hasan Malek

Minister of Domestic Trade, Cooperatives and Consumerism

As we approach the end of the year, the MyCC has recorded numerous successes in its ongoing drive to institutionalise competition in Malaysia, and establish a fairer and more open business landscape. We continue to actively participate in various bilateral and multilateral programmes which focus on the development of competition policy, and in recent months, I have personally attended a number of such conferences and forums in both South Korea and Japan.

Domestically, the MyCC remains focused on promoting initiatives which build awareness on bid rigging and its threat to the economy, as well as those which facilitate the enforcement of the relevant legal provisions. In line with these efforts, I have also officiated at several nationwide outreach programmes, which are aimed to raise awareness on the topic, especially amongst officers involved in public procurement.

More generally, the importance of compliance is also becoming increasingly evident to private sector practitioners in Malaysia. As the MyCC forges ahead with the investigation of cases and clarification of legal interpretations, it should also be noted

that companies are expected to play a lead role in ensuring that they comply with the *Competition Act 2010* (CA 2010).

To help the public better understand how enforcement decisions relating to financial penalties and legal leniency are weighed, the Commission has also made relevant guidelines available on its website. These documents are respectively based on Section 17 of the *Competition Commission Act 2010* and Sections 40(1) and 41 of the CA 2010, and do not serve to substitute or supersede any provision made in the CA 2010 or any subsequent regulation.

At the same time, the Commission continues to embrace its role as the nation's sole statutory body concerned with competition advocacy. Following last year's launch of the *Competition Act 2010: Compliance Guidelines* handbook, we additionally jointly launched a Compliance Checklist with the Federation of Malaysian Manufacturers (FMM). While the checklist was aimed for FMM members, it is also available for other businesses as a reference on how to create their own compliance checklists in order to independently verify the legality of their operations, as well as the adequacy



of their internal compliance and prevention measures. It is heartening to note that FMM has taken the initiative in being an advocacy partner and I hope more associations will follow suit.

Looking ahead, I am confident that there are even greater achievements in store for 2015. Through the MyCC's awareness-building efforts to date, the corporate sector continues to mature and take strides towards ensuring competition compliance, and the MyCC is poised to go on building on this momentum.

Tan Sri Dato' Seri Siti Norma Yaakob

Chairman, Malaysia Competition Commission



In order to transition into a fully developed economy, it is important that our business ecosystem matches world standards.

One major obstacle for a healthy economy is the anti-competitive conduct of bid rigging, which distorts a fair market. As such, the Malaysia Competition Commission (MyCC) has identified bid rigging as one of the major areas to tackle. During the year, intensive efforts were undertaken to launch the fight against bid rigging and one major achievement was the launch of two books titled the *Guidelines for Fighting Bid rigging in Public Procurement* and *Help Us Detect Bid rigging*. The publications essentially outline issues that require attention during procurement processes to assist public procurement officers in identifying malpractices in tender processes. The launches, which took place in Putrajaya, Kuching and Kota Kinabalu, were also followed with seminars held nationwide, in line with our goal of raising awareness on this anti-competitive practice.

Considering that the nature and characteristics of bid rigging are so intricately linked with the need for transparency and ethical business practices, the next stage we are looking into is possible collaborations with the National Audit Department and the Malaysian Anti-Corruption Commission (MACC). This is because, bid rigging is two sides of the same coin, and even internationally, there is a growing debate about competition and corruption. However, a progressive approach is needed here where the agencies mentioned above need to

clearly understand the CA 2010 and where the agencies can work together.

International events are a platform for the MyCC to not only share our best practices with other countries, but also to learn more about anti-competition legislation and practices that could be adopted in our framework. The MyCC participated in the Fourth ASEAN Competition Conference, among others, held in Manila last July, where we were the moderator for the panel discussing *New Strategies for Cartel Detection and Deterrence*. Additionally, the MyCC also participated in the *Competition Law Conference 2014* held in Singapore a month later, taking part in key discussions.

In order to strengthen our core competencies and to benchmark against established jurisdictions, the MyCC has continued to actively participate in international working groups. This year we also took on the joint hosting of the inaugural ASEAN Experts Group on Competition (AEGC) Workshop on Investigation and Case-Handling with the ASEAN Secretariat, and the German Federal Enterprise for International Cooperation – (GIZ) in June. In addition, as part of our consistent capacity building efforts, we have also conducted cross-border collaborations through attachment programmes, such as with the Competition Commission of Singapore, and also obtaining technical assistance.

Overall, we have progressively continued our two-pronged approach of enforcement and advocacy in applying the Competition Act 2010 and certainly have seen more results. As the year comes to a close, we continue to look forward to forge greater awareness on competition issues and thenceforth, compliance amongst stakeholders in the public and private sectors. Ultimately, our mission to promote competition can only be achieved by a joint effort between the MyCC, relevant Government bodies, corporations and members of the public.

