



Cartels

**Enforcement, Appeals &
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Overview of the law and enforcement regime relating to cartels

The principal legislation prohibiting cartel conduct is the Competition Act 2010 (“Act”). The Act seeks to promote economic development by promoting and protecting the process of competition. The Act is enforced by the Malaysia Competition Commission (“MyCC”). MyCC is a quasi-judicial body, as it has investigation, enforcement and decision-making powers under the Competition Commission Act 2010.¹ MyCC has had an impressive track record since the Act took effect. It has demonstrated its willingness to pursue difficult theories of harm and to conduct complex economic analyses, and is gradually establishing itself as an active enforcement agency in the region.

There are sector-specific competition laws, which similarly prohibit cartel conduct. These include the Communications and Multimedia Act 1998 and the Civil Aviation Authority of Malaysia Act 2017.

Cartel conduct is prohibited under the Act’s Chapter 1 Prohibition.² An agreement between enterprises is prohibited if it is anti-competitive by object or effect.³ The term “agreement” is defined broadly to include any form of contract, arrangement or understanding, whether or not legally enforceable, and includes decisions by associations and concerted practices.⁴ This broad definition would cover any kind of *consensus ad idem* or “meeting of the minds”.

Certain horizontal agreements are deemed to be anti-competitive by object. This refers to agreements that, by their very nature, are clearly harmful to competition that they are deemed anti-competitive without the need to examine the agreement’s actual effect on the market. These anti-competitive horizontal agreements by object or “hardcore” anti-competitive agreements include:

- (a) price fixing;
- (b) market sharing;
- (c) limiting production, market outlets or market access; and
- (d) bid rigging.

For these agreements, MyCC does not need to examine the anti-competitive effect – the object alone suffices to establish a breach.

Information exchanges can also be assessed as cartel conduct under the Chapter 1 Prohibition. MyCC is likely to follow European cases on exchange of commercially sensitive information, including cases on the

hub-and-spoke cartel where the parties to a cartel use a third party (for example, in a vertical agreement) as a conduit for exchanging such information.

MyCC's Guidelines on the Chapter 1 Prohibition state that sharing of price information could fall within the conduct deemed to have the object of "significantly preventing, restricting or distorting competition in the market" as stated in section 4(2). Whether non-price information-sharing significantly reduces competition needs to be assessed on a case-by-case basis. In general, the frequent exchange of confidential information in a market with few competitors is more likely to have a significant effect on competition. In addition, the exchange of information between competitors that is not provided to consumers is also likely to have a significant adverse effect on competition.

In the *Container Depot Operators*⁵ case, MyCC found an information technology provider (Containerchain) liable for cartel conduct with several container depot operators to fix prices. Although Containerchain did not operate in the same level of the supply chain with the depot operators, MyCC found that Containerchain had facilitated the cartel in a "vertical agreement by way of concerted practice".

Horizontal agreements that raise competition issues can nevertheless be relieved from liability where the criteria in section 5 of the Act are proven. In principle, no activity is precluded from the application of section 5, which allows parties to an agreement that restricts competition to defend the restriction based on pro-competitive grounds. However, in practice, it is unlikely for hardcore cartels to be able to satisfy the relief of liability criteria under section 5.

Section 5 provides that anti-competitive agreements may be relieved from liability where all of the following criteria are proven by the parties:

- there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
- the benefits could not reasonably have been provided without the agreement having the anti-competitive effect;
- the detriment to competition is proportionate to the benefits provided; and
- the agreement does not eliminate competition in respect of a substantial part of the goods or services.

All four criteria must be met and the parties claiming this relief have the onus of proving that the benefits gained are passed on to the consumers.

Overview of investigative powers in Malaysia

MyCC has wide investigation powers under Part III of the Act. Apart from the powers of investigation and enforcement under the Act, MyCC officers have the powers of a police officer in relation to seizable cases under the Criminal Procedure Code.⁶

While investigations can be initiated on MyCC's own accord, in practice an investigation is usually initiated based on complaints (e.g., from competitors or aggrieved parties). In the case involving *Tenders for Building and Facility Maintenance, Landscaping and Civil Engineering Works in Putrajaya*,⁷ MyCC commenced investigations after receiving a complaint from Perbadanan Putrajaya on suspected bid rigging in relation to tenders issued by Perbadanan Putrajaya.

