



NEWS RELEASE

MyCC ACCEPTS UNDERTAKING FROM PMLOA

KUALA LUMPUR, 21 May 2014 – The Malaysia Competition Commission ('MyCC') accepted an Undertaking from the Central Committee Members of the Pan-Malaysia Lorry Owners Association ('PMLOA') recently concerning its pricing practices on transportation charges.

The MyCC had found that the Central Committee Members of the PMLOA had infringed section 4(2)(a) of the Competition Act 2010 ('the Act') by engaging in a price fixing agreement, i.e. by imposing a transport charge of up to 15%, which has the object or effect of significantly preventing, restricting or distorting competition in any market for lorry transport services. Price-fixing is when enterprises from different sizes collude to increase prices across the board to maximise profitability without any competition.

"Transportation costs have strong direct and indirect multiplier effects on the economy as a whole thus price-fixing agreements such as these are eventually detrimental to the consumers," said Shila Dorai Raj, MyCC Chief Executive Officer. "The agreement to fix price leaves no room for individual enterprises to assess their own costs and determine for themselves the cost-pass-through effects and how much should the price increase be and also whether the price increase should be borne by themselves or by the consumers."

The Undertaking acceptance followed after a period of negotiations between the Central Committee Members of the PMLOA and the MyCC. Instead of imposing a penalty on



the Central Committee Members of the PMLOA, in accordance with Section 43(1) of the the Act, which provides that *“the Commission may subject to the conditions that the Commission may impose, accept from an enterprise an undertaking to do or refrain from doing anything as the Commission considers appropriate”*, the MyCC has accepted the Undertaking signed 7 May 2014.

The Central Committee Members of the PMLOA undertook to issue and publish a joint statement in major newspapers in apology of their anti-competitive behaviour, circulate a copy of the Undertaking given to the Commission to each of the PMLOA’s members and direct as well as ensure that the Central Committee Members of the PMLOA do not engage in any anti-competitive conduct in the future. The joint statements have since been published on 19 May 2014 in selected major newspapers.

Background

The PMLOA had first published a statement in the local papers on 11 September 2013 that the PMLOA and its members were unanimous in their decision during its 3rd Central Committee Meeting to raise transportation charges by 15 percent. The MyCC subsequently gave Interim Measures on 20 September 2013 and further directions on 23 October 2013 to the PMLOA, its members and related lorry enterprises. The essence of the measures and directions were to cease and desist from acting in accordance with the decision made by the PMLOA during its 3rd Central Committee Meeting, and to amend the PMLOA’s and its members’ Constitutions of any provisions concerning any discussion and determination of any chargeable prices.

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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 the competition laws.

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

EDITOR'S NOTES:

1. The details on **Section 4 (1) and (2) of the Competition Act 2010**: Prohibited *horizontal and vertical agreement is as follows:

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.

* “horizontal agreement” = agreement between enterprises each of which operates at the same level in the production or distribution chain;
“vertical agreement” = agreement between enterprises each of which operates at a different level in the production or distribution chain.

2. Details of **Section 35 of the Competition Act 2010**: Interim measures

35. (2) If the Commission has reasonable grounds to believe that any prohibition under this Act has been infringed or is likely to be infringed and the Commission considers that it is necessary for it to act under this section as a matter of urgency for the purpose of—

- (a) preventing serious and irreparable damage, economic or otherwise, to a particular person or category of persons; or
- (b) protecting the public interest, it may give such direction as it considers to be appropriate and proportionate for that purpose.

(3) A direction given under subsection (2) may include requiring or causing any person—

- (a) to suspend the effect of, and desist from acting in accordance with, any agreement which is suspected of infringing any prohibition under Part II;
- (b) to desist from any conduct which is suspected of infringing any prohibition under Part II; or
- (c) to do, or refrain from doing, any act, but which shall not require the payment of money.

(4) The Commission shall, before giving a direction under subsection (2)—

- (a) serve a written notice to the person to whom it proposes to give the direction; and
- (b) give that person an opportunity to make written representations within a period of at least seven days from the date of the written notice.



(5) A notice under subsection (4) shall indicate the nature of the direction which the Commission proposes to give and its reasons for giving the direction.

(6) The Commission may at any time withdraw a direction given under subsection (2).

(7) Without prejudice to subsection (6), any direction given under subsection (2) shall cease to have effect —

(a) on the date of the decision by the Commission upon completion of the investigation under section 14; or

(b) twelve months from the date the direction was given, whichever is earlier.

Section 40 (1) and 40 (4) of the Competition Act 2010: Finding of an infringement

3. Details of Section 40 of the Competition Act 2010: 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.

(4) A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.