Shila Dorai Raj
CEO, Malaysia Competition Commission

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HIGHLIGHTS

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



MyCC CEO Shila Dorai Raj (centre) moderating the plenary discussion entitled 'New Strategies for Cartel Detection and Deterrence,' in which competition policy experts from across the ASEAN region participated.

Facilitating Frameworks

To further enhance its contribution to the development of competition standards across the region, the MyCC was involved in the 4th ASEAN Competition Conference, which was held in Manila, Philippines, from 16th to 17th July.

The event, themed *Building Blocks for Effective Enforcement of Competition Policy & Law*, was attended by MyCC CEO Shila Dorai Raj – who served as a moderator during one of the plenary discussions – and Investigation and Enforcement Division Executive Muhammad Imran.

Advancing Awareness

Acknowledging the importance of fostering business ethics and competition compliance from a young age, the MyCC conducted an industrial seminar for students at the Putra Business School, Universiti Putra Malaysia, on 11th August.

Titled *Competition Policy in Malaysia*, the seminar featured a presentation on the fundamentals of competition law, delivered by MyCC CEO Shila Dorai Raj.



MyCC CEO Shila Dorai Raj delivering a presentation on Malaysia's competition laws to students at Universiti Putra Malaysia.



MyCC Strategic Planning and International Affairs Division Executive Ayuda Sari Ismail delivering a presentation on the advocacy strategies employed by the Commission since its establishment.

Promoting Policy Formation

Organised by the Competition Commission of Singapore (CCS), the *ASEAN Experts Group on Competition (AEGC) Workshop on Promoting Competition Compliance in ASEAN* was held on 20th August this year. The workshop provided ASEAN competition authorities with guidance in designing effective outreach programmes for businesses, while also exploring strategies to encourage greater compliance with competition law among companies.

Representing the MyCC were Strategic Planning and International Affairs Division Executive Ayuda Sari Ismail, and Strategic Planning and International Affairs Division Assistant Administrative Executive Noor Khalijah Mazlan, who highlighted the Commission's efforts to foster competition compliance in Malaysia.

Collaborating for Compliance

As part of the MyCC's ongoing partnership with the Competition Commission of Singapore (CCS), representatives from the Malaysian commission attended the *Competition Law Conference 2014* in the neighbouring island nation, on 21st and 22nd August.

Jointly organised by the CCS and the Singapore Academy of Law (SAL), the gathering brought international and local competition experts together to discuss the latest developments in competition policy and law, as well as best practices in ensuring competition compliance.

Attended by some 250 competition policy and law practitioners, academics and students, as well as MyCC CEO Shila Dorai Raj, the event also marked the start of the CCS's 10th anniversary celebrations.



MyCC CEO Shila Dorai Raj addressing the audience during her presentation on the Commission's strategies to enhance competition compliance.



MyCC CEO Shila Dorai Raj delivering her presentation on the *Competition Act 2010 (CA 2010)* and the relevant considerations for companies.

Bettering Businesses

To engender positive practices in the Malaysian business community, the MyCC participated in the *2014 Annual Conference* organised by the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) in Kuala Lumpur on 9th September.

At the conference, themed *Challenges of the Changing Corporate and Regulatory Landscape*, the MyCC was represented by CEO Shila Dorai Raj, who delivered a presentation entitled *The Competition Act: Impact, Issues and Challenges to Businesses*.



MyCC CEO Shila Dorai Raj (third from right) presenting a kit of advocacy materials to Minister Datuk Ir Dr Wee Ka Siong (third from left). Also pictured are (from left) the Minister's Special Officer for SME Affairs Lester Kong, his associate Ir Lawrence Low, MyCC Corporate Communication Unit Head Rowena Wong and Strategic Planning and International Affairs Director Aila Abdullah.

Assisting Governance

At the invitation of the Prime Minister's Department, the MyCC provided recently-appointed Minister in charge of SME Development Datuk Ir Dr Wee Ka Siong with a special one-to-one presentation on the *Competition Act 2010 (CA 2010)*, the requirements set forth by its provisions, and the spirit of competition that it seeks to engender.

The comprehensive introduction was delivered by MyCC CEO Shila Dorai Raj on 18th September, while Corporate Communication Unit Head Rowena Wong and Strategic Planning and International Affairs Director Aila Abdullah were also in attendance.



MyCC CEO Shila Dorai Raj (centre) receiving a Certificate of Appreciation from former IEM President (2013/2014 Session) Ir Choo Kok Beng (left). Also pictured is IEM Vice President and Council Member (2014/2015 Session) Dato Ir Dr Andy Seo.

Explaining Unethical Practice

In order to facilitate greater compliance with the *Competition Act 2010 (CA 2010)* and enhance awareness on different types of anti-competitive business practices, the MyCC conducts briefing sessions for association members from time to time, such as one held for the Institution of Engineers Malaysia (IEM) on 19th September this year.

Conducted by MyCC CEO Shila Dorai Raj, the session featured a discussion on the imposition of fee scales by professional bodies, and the legal implications of these practices under the CA 2010.