Separately, MyCC must initiate investigations where the Minister directs MyCC to do so.⁸

Notably, competition law violations are not punishable as a criminal offence. They are punishable with a financial penalty. However, non-compliance with MyCC's investigation powers under Part III is punishable as a criminal offence.

MyCC can invoke its investigation powers against any person who MyCC reasonably suspects has relevant information or documents. This means that the powers can be invoked not only against those suspected of infringing the Act, but also against those who have relevant information (e.g., witnesses).

MyCC's investigation powers include the following:

- (1) Information gathering powers:
 - (a) Production information or documents relevant to MyCC's powers and functions.
 - (b) Make a statement providing an explanation of any such information or documents.

The Commission may take and retain possession of any document obtained during the investigation for such duration as it deems necessary.
- (2) Search and seizure or "dawn raids":
 - (a) Direct any person to allow access to records, books, accounts or other things.
 - (b) Carry out search and seizure of any premises with or without a warrant.
 - (c) Seize any record, book, account, document, computerised data or other thing.
 - (d) Access to computerised data and must be provided with the necessary passwords, encryption codes, decryption codes, software or hardware required for access.

On "dawn raids", MyCC has the power to carry out search and seizure with a warrant. It also has the power to do so without a warrant where there is a risk of the investigations being adversely affected or evidence being dissipated. In practice, MyCC usually relies on warrants for dawn raids.⁹

While MyCC has wide investigation powers, MyCC is restricted from accessing privileged communication. The Act protects privileged communications between an advocate and solicitor (external counsel) and his clients. An advocate and solicitor may refuse to comply with a production requirement in respect of privileged communications unless the relevant client consents to the disclosure.

Overview of cartel enforcement activity during the last 12 months

MyCC has continued its active enforcement against cartels, and in particular bid rigging. This remains MyCC's top enforcement priority. These are some recent cases involving bid rigging and price-fixing cartels in the last 12 months:

- (1) **Bid rigging in road construction and flood mitigation tenders.**¹⁰ In February 2025, MyCC issued an infringement decision against eight enterprises for colluding in relation to two road construction tenders issued by the Public Works Department ("JKR") and one flood mitigation project by the Department of Drainage and Irrigation ("JPS"), with a value of approximately RM474 million. The investigation revealed that the enterprises coordinated their tender bidding through the exchange of information via emails and meetings, as well as the preparation of physical tender documents. Following the award of the tenders, the parties entered into subcontracting arrangements to allocate the works among themselves. MyCC imposed a total financial penalty of RM92,876,078.90 on the infringing enterprises.
- (2) **Bid rigging in maintenance work tenders.**¹¹ In July 2025, MyCC imposed financial penalties totalling RM2,977,015.15 on three enterprises for engaging in bid rigging conduct involving six tenders issued by Perbadanan Putrajaya for maintenance works between 2018 and 2021, with a value of RM44,845,284.80. MyCC found that the parties coordinated their bids through various means, including WhatsApp communications, emails, and meetings, and prepared tender documents for multiple bidders at a single location.
- (3) **Bid rigging cartel related to tenders.**¹² In October 2025, MyCC imposed total penalties of RM97.3 million on 26 companies for participating in a bid-rigging cartel involving tenders valued at RM540.72 million.
- (4) **Alleged bid rigging in prison department¹³ and highway tenders.**¹⁴ In late 2025 and early 2026, MyCC issued several proposed decisions in respect of suspected bid rigging arrangements. These

include a case involving six enterprises allegedly colluding in relation to 16 quotations and one tender issued by the Kluang Prison Department, valued at approximately RM7.3 million. In a separate matter, two enterprises are facing proposed penalties for alleged collusion in connection with a Central Spine Road Construction Tender issued by the JKR and valued at approximately RM285 million.

