

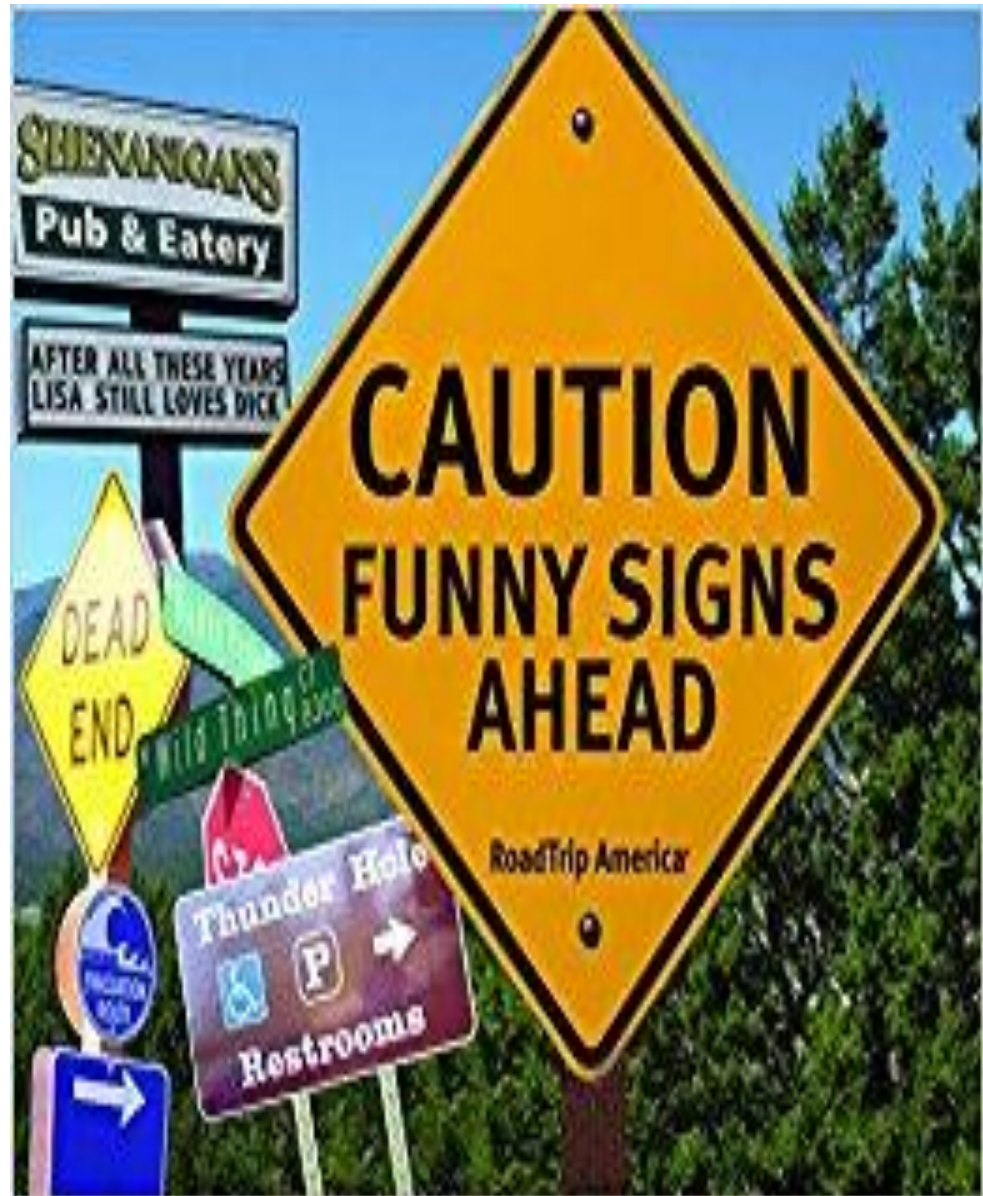
INFRINGEMENTS AND YOU

Understanding competition law

- Competition , is rivalry between firms striving to gain sales and make profits, is the driving force behind markets. Efficient and fair markets are essential for catalysing private sector development and economic growth.