HIGHLIGHTS

Revisiting Regional Standards

On 4th and 5th September, the MyCC participated in the *8th Seoul International Competition Forum* and the *18th International Workshop on Competition Policy*, both of which were held in the South Korean national capital of Seoul. The events brought competition policy experts together to discuss the latest benchmarks in the institution and enforcement of relevant laws throughout Asia.

Both of the events were attended by MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob, as well as Head of Legal Unit Dhaniah Ahmad and Investigation and Enforcement Division Executive Pakeeza Mohammed Junus.



MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob (centre), pictured with Head of Legal Unit Dhaniah Ahmad (left) and Investigation and Enforcement Division Executive Pakeeza Mohammed Junus during the *8th Seoul International Competition Forum*.



From left to right: MyCC Director of Strategic Planning and International Affairs Aila Melissa Abdullah, Japan Fair Trade Commission Chairman Kazuyuki Sugimoto, Asian Development Bank Institute Dean Dr. Naoyuki Yoshino, MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob, MyCC Investigation and Enforcement Division Executive Amalina Ramdhan and China Taiwan Fair Trade Commission Commissioner Dr Diana Hwei-An Tsai.

Championing Cooperation

MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob recently travelled to Japan to take part in the *10th East Asia Top Level Officials' Meeting on Competition Policy*, which was held as part of the Asian Enforcers Roundtable at the International Bar Association's 2014 Annual Conference.

During the Asian Enforcers Roundtable sessions – which took place between 20th and 21st October – she also led a panel discussion entitled *Promotion of International Enforcement Cooperation*, allowing her to share the MyCC's experience in mobilising intergovernmental partnership in order to facilitate greater competition compliance across various jurisdictions.

Compliance Checklist Launch

The MyCC and Federation of Malaysian Manufacturers (FMM) launched a compliance checklist on 25th November which summarises the MyCC Compliance Guidelines handbook. This was followed by a briefing titled *Better Business With Competition Compliance*. 120 FMM members attended the event where MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob said, "Businesses must bear in mind that there is no 'one size fits all' competition law compliance program. Each business must assess its own compliance risks and determine the steps it requires to take in order to comply with the law."

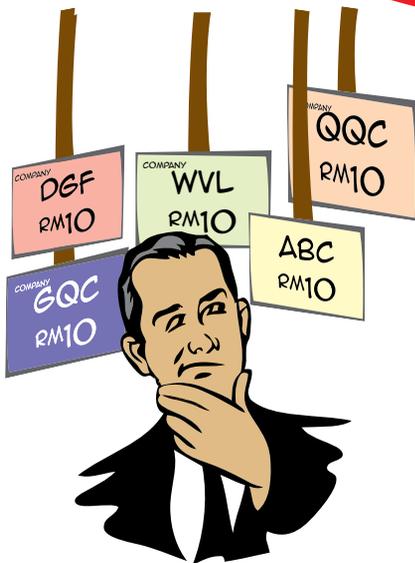


From left to right: FMM Council Member Steven Aroki, FMM Immediate Past President Tan Sri Datuk Yong Poh Kon, MyCC CEO Shila Dorai Raj, MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob, FMM President Dato' Saw Choo Boon, and MyCC Commission Member Prof Dato' Dr. Sothi Rachagan.

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

Q&A

Have a question on the procedures and policies of the MyCC? **MyCompetition News** reproduces some of the most common questions posed by businesses and members of the public.



Q The SME that I operate has been invited to participate in a discussion with our competitors, to determine the prices of our products and services. Is this practice prohibited under the law?

A In accordance with Section 4(2) of the *Competition Act 2010* (CA 2010), enterprises are prohibited from communicating with their counterparts on the price or nature of pricing schemes used to determine the rates imposed for goods and services offered.

Defined as price fixing – which is a form of anti-competitive horizontal agreement – this kind of joint conduct has the potential to significantly restrict competition between the collaborating parties, and should be strictly avoided by ensuring that pricing and marketing decisions are made independently.

To limit possible liability in future, enterprises should also record the basis on which pricing decisions were made, and ensure that sales and marketing personnel understand the restrictions on discussing pricing information with competitors or at association meetings.

Q I am about to submit a bid for a contract and am planning to consult with other bidders so we can take turns to win tenders. Is this allowed under the Competition Act 2010 (CA 2010)?

A No. Bid rigging is a form of price fixing and market allocation, all of which are anti-competitive agreements. What you are describing is bid rotation, and is against the CA 2010, along with other forms of bid rigging like cover pricing, bid withdrawal and bid suppression.

The purpose of the tender process is to select a competent enterprise from among a range of bidders; one that offers the best price on the most attractive terms. Bid rigging defeats this purpose.



STRENGTHENING CORE COMPETENCIES

ASEAN Experts Group on Competition (AEGC) Workshop on Investigation and Case Handling

Endorsed by the ASEAN Economic Ministers (AEM), the ASEAN Experts Group on Competition (AEGC) was established in August 2007, as a regional forum to discuss and cooperate on competition policy and law (CPL). Their efforts have resulted in the development of the ASEAN Regional Guidelines on Competition Policy and a Handbook on Competition Policy and Law in ASEAN for Business.

