

LEGALLY SPEAKING

MyCC reviews the food sector

THE Malaysia Competition Commission (MyCC) is empowered, under the Competition Act 2010, to conduct a review into any market to determine whether any feature of the market is anti-competitive.

MyCC exercised this power in 2018 to conduct a market review on the food industry in Malaysia to determine whether the rising food cost was caused by any anti-competitive conduct within the food sector. MyCC's review, which examined the sector based on several factors including applicable laws, market structures and levels of market competitiveness at all levels in the supply chain, was conducted on five specific food items - beef, *ikan kembung* (mackerel), *sawi* (mustard greens), *kubis bulat* (round cabbage) and infant milk powder.

Its Aug 6, 2019 report sets out its findings and recommendations on these selected food sub-sectors, and the key takeaways are as follows.

Beef

Malaysia is heavily reliant on live cattle imported from Australia and Thailand, beef imported from Australia, and buffalo meat sourced from India. There has been significant price increases in recent years for imported cattle, local beef and imported beef. Some factors which may have led to this include low domestic production, high dependence on imports, high financial barrier to entry (because huge capital is needed for importation and logistics), the dominance of selected importers, and the limited number of exporters to Malaysia (primarily due to the need to meet halal certification requirements).

MyCC found certain importers had established long-term agreements with exporters and enjoyed preferential treatment (e.g. competitive prices) as a consequence, and that there had been restrictions imposed on new/emerging importers (e.g. large minimum purchasing volume).

Fish

While Malaysians are, on a per capita basis, the fourth highest fish consumers in the world, the self-sufficiency ratio (i.e. the extent to which local production can meet the total domestic demand) of *ikan kembung* has been constantly low, dropping to its lowest point of only 34% in 2017. More than 50% of the fish supply in Malaysia is distributed through the Kuala Lumpur wholesale market, meaning its wholesalers have higher bargaining power and the ability to determine the market supply and influence prices due to price information asymmetry along the supply chain (i.e. where wholesalers possess greater material price

knowledge). In addition, the existence of multiple layers of intermediaries (middlemen) in the fisheries supply chain can drive up the prices - sometimes by as much as six times - by the time it reaches the market.

Vegetables

While Malaysia depends on imports for *kubis bulat* (90% from China and 10% from Indonesia), it generally produces sufficient *sawi* for Malaysian consumption. Interestingly, an approved permit (AP) is required to import *kubis bulat* and there have been cases of unethical practices where AP holders sell or rent their quotas to foreign companies that import directly from their own farms in the country of origin. This ultimately adds competitive pressure on the local players.

Infant formula

MyCC did not find any significant indication of anti-competition conduct within the infant formula sector but noted some shortcomings. These include the fact that the majority of brands being offered are premium brands, there is reliance on imports (which causes price volatility when the ringgit fluctuates) and the dominance of a few multinational companies in the market.

Among MyCC's overarching recommendations in its report are first, to promote investment within the food sector (including infrastructure development and adoption of technology); second, to strengthen legislative powers to reduce information asymmetry; third, to enhance market transparency and encourage fair trading practices through consumer and business education respectively; and finally, to streamline existing government policies.

MyCC also made specific recommendations - to monitor APs for the *kubis bulat* market post-grant; and for the infant formula sector, MyCC supports the Ministry of Health's recommendation for exclusive breastfeeding for infants during their first six months (where possible).

MyCC's review comes on the back of several food-related competition investigations and enforcement action taken within Southeast Asia in recent years. It is hoped that the government will seek to implement the recommendations in the report as these could reduce the cost of food in Malaysia.

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