CAUTION

The views expressed are those of the speaker and do not necessarily reflect those of Faculty of Law and or any other institution



Presentation outline



- Overview of Competition law
- What would be infringements under competition law
- Malaysia and other jurisdiction cases
- How did these businesses break the law
- What are the lessons from these cases
- What can YOU do

OVERVIEW OF COMPETITION LAW



NEW ECONOMIC MODEL

Is competition law always good



Competition is central to the operation of markets,

- Foster innovation,
- Foster Productivity
- Foster growth

Promoting competition is broadly accepted as the best available tool for promoting consumer well being.

- WIDER choice low prices

Competition law tools



- Economic theories and infringements
- Competition law supplement other national policy, particularly economic policy, promotion of domestic market, promote economic growth – should not sets a barrier .
- Correctly apply competition tools , market studies/review
- Merger control

COMPETITION ASSESSMENT FRAMEWORK



- ‘Competition Policy’ is the combined effect of all government policies that influence the level of competition in markets.
- Many factors influence the level of competition, and a holistic approach is needed to assess it.
- Barriers –inappropriate government policies or anti competitive behaviour by firms.
- Barriers ;
- Diminish opportunities for innovation and growth, and make consumers worse off
- Effective competition reduces opportunities for corruption &
- CREATE more space for SMEs and entrepreneurs to grow

Assessment

- Competitive public procurement increases the effectiveness of expenditure on publicly provided services, such as education and infrastructure
- Effective and fair competition is NOT automatic
- Sound Competition policy can help markets WORK better,
- and is the KEY part of the investment Climate that can help investor confidence
- And provides a level playing field for domestic SMEs and other market players

HOW



- To remain competitive :
- No unnecessary barrier entry barrier, so that new firms can enter when they see business opportunities
- Barriers to exit should not be excessive –to allow firms leave markets when they are unable to operate effectively
- An effective Competition Policy Should Safeguard the rights of undertaking /firms to enter and leave markets.

COMPETITION ASSESSMENT FRAMEWORK



- FORMULATING POLICY ADVICE ON EFFECTS OF ANTI-COMPETITIVE PRACTICES IN KEY MARKETS
- INFORMING THE DESIGN OF PROGRAMME/PROJECTS TO CATALYSE PRIVATE SECTOR-MAKING MARKETS WORKS
- PART OF HOLISTIC APPROACH-"GROWTH

Market Structure



- To create **Culture of competition & Compliance**

Market players behaviour

- Endogenous Conditions
- Exogenous conditions

COMPETITIVE ASSESMENT GUIDE

- HOW TO SELECT SECTORS AND MARKET ASSESMENT
- IDENTIFY RELEVANT MARKETS AND COMPETITORS
- EXAMINE MARKET STRUCTURE
- LOOKS FOR BARRIER TO ENTRY
- ASCERTAIN IF INSTITUTION LIMIT COMPETITION
- CONSIDER VESTED INTERESTS
- LOOKS FOR SIGN OF ANTI COMPETITIVE CONDUCT BY FIRMS
- DRAW CONCLUSIONS

COMPETITION STORIES



CASES



- Ice manufacturer
- Increase price of edible ice cubes and ice block
- Agreed in meetings, telephones calls
- Published in several news paper
- Illustrate Collusion or concerted practice under section 4(2)(a) Ca 2010

NLC Case



- 20/6/2017;
- In the case of National lighting Company (NLC) supplies light fittings to range of retailers who then sell them on. After a detailed investigation, the Competition authority (CMA) in UK found it **imposed a minimum price online sellers, who then had to retail goods at or above, this price**

Hiding illegal online pricing policies



- NLC tried to avoid detection by NOT committing agreements in writing, has been fined 2.7 million pound for breaking competition law.
- The supplier was aware of the legal risks of what its asking the resellers to do
- IT sought to hide RPM behind Internet licence Agreement (ILA).
- IT avoided communicating pricing instructions and policies via email or in writing.

Collusion



- An agreement, usually secretive, which occurs between two or more persons to deceive, misled, or defraud others of their legal rights, or to obtain an objective forbidden by law typically involving fraud or gaining unfair advantage.
- ALL ACTS affected by Collusion are considered VOID /wrong

“The everybody - does it –defence of collusion



Collusion when and how

Explicit

Tacit

Economics and competition market study



- Collusion takes place within an industry when rival companies cooperate for their mutual benefit. Collusion most often takes place within the market of oligopoly, also known as “oligopolistic problem”
- Where the decision of few firms to collude can significantly impact the market as a whole.