In line with the focus of AEGC to strengthen core competencies of competition authorities the Malaysian Competition Commission (MyCC) also places a high priority on capacity building as portrayed in an earlier AEGC Brainstorming meeting on *Capacity Building Needs*. In this regard, together with the ASEAN Secretariat, and the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (German Federal Enterprise for International Cooperation – GIZ), the MyCC co-hosted the inaugural ASEAN Experts Group on Competition (AEGC) Workshop on Investigation and Case Handling on the 17th and 18th of June at Best Western Hotel, Kuala Lumpur.

The welcome and keynote addresses were delivered by MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob and Minister of Domestic Trade, Co-operatives and Consumerism (MDTCC) Dato' Sri Hasan Malek. The former remarked that the workshop is a vital platform, enabling experience-sharing from mature jurisdictions and introduction to foreign expertise.

Meanwhile, the Minister commended the MyCC for its efforts in enforcing and promoting competition law, while at the same time protecting consumers. He also highlighted that to build a strong economy, a conducive and competitive environment is needed – thus the

effective implementation of consumer and competition policies is of great importance.

Experts' Views

The workshop then proceeded with presentations from selected ASEAN representatives, particularly Indonesia, Malaysia, Singapore and Vietnam, who described their experiences of investigation challenges. They were followed by three sessions covering *Initiating Anti Trust (Cartel) Investigation*, *Gathering Evidence*, and *Handling of Evidence and Case Files* delivered by Michael Albers, former Hearing Officer in the European Commission.

“Effective enforcement is vital for the successful implementation of competition law and policies, and effective enforcement is contingent on good investigation and case handling. This inaugural workshop can be the starting point for participating members states to undergo more in-depth training.”

Tan Sri Dato’ Seri Siti Norma Yaakob
MyCC Chairman



“It is heartening that people here are ready to describe their weaknesses and mistakes, and admit that their systems are not perfect. This is an open and frank attitude. If you are ready to tell other people that your system is not perfect, then this is the first step not only to improve yourself, but also to be aware of possible future mistakes.”

Michael Albers
Former Hearing Officer, and former Head of Unit for Antitrust Policy,
European Commission

“The Leniency Programme (whereby surcharges on the enterprise involved in a cartel or bid rigging are immunised or reduced if it voluntarily reports to the Japan Fair Trade Commission) is indeed very successful as most cartel cases in Japan are initiated by it. We do not accept cases reported by the initiator for our leniency programme, to prevent attempts from companies who purposely get involved in cartel conduct to destroy their competitors.”

Katsunori Inaguma
Senior Investigator for International Cartel, Japan Fair Trade Commission



“This programme is very well-structured as participants are given the chance to see the difference in the various legal systems and concepts of the different ASEAN Member States.”

Yeo Hui Chuan
Assistant Director, Legal & Enforcement,
Competition Commission of Singapore

FOCUS



“Good and analytical ability is needed to be involved in the competition field. The thing about competition law, when seen from an economic approach, is that we are often looking at the effect of conduct to decide whether the case is considered as an infringement of competition law, and that is a different way of thinking about the law compared to how most lawyers are trained.”

Prof Robert Ian McEwin
European Union Competition Law Expert

Albers noted that it is important to have clear rules that promote efficient, effective and fair procedures and which also expressly forbid cartels. Without them, a good case might be killed in court, as the accused can make claims of manipulation, which completely affect the whole case. Also, he emphasised the importance of creating a discovery risk, to instil fear among companies so they will begin to realise the impact to the industry in the long term.

He also spoke of the pre-investigation process, which authorities should be careful about as they must decide whether the case is worthy to be brought to the second phase and if the complaints are of public

interest or just made to make their competitors suffer.

On the second day, Prof Robert Ian McEwin, a competition law expert from the European Union presented *The Role of Economics in Competition Policy*, and Senior Economist Prof Cheah Wee Wah, shared his expertise and helped to facilitate group discussion by the participants at the end of the workshop.

Later, Prof Robert McEwin told *MyCompetitionNews* that in deciding the fine imposed on companies which are involved in anti-competitive conduct, the relevant turnover is an important element. For example when a fine of RM1 million is imposed, it is a

huge amount for a small company, but may hardly affect a big company, and thus may not be effective in helping to achieve the goal of encouraging competition and protecting consumers.

Another presenter, Katsunori Inaguma, Senior Investigator for International Cartel at the Japan Fair Trade Commission (JFTC), spoke on Japan’s experience in cross-border cartel investigation and outlined recent cases of successes in their *Leniency Programme*.

