

Client Alert

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MyEG's penalty for abuse of dominance stands

On 28 December 2017, the Competition Appeal Tribunal (“**CAT**”) upheld the Malaysian Competition Commission’s (“**MyCC**”) decision on 24 June 2016 that My E.G. Services Berhad (“**MyEG**”) and its wholly-owned subsidiary, My E.G Commerce Sdn. Bhd. (“**MyEG Commerce**”) have abused their dominant position in the provision and management of online Foreign Workers Permit (“**PLKS**”) renewals.

Brief Facts and MyCC Decision

In 2012, MyEG signed an agreement with the Malaysian government to provide an online system for PLKS renewals. In order for a PLKS renewal application to be successful, an employer of foreign workers has to fulfil several conditions including the purchase of three mandatory policies for the foreign workers (“**Mandatory Insurance**”). MyEG Commerce is an agent for several insurance companies for the sale of the Mandatory Insurance.

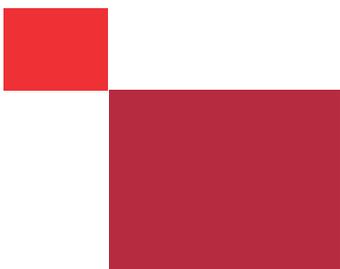
The MyCC found that MyEG has abused its dominant position by engaging in various conduct, including:

- (i) MyEG, being the only platform for provision and management of online PLKS renewals had in effect made it compulsory for the employers of foreign workers to purchase the Mandatory Insurance from MyEG Commerce;
- (ii) MyEG had induced the employers of foreign workers to purchase the Mandatory Insurance from MyEG Commerce by implementing additional verification steps for employers who purchase these policies from other insurance companies for which MyEG Commerce was not an agent; and
- (iii) MyEG had leveraged its dominance in the upstream market of online PLKS renewal service, in the downstream market of sale of Mandatory Insurance.

The MyCC imposed a total financial penalty of RM2,272,200.00 on MyEG (“**Initial Penalty**”).

Decision

On 28 December 2017, the CAT upheld MyCC’s decision and imposed a financial penalty of RM6,412,000 on MyEG and MyEG Commerce (comprising the Initial Penalty and a daily penalty of RM7,500 from 25 June 2016 to 28





December 2017, amounting to RM4,140,000). Further, the CAT ordered MyEG and MyEG Commerce to comply with the following directions:

- (i) cease and desist immediately from imposing different conditions to the equivalent transaction in the processing of Mandatory Insurances for PLKS renewals;
- (ii) to provide an efficient gateway for all its competitors and potential new entrants in the relevant market for the sale of the Mandatory Insurances and allow the other competitors to compete at the same level within sixty (60) days from the date of CAT's decision i.e. 28th December 2017; and
- (iii) in the event of non-compliance of the aforesaid directions, MyCC is at liberty to impose a daily penalty of RM7,500 (instead of higher penalty) for the subsequent period of non-compliance.

The CAT also reiterated that being in a dominant position by itself is not a breach of the Malaysian Competition Act (“**Act**”). However, as MyEG is a sole concession holder, there is a higher burden on MyEG to comply with Malaysia's competition laws, and to grant market players equal access to its facilities.

Conclusion

MyCC's decision against MyEG and MyEG Commerce was the first infringement decision for abuse of dominance since its establishment in 2012. The CAT's decision to uphold the fine imposed by MyCC is a reminder to companies with significant market power to conduct themselves cautiously, and lends support to MyCC's continuing vigilance in monitoring dominant players and other infringements under the Competition Act.