

Immunity, Sanctions & Settlements 2017
Malaysia

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GCR | **Know-how**

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Immunity or a 100 per cent reduction in sanctions

1 What benefits are available to the first applicant to qualify?

Section 41 of the Competition Act 2010 (the CA) provides for a leniency regime with a reduction of up to a maximum of 100 per cent of any penalties that would otherwise have been imposed, which may be available if the applicant admits involvement in an infringement of section 4(2) of the CA and provides information or cooperation to the Malaysia Competition Commission (the MyCC).

Section 4(2) of the CA prohibits horizontal agreements between enterprises. The object of this is to prohibit horizontal agreements that have the object or effect to:

- fix, directly or indirectly, a purchase or selling price or any other trading conditions;
- share a market or sources of supply;
- limit or control:
 - production;
 - market outlets or market access;
 - technical or technological development; or
 - investment; or
- perform an act of bid rigging.

The above are deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services.

The MyCC has also issued Guidelines on Leniency Regime (the Guidelines), which state that the policy of the MyCC is to grant a 100 per cent reduction of the financial penalty to a successful leniency applicant (in relation to the first applicant), on condition that the applicant admits its involvement in a cartel and the applicant offers to provide information or cooperation on cartels of which the MyCC has no knowledge.

The leniency granted by the MyCC will not protect the applicant from other legal consequences such as private actions initiated by any aggrieved person under section 64 of the CA.

2 Do the protections extend to current and former officers, directors and employees?

Although the CA and the Guidelines do not specifically provide for this, the MyCC may extend the leniency protection to the current and former employees of the leniency applicant.

If the application for leniency is unsuccessful and the enterprise is found to have committed an offence under the CA, pursuant to section 63 of the CA:

If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, chief executive officer,

chief operating officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management –

- a) may be charged severally or jointly in the same proceedings with the body corporate;*
- and*
- b) if the body corporate is found to have committed the offence, shall be deemed to have committed the offence....*

3 Is immunity available after an investigation begins?

Yes, leniency is available after an investigation begins. As provided under section 41(1)(b), a reduction of up to a maximum of 100 per cent may be available where an employee has admitted his or her involvement in an infringement under section 4(2) of the CA and provided information or other form of cooperation which ‘significantly’ assists the MyCC in the identification or investigation of any finding of an infringement.

The Guidelines provide that the amount of reduction will depend on the stage of investigation, and an applicant may receive a greater reduction than in a subsequent application as the MyCC will assess the subsequent application for leniency in the light of the information that it has in its possession. The MyCC also has the discretion to grant a 100 per cent reduction in circumstances in which the MyCC considers it appropriate.

4 What are the eligibility requirements before an investigation begins?

The CA and the Guidelines do not expressly provide for different eligibility requirements for leniency applications “before” or “after” an investigation begins.

Section 41(2)(a) of the CA states that:

A leniency regime may permit different percentages of reductions to be available to an enterprise depending on –

- a) whether the enterprise was the first person to bring the suspected infringement to the attention of the Commission*
- b) the stage in the investigation at which –*
 - i) an involvement in the infringement was admitted; or*
 - ii) any information or other co-operation was provided...*

The Guidelines further state that the policy of the MyCC is to grant a 100 per cent reduction in the financial penalty to the successful leniency applicant (the first applicant) where the applicant has admitted its involvement in a cartel and the applicant provides details or another form of cooperation about the same cartel which is new information to the MyCC.

5 What are the eligibility requirements after an investigation begins?

See question 4. The percentages of reductions will generally depend on the stage of the investigation, and a greater reduction will be given during the earlier stages of an investigation. The Guidelines provide that the MyCC may take into consideration any circumstances such as whether the enterprise was the first one to come forward to the MyCC about an infringement, the information already in the possession of the MyCC or the provision of other forms of cooperation that would significantly assist the MyCC in the investigation of any finding of an infringement under the CA. According to the Guidelines, the first applicant may receive a greater reduction than a subsequent applicant as the MyCC will assess the subsequent application for leniency in the light of the information that the MyCC has in its possession.

6 Will the applicant have to admit to a violation of law?

Yes, in terms stipulated under section 41(1)(a) of the CA.