“The *Leniency Programme* was introduced in Japan in 2006. It is a system whereby surcharges are immunised or reduced on condition that the enterprise involved in a cartel



From left: MyCC CEO Shila Dorai Raj, GIZ Principal Advisor, “Competition Policy and Law in ASEAN” Frank Tibitanzl, Former Hearing Officer and Former Head of Unit for Antitrust Policy at the European Commission Michael Albers, Secretary-General of Ministry of Domestic Trade, Cooperatives and Consumerism Dato’ Sri Alias Ahmad, Minister of Domestic Trade Dato’ Seri Hasan Malek, MyCC Chairman Tan Sri Dato’ Seri Siti Norma Yaakob, EU Competition Law Expert Prof Robert Ian McEwin, Senior Economist and Director and Principal of JayCee Asia-Pacific Pty Ltd Prof Cheah Chee-Wah, Senior Investigator for International Cartel at the Japan Fair Trade Commission Katsunori Inaguma and MyCC Commission Member Prof Dato’ Dr Sothi Rachagan.

INTRODUCING COMPETITION RULES TO ASEAN

Frank Tibitanzl is the Principal Advisor for the German Federal Enterprise for International Cooperation (GIZ) in the *Competition Policy and Law In ASEAN (CPL) Project*. Working together with the ASEAN secretariat and the competent regional body, ASEAN Experts Group on Competition (AEGC), GIZ is taking various measures to introduce competition rules to all 10 ASEAN member states in order to promote a competitively-based market economy.



How would you rate participation in this programme?

I am pleased to see that the investigators and participants who joined in this workshop are actively participating. It is clear that they do think they are learning something useful and which will help them perform their duties, and I think that this workshop is very successful.

Was there anything that was shared in this programme that you found interesting?

It is interesting to see that there are countries without competition law, as such law sets the framework for investigators to proceed. For countries which are still

in the process of drafting a competition law, I would suggest to them to take similar decisions as those countries which have it. For example, as I learnt today, dawn raids (on-the-spot inspections) should be allowed as they are a very important element in investigations. Without them, the mandate is very limited, and it will be very difficult for authorities to find evidence to build a case.

What do you think are the challenges for competition law to be successfully enforced and implemented?

One of the biggest challenges especially for younger agencies is of course, resistance. There is so much resistance, and it actually took Germany 10 years for competition law to be taken seriously.

What are your recommendations for Malaysia, or the MyCC, or even the rest of the ASEAN member states who are implementing competition law?

It is very important to keep staff motivated, especially when the process of investigation is very time-consuming. There are also cases which are terminated in court, and there will be frustration.

People who are part of enforcing competition law must be aware of this. We have to always remember that in the long run, our efforts will pay off, as competition is crucial for economic development. We also have to create a common understanding in the country, as well as among businesses, on the long term benefits of competition.

or bid rigging voluntarily reports to the JFTC. Before the introduction of this programme, JFTC faced difficulty in fighting cross-border cartels. For example, JFTC could not take legal measures against a number of cases in the past," Inaguma explained.

The Assistant Director, Legal & Enforcement at the Competition Commission of Singapore (CCS),

Yeo Hui Chuan, also spoke at the workshop, and discussed recent cartel cases in her country. She noted that under section 34 Prohibition in their *Competition Act*, any agreements which prevent, restrict or distort competition within Singapore are not allowed. In a case of infringement of that section involving Singapore subsidiary companies and their foreign parent companies, both parties are jointly liable, as the parent company is

regarded to have decisive control over the subsidiary.

In calculating penalties, among the relevant factors that are taken into account by the CCS are the relevant turnover, mitigating factors, nature of infringement and duration of the infringement. She also stressed that hard-core cartels are one of the most harmful forms of anti-competitive conduct and the CCS takes a serious view of them.

It is vital for investigators and the authorities in the field of competition law to enhance their skills and learn from others, especially for a relatively young agency such as the MyCC. Thus, the workshop was an excellent platform for both the participants and investigators from the ASEAN member states to exchange views and share experiences.

A STAND AGAINST BID RIGGING

Noting that bid rigging constitutes one of the most serious breaches of competition law, the Malaysian Competition Commission (MyCC) is proactively taking on this form of anti-competition behaviour as a priority area for enforcement. In line with this, the MyCC has released two new handbooks on bid rigging, in addition to organising a series of seminars nationwide on the topic.



"In the past 10 years, Malaysia has spent 24% to 33% of the GDP on procurement – higher than most OECD countries. This has a huge impact on the country's economy as it involves public funds and therefore the government places emphasis on principles like public accountability, transparency, best value for money, open competition and fair dealing in managing tenders. "

Dato' Sri Hasan Malek
Minister of Domestic Trade, Co-operatives and Consumerism,
on the downstream economic implications of bid-rigging.

(Right)The launch of the MyCC's two new publications: *Garis Panduan Menentang Tipuan Bida Dalam Perolehan Awam* (*Guidelines for Fighting Bid Rigging in Public Procurement*) and *Help Us Detect Bid Rigging* took place at Putrajaya on 23rd June. From left to right: MyCC CEO Shila Dorai Raj, Deputy Secretary General (Management) Dato' Zaidon bin Asmuni, Deputy Secretary General (Domestic Trade) Dato' Azmi bin Lateh, Deputy Minister of Domestic Trade, Co-operatives and Consumerism YB Senator Dato' Seri Ahmad Bashah bin Md Hanipah, and MyCC Chairman Tan Sri Dato' Seri Siti Norma Yaakob.

