
NEWS RELEASE

MyEG TO PAY RM 6,412,200.00 AFTER CAT DISMISSED APPEAL

KUALA LUMPUR, 29 DECEMBER 2017 –The Competition Appeal Tribunal (CAT) yesterday has dismissed the appeal of My E.G. Services Berhad (MyEG) and My E.G Commerce Sdn. Bhd. (MyEG Commerce) (both hereinafter referred as “Appellants”) against the decision of the Malaysia Competition Commission (MyCC) dated 24 June 2016 (MyCC’s decision) which found the Appellants infringed section 10(2)(d)(iii) of the Competition Act 2010 (CA 2010).

The CAT, presided by Tan Sri Haidar Bin Mohd Nor, are of the view that MyCC rightly held that the Appellants had abused their dominant position within the meaning of section 10(2)(d)(iii) of the Act. The CAT added that, taking into account the totality of the evidence, there are no compelling grounds for CAT to interfere with MyCC’s decision. .

Therefore CAT affirmed MyCC’s Commission decision and ordered the Appellants to comply with the following directions:

- (i) total financial penalty of RM2,272,200-00 as at 24 Juneth 2016;
- (ii) daily penalty of RM7,500-00 from 25th June 2016 to the date of CAT’s decision i.e. 28th December 2017;
- (iii) cease and desist immediately from imposing different conditions to the equivalent transaction in the processing of Mandatory Insurances for online Pas Lawatan (Kerja Sementara) (‘PLKS’) renewal applications;
- (iv) to provide an efficient gateway (Online Renewal System Services) for ALL its competitors and potential new entrants in the relevant market for the sale of the Mandatory Insurances and allow the other competitors to compete at the same level within sixty (60) days from the date of CAT’s decision i.e. 28th December 2017; and

- (v) in the event of non-compliance of the aforesaid directions, MyCC is at liberty to impose a daily penalty of RM7,500-00 (instead of higher penalty) for the subsequent period thereof.

Thus as at 28th December 2017, the total amount of financial penalty to be paid by the Appellants is RM6,412,200-00, which includes the daily penalty of RM7,500-00 from 25th June 2016 amounting to RM4,140,000-00. However, the total amount may increase should the Appellants failed to comply with CAT's directions.

It is to be noted that the CAT did not affirm MyCC's direction that the Appellants are required to comply with PIAM's rules and regulations as the Appellants are not within the jurisdiction of PIAM.

MyCC's decision found that the Appellants had abused their dominant position by imposing different conditions in an equivalent transaction in the purchase of Mandatory insurances for the renewal of *Pas Lawatan (Kerja Sementara)* (PLKS) for foreign workers.

MyEG Commerce, a subsidiary of MyEG, had entered into an Agency Agreement with RHB Insurance to act as an agent for RHB Insurance to sell, amongst others, mandatory insurances for the renewal of PLKS.

MyCC's decision arose from its findings that the Appellants' conduct had resulted in faster renewal times for customers who chose to purchase mandatory insurances from RHB Insurance via the Appellants for the renewal of PLKS due to the fact that there was automatic verification for the said insurances purchased from RHB insurance.

However, if customers chose to purchase mandatory insurances from other insurance companies of which the Appellants was not an agent of, extra steps for verification were imposed by the Appellants for the said insurances, which resulted in a longer renewal times. This in turn created pressure on the customer to purchase mandatory insurance from RHB Insurance via the Appellants.

The Appellants on the same day has stated that the Appellants will file a judicial review of the CAT's decision.

MyCC's Chief Executive Officer, Dato' Abu Samah Shabudin welcomed the decision of CAT decision and states that *"it has been MyCC's objective from the beginning to ensure that companies in a dominant position do not abuse their position as this could have a very negative impact on consumers and the national economy as a whole."*

He further added that, *"MyCC had previously investigated several dominant players such as Megasteel Sdn. Bhd., Giga Shipping Sdn. Bhd. and Nexus Mega Carriers Sdn. Bhd. in the steel and logistics industry respectively. Although not all of these investigations resulted in financial penalties being imposed on the said parties due to non-infringement of the Competition Act, the MyCC will continue, without fear or favour, to be vigilant in ensuring competition law is adhered to and will not hesitate to take firm action against those who violate the law"*.

Besides investigation on abuse of a dominant position, MyCC is currently focusing and targeting on cartel activities. Majority of cases undertaken by MyCC involve companies engaged in cartel activities such as price fixing, setting trading conditions by way of rebates and discounts, and market allocation and sharing. Some of the companies that were investigated by the MyCC for cartel activity include players from the aviation industry, ice manufacturing, logistics and sand traders.

Apart from cases that are currently under MyCC's investigation, a judicial review of the CAT'S decision is pending in the case between MyCC against Malaysian Airline System Berhad ('MAS') and AirAsia Berhad ('AirAsia'). The hearing for the said judicial review will be held on 7 March 2018.

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Corporate Affairs Division

Malaysia Competition Commission

Editor's note:

The copy of the appeal decision by the CAT is attached herein as Annexure A.

About 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 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. For more information on the Act and the MyCC's activities, you can log on to www.mycc.gov.my.

Section 2 of the Competition Act 2010 defines "dominant position" as follows: "Dominant position means a situation in which one or more enterprises possess such significant power in a market to adjust prices or outputs or trading terms, without effective constraint from competitors or potential competitors."

Chapter 2: Abuse of dominant position Abuse of dominant position is prohibited

10. (1) An enterprise is prohibited 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.

(2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—

(a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;

(b) limiting or controlling—

(i) production;

(ii) market outlets or market access;

(iii) technical or technological development; or

(iv) investment, to the prejudice of consumers;

(c) refusing to supply to a particular enterprise or group or category of enterprises;

(d) applying different conditions to equivalent transactions with other trading parties to an extent that may—

(i) discourage new market entry or expansion or investment by an existing competitor;

(ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or

(iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;

(e) making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;

(f) any predatory behaviour towards competitors; or

(g) buying up a scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.