



**Malaysia Competition Commission**

## **MyCC: Enforcement and Challenges**

**ISKANDAR ISMAIL**

**Director of Investigation & Enforcement Division**

**Malaysia Competition Commission (MyCC)**

**7 November 2017**

**UiTM, Shah Alam**

## ESTABLISHMENT OF THE MALAYSIA COMPETITION COMMISSION (MyCC)



## MALAYSIA COMPETITION COMMISSION (The MyCC)

**An independent body established under the Competition Commission Act 2010 to enforce the Competition Act 2010**

### Main roles include:

- Investigation & Enforcement
- Advocacy
- Market review
- Exemption
- Compliance & Leniency
- Policy advice

## COMPETITION ACT 2010 (ACT 712)

An Act to promote economic development by promoting and **protecting the process of competition**, thereby protecting the interests of consumers and to provide for matters connected therewith

Scope of the CA 2010: Applies to **all commercial activities, both within and outside Malaysia** which has an effect on competition in any market in Malaysia

## ENFORCEMENT BY OTHER AUTHORITY

Investigation by Authority

Prosecution in Court

Adjudicated by Court

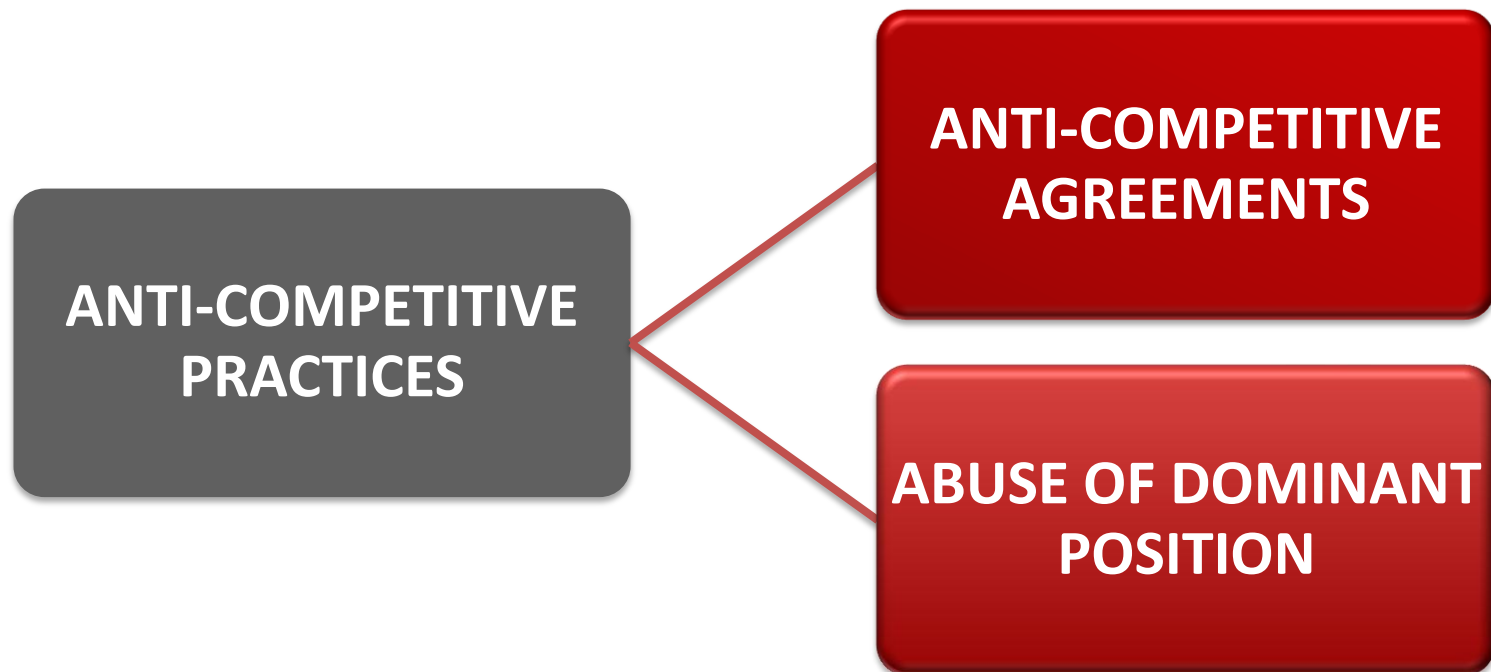
## ENFORCEMENT BY MYCC

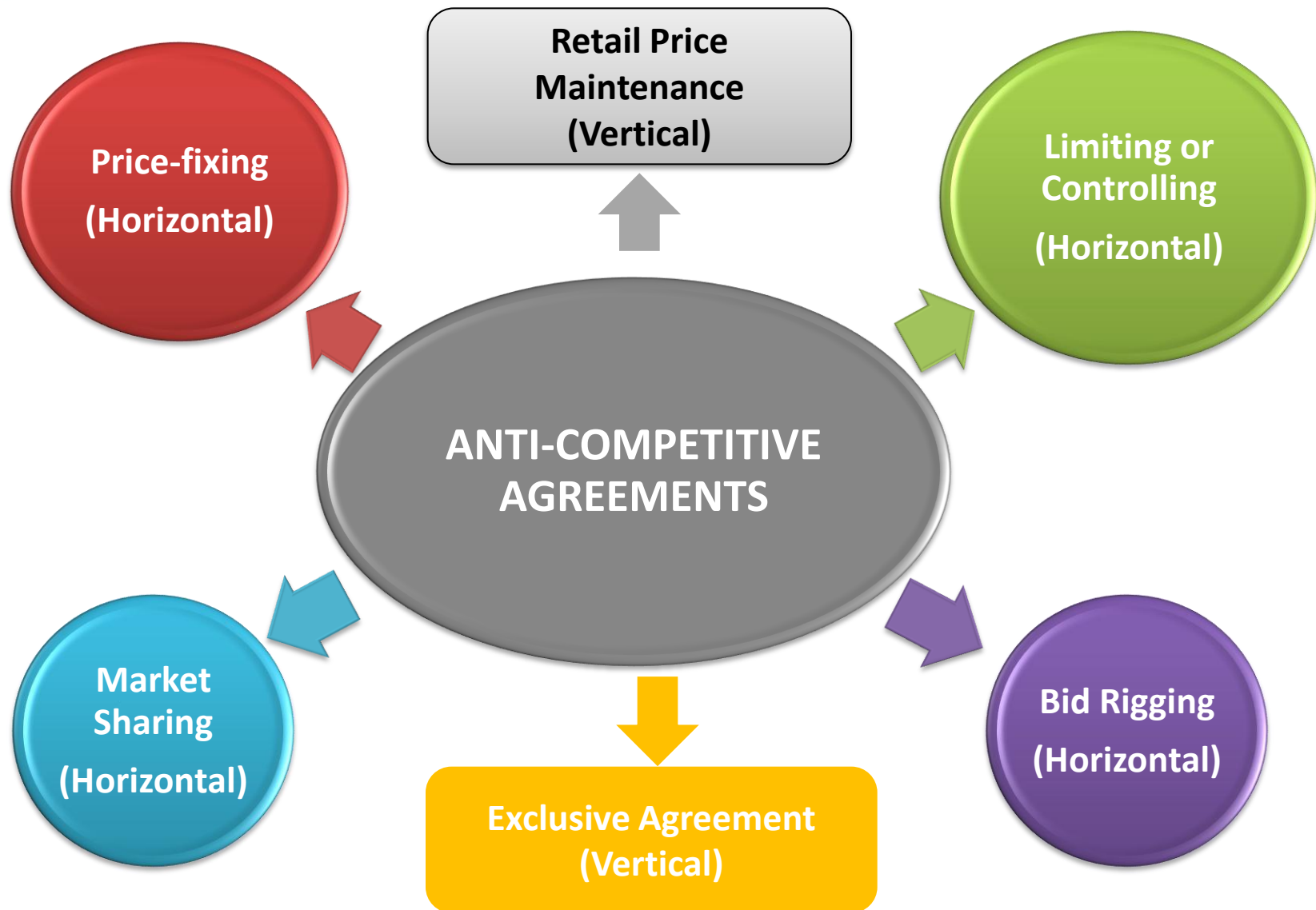
Investigation by MyCC

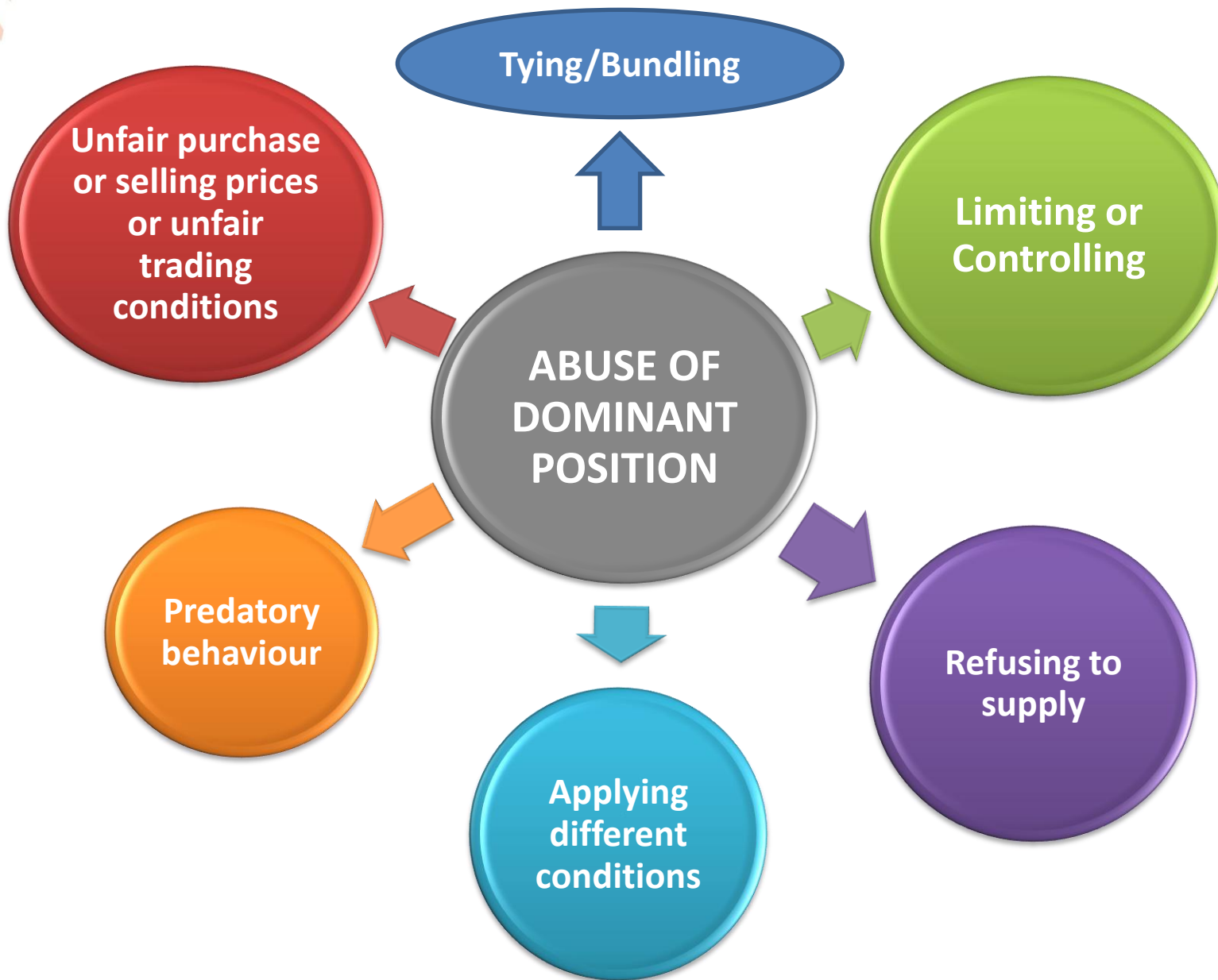
Decision by MyCC

Enforcement by MyCC

# MAIN PROHIBITIONS OF THE CA 2010









# Common Myth



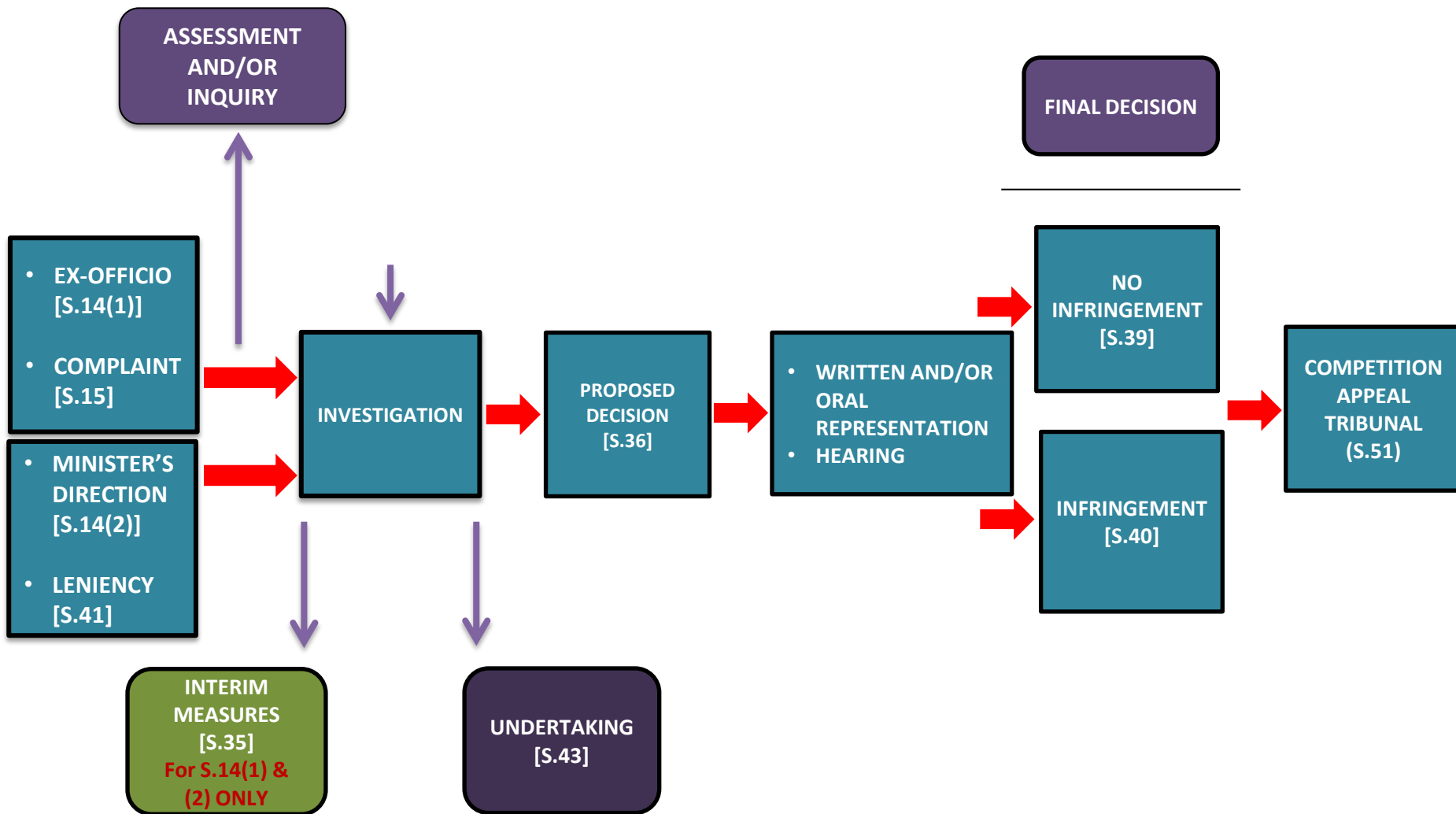
**Monopoly is an  
infringement**



**MyCC is a price  
regulator**



# INVESTIGATION PROCESSES



## **TYPES OF INVESTIGATION**

- **Complaint (Section 15 of CA 2010)**
- **Ex-Officio/Own Initiative (Section 14(1) of CA 2010)**
- **Direction of the Minister (Section 14(2) of CA 2010)**
- **Leniency regime (Section 41 of CA 2010)**

## SOURCES OF INFORMATION FOR INVESTIGATION

- ❑ A preliminary assessment may be conducted based on information obtained from various sources including, but not limited to the following:
  - Media;
  - Anonymous Complaints/Informants;
  - Government Sources;
  - Industry Regulators;
  - Public Sources;
  - Leniency Application; etc.