The books were also launched in Kota Kinabalu, Sabah on 23rd September (previous page: top), and Kuching, Sarawak on 4th November (previous page: below).



“Bid rigging raises prices of goods or services offered in public tenders. When it impacts public procurement, it wastes taxpayers’ money and causes governments to pay far more than a fair price, subsequently causing harm to the nation’s economy.”

Tan Sri Dato’ Seri Siti Norma Yaakob
Chairman of the MyCC, on cooperative efforts needed to fight bid rigging at the national level.



“We work without fear or favour. The MyCC will not tolerate any anti-competition behaviour, regardless of status or background of any individuals. If a case involves international tenders, and affects Malaysia, we cooperate with other agencies and involve extra territorial jurisdiction.”

Shila Dorai Raj
Chief Executive Officer of MyCC, in her response to a question regarding MyCC’s enforcement on international bid rigging following the panel discussion session.



The first publication – *Garis Panduan Menentang Tipuan Bida Dalam Perolehan Awam* (*Guidelines for Fighting Bid Rigging in Public Procurement*), originally published by the Organisation for Economic Cooperation and Development (OECD), was translated into Bahasa Malaysia to ensure that a set of guidelines on the matter is available in the national language and accessible to all Malaysians.

The other handbook – *Help Us Detect Bid Rigging* was produced by the MyCC to assist public procurement officers to identify malpractices in tender processes.

The books were first launched in Putrajaya in June by the Deputy Minister of Domestic Trade, Co-operatives and Consumerism Senator Dato’ Seri Ahmad Bashah Md Hanipah, on behalf of the Minister Dato’ Sri Hasan Malek. Also in attendance were MyCC Chairman Tan Sri Dato’ Seri Siti Norma Yaakob, who gave the opening speech, Deputy Secretary General (Management) Dato’ Zaidon bin Asmuni, Deputy Secretary General (Domestic Trade) Dato’ Azmi bin Lateh, and MyCC CEO Shila Dorai Raj.

(Continued on page 15)

FEATURE

“Though bid rigging is not specifically defined in the Malaysian Anti-Corruption Act, the act does cover bribery when procuring tenders. When bidders collude to offer gratification to public servants, the MACC can investigate, even though no money has been transacted.”

Dato’ Han Chee Rull

Senior Deputy Director of Investigations, Malaysian Anti-Corruption Commission (MACC), speaking on the commission’s purview on bid rigging offences during the panel discussion session.



“It is essential to highlight that we can effectively prosecute potential cartels, and the next step is to educate procurement officers. We also need to educate the private sector that bid rigging is not tolerated.”

Wan Khatina Wan Mohd Nawawi

Director of Khazanah Research Institute Malaysia, on areas that require more focus to prevent bid rigging in the country.



“Detecting and fighting bid rigging is the collaborative effort of various initiatives from the MyCC to contribute to improving national efficiency. Awareness is key, and it is important to disseminate information on this issue to public, businesses and the regulators.”

Ahmad Junaidi

Director of Case and Decision Proceeding, Commission for the Supervision of Business Competition, Indonesia, on the focus area for improvement.



“Malaysia is indeed on track to keep bid rigging at bay. All the right things are being done to lay the groundwork to fight this form of fraud. In most cases, bid rigging is detected by procurement personnel and the MyCC should establish a relationship with them to exchange of information, and generate referral of cases.”

Antonio Capobianco

Directorate for Financial and Enterprise Affairs, Organisation for Economic Co-operation and Development (OECD), on Malaysia’s efforts in terms of promoting fair competition as well as the key initiative to combat bid rigging.



“We pick up on collusion issues when performing procurement audits of government bodies. We report these findings, for ministries to take action. If none is taken, authorities like the MACC, Royal Malaysia Police, Ministry of Finance, and Public Service Department are roped in for discussion and possible prosecution.”

Raja Sunthara Kannan Raja Gopal
Federal Deputy Audit Director, Federal Government Audit Sector, National Audit Department (NAD), giving the participants some background on the NAD's role and function in relation to bid rigging and collaborative efforts required to effectively stop collusion.



“To combat bid rigging, it is important to have strict regulations and a strong enforcement body in place. For example, the Korea Fair Trade Commission strictly warns potential bid rigging participants of the applicable laws, as once prosecuted, companies can no longer participate in any form of bid or tender.”

Kim Hong-Geun
Deputy Director, Cartel Investigation Division, Cartel Bureau, Korea Fair Trade Commission, speaking about how bid rigging can be effectively regulated.

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In his address, Dato' Sri Hasan bin Malek highlighted that public procurement greatly affects the country's economy and that effective and transparent processes are vital to ensure that these processes are not corrupted by fraudulent bids. He also stressed that public procurement officials play an integral role in detecting bid rigging and that continuous engagements with them are essential. Form of events like this empower the officials with knowledge in detecting this kind of offence.

