



Malaysia Competition Commission

RAGUNATH KESAVAN
Member of the Commission

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1 CARTEL DETECTION

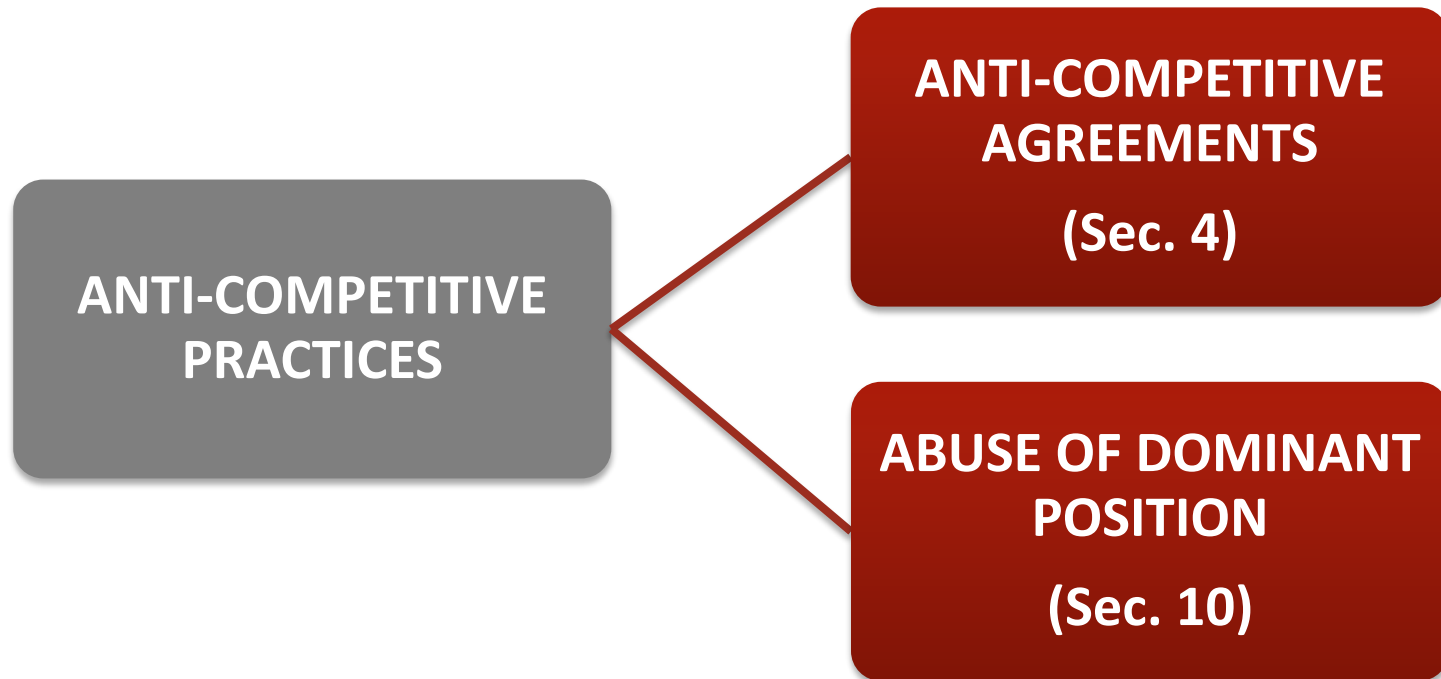
2 LENIENCY PROGRAMME

3 CARTEL IN PUBLIC PROCUREMENT

SCOPE OF COMPETITION ACT 2010

**Applies to all commercial activities
both within and outside of
Malaysia that have negative or anti-
competitive effects in any market in
Malaysia**

MAIN PROHIBITIONS OF THE COMPETITION ACT 2010



CARTEL DETECTION

Proactive Cartel Detection

Engaged in the cartel detection based on own initiatives.

- i. Economic analysis
- ii. Industry monitoring
- iii. Media monitoring
- iv. MyCC's initiatives
- v. Minister's Directive

CARTEL DETECTION

Reactive Cartel Detection

Initiated based on information brought forward to the MyCC. Most of the information was obtained from the aggrieved parties, competitors, associations and market participants.

- i. Complaints
- ii. Leniency programme
- iii. Whistle-blowers

INVESTIGATION STRATEGY

1. MARKET STRUCTURE AND RELEVANT MARKET (Sec 4(1) and Sec 10)

- Identification and description of the industry value chain, relevant product and geographic market.
- A detailed description of the business of each of the Enterprises which includes:
 - i. Types of products and/or services;
 - ii. Target market;
 - iii. Geographical area of operation; and
 - iv. Market share.
- Any recent market research conducted on the related subject-matter.

