



NEWS RELEASE

**MyCC ACCEPTS UNDERTAKINGS
FROM LOGISTICS SERVICE PROVIDERS**

KUALA LUMPUR, 07th October 2014 – The Malaysia Competition Commission (MyCC) has recently accepted Undertakings in accordance with Section 43 of the Competition Act 2010 (the ‘Act’) from Giga Shipping Sdn Bhd and Nexus Mega Carriers Sdn Bhd. The Undertakings are in relation to exclusive agreements between the two enterprises with vehicle manufacturers, distributors and retailers. Both enterprises are major providers of logistic and shipment services (the ‘services’) by sea for motor vehicles from ports in Peninsular Malaysia to ports in Sabah, Sarawak and Labuan.

Following a complaint from a competitor, the MyCC had been investigating suspected infringements of Sections 4(1) and 10(1) of the Act regarding the said exclusive agreements. The MyCC was concerned that these agreements may have had the effects of foreclosing customers to competitors of the enterprises, which if established, would have the effect of significantly preventing, restricting or distorting competition in the provision of the services.

Both enterprises have denied that their agreements with customers infringe the Act. To address the MyCC’s competition concerns, the enterprises have then undertaken to stop including any exclusivity clauses or clauses in their agreements, which may distort, restrict or prevent the provision of services to their customers or potential customers.

“The MyCC’s intervention in this matter has ensured that competitors in the logistic and shipment services have access to customers while customers will also stand to gain from having more competing service providers to choose from,” said Dato' Sri Hasan Malek, Minister of Domestic Trade, Co-operatives & Consumerism (MDTCC), regarding the matter.



The Undertakings accepted by the MyCC are legally binding on the enterprises and for so long as the enterprises are in compliance with the Undertakings, the MyCC will refrain from instituting or taking proceedings against the enterprises.

The enterprises have also undertaken to continue implementing their competition law compliance programme initiated during the MyCC investigation for as long the Undertakings are in effect. The MyCC is satisfied that the Undertakings provided by the enterprises address its competition concerns and has therefore closed its investigation on this matter.

The Undertakings are also available for public viewing on the MyCC website, www.mycc.gov.my.

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EDITOR'S NOTES:

1. The MyCC commenced the investigation under Section 15(1) of the Competition Act 2010 (the "Act") where the MyCC has reason to suspect that any enterprise has infringed or is infringing Section 4(1) and/or Section 10 of the Act in relation to the conduct of Giga Shipping Sdn Bhd and/ or Nexus Mega Carriers Sdn Bhd by:
 - (a) entering into vertical agreements with motor vehicle manufacturers and/or distributors and/or retailers which has the object or effect of significantly preventing, restricting, or distorting competition for logistic and/or shipment services by sea for motor vehicles from Peninsular Malaysia to Sabah, Sarawak and Labuan;
 - (b) discouraging new market entry by competitors for logistic and/or shipment services by sea for motor vehicles from Peninsular Malaysia to Sabah, Sarawak and Labuan.

2. *Details of Section 43 of the Act: Power to accept Undertaking*

The Act allows an enterprise to make legally binding Undertakings without the need for a finding of an infringement by the MyCC. The MyCC has discretion whether to accept such Undertakings and will take a number of factors into consideration when determining whether to accept Undertakings or not.



These factors include, but are not limited to, the gravity of the infringement; the level of genuine cooperation received from the enterprise in assisting the MyCC (also referred to as the Commission) with its investigation and whether accepting the Undertakings will efficiently and effectively address the competition concerns. The Commission's power to accept Undertakings are stated in section 43 of the Act, as follows:

43. (1) 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.

(2) If the Commission accepts an undertaking under subsection (1), the Commission shall, in relation to an infringement, close the investigation without making any finding of infringement and shall not impose a penalty on the enterprise.

(3) Any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.

(4) The provisions of any undertaking accepted by the Commission under this section shall be enforceable by the Commission as though those provisions had been set out in a decision given to the enterprise providing that undertaking pursuant to section 40.

3. Details of Section 4 and 10 of the Act are as follows:

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.

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.



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.

(3) This section does not prohibit an enterprise in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.

(4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.



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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.