Tacit practices



- Uniform prices
- A penalty of discount advance notice of price change-
- Information exchange

Oligopolistic



- In economics, an oligopoly is a market structure where the industry is dominated by a small number of sellers (oligopolists). The dominant sellers, since they are so few in number, are each likely to be aware of the actions of the others. The decisions of one firm influence, and are influenced by, the decisions of other firms.
- OECD

Cartel are a special case of EXPLicit collusion



- A **cartel** is a special case of oligopoly when competing firms in an industry collude to create explicit, formal agreements to fix prices and production quantities. In theory, a cartel can be formed in any industry but it is only practical in an oligopoly where there is a small number of firms. Cartels are usually prohibited by anti-trust law.

CASES



- The National Lighting Company (NLC) -20th JUNE 2017.RPM :fixed min price online CMA 2.7 million pound.
- Ultra Finishing Group Limited, as the ultimate parent company of Ultra Finishing Limited, is jointly and severally liable for the penalty. 10 May 2016
- The Competition and Markets Authority (CMA) announced then that it would apply a discount of 20% from the fine in recognition of efficiencies resulting from Ultra admitting its infringement under settlement.

CASES



- Afrion Property Services and 7 others involved in fire fighting cartel has settled and paid CA R327,201 fine for colluding with competitors -21 July 2017
- Currency Traders for Collusion -15 February 2017 Bank of America Merrill Lynch International Limited, BNP Paribas, JP Morgan Chase & Co, JP Morgan Chase Bank N.A, Investec Ltd, Standard New York Securities Inc., HSBC Bank Plc, Standard Chartered Bank, Credit Suisse Group; Standard Bank of South Africa Ltd, Commerzbank AG; Australia and New Zealand Banking Group Limited, Nomura International Plc., Macquarie Bank Limited, ABSA Bank Limited (ABSA), Barclays Capital Inc, Barclays Bank

