



COMPLIANCE ACROSS ASIA - NEW CHALLENGES AND CHANCES FOR PRACTICAL INTEGRITY

Overview of Competition Law in Malaysia

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Recognised “Pillars” of Competition Law

**Horizontal Agreements
(Cartels)***

Vertical Agreements*

Abuse of Dominance*

Merger Control #

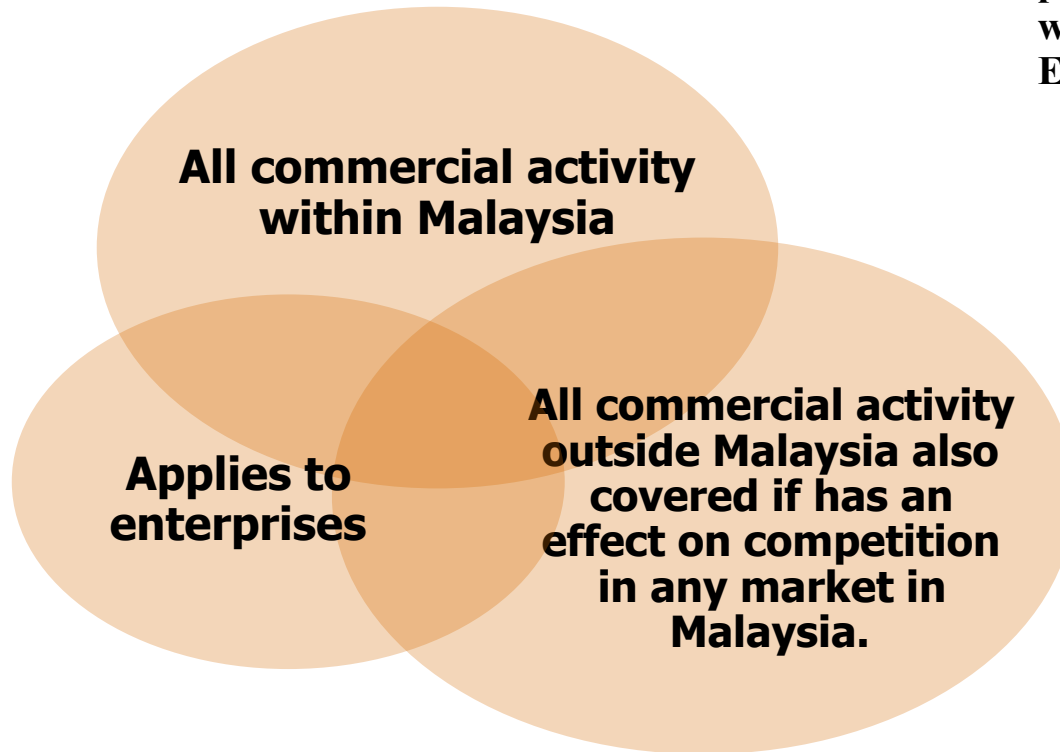
**Criminalisation of
Cartels #**

State Aid #

**Malaysian law contains prohibitions against anti-competitive HAs & VAs and abuses of dominance.*

#No general Malaysian rules governing merger control, criminalisation of cartels and prohibition against state aid.

COMPETITION ACT 2010



Note : - CA came into effect on 1.1.2012
- There are some Exclusions
- Section 40 CA: finding of infringement may result in penalties of up to **10%** of worldwide turnover of the Enterprise

Section 2 CA – “market” means a market in Malaysia or in any part of Malaysia, and when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services;

Section 3 CA – Application

“3(3) This Act ***shall not apply*** to any commercial activity regulated under the legislation specified in the ***First Schedule*** and the Minister may, by order published in the Gazette, amend the First Schedule.

3(4) For the purposes of this Act, “commercial activity” means 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.***”

First Schedule to the CA

1. ***Communications and Multimedia Act 1998 [Act 588]***
2. ***Energy Commission Act 2001 [Act 610]***
3. ***Petroleum Development Act 1974 [Act 144] and the Petroleum Regulations 1974 [P.U.(A) 432/1974] in so far as the commercial activities regulated under these legislation are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia.***
4. ***Malaysian Aviation Commission Act 2015 [Act 771]***

Section 13 CA – Exclusion

“13. (1) The prohibitions under Part II **shall not apply** to the matters specified in the Second Schedule.”

Second Schedule to the CA

“Chapters 1 and 2 of Part II of this Act **shall not apply to**—

- 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 prohibition under Chapter 1 and Chapter 2 of Part II would obstruct the performance, in law or in fact, of the particular tasks assigned to that enterprise.”

Malaysia: MyCC's Decided Cases

Date	Company/Association	Outcome
6.12.2012	Cameron Highlands Floriculturist Association	No fine - a "cease and desist" order was issued
30.1.2014	Malaysia Indian Hairdressing Saloon Owners Association ("MIHSA")	No fine - undertaking to discontinue given by MIHSA
31.3.2014 - ongoing*	Malaysian Airline System Berhad, AirAsia Berhad and AirAsia X Sdn. Bhd ("MAS/Airasia")	Fines of <u>RM10,000,000</u> respectively (CAT overruled on appeal but the High Court subsequently upheld MyCC's decision following its judicial review decision on 20.12.2018. MAS and Airasia have filed an appeal to the Court of Appeal, which will be heard in December 2019.
7.5.2014	Pan Malaysia Lorry Owners' Association ("PMLOA")	No fine - Undertaking was given by PMLOA to ensure that they would not engage in any anti-competitive conduct in future
October 2014	Federation of Malaysian School Bus Operators Associations	MyCC warned school bus operators against price-fixing
1.10.2014	Giga Shipping Sdn. Bhd. ("Giga") and Nexus Mega Carriers Sdn. Bhd. ("Nexus")	No fine - undertaking was given by Giga and Nexus to discontinue exclusivity clauses
30.1.2015	Tube Ice Manufacturers	24 companies were fined <u>RM252,250</u> in total and 1 company was not found to have infringed CA 2010