- (5) **Price fixing in childcare services.** MyCC has issued proposed decisions against 22 enterprises in Kuala Lumpur and Selangor in April 2025,¹⁵ as well as 31 enterprises in Kelantan in December 2025,¹⁶ for alleged price-fixing conduct. In both instances, it is alleged that the childcare service providers agreed to set fees during association meetings.
- (6) **Affirmation of chicken feed cartel decision.**¹⁷ In February 2026, the Competition Appeal Tribunal (“CAT”) unanimously upheld MyCC’s earlier decision issued in December 2023, which imposed financial penalties totalling RM415.5 million on five poultry feed millers for engaging in a price-fixing cartel involving chicken feed. The CAT affirmed that the enterprises had coordinated price increases between 2020 and 2022.

Key issues in relation to enforcement policy

Cartel conduct remains MyCC’s top enforcement priority, particularly bid rigging. MyCC’s Chief Executive Officer has repeatedly stated in various press releases that “Cartel is the supreme evil of competition law”.¹⁸ MyCC has also stated that it will actively target bid rigging cartels. MyCC’s last seven findings of infringement from 2021 have been in cases involving cartels.

In an interview with a radio station in March 2026, the Chief Executive Officer stated that over 500 companies were under investigation for bid rigging in government tenders worth RM2 billion.¹⁹

In March 2026, MyCC established a new unit solely focusing on bid rigging cartels.²⁰ MyCC has also signed cooperation agreements with various government bodies for MyCC to provide advisory services, assessment reports on suspected bid rigging in procurement, and training for procurement officers.²¹

Key issues in relation to investigation and decision-making procedures

Trigger

MyCC may conduct any investigation it thinks expedient where it has reason to suspect that an enterprise has infringed or is infringing any prohibition under the Act. Investigations of cartels are usually triggered by a complaint or a participant in the cartel seeking a benefit under the leniency regime. MyCC encourages aggrieved parties to lodge complaints in accordance with the Guidelines on Complaint Procedures. If MyCC decides not to investigate a complaint, it must inform the complainant of the decision and reasons for the decision.

MyCC may, through inter-agency cooperation, work with other competition authorities in enforcement, investigations and other actions, and thus investigate international cartels.

Apart from MyCC’s powers to initiate investigations on its own accord, the Minister has powers to direct MyCC to investigate any suspected infringement.

Where markets are not competitive, MyCC may conduct a market review to determine whether any feature or combination of features of the market restricts competition. This may include a study into the market structure, conduct of enterprises, supplies and consumers in the market. Information gathered from the review can trigger an investigation. By way of illustration, MyCC has conducted several market reviews, the most recent one being the “*Market Review on the Digital Economy Ecosystem under the Competition Act 2010*”, a review of mobile operating and payment system, e-commerce, digital advertising services and online travel agencies sub-sectors.

Collection of evidence

MyCC has wide powers of investigation. It may request information by written notice and conduct unannounced raids.

Notice of proposed decision

If, after the completion of the investigation, MyCC proposes to take enforcement action, it must give written notice of its proposed infringement decision to each enterprise that may be directly affected by the decision. The notice will:

- set out the reasons for MyCC's proposed decision in sufficient detail to enable such enterprise to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;
- set out the penalties or remedial action; and
- present an opportunity for the enterprise to make written or oral representations to MyCC and the deadline for such representations.

MyCC may also conduct hearings to determine whether an enterprise has infringed the Chapter 1 Prohibition.

Decision

If MyCC determines that there has been an infringement, it must notify the persons affected by the decision and require that the infringement be ceased immediately. It is empowered, *inter alia*, to impose a financial penalty of up to 10 per cent of the enterprise's worldwide turnover during the period of the infringement.

If MyCC finds that there is no infringement, it must give notice of such decision and specify its reasons.

Leniency/amnesty regime

The Act empowers MyCC to establish a leniency regime that provides for a reduction of up to a maximum of 100% of any penalties that would otherwise have been imposed (i.e., full immunity). The leniency regime is only applicable for the admission of an infringement of a prohibition under the Chapter 1 Prohibition. The leniency regime does not apply to cases of abuse of dominance.

Leniency granted would not protect the successful applicant from other legal consequences, such as private actions by aggrieved persons who have suffered loss or damage directly caused by an infringement.