# WHO INVESTIGATES FOR THE MyCC?

## COMMISSION OFFICER a.k.a THE INVESTIGATOR

- A person appointed or authorized by the Chief Executive Officer in writing under the competition laws for the purpose of carrying out investigation of any offence or infringement of the competition laws (Section 2 and 38 of CCA 2010)

## Section 17 of CA 2010

- A Commission Officer shall have all the powers of investigation and enforcement
- A Commission officer investigating any commission of an offence under this Act shall have all or any of the powers of a police officer in relation to police investigation in seizable cases as provided under the Malaysia Criminal Procedure Code [Act 593]

## ONCE INVESTIGATION STARTS...

- ❑ Request of information and/or document (Section 18(1)(a) of CA 2010)
- ❑ Statement of parties in relation to the requested information and/or document (Section 18(1)(b) of CA 2010)
- ❑ Access to Records (Section 20 of CA 2010)
- ❑ Dawn Raid with or without warrant including accessing computerized data (Section 25 to 27 of CA 2010)
- ❑ Imposition of interim measures (Section 35 of CA 2010)

**Note : In carrying out the above, the Commission has to protect the confidentiality (Section 21 of CA 2010) of the information and/or data and not to request or seize any privileged communication (Section 22 of CA 2010)**

# OUTCOME OF A MyCC INVESTIGATION

Target Enterprise gave an undertaking that is accepted by the MyCC (Section 16 and 43 CA 2010)

Finding of Non-Infringement (Section 39 CA 2010)

Finding of an Infringement (Section 40 CA 2010)

Issuance of a warning letter to the Target Enterprise (Section 16 & 17 of Competition Commission Act 2010)

Issuance of a directive to the Target Enterprise requiring them to do or refrain from doing a particular act

(Section 16 & 17 of Competition Commission Act 2010)

## STATISTIK SEKSYEN 14 (sehingga 1 NOVEMBER 2017)

	2012	2013	2014	2015	2016	2017	JUMLAH TERIMA	JUMLAH TUTUP
ADUAN	8	69	80	75	51	56	339	311
INISIATIF MyCC	2	10	13	6	9	5	45	41
ARAHAN MENTERI	1	2	3	1	3	0	10	10



## ONGOING ASSESSMENT & INVESTIGATION

	ASSESSMENT	INVESTIGATION
TOTAL	16	7

**INDUSTRY UNDER ASSESSMENT:** GOVERNMENT PROCUREMENT, AGRICULTURE, F&B, HEAVY INDUSTRY, PUBLIC TRANSPORTATION, FINANCIAL SERVICES, LIVESTOCK, INFORMATION TECHNOLOGY, SERVICES, TOURISM

**INDUSTRY UNDER INVESTIGATION:** GOVERNMENT PROCUREMENT, PHARMACEUTICAL, INFORMATION TECHNOLOGY, FINANCIAL PRODUCT, SERVICES, LOGISTICS

# LIST OF COMPLETED CASES

**LIST OF CASES**

FINAL DECISION		APPEAL	UNDERTAKING
<b><u>SECTION 39 (NO INFRINGEMENT)</u></b>	<b><u>SECTION 40 (INFRINGEMENT)</u></b>	<b><u>ONGOING</u></b>	<b><u>SECTION 43</u></b>
1) 1 Pengeluar Ais – <b>30/1/2015</b> 2) Pangsapuri Perdana – <b>12/2/2015</b> 3) 9 Persatuan Pembuat Roti dan Kek – <b>12/2/2015</b> 4) Persatuan Restoran Sarawak – <b>16/4/2015</b> 5) <b>My Egg Consortium Sdn. Bhd. – 4/6/2015</b> 6) Federation of Stationers and Book Sellers Association of Malaysia – <b>26/10/2015</b> 7) Megasteel Sdn. Bhd. – <b>15/10/2016</b> 8) Dongwha Fibreboard Sdn Bhd dan Evergreen Fibreboard Bhd (Woodsellers) – <b>7/2/2017</b> 9) Avery Dennison Materials Sdn. Bhd. dan UPM Raflatac Sdn. Bhd. (Labelstock Makers) – <b>7/2/2017</b>	1) Cameron Highland Floriculturist Association (CHFA) – <b>6 Disember 2012</b> 2) Malaysian Airline System Berhad, AirAsia Berhad & AirAsiaX Sdn. Bhd. – <b>31 Mac 2014</b> 3) Tube Ice Manufacturers (Tube Ice) – <b>30 Januari 2015</b> 4) Persatuan Pembuat Kek dan Roti Sibul – <b>12 Februari 2015</b> 5) <b>Penggendali Depoh Kontena (CDO Penang) – 1 Jun 2016</b> 6) MyE.G. Services Berhad. (MyEG) – <b>24 Jun 2016</b>	1) My E.G. Services Berhad – <b>4 Februari 2016</b> 2) MAS & AirAsia (At Judicial Review stage; High Court) – <b>4 Februari 2016</b>	1) Persatuan Pengusaha Jurugaya Rambut India Malaysia – <b>30 Januari 2014</b> 2) Pan Malaysia Lorry Owners Association (PMLOA) – <b>7 Mei 2014</b> 3) Giga Shipping Sdn Bhd & Nexus Mega Carriers Sdn Bhd) – <b>1 Oktober 2014</b> 4) Persatuan Ampunya Jentera Pembinaan Berat Malaysia (MHCEOA) – <b>12 Oktober 2015</b> 5) Containerchain Malaysia Sdn. Bhd. – <b>30 Jun 2016</b> 6) <b>Pengusaha-Pengusaha Pasir Jajahan Kota Bharu, Pasir Mas, Tanah Merah dan Machang, Kelantan – 25 September 2017</b>