Date	Company/Association	Outcome
12.2.2015	Members of the Sibu Confectionery and Bakery Association	Fine of <u>RM247,730</u>
12.2.2015	Pangsapuri Perdana	No abuse of dominance: complaint had no merit
16.4.2015	Sarawak Restaurants Association	Non-infringement: no evidence of agreement to fix prices of food and beverages in Sarawak
4.6.2015	My Egg Consortium Sdn Bhd ("My Egg")	Non-infringement: no evidence of infringing horizontal conduct by My Egg
4.8.2015	Nursery and Nanny Association	Warning issued by MyCC
12.10.2015	Malaysia Heavy Construction Equipment Owners' Association	No fine - Undertaking to discontinue given by MHCEOA
26.10.2015	Federation of Stationers and Booksellers Association of Malaysia	Non-infringement: alleged announcement to increase prices in local newspaper did not represent view of the association
15.4.2016	Megasteel Sdn Bhd	The proposed decision was that of an infringement with a penalty of <u>RM4.5 million</u> . However, MyCC eventually decided that there was no infringement: there was no practice of margin squeeze.

Date	Company/Association	Outcome
1.6.2016	5 companies (1 IT services provider Containerchain Malaysia Sdn. Bhd. & 4 container depot operators - cartel)	The depot operators increased depot gate charges from RM5 to RM25 and fixed a rebate of RM5 offered to hauliers. A total penalty of <u>RM645,774</u> was imposed (Upheld by CAT on 27.2.2017). Containerchain was required to undertake that its system is not used for any anti-competitive conduct (price-fixing - VA).
25.7.2016 - ongoing*	My E.G. Services Bhd	MyCC fined My E.G <u>RM307,000</u> , with a daily penalty of <u>RM7,500</u> . This resulted in a total penalty of at least <u>RM2,272,200.00</u> . The decision was upheld by the CAT on 28.12.2017 and the High Court on 22.1.2019. MyEG has appealed the daily penalties to the Court of Appeal.
7.2.2017	Dongwha Fibreboard Sdn Bhd and Evergreen Fibreboard Bhd	Non-infringement: no evidence of agreement to fix prices of rubber wood small logs.
7.2.2017	Avery Dennison Materials Sdn Bhd and UPM Raflatac Sdn Bhd	Non-infringement: no evidence of agreement to fix prices of label stock materials.
22.2.2017 - on-going*	General Insurance Industry	Alleged price-fixing conduct with a total proposed fine of <u>RM213,454,814</u> on 22 general insurers. The insurance companies are disputing this. Oral representations concluded in June 2019.

Date	Company/Association	Outcome
25.9.2017	Group of 11 Sand Operating Companies in Kelantan	No fine - Undertaking to rescind new price list, to stop all anti-competitive behaviour and to issue a press release of undertakings in 4 major newspapers.
10.07.2018 - on-going*	Dagang Net Technologies Sdn Bhd	Total proposed fine of <u>RM17,397,695.30</u> and proposed cease and desist to be imposed on Dagang Net to prevent it from disrupting market competition. Oral representations concluded in July 2019.
8.2.2018	7 Tuition and Day Care Centres	Total fine of <u>RM33,068.85</u> imposed on the 7 tuition and day care centres.
04.03.2019 - on-going*	Group of 8 IT companies - bid rigging	MyCC issued a proposed decision of <u>RM1.94 million</u> against the companies for colluding during the procurement process for Akademi Seni Budaya dan Warisan Kebangsaan (ASWARA) tenders. Oral representations on-going.
18.06.2019	Wealthy Care Consortium Sdn Bhd, Lee Ting San Lorry Transport Sdn Bhd	Judicial review against MyCC's Section 18 Notices. Unsuccessful.
30.08.2019	Sabah Tourist Guides	No fine - Undertaking to withdraw agreed fee scale for tourist guide services

The Malaysian Bar's Position on Reform

“The Malaysian Bar is firmly committed to promoting the ideals and principles of competition law and cooperating with MyCC in order to do so. We believe that more can certainly be done to improve and enhance the law and practice of this regime in Malaysia. This includes, among others:

- ▶ *addressing and where necessary dismantling artificial monopolies and dominances, where they did not come into existence through entrepreneurship and innovation;*
- ▶ *the introduction of a merger control regime so that the ideals and principles of competition law are not defeated by unregulated concentrations which result in a substantial lessening of competition, if not worse; and*
- ▶ *that competitive neutrality should be the guiding principle in order to give a level playing field to all enterprises and players.”*

Possible Reform – Merger control?

MyCC Chairman YB Dato' Seri Mohd Hishamudin Md Yunus, in November 2018:

“Based on the regulatory gap... the MyCC aims to harmonise the domestic economy ecosystem by incorporating merger control in the Competition Act 2010.”



Thank You

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