

An agency under



MINISTRY OF DOMESTIC TRADE AND
CONSUMER AFFAIRS



GUIDELINES ON

COMPLAINT PROCEDURES

Malaysia Competition Commission

A decorative border of various business and legal icons in shades of pink and purple surrounds the central text. The icons include a dollar sign, a bar chart, a line graph, a pie chart, a calculator, a briefcase, a gavel, a speech bubble, a document, a group of people, and a magnifying glass.

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These Guidelines are not a substitute for the Act or any Regulations that are made pursuant to the Act. These Guidelines may be revised should the need arises. The examples given in these Guidelines are for illustrative purposes only and are not exhaustive. They do not set a limit on the investigation and enforcement activities of the Malaysia Competition Commission (“MyCC”). In applying these Guidelines, the facts and circumstances of each case will be considered in totality. Persons in doubt about how they and their commercial activities may be affected by the Act may wish to seek legal advice.

The MyCC would advise enterprises to conduct self-assessment of their businesses in respect to their conduct, procedures, management and control. They should also have competition compliance procedures in place for all their employees at all levels, including the Board of Directors.

1. INTRODUCTION



In accordance with Section 66 of the Competition Act 2010 ("the Act"), the MyCC is empowered to issue and publish Guidelines for the better carrying out of the provisions of the Act. This set of Guidelines is published for the purpose of assisting those who wish to lodge complaints about infringements of any of the prohibitions under the Act.

2.

APPLICATION OF THE COMPETITION ACT 2010

The Act applies to anyone involved in any commercial activity within Malaysia. It also applies to any commercial activity transacted outside Malaysia, which has an effect on competition in any market in Malaysia. However, the Act does not apply to activities regulated under the following legislations:

1. Communication and Multimedia Act 1998
2. Energy Commission Act 2001

The Act applies to enterprises involved in any commercial activity. Commercial activity is defined as any activity of a commercial nature but does not include –

- (a) any activity, directly or indirectly in the exercise of governmental authority;
- (b) any activity conducted based on the principle of solidarity; and
- (c) any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity.

There are two prohibitions provided in the Act. The first is in Section 4, which describes prohibited horizontal and vertical agreements including agreements to fix prices and share markets. The second is in Section 10, which prohibits an enterprise from engaging, directly or indirectly, in any conduct which amounts to an abuse of a dominant position.

3.

EXCLUSION

There are certain activities to which the prohibitions under Section 4 and Section 10 do not apply. These are:

- (a) an agreement or conduct to the extent to which it is engaged in an order to comply with a legislative requirement;
- (b) collective bargaining activities or collective agreements in respect of employment terms and conditions and which are negotiated or concluded between parties, which include both employers and employees or organisations established to represent the interests of employers or employees.
- (c) an enterprise entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibitions under the said sections would obstruct the performance, in law or in fact, of the particular tasks assigned to that enterprise.

Please note that an inquiry or investigation may not be initiated if the MyCC is of the view that the commercial activity is exempted or excluded from the application of the Act.

4.

COMPLAINTS

Complaints can be lodged with the MyCC in respect of a suspected infringement of either Section 4 or Section 10 of the Act. As the Act came into effect on 1 January 2012, only complaints about alleged infringing activities after that date will be considered by the MyCC. If any enterprise is suspected to be engaged in such an infringement, a complaint may be lodged pertaining to the same with the MyCC.

5.

SUBMISSION OF COMPLAINTS

A complaint should be lodged using the **Complaint Form**.

The **Complaint Form** specifies the type of required information that will assist the MyCC to assess the complaint.

A duly completed Complaint Form should contain:

1. information about the complainant;
2. information about the party or parties complained of;
3. a brief description of the alleged infringing activity that is the subject matter of the complaint; and
4. any other relevant information and supporting documents.

Complaints may be submitted to the MyCC in any of the following ways:

E-mail

Download the **Complaint Form** from the MyCC's website at www.mycc.gov.my. Submit the completed **Complaint Form** by e-mail to complaints@mycc.gov.my.

Post

The completed **Complaint Form** may also be sent by post addressed to:

Chief Executive Officer

Level 15, Menara SSM@Sentral,
No. 7, Jalan Stesen Sentral 5,
Kuala Lumpur Sentral,
50623 Kuala Lumpur.

Fax

The completed **Complaint Form** may also be sent by fax to the CEO at +603-2272 1692.

In Person

Complainants may also call in person at our office to fill in and submit the **Complaint Form**. For assistance regarding complaints, please contact the MyCC at +603-2273 2277 or by e-mail at helpdesk@mycc.gov.my. The MyCC will acknowledge receipt of the complaint within 3 working days.

6.

COMPLAINT PROCEDURES

The MyCC will first check whether the complaint falls within the scope of its powers under the Act. Otherwise, the MyCC may direct the complainant to the relevant agency.

The MyCC may conduct an inquiry to decide whether or not to investigate the complaint. In order to do so, sufficient information should be made available in the **Complaint Form**. Therefore, please provide as much information as possible including supporting documents when submitting the **Complaint Form**. If the MyCC decides not to proceed with further action regarding the complaint, the complainant will be duly informed.

The MyCC may launch a formal investigation if there are reasonable grounds for suspecting an infringement of the Section 4 or Section 10 prohibitions. In deciding whether to launch a formal investigation, the MyCC will take into account its strategic priorities.

7.

ANONYMOUS COMPLAINTS

The MyCC would prefer that complaints not be anonymous, as the MyCC will not be able to contact the complainant for clarification or further details. Insufficient information will make it difficult for the MyCC to proceed with its investigation of a complaint.

8.

CONFIDENTIALITY OF IDENTITY

During the course of its investigation into any complaints, the MyCC may have to reveal the source and/or the information obtained. If a complainant is concerned about the disclosure of its identity or any information submitted, kindly raise this with the MyCC at the time the complaint is lodged.

Information submitted to the MyCC will be considered confidential and will only be disclosed in accordance with the Act.

9.

CLOSURE OF AN INVESTIGATION

If the MyCC decides to close an investigation, it will publish a statement to that effect and summarise its reasons for doing so.

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