## OTHER ACTIONS BY MyCC

DIRECTIVE	WARNING
<ol style="list-style-type: none"> <li>1) Malaysian Dental Association (MDA) – <b>7 April 2015</b></li> <li>2) Malaysian Institute of Arbitrators (MiARB) – <b>7 April 2015</b></li> <li>3) Malaysia Institute of Architects (PAM) – <b>7 April 2015</b></li> <li>4) Institute of Landscape Architects Malaysia – <b>7 April 2015 (ILAM)</b></li> <li>5) Malaysian Tourist Guide Council (MTGC) – <b>11 Oktober 2016</b></li> </ol>	<ol style="list-style-type: none"> <li>1) Persatuan Pengasuh Berdaftar Malaysia (PPBM) – <b>14 Julai 2015</b></li> <li>2) Persatuan Taska /Penjaga Bayi: Selangor; Wilayah Persekutuan; Kedah; Pulau Pinang; Kelantan; Pahang; Terengganu; Johor; Melaka; Sabah; Sarawak – <b>14 Julai 2015</b></li> <li>3) 2 Persatuan Penternak Ikan Tawar - <b>27 Ogos 2015</b></li> <li>4) Kuching Bakery Association – <b>17 Ogos 2015</b></li> <li>5) Sarawak Restaurant Association – <b>11 April 2015</b></li> <li>6) Federation of Goldsmith &amp; Jewellers Association of Malaysia (FGJAM) - <b>25 Februari 2016</b></li> <li>7) Federation of Livestock Farmers’ Associations of Malaysia (FLFAM) – <b>22 Februari 2016</b></li> <li>8) Malaysian Corrugated Carton Manufacturers Association (MACCMA) – <b>10 Mac 2016</b></li> <li>9) Avery Dennison Materials Sdn. Bhd. dan UPM Raflatac Sdn. Bhd. (Labelstock Makers) – <b>7 Februari 2017</b></li> </ol>

## **Finding of Non-infringement against My Egg Consortium Sdn Bhd (My Egg)**

- The MyCC received a complaint that My Egg was set up by the Federation of Livestock Farmers' Association Malaysia (FLFAM) with the objective of reducing the supply of chicken eggs in the market to ultimately push up its prices.
- It was alleged that My Egg export eggs overseas in large quantities to reduce supply.
- The MyCC conducted an economic analysis of data obtained from KPDNKK, Customs, Statistics Department and the Department of Veterinary Services.
- Limited evidence and unreliable data forced MyCC to conclude that there was insufficient evidence to hold My Egg liable under Section 4 or 10.

## **Infringement finding against 4 Container Depot Operators & 1 Software Provider**

- 4 containers depot operator (CDOs) at the Penang Port was found to have engage in a horizontal price fixing agreement to:-
  - (i) Fix the Depot Gate Charges (DGC) imposed on their customers from RM5 to RM25; and
  - (ii) Offering a RM 5 rebates to hauliers.
- Infringement of section 4(2)(a) of CA 2010.