INVESTIGATION STRATEGY

2. ASSESS AGREEMENTS (Sec 4 and Sec 10 - exclusionary conducts)

- Assessment of the terms of agreements to identify elements that may have significantly prevent, restrict or distort competition in any market.
- For examples:
 - i. Parties to the agreement;
 - ii. Purpose of the agreement;
 - iii. Terms that fall under Section 4(2); and
 - iv. Pricing terms.

INVESTIGATION STRATEGY

3. EFFECT OF COMPETITION IN THE MARKET (Sec 4(1) and Sec 10)

- Investigate broadly the possible anticompetitive effects of the conduct in the market.
- Information required:
 - i. Barriers to entry market;
 - ii. Possibility of switching by customers;
 - iii. Effects on pricing;
 - iv. Exclusion of competitors; and
 - v. Effects on other related sectors.

INVESTIGATION STRATEGY

WHO AND WHAT POWERS:

- Commission officer shall have **ALL** the powers of investigation and enforcement under the Act
- Also have all or any of the powers of a police officer as provided under CPC

DAWN RAIDS

- Search on the premise of targeted enterprises can be done:
 - Section 25: With warrant/Magistrate's order evidenced by affidavit of Commission Officer
 - Section 26: Without warrant
 - Things that can be seized:
 - Record
 - Book
 - Account
 - Document
 - Other things which is relevant to the investigation
 - Computerized data (Section 27)
- } Section 29

PENALTY BY MyCC

If there is an infringement, the Commission

- Shall issue a cease and desist order
- May specify steps to bring an end to the infringement
- May impose financial penalty:

MAXIMUM 10 % OF THE WORLDWIDE TURNOVER

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LENIENCY PROGRAMME

Competition Act 2010, Section 41:

Leniency regime

41. (1) There shall be a leniency regime, with a reduction of up to a maximum of one hundred percent of any penalties which would otherwise have been imposed, which may be available in the cases of any enterprise which has—

- (a) admitted its involvement in an infringement of any prohibition under subsection 4(2); and
- (b) provided information or other form of co-operation to the Commission which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of any prohibition by any other enterprises.

LENIENCY PROGRAMME

Competition Act 2010, Section 41:

(2) A leniency regime may permit different percentages of reductions to be available to an enterprise depending on—

- (a) whether the enterprise was the first person to bring the suspected infringement to the attention of the Commission;
- (b) the stage in the investigation at which—
 - (i) an involvement in the infringement was admitted;
or
 - (ii) any information or other co-operation was provided;
or
- (c) any other circumstances which the Commission considers appropriate to have regard to.

LENIENCY PROGRAMME

Common Types of Leniency Regime:

- **Leniency Before an Investigation Has Begun**

Leniency is granted to the first enterprise reporting a 'cartel' activity before an investigation has commenced. In such circumstances, a full immunity will be granted.

- **Leniency After an Investigation Has Begun**

Leniency is granted to an enterprise reporting a 'cartel' activity only after an investigation has commenced. In such circumstances, usually the applicant will only receive a partial reduction of the financial penalty (full leniency is only accorded if the enterprise fulfils certain conditions i.e first applicant,)

- **Leniency Plus**

Leniency is granted to an enterprise who provides assistance as to the existence of another 'cartel' not currently being investigated by the Commission.

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CARTEL IN PUBLIC PROCUREMENT

BID-RIGGING = HARD-CORE CARTEL?

- Under the Malaysian Competition Act 2010, bid rigging is considered as hard-core cartels
- As a result, Section 4(2) of the Competition Act 2010 **deems** these types of agreements to have the **object** of significantly preventing, restricting or distorting competition.
- This means that MyCC does not have to prove that the agreement has an **anti-competitive effect**.

CARTEL IN PUBLIC PROCUREMENT

Competition Act 2010, section 4:

PART II

ANTI-COMPETITIVE PRACTICES

Chapter 1

Anti-competitive agreement

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.

CARTEL IN PUBLIC PROCUREMENT

Competition Act 2010, section 4:

(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.

CARTEL IN PUBLIC PROCUREMENT

Signs of Possible Bid Rigging:

- i. Receive identical bids or close amount of number from different companies
- ii. There is some indication of a physical alteration of bids, particularly at the last minute
- iii. The range of bids shows a clear gap between the winner and all others
- iv. All companies submit high bids when the cost for work are less on paper
- v. Qualified bidders do not bid especially if they initially took steps to bid
- vi. If a contract is re-bid because all initial bids are unacceptable, the bidders come back in the same order or some bidders fail to re-bid

CARTEL IN PUBLIC PROCUREMENT

How to Fight Bid Rigging Effectively:

- i. Effective cartel law and regulation;
- ii. Effective leniency programme;
- iii. Effective enforcement procedures and institution;
- iv. Effective sanctions;
- v. Collaborative work with procurement agencies i.e. corruption and audit departments;
- vi. Raise awareness of procurement officials and bidders concerning the risk of bid rigging i.e. guidelines/checklist on bid rigging in public procurement

THANK YOU



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