The handbooks were subsequently launched in Kota Kinabalu, Sabah, in September with the assistance of the Director of

MDTCC Sabah, Mr Severinus Tukah, and later in November with the assistance of the Director of MDTCC Sarawak, Mr Stanley Tan. Each launch was followed by a seminar on bid rigging attended by public procurement officers.

The launches and seminars in Putrajaya, Kota Kinabalu and Kuching were also followed up with seminars conducted in Kangar, Sibul, Sandakan, Kuantan and Melaka. The seminars highlighted to procurement officers the various issues such as what is bid rigging, why it is prohibited by the *Competition Act 2010*, and what to look out for when conducting tenders.

To further increase public awareness of the prohibition against bid rigging, the MyCC is working together with other major enforcers and policy makers in the country such as the Ministry of Finance, the National Audit Department, the Malaysian Anti-Corruption Commission, and government-linked companies such as the Khazanah Research Institute.

GST AND THE COMPETITION ACT

A MyCC Message to Consumers and Businesses

With the Goods and Services Tax (GST) coming into effect on 1st April 2015, the MyCC, in protecting the competitive process for the benefit of businesses, consumers and the economy, aims to enlighten consumers and businesses regarding the potential implications its introduction may have under the Competition Act 2010 (CA 2010).

The Gist of GST

The GST is a consumption tax based on the value-added concept, and the rate is fixed at 6%. It will be imposed on goods and services at every production and distribution stage in the supply chain, including importation. Not subject to GST, however, are certain basic food items, health and private education, public transportation, residential property, agricultural land, RON95 petrol, diesel, LPG, medicines, reference and religious books, dictionaries and newspapers. Also, businesses registered under the GST legislation can charge and collect GST.

The CA 2010 which the MyCC enforces, prohibits enterprises from engaging in anti-competitive agreements and abuse of a dominant position. Hence, while the introduction of GST by itself does not raise an issue under the Act, businesses should be aware of any conduct which may have implications under the CA 2010.

Under the Act

Any agreement, be it horizontal or vertical, that has the object or the effect of significantly preventing, restricting or distorting competition, is an infringement under Section 4 of the CA 2010. Price fixing, market sharing, limiting production or supply, and bid rigging are considered to be serious infringements. The



introduction of GST will directly affect the pricing strategies of most businesses, and individual businesses may decide to change their pricing strategies post-GST introduction. For example, should they collude or agree to increase their prices post-GST introduction, including under the auspices of their trade or industry associations, they are deemed to be engaged in price fixing, which is a serious infringement. However, it is within the discretion of each individual business to adapt their prices to the GST and decide

While the upcoming Goods and Services Tax (GST) is expected to result in some price increases, the MyCC has warned retailers against banding together to hike prices as it will be a violation of the *Competition Act 2010*.



whether to increase prices as a result of GST implementation.

Section 10 of the CA 2010 prohibits an enterprise from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services. This means that if your business holds a dominant position in any market, you will need to ensure that it does not use that strong market position to damage competition. While merely holding a dominant position

does not infringe the CA 2010, conduct that may constitute an abuse includes exploitative pricing practices, predatory pricing, price discrimination, and margin squeezing, as well as non-price-related conduct such as tying and bundling, exclusive dealing and refusal to supply. The introduction of GST does not give businesses an excuse to artificially inflate prices and the charging of excessive prices by a dominant enterprise is a behaviour which may violate the Act and become subject to a financial penalty up to 10% of the enterprise's worldwide turnover if found liable.

Advice and Awareness

The MyCC urges all Malaysian businesses to take steps to ensure compliance with the CA 2010. This will require a review of current contractual and non-contractual arrangements and business practices to determine whether there are any existing concerns that need to be addressed, as well as the introduction of a tailored compliance programme which includes an ongoing commitment to competition law compliance. As a general guide, businesses are advised to refer to the *Competition Act 2010: A Guide for Business* handbook.

Business are reminded to not take advantage of the introduction of GST to engage in any anti-competitive conduct especially in respect of changing their pricing strategies. The Malaysian market must remain competitive – and this includes being price-competitive – as this will pressure businesses to be more efficient, innovative and responsive to consumer demand. In turn, this will lead to lower prices, better products, a wider choice for consumers and greater efficiency of enterprises and the economy as a whole.

Last but not least, the MyCC depends on individual consumers to be our “eyes and ears” and we urge them, and those businesses that are aware of an infringement or possible infringement of the CA 2010, to make a complaint to the MyCC by completing the relevant form which is available at www.mycc.gov.my.

EXPERTISE

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 as well as by engaging those with relevant expertise.

Zairan Ishak

Legal Officer, MyCC

Pursuant to the Capacity Building Plan 2014 for MyCC's employees, Zairan Ishak was selected to undergo a one month attachment with the Competition Commission of Singapore (CCS). He was assigned to the case team investigating allegations of anti-competitive agreements and abuse of dominance, exposing him to preliminary enquiries and leniency applications as well as the drafting of infringement decisions, all of

which will assist him in performing his duties with the MyCC.