## **Infringement finding against 4 Container Depot Operators & 1 Software Provider**

- The 4 CDO was also found to have engage in a concerted practice with Containerchain, a software provider to fix the DGC and impose the rebate :-
  - Containerchain was actively influencing the CDOs to increase their DGC and grant the RM 5 rebate to hauliers.
  - Containerchain's influence resulted in the CDOs to increase the DGC and grant rebates to hauliers.
  - The Containerchain system was used as one of the catalyst to inform the industry about the need to increase the DGC.
  - The Containerchain system was used to implement the price fixing agreement of the 4 CDOs.
- Infringement of section 4(1) of CA 2010.

## **Infringement finding against 4 Container Depot Operators & 1 Software Provider**

- All five enterprises were fined at the total amount of RM645,774-00.
- One enterprise filed an appeal but CAT rejected their appeal.
- All but one fully paid their fine.
- MyCC permitted one enterprise to pay by instalment.

## Pasir Kelantan Undertaking

- On 10 January 2017, 13 target enterprises had a meeting in which they have allegedly come out with a price list of sand for the Kota Bharu, Pasir Mas, Tanah Merah and Machang district in Kelantan.
- The MyCC conducted an investigation against the 13 enterprises for price fixing.
- Their conduct raised competition concern.
- 25 September 2017 – the target enterprises gave an undertaking to the MyCC that they will rescind the issued price list, terminate any other anti-competitive behaviour in relation to the price list and issued a press release of their undertaking in 4 major newspapers.



## Directive made by MyCC against Professional Bodies

- ❑ 2013 - MyCC conducted a study on 131 associations in 35 sectors for fixing of prices or fees by Professional Bodies.
- ❑ 2014 – The MyCC conducted a public consultation on the fixing of scale of fees by professional bodies.
- ❑ 2015 – The MyCC issued letters to four professional bodies requiring them to dismantle their scale of fees within 30 days.
- ❑ The MyCC was of the view that scales of fees fixed by professional bodies are contrary to the provision of Competition Act 2010.
- ❑ In light of this, the four professional bodies has dismantled their scale of fees:- **1. Malaysian Dental Association (MDA) 2. Malaysia Institute of Architects – Arbitration Fees (PAM) 3. Malaysian Institute of Arbitrators (MiARB) 4. Institute of Landscape Architects Malaysia (ILAM).**

# Latest Development of MyCC'S Cases

- ❑ Proposed Decision:
  - Discount and Price fixing case.
  
- ❑ Undertaking:
  - Pengusaha-Pengusaha Pasir Jajahan Kota Bharu, Pasir Mas, Tanah Merah dan Machang.
  
- ❑ Case:
  - Prompt Dynamics Sdn Bhd (CAT maintained MyCC's decision).
  - MyEG (awaiting judgment by CAT).
  
- ❑ Judicial Review:
  - MAS & AirAsia case (against the appeal judgment by CAT).

## Fines Imposed by MyCC so far...

**RM23.4  
million**

- 6 Final Decisions

**RM?**

- 1 Proposed Decision

## WHERE CAN ANTI-COMPETITIVE CONDUCTS ARISE?

- ❑ Section 2 of the Competition Act 2010 defines a **consumer** to mean *“any direct or indirect user of goods or services supplied by an enterprise in the course of business, and includes another enterprise that use the goods or services thus supplied as an input to its own business as well as a wholesaler, a retailer and a final consumer.”*
- ❑ The Competition Act 2010 aims to protect the interest of the consumer by protecting the **process of competition**. Parties to this process involve every participant at all levels of any given market, which play an active role in the said market.
- ❑ Anti-competitive conducts can arise from **all levels** of the supply or production chain of any market for goods or services for example:
  - **Upstream**: Manufacturers, distributors, concession holders etc.
  - **Downstream**: Retailers, service providers, end users, etc.
- ❑ **However**, it should be noted that the Competition Commission **cannot be partisan or partial to any particular level of the market** in its efforts to protect the process of competition.