The leniency regime is thus only available in cases where the enterprise has:

- (1) admitted its involvement in an infringement of a prohibition under section 4(2); and
- (2) provided information or other form of cooperation to MyCC that significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of the infringement against any other enterprises.

The leniency regime permits different percentages of reductions to be made available to an enterprise. This would depend on whether the enterprise was the first to bring the suspected infringement to the attention of MyCC, as well as on the stage in the investigation at which it admits its involvement in the infringement. Given the illicit nature of cartels, the leniency regime is designed to encourage cartelists to race to be the "first in" to supply as much information as possible in order to expedite MyCC's investigation.

An infringing enterprise that is second in line may still benefit from the leniency regime. However, the percentage of reduction would largely depend on the stage in the investigation at which it admits its involvement in the infringement and the value of the incremental information or other cooperation

it is able to provide. Such percentage of reduction is expected to be commensurate with the additional information and assistance such enterprise is able to provide to MyCC.

MyCC's Guidelines on Leniency Regime provide guidance on the reduction of financial penalties, the procedure for making a leniency application and the grant of leniency. In relation to the methods of contacting MyCC for leniency matters, the Guidelines state that MyCC has appointed an official to serve as the leniency officer to facilitate the handling of inquiries about the availability of leniency. Any person or enterprise wishing to apply for leniency should call the leniency hotline telephone number on MyCC's website. No other person at MyCC should be contacted unless MyCC directs otherwise.

If, upon request, the leniency officer advises that leniency is available in respect of a situation, the potential applicant may ask for a marker in order to preserve its priority in receiving leniency while an application is being prepared. A marker is valid for 30 days from the date on which it is granted. If the recipient of a marker fails to complete its applications by the end of the specified period, the enterprise will lose its priority position.

Further, the Guidelines on Leniency Regime provide that the leniency regime may be available in the case of any enterprise that has provided information or other forms of cooperation to MyCC that has significantly assisted or is likely to assist in the identification or investigation of any finding of an infringement of any prohibition by any other enterprises. Further, the Guidelines provide that an applicant may provide information relating to a different cartel.

Administrative settlement of cases

As infringement of the Chapter 1 Prohibition is not a criminal offence, there is no applicable plea bargain concept.

However, MyCC may accept an undertaking from an enterprise to take remedial action subject to conditions that MyCC may impose. Where this is the case, MyCC shall close the investigation without any finding of infringement, and it cannot impose a penalty on the enterprise. The undertaking will be made public. MyCC may apply to the High Court for an order that the enterprise complies with the terms of the undertaking accepted by MyCC. A breach of the High Court order may be punished as a contempt of court.

Offering a suitable undertaking is particularly useful to avoid a finding of infringement, which may potentially trigger follow-on civil actions.

Third-party complaints

Any person who suffers loss or damage directly as a result of any anti-competitive conduct under the Act may bring a private action against the infringing enterprises in the civil courts regardless of whether such person dealt directly or indirectly with the enterprise. As such, indirect purchaser claims are actionable.

Such civil action may be initiated even if MyCC has not conducted or concluded an investigation into the alleged infringement. However, in practice, the evidential burden on private parties makes this unlikely unless MyCC's investigation and adjudication process is slow.

Notably, class actions are not possible in Malaysia. The only form of group litigation in Malaysia is representative actions. Where numerous persons have the same interest in any proceedings, the proceedings can be commenced and (unless the court orders otherwise) continued by any one or more claimants, otherwise known as "representative proceedings". The representor must satisfy the following criteria to initiate a representative action:

- common interest;
- common grievance; and
- the relief sought must be beneficial to all.

A member of a class who is not represented by the representor may apply to court to be added as a co-plaintiff.

Civil penalties and sanctions

On finding an infringement, MyCC may impose a financial penalty of up to 10 per cent of the worldwide turnover of an enterprise over the period during which the infringement occurred. There is no minimum financial penalty that MyCC may impose under the Act.

The concept of a single economic unit is recognised under the definition of “enterprise”, and this may enlarge the turnover of the relevant enterprise to include parents with decisive influence, and subsidiaries that do not have autonomy to determine their actions on the market.

