



# Malaysia

## Increased enforcement appetite

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**Although a young antitrust agency, the Malaysia Competition Commission already has an impressive enforcement track record. Its vigorous enforcement against cartels and abuse of market dominance, including an appetite to pursue both foreign and major domestic companies, suggests that the MyCC is set to become a significant enforcer in the region.**

In 2012, Malaysia joined more than 130 countries worldwide and became the fifth ASEAN nation (after Indonesia, Singapore, Thailand and Vietnam) to establish a competition law regime. The Malaysian Competition Act 2010 (Competition Act) is enforced by the Malaysia Competition Commission (the MyCC). The Competition Act introduces competition law for all markets in Malaysia except for a small number of sectors that remain subject to sectorial regulation. As well as applying to commercial activities within Malaysia, the Competition Act catches commercial activities undertaken outside Malaysia that have an effect on competition in any market within the country. There is no requirement for any of the parties involved in the conduct to be domiciled in Malaysia.

The Competition Act contains prohibitions on anti-competitive agreements and abuse of a dominant market position, but it does not provide for general regulation of merger control. There is, however, a voluntary merger notification regime for mergers in the aviation services sector under the Malaysian Aviation Commission Act 2015. These are reviewed by the Malaysian Aviation Commission.

### **Aggressive cartel enforcement**

The MyCC has built an impressive track record since the Competition Act took effect. In the past five years, its enforcement activities have focused on cartel conduct, particularly price-fixing in the context of trade associations. Following its first cartel case in 2012, involving the Cameron Highlands Floriculturist Association, the authority has investigated several high-profile alleged cartels in various sectors.

In 2014, the MyCC fined two major Malaysian airlines (MAS and AirAsia) MYR 10m (approximately US\$2.3m) each for market-sharing in relation to Malaysia's air transport services sector. In 2015, it imposed fines totalling MYR 252,250 (approximately US\$59,000) on 24 ice manufacturers for fixing the price of edible tube ice and block ice. In 2016, it fined an information technology service provider to the shipping and logistics industry and four container depot operators for price-fixing, and imposed a financial penalty of MYR 645,774 (approximately US\$150,000). It also imposed an additional penalty of MYR 7,000 (approximately US\$1,630) a day for failure to comply with remedial actions within 30 days from the date of the decision.

In its most significant case to date, in February 2017 the MyCC proposed a decision against the General Insurance Association of Malaysia and 22 general insurers for alleged fixing of parts trade discounts and labour rates for workshops. The authority proposed a total penalty of approximately MYR 213m (approximately US\$49.6m) – its highest ever proposed fine.

The MyCC has steadily increased the level of fines imposed. Although current fine levels remain relatively low compared with other Asian jurisdictions, the gradual increase highlights the MyCC's enforcement appetite. In setting fines, it will take into account the seriousness of the infringement, duration of the infringement and mitigating factors such as co-operation during the investigation.

**1  
January  
2012**

Date competition law in Malaysia came into force.

**US\$  
49.6m**

fine against the General Insurance Association of Malaysia and 22 general insurers for alleged price-fixing.

### Enforcement against anti-competitive vertical agreements

While the MyCC's enforcement focus over the past five years has been on cartels, it has also taken action against other anti-competitive agreements, including vertical restraints. The authority completed its first vertical restraints case in 2014 relating to exclusivity agreements entered into by two major providers of logistical and shipment services by sea – Giga Shipping and Nexus Mega Carriers – with vehicle manufacturers, distributors and retailers. It was concerned that these agreements would foreclose competition in the provision of such services. The case was settled after the parties adopted separate undertakings to stop including exclusivity clauses in their agreements. The MyCC accepted the undertakings without imposing any financial penalties or finding an infringement.

**‘We will be more aggressive in our enforcement next year particularly against price fixing cartels as they are the most notorious in breaching the Competition Act 2010.’**

Iskandar Ismail

Enforcement Division Director,  
the Malaysia Competition Commission –  
December 2016

### Increased scrutiny in abuse of dominance cases

In more recent years, the MyCC has also stepped up enforcement against abuses of dominant market positions. In 2012, it initiated an investigation against Megasteel on the grounds that Megasteel abused its dominant market position by engaging in margin squeeze. In its final decision in 2016, the authority eventually concluded that Megasteel did not infringe the law following evaluation of the parties' further arguments.

In October 2015, the MyCC adopted a proposed decision against My EG Services (MyEG) for abusing its dominant position in the provision and management of online foreign workers' permit renewals by imposing discriminatory trading conditions. In 2016, the authority adopted a final decision and imposed an MYR 2.27m (approximately US\$530,000) fine on MyEG.

In 2016, the MyCC also initiated investigations against seven pharmaceutical companies for alleged discriminatory pricing. It is concerned that the companies allegedly apply different prices to different suppliers for the same medicine and are attempting to monopolise medicine supply. The case is currently ongoing.

The cases highlight the MyCC's willingness to pursue difficult theories of harm and to conduct complex economic analyses. They also show that the authority will not hesitate to investigate companies with perceived market power. Although its dominance cases have targeted domestic companies to date, the MyCC's enforcement record suggests that it will not hesitate to pursue foreign companies in appropriate cases.

### Increasing financial penalties

On finding an infringement, the MyCC may impose a financial penalty of up to 10 per cent of an enterprise's worldwide turnover during the period in which the infringement occurred – with the caveat that companies cannot be fined for behaviour before 2012 (when the Competition Act came into effect). The financial exposure is potentially higher than in other jurisdictions where the fine is limited to a specified number of years. Companies that infringe the Competition Act, therefore, should be prepared to pay potentially heavy fines based on their turnover over the entire period of infringement. Although not all infringing enterprises have been fined, the MyCC is increasingly taking a stricter stance with a view to strengthening the deterrent effect of fines.

**‘Currently we are investigating companies in the pharmaceutical industry, general insurance industry, financial institutions, as well as the services industry.’**

Iskandar Ismail

Enforcement Division Director, the Malaysia Competition Commission – December 2016

### Looking ahead

Price-fixing cartels and the activities of trade associations are expected to remain an enforcement priority. The MyCC is expected to continue to investigate companies with significant market positions where it suspects possible abuses. It is also expected to continue to focus enforcement on the pharmaceutical, logistics, transportation, financial services, consumer services and fast-moving consumer goods sectors. The MyCC remains a young agency but it is expected to gradually establish itself as an important enforcement agency in the region.