## COMPETITION LAW AND CONSUMER PROTECTION

- ❑ Per the United Nations Conference on Trade and Development (UNCTAD) paper “The benefit of competition policy for consumers” (2014) as well as the Organization for Economic Co-operation and Development (OECD) policy roundtable on “the interface between competition and consumer policies” (2008):
  - *“The ultimate goal of both competition and consumer policies is to **enhance consumer well-being**. Both policies are directed at ensuring that markets function effectively and at correcting market failures, but approach this goal from **different perspectives**. Competition policy addresses the **supply side of the market** and aim to ensure that consumers have adequate and affordable choices, while consumer policy tackles **demand-side issues** and aims to ensure that consumers can exercise their choices effectively”*

## MyCC's STAND

- ❑ Few jurisdictions have consumer welfare or the protection of consumer interest as an explicit objective of competition law, e.g. Australia, Japan and India.
- ❑ The European Commission sets priorities based on potential harm to consumers.
- ❑ The US will focus on anti-competitive conduct most harmful to the consumers.
- ❑ Others, such as Canada, Singapore and South Africa have defined their competition acts as the promotion and maintenance of competition in order to, inter alia “provide consumers with competitive prices and product choices”.
- ❑ While the impact of the anti-competitive conduct on consumers is of high importance, MyCC took the stand that the objective of competition law is to protect the interest of the consumer by protecting the **process of competition** by addressing issues arising from the **supply side of the market (refer to preamble of Competition Act 2010 and definition of ‘consumer’)**.

## UNSETTLED OR UNAVAILABILITY OF LOCAL PRECEDENTS

- ❑ Cases from other jurisdiction are ***persuasive but not binding***
- ❑ Competition authorities around the world have different approaches to competition law enforcement
  - Eg: Relief of Liability section 5 CA 2010 and Art 101(3) TFEU – The CA 2010 accepts social benefits; Art 101(3) only accepts efficiencies.
- ❑ Despite the different approaches taken by the competition authorities around the world, the fundamental principles of competition law is still the same.
- ❑ Contractual or commercial law cases in Malaysia may offer some help but not on point. They are usually between two parties in order to preserve their self-interest.
- ❑ Competition law concerns with the overall protection of competition processes in any given market.

## SCARCITY OF EXPERIENCED AND SPECIALISED COMPETITION LAW PRACTITIONERS, INVESTIGATORS AND ECONOMIST

- ❑ MyCC has issues on resources but have grown in numbers and gained experience, skills and knowledge.
- ❑ Legal practitioners, business enterprises and the public are not that familiar with the specialised investigation system in competition law enforcement.
- ❑ Competition law cases are challenging. Look at the definition of 'agreement'.
- ❑ Untested laws and procedures in competition law enforcement.



## THE UNIQUENESS OF THE MALAYSIAN ECONOMIC STRUCTURE

- The Malaysian economy is very much influenced by the policies adopted by the government.
- Government policy is influenced by various factors - historical and socio-economic reasons including lobbying by industry or political groups.
- Some of the policies have the effect of distorting competition in the market.
- Many government departments and agencies are still in the dark of competition laws and policies including the existence of MyCC.

## LEVEL OF AWARENESS ON MyCC AND COMPETITION LAWS

- ❑ Survey done in 2013 revealed that, on average only 6.7% of the stakeholders actually knew about MyCC with the remaining majority unaware of the existence of MyCC. Awareness increased in 2016 to 67.5%. But they do not know about the roles of MyCC.
- ❑ 56.5% of the stakeholders is aware of Competition Act 2010 but they are not familiar with the prohibitions and powers of MyCC. Most enterprises are not willing or reluctant to reveal their trade secrets.
- ❑ SMEs and Legal Practitioners have the highest awareness of MyCC and the relevant laws.
- ❑ Not easy to break their norms/traditions after years of anti-competitive behaviors.

## UNRELIABLE AND/OR UNAVAILABILITY OF DATA

- Cases under Section 4(1) and Section 10 require a thorough analysis of the market.
- Challenges in collecting, extracting and analyzing data.
- Data captured is not sufficient and unreliable too for the completion of investigation.
- MyCC found that there are agencies or groups are not that fond to share their data and statistics with each other or refer to the available or public data or information.

## HOW TO FILE YOUR COMPLAINT?...

We can be communicated: Walk-in, write letter then fax and/or post, email, whatsapp, e-complaint form, write to the media, middleman, etc.

**Malaysia Competition Commission (MyCC)**

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

**Telephone: +603 2273 2277**

**Fax: +603 2272 1692**

**[complaints@mycc.gov.my](mailto:complaints@mycc.gov.my) (email)**

**[www.mycc.gov.my](http://www.mycc.gov.my) (e-complaint form)**



**THANK YOU**