MyCC must require that the infringement be ceased immediately, and may specify steps to be taken to achieve this or give any other appropriate direction.

The financial penalty is potentially higher than that in other jurisdictions where the fine is limited to a specified number of years, whereas in Malaysia it may be for the entire duration of an infringement. However, the magnitude of this may not be felt for a while, as it applies only from 1 January 2012, the date on which the Act came into force.

MyCC may bring proceedings before the High Court against any person who fails to comply with its directions.

Right of appeal against civil liability and penalties

Appeals against MyCC’s decisions are made to the CAT, which has exclusive jurisdiction to review on appeal any findings of infringement or non-infringement made by MyCC. The president of the CAT is a judge of the High Court, and the CAT comprises between seven and 20 other members appointed by the prime minister on the recommendation of the minister in charge of domestic trade.

A person aggrieved by MyCC’s decision may appeal to the CAT by filing a notice of appeal to the CAT within 30 days of the decision. This means that the right of appeal is not limited only to the enterprise made subject to MyCC’s decision, but extends to third parties who are aggrieved or whose interest are affected by that decision (which may include third-party consumers). This notice of appeal shall state in summary form the substance of the decision of MyCC being appealed against, and an address for service of notices related to the appeal.

The CAT may confirm or set aside the decision being appealed against, or any part of it, and may:

- remit the matter to MyCC;
- impose or revoke, or vary the amount of, a financial penalty; and
- exercise MyCC’s powers to make decisions, give directions or take such other appropriate actions.

The CAT’s decision is decided by a majority of its members, and is final and binding on the parties to the appeal. Nonetheless, the CAT’s decision may be subjected to judicial review by the High Court.

Criminal sanctions

Cartel conduct under the Act is not a criminal offence. However, obstructing MyCC’s investigation may lead to criminal sanctions. Among other things, it is an offence to:

- refuse to give access to documents when directed by MyCC;
- provide false or misleading information, evidence or documents;
- destroy, conceal, mutilate or alter any evidence with the intent to defraud MyCC or obstruct MyCC’s investigation;

- tamper with or break a seal affixed to protect the integrity of evidence;
- tip off others in a manner that is likely to prejudice any investigation or proposed investigation; or
- threaten reprisals on persons who file complaints of infringements or cooperate with MyCC in its investigations.

On conviction of any of the above, the penalty for a body corporate is a fine of up to RM5 million, and for subsequent offences up to RM10 million. For individuals, the fine is up to RM1 million or imprisonment of up to five years, or both; and for subsequent offences, a fine of up to RM2 million and imprisonment of up to five years, or both.

To date, there have been no such criminal sanctions imposed under the Act and reported in case law.

Cooperation with other antitrust agencies

MyCC is active in regional and international organisations on competition law and policy.²² This enables MyCC to keep abreast of the latest progress and trends, which allow MyCC to actively contribute its expertise and experiences. The international networks and organisations include:

- (1) Asia-Pacific Economic Cooperation (“APEC”).
- (2) The Association of Southeast Asian Nations (“ASEAN”).
- (3) International Competition Network (“ICN”).
- (4) The Organisation for Economic Co-operation and Development (“OECD”).
- (5) United Nations Conference on Trade and Development (“UNCTAD”).
- (6) East Asia Top Level Officials’ Meeting on Competition Policy (“EATOP”).

Cross-border issues

The Act has extra-territorial application, provided that there is a Malaysian nexus. This means that the Act can apply to cartels outside of Malaysia, where there is an effect on competition in any market in Malaysia. That said, MyCC does not have jurisdiction to carry out an investigation outside of Malaysia. It would have to rely on government-to-government assistance or mutual legal assistance in criminal matters procedures.

Developments in private enforcement of antitrust laws

Any person who suffers loss or damage directly as a result of any anti-competitive conduct under the Act may bring a private action against the infringing enterprises in the civil courts regardless of whether such person dealt directly or indirectly with the enterprise.

There is some uncertainty on whether this is a “standalone” or “follow on” right – where the right of private action is contingent upon MyCC’s finding of infringement.

