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**Competition**

**With Great (Market) Power Comes Great Responsibility**

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*In Issue 04/11 (April 2011), we explained the general concept of abuse of dominance (view [here](#))*

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Last week, the Competition Appeal Tribunal dismissed an appeal by My E.G. Services Berhad, or MyEG, against a decision made by the Malaysia Competition Commission in June 2016. The Commission decided that MyEG, together with its wholly-owned subsidiary My E.G. Commerce Sdn Bhd, or MyEG Commerce, had abused their dominant position in the renewal of temporary employment passes by imposing different conditions on the purchase of mandatory insurance offered by MyEG Commerce, as opposed to other insurance agents.

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The Competition Act 2010 prohibits an enterprise from engaging in any conduct that amounts to an abuse of dominant position. The fact that an enterprise is dominant is not in itself a breach of the Act. Rather, prohibitions under the Act relate to conduct of enterprises that amount to an abuse of dominant position — including the imposition of different conditions to equivalent transactions in a way that may harm competition. Such conduct could result in trading partners of the dominant enterprise being treated differently, which would potentially prejudice these companies and in turn drive them out of business.

At the time of the alleged infringement, MyEG was the sole concession holder in the provision and management of the renewal of employment passes. One condition for renewal is that the employer must purchase coverage for three mandatory insurance policies, namely, the Foreign Workers Insurance Guarantee, the Foreign Workers Hospitalisation and Surgical Scheme, and the Foreign Workers Compensation Scheme.

The Commission found that MyEG had imposed different conditions for the purchase of mandatory insurance policies depending on the channel the employer had opted for, as elaborated below:

- MyEG (through its FAQ uploaded on its website) indicated that the purchase of the Insurance Guarantee must be made through its platform despite the other channels available for purchasing insurance; and
- MyEG (also through its FAQ) induced employers of foreign workers to purchase the Hospitalisation and Surgical Scheme as well as the Compensation Scheme directly through MyEG for

faster and easier renewal of employment passes. For example, mandatory insurance purchased directly from MyEG is automatically verified, whereas policies bought from other insurers and insurance agents would take longer to verify.

It was found that RHB Insurance Berhad, which had entered into an agency agreement with MyEG (pursuant to which the latter earned a commission for every insurance sale), was able to capture increased sales within a short period as compared to other competing insurance providers.

The Appeal Tribunal upheld the Commission's decision — imposing a financial penalty amounting to RM2.27 million for the infringement period from 5 January 2015 to 22 January 2015 and 2 May 2015 to 6 October 2015 — while also including an additional daily penalty of RM7,500 computed from 25 June 2016 to 28 December 2017. The total financial penalty imposed on MyEG increased to RM6.4 million from RM2.27 million previously.

MyEG was further required to cease imposing different conditions in the processing of mandatory insurance for the online renewal of employment passes, and also to provide an efficient gateway for the sale of the mandatory insurance. It has been reported that MyEG intends to file a judicial review of the Appeal Tribunal's decision.

From the above, it is clear that enterprises with significant market power need to be mindful of their conduct in the market. While dominance in itself would not be contrary to the Act, there are prohibitions that apply solely to dominant enterprises. In this regard, it is advisable to examine the business conduct of these enterprises to ensure they do not fall foul of competition law.

**Thong Xin Lin**

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