

NEWS RELEASE

MyCC ISSUES FINAL DECISION AGAINST FIVE ENTERPRISES FOR PRICE FIXING

KUALA LUMPUR, 1 June 2016 – The Malaysia Competition Commission (“MyCC”) has issued a decision of finding of infringements pursuant to section 40 (“the Decision”) of the Competition Act 2010 (“the Act”) against an information technology service provider to the shipping and logistics industry in the Penang area, namely Containerchain (M) Sdn. Bhd. (“Containerchain”) together with four Container Depot Operators, namely Ayza Industries Sdn. Bhd./ Ayza Logistics Sdn. Bhd; ICS Depot Services Sdn. Bhd.; E.A.E. Depot & Freight Forwarding Sdn. Bhd.; and Prompt Dynamics Sdn. Bhd. (“the Container Depot Operators”) for engaging in price-cartel activities.

The MyCC has determined that Containerchain and the Container Depot Operators have infringed section 4(1) of the Act by entering into vertical agreements by way of concerted practices which had the effect of the Container Depot Operators increasing the Depot Gate Charges imposed on their customers from RM5 to RM25 and the Container Depot Operators fixing a rebate of RM5 offered to hauliers in respect of the Depot Gate Charges.

The MyCC also held that the Container Depot Operators have infringed section 4(2)(a) of the Act by entering into a horizontal agreement to fix the RM25 Depot Gate Charges together with the RM5 rebate which is deemed to have the object of significantly preventing, restricting or distorting competition in the market for the provision of empty container storage, maintenance and handling services within a five (5) to fifteen (15) kilometers radius of the Penang Port.

In the same Decision, the MyCC imposed a total financial penalty of RM 645,774.00 on the above five (5) infringing enterprises and an additional penalty of RM7,000 for each day should they fail to comply with the following remedial actions within thirty (30) days from the date of the Decision:

- a. The Container Depot Operators to cease and desist from implementing the agreed rate for the Depot Gate Charges and rebate which arose from their anti-competitive conduct;
- b. In line with the above direction, clause 7 of the Carrier Access Arrangement that stipulated the Depot Gate Charge and the rebate or any similar clauses shall be removed as this clause is anti-competitive in nature;
- c. The Carrier Access Arrangement published on the Containerchain system shall not contain any clause which may allow the sharing of confidential information relating to any Container Depot Operator who has subscribed to the Containerchain system;
- d. Containerchain to provide an undertaking in the form and manner acceptable to the Commission to reconfigure the Containerchain system in order to ensure that it is not being used for any anti-competitive conduct including those mentioned in (a) above; and
- e. All future prices and other trading conditions should be determined independently by all Container Depot Operators who have subscribed to the Containerchain system.

The decision was made after the submission of the written and oral representations by each enterprise. Each of the infringing enterprise has thirty (30) days from the date of the Decision to pay the financial penalty. The Decision will be uploaded on the MyCC website. For more information on the case or on MyCC, kindly log on to www.mycc.gov.my.

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Malaysia Competition Commission

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 affects competition in the Malaysian market. It provides a regulatory framework including powers to investigate, adjudicate and impose penalties on the perpetrators of anti-competitive practices/ conduct under the competition laws. For more information on the Act and MyCC activities, log on to www.mycc.gov.my.

EDITOR'S NOTES:

Section 4: Prohibited horizontal and vertical agreement

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

(a) fix, directly or indirectly, a purchase or selling price or any other trading

- conditions;
- (b) share market or sources of supply;
- (c) limit or control—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or
- (d) perform an act of bid rigging,

is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.

Section 40 : Finding of an infringement

40. (1) If the Commission determines that there is an infringement of a prohibition under Part II, it—
- (a) shall require that the infringement to be ceased immediately;
 - (b) may specify steps which are required to be taken by the infringing enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end;
 - (c) may impose a financial penalty; or
 - (d) may give any other direction as it deems appropriate.
- (2) The Commission shall, within fourteen days of its making a decision under this Part, notify any person affected by the decision.
- (3) The Commission shall prepare and publish reasons for each decision it makes under this section.
- (4) A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.