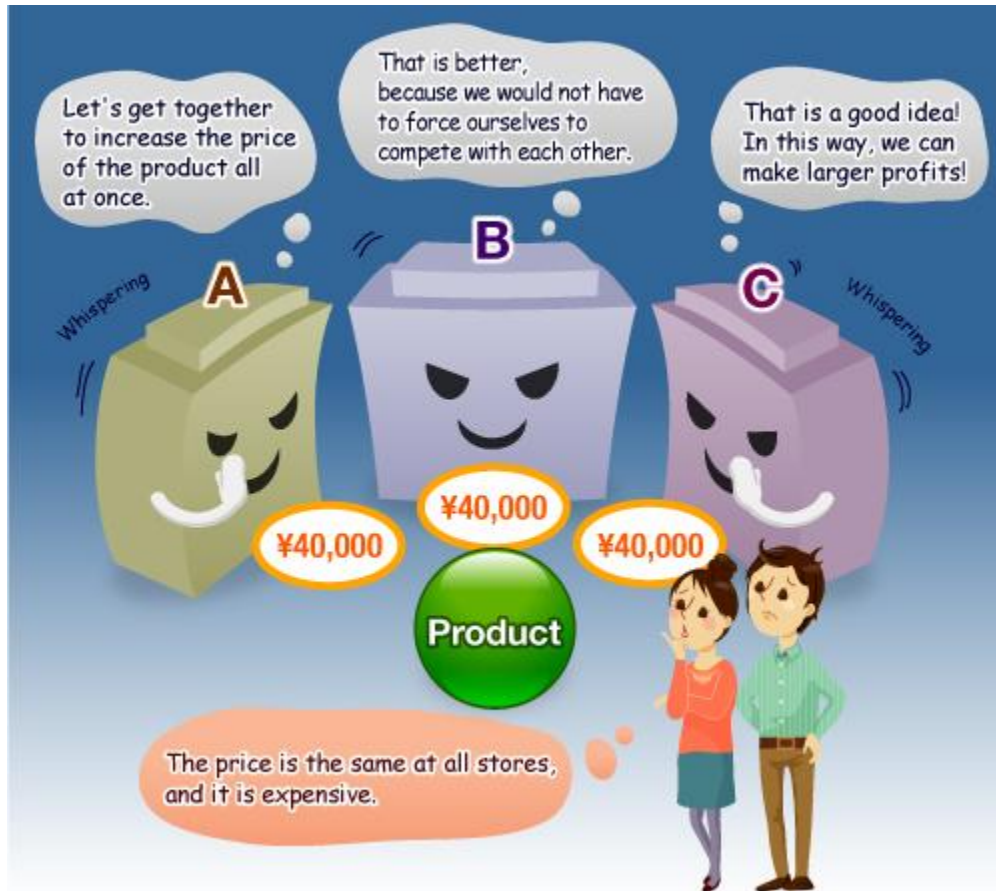
Lessons learned from other jurisdiction



- RPM-Domestic Lights Fittings RPM case What happened?
- Commercial catering equipment and bathroom fittings RPM cases-what happened?

Competition and Markets Authority





Let's get together to increase the price of the product all at once.

That is better, because we would not have to force ourselves to compete with each other.

That is a good idea! In this way, we can make larger profits!

Whispering

Whispering

¥40,000

¥40,000

¥40,000

Product

The price is the same at all stores, and it is expensive.



So, what is bid rigging?

• Bid rigging occurs when bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. (OECD-DETECTING BID RIGGING IN PUBLIC PROCUREMENT PG. 3)



Ten companies that participated in the bidding

Let us submit bid prices at this level for this bid.

Please make our company the successful bidder for the next bid.

Whispering

Whispering

This time, our company will be the successful bidder.

Bid box

The successful bidders are always the same companies. There is something strange about the bidding.

Bid-rigging

You must stop the act!

Cease and desist order

What can YOU do



COMPETITION LAW AND INFRINGEMENTS

What you can do



- Create a **culture of compliance** –everyone in your business must understand what they need to do stay on the right side of competition law
- If you think your business has been involved in RPM or other infringements, you should try notify the authorities as soon as possible you may benefit from lenient treatment
- Take Remedial actions /steps to mitigate the infringements this would address the intentional or/ and negligently infringed- penalty considerations

WHAT CAN YOU DO



COMPETITION AUTHORITIES

REGULATORY TOOLKIT



- Understanding relationship between law and economics in competition law cases.
- Standard of proof required in competition law
- Correctly apply competition tools in assessing infringements
- CPL is not a panacea to all markets problem ..
- Economic play a central role in competition
- In deciding or reviewing must have access to expert evidence that will point to the correct results
- Because economics itself is field that changes and evolves over time , the law itself must incorporate same kind of flexibility

PLUS FACTORS



- RAPID TECHNOLOGY CHANGES-ALGORITHM AND COLLUSION , DISRUPTIVE INNOVATION , ONLINE AGREEMENTS ,
- STILL IN TRANSITION PERIOD- UNCERTAIN OF ECONOMICS APPLICATION AND COMPETITION LAWS TOOLS
- RESISTANCE FROM PRIVATE AND PUBLIC SECTOR – “LOVIN”THE OLD ECONOMIC MODEL
- CONSUMERLOVIN WELFARE –LAST PRIORITY IN BUSINESS DECISIONS

EFFECTIVE COMPETITION POLICY



- SUPPORTED BY CULTURE OF COMPETITION WHERE OBJECTIVES ARE WIDELY UNDERSTOOD AND FORM NATURAL PART OF THE BACKGROUND TO DECISIONS BY GOVERNMENT , FIRMS AND CONSUMERS.
- CIVIL SOCIETY AND VIGOROUS CONSUMER MOVEMENT.
- VESTED INTEREST THAT OPPOSE REFORMS AND FAIR COMPETITION HAVE TO BE OVERCOME

Valuable Guidance Assessing effects of regulation



- Addressing the Cause of WEAK competition in the market
- Holistic approach- help policy makers in emerging economy to identify and address weak competition in the key sectors in their economies
- Market structure –endogenous and exogenous conditions in the markets –
- Competition Assessment Toolkit

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Thank you



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