Collaboration between both commissions dates back to when the CCS was established on 1st June 2011, in the form of familiarisation visits by the CCS and meetings with its officials to discuss internal and external guidelines. Recently, CCS officials attended the ASEAN Experts Group on Competition (AEGC) Workshop on Investigation and Case-Handling as guest speakers.



"The attachment was mutually beneficial and there was an active exchange of views on the powers and process of investigation of the MyCC and CCS, making it a fulfilling experience that was enriching on both personal and professional level."

Ibrahim Bah

Technical Advisor, MyCC

Prior to his appointment to the MyCC, Ibrahim Bah served with a number of competition regulators, namely the South Africa Competition Commission, the Competition Authority of Ireland and the Norwegian Competition Authority.

His current position is an advisory role that includes assessing complaints of infringements of the *Competition Act 2010* (CA 2010), leniency applications and assisting in building the capacity of staff, as well as other ad hoc functions

like representing the MyCC in talks and discussions.

The experience he has garnered in various jurisdictions has equipped him with the knowledge to understand, identify and deal with country-specific legislation issues and commercial transaction patterns. His attachment will provide the MyCC with different and fresh perspectives when investigating potential infringements of competition law.

"I am amazed that the MyCC, being a relatively young competition agency, has taken on cases which I believe other agencies would not have dealt with at the onset of their establishment."

Since the beginning of 2012 when the Competition Act 2010 (CA 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.

DISCONTINUING EXCLUSIVITY CLAUSES

Acceptance of Undertaking from Logistics Service Providers

Pursuant to a complaint, the MyCC investigated an alleged infringement of Sections 4(1) and 10(1) of the CA 2010 by virtue of exclusivity clauses in vertical agreements, involving Giga Shipping Sdn Bhd and Nexus Mega Carriers on the provision of logistic and shipment services of motor vehicles by sea. The MyCC recently accepted a Section 43 undertaking by Giga Shipping which, among others, undertook to cease including exclusivity clauses in agreements (with certain exceptions) and closed its investigations with no finding of infringement.

NIPPING MARKET FORECLOSURE IN THE BUD

Guideline on Health Examinations and Insurance Coverage

The MyCC lauds the guideline by the Ministry of Education (MOE) which allows private learning institutions to appoint any insurance firm registered with it to provide insurance coverage to foreign students. Prior to this, the MyCC had received a complaint of alleged market foreclosure, an anti-competitive act, by Education Malaysia Global Services, a wholly owned subsidiary of the MOE and proceeded to engage the relevant parties to ensure that foreign students could choose their preferred health insurance service provider.

FINANCIAL PENALTY OF RM439,000

Price Fixing of Confectionery and Bakery Products

24 members of the Sibü Confectionery and Bakery Association (SCBA) had until 30th October 2014 to submit written representations or indicate intentions to make oral representations, failing which they would become liable to a total penalty of RM439,000 for price-fixing, an offence under Section 4(2) of the CA 2010. Investigations led to a finding that the enterprises had agreed to a 10-15% price increase of confectionery and bakery products sold in Sibü, effective 1st December 2013. They were also directed to stop the infringement and comply with the Act.



WARNING AGAINST PRICE FIXING

School Bus Operators Agree To Fare Hike

The MyCC has warned school bus operators in Malaysia that they must independently decide on bus fares, following a report in a local daily that 18,000 members of the Federation of Malaysia School Bus Operators had collectively agreed to a 30% price increase commencing 2015. According to the MyCC, such an agreement is a violation of Section 4 of the CA 2010, which prohibits price fixing and imposes a penalty of 10% of worldwide turnover during the period of infringement.



SURUHANJAYA PERSAINGAN MALAYSIA
MALAYSIA COMPETITION COMMISSION

SPECIAL RESEARCH GRANT PROGRAMME (RGP)

This programme will fund research, market surveys and case studies on competition-related issues in the Malaysian economy and is now open for applications throughout the year.

RESEARCH TOPICS

- Any of the **Strategic Research Areas** listed on the MyCC website. (The Strategic Research Areas may be revised from time to time and applicants are advised to refer to the MyCC website for the latest information).
- The Strategic Research Areas focus on the priority sectors and stakeholders that fall within the purview of the **MyCC Advocacy Strategy Plan**.
- There is no limit to the number of research proposals that can be submitted by individuals or groups.

APPLICANT ELIGIBILITY

- **Malaysian citizens** with proven research capacity in any discipline.
- Faculty, post-doctoral or doctoral researchers at public or private universities.
- Staff of think-tanks or civil society organisations (An organisation may apply in its name, and be represented by a staff member or the Chief Executive Officer).
- Freelance researchers.

HOW TO APPLY?

- Visit the MyCC website at **www.mycc.gov.my** or email **RGP@mycc.gov.my** to access the **Call for Applications** which contains detailed information on the **Application Procedure**.
- Open for applications throughout the year.

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