In a 2021 decision, the High Court in *Gabungan Pertubuhan Teksi, Kereta Sewa, Limosin Dan Teksi Lapangan Terbang Semalaysia-Gtsm v. Grabcar Sdn Bhd*²³ held that the right of private action was only available where there is a finding of infringement by MyCC. This is because Parliament intended for MyCC to be the authority to supervise and regulate competition.

However, in a 2025 decision, the High Court in *Thirteen Wings Sdn Bhd & Ors v. Heineken Malaysia Bhd & Anor*²⁴ held that the absence of a finding by MyCC is a legally neutral fact. It does not extinguish or limit a plaintiffs’ statutory right to maintain a private action, nor does regulatory silence bar civil proceedings.

Reform proposals

MyCC affirmed that the amendments to the Act, including the introduction of the merger control regime, are in progress. The proposed amendments will also empower MyCC to take early intervention actions against the formation of new cartels or monopolies through merger control activities. The merger control provisions will function as a preventative approach as opposed to a reactive one, i.e., the current prohibition of cartels and the prohibition of abuse of dominant position under the Act.

The amendments are expected to introduce provisions on whistleblower protection and rewards. The proposed amendments also seek to broaden MyCC's powers to address anti-competitive conduct, including bid rigging, price fixing, market allocation, and production quotas.²⁵

The amendments to the Act and the Competition Commission Act 2010 are expected to be tabled in the next parliamentary sitting.²⁶



Endnotes

- 1 *Suruhanjaya Persaingan v. Tribunal Rayuan Persaingan & Ors* [2024] 6 CLJ 570.
- 2 Part II, Chapter 1 of the Act.
- 3 Section 4(1) of the Act.
- 4 Section 2 of the Act.
- 5 Case No. 700.2.005.2013: <https://www.mycg.gov.my/sites/default/files/pdf/decision/15%20members%20of%20SCBA.pdf>
- 6 Section 17.
- 7 Case No. 700-1/1/33/2019: https://www.mycg.gov.my/sites/default/files/pdf/decision/Non-Confidential%20Public%20Version_Final%20Decision_Case%20Number%20700-11332019.pdf
- 8 Section 14.
- 9 Case No. 700/1/1/17/2017, *Competition Commission v. Agenda Eksklusif Sdn Bhd and 6 Ors*.
- 10 <https://www.mycg.gov.my/media-release/mycc-penalises-eight-enterprises-for-bid-rigging-cartel>
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- 12 <https://www.thestar.com.my/news/nation/2025/10/30/mycc-imposes-rm973mil-in-penalties-on-26-companies-over-bid-rigging-cartel>
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- 20 <https://says.com/my/says/no-more-rigged-deals-myccs-new-unit-takes-on-bid-rigging-cartels>
- 21 <https://www.nst.com.my/news/nation/2026/01/1367462/mycc-ft-dept-join-forces-combat-bid-rigging-cartels>

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25 <https://www.nst.com.my/news/nation/2026/02/1385833/competition-act-amendments-protect-reward-whistleblowers-%E2%80%93-armizan>

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Raj heads the firm's Competition Law practice, and has extensive experience in relation to contentious and non-contentious competition law matters. Raj advised on the merger between Pos Aviation Engineering Services and SIA Engineering, which was cleared by the Malaysian Aviation Commission under the Malaysian Aviation Commission Act 2015. He also regularly advises on individual exemptions under the same Act, including the individual exemption between Malaysian Airlines and Japan Airlines. Raj advised on the merger notification under the Communications and Multimedia Act 1998 for the merger between Digi and Celcom, which was cleared by the Malaysian Communications and Multimedia Commission. In relation to contentious matters, notable engagements include acting for Containerchain Sdn Bhd in its defence against MyCC's infringement decision (MyCC fines five firms RM645k for price fixing).

Raj was part of the law reform project team to review the Communications and Multimedia Act 1998 (which has sector-specific competition law) in 2016 to take into account industry developments. He has in-house experience in the automotive sector, where he advised on competition law compliance. Raj started practice in the Dispute Resolution practice and advised on general litigation including commercial and corporate disputes.

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