7 Are ringleaders or initiators of the conduct eligible?

As provided under paragraph 2.7 of the Guidelines, an enterprise would not qualify for a 100 per cent reduction in financial penalties if the enterprise initiated the cartel or took steps to coerce other enterprises into taking part in the cartel activity. However, such applicants may still qualify for a reduction in financial penalties.

8 When must the applicant terminate its involvement in the conduct?

In accordance with paragraph 8.4 of the Guidelines, one of the conditions for the grant of a conditional leniency shall include:

- b. Cease and Desist: the applicant ceases and desists from engaging in the infringing activities which are the subject of the cartel for which involvement is admitted unless the MyCC expressly authorises continued participation by the applicant in the cartel for the purpose of furthering the MyCC’s investigation.*

9 What constitutes termination of the conduct?

The CA and the Guidelines do not have a specific or formal definition for this. A condition for the grant of a conditional leniency includes the ‘cease and desist’ condition, as described above.

10 Will the applicant be required to make restitution to victims?

There is no such request or condition for leniency under the CA and the Guidelines. However, ‘victims’ have a right of action for relief in civil proceedings in court under section 64 of the CA.

11 Can more than one applicant qualify for immunity?

Yes, it may be possible according to the Guidelines. According to paragraph 3.4 of the Guidelines, the MyCC’s policy is to grant a 100 per cent reduction in the financial penalty that would otherwise be imposed on the first successful leniency applicant. However, paragraph 3.7 of the Guidelines states that the MyCC reserves the right to give a reduction of up to 100 per cent in ‘other circumstances’.

12 Can an applicant qualify if one of its employees reports the conduct to the authority first?

There is no specific disqualification in this situation. This would be a matter for the MyCC’s discretion.

13 Does the afforded protection extend to any non-antitrust infringements?

The CA and the Guidelines do not extend leniency to any non-antitrust infringements.

14 What confidentiality assurances are given to the first applicant to report?

Confidentiality will be maintained, according to section 21 of the CA. Section 21 provides that:

Any person who discloses or makes use of any confidential information with respect to a particular enterprise or the affairs of an individual obtained by virtue of any provision of this Act commits an offence.

However, there are exceptions to this provision as provided under section 21(2) of the CA as follows:

- (a) the disclosure is made with the consent of the person from whom the information was obtained;*
- (b) the disclosure is necessary for the performance of the functions or powers of the Commission;*
- (c) the disclosure is reasonably made during any proceedings under this Act provided that such disclosure is not made against any direction by the Commission or the Competition Appeal Tribunal before which the proceedings are taking place;*
- (d) the disclosure is made in connection with an investigation of an infringement or an offence under this Act; or*
- (e) the disclosure is made with the authorisation of the Commission to any competition authority of another country in connection with a request by that country’s competition authority for assistance.*

15 Does the authority publish guidance regarding the application of the programme?

There are no publications, updates or status reports to date, apart from the Guidelines on Leniency Regime issued by the MyCC.

16 Do the rules for obtaining immunity in your jurisdiction conflict with the immunity rules in other jurisdictions?

The Guidelines in Malaysia are relatively new. Much has been borrowed from other jurisdictions. No exhaustive comparison is possible or available. However, broadly speaking, the Guidelines in Malaysia do tend to mirror guidelines in other jurisdictions. However, there are nuances in the Guidelines that may lead to different conclusions in given situations.

Immunity application and marker process

17 What is the initial process for making an application?

An applicant should contact the Leniency Officer, an official appointed by the MyCC to facilitate the handling of enquiries about the availability of leniency in specific circumstances. The applicant may also call the Leniency Hotline telephone number which is provided for on the MyCC’s website. According to the Guidelines, an applicant may ask about availability of leniency with respect to a particular situation, request a “marker” to establish priority over other potential applicants in order to obtain sufficient time to prepare a leniency application and ask questions about requirements for making a leniency application. A completed leniency application should be submitted in writing and signed by an authorised senior officer of the applicant. If the Leniency Officer advises that leniency is available in respect of a particular situation, an applicant may request a marker in order to preserve priority. A marker records the priority, date, time and matter for an enterprise who intends to submit a leniency application, and the specified period in which the enterprise must complete its application for leniency.

18 What information is required to secure a marker?

The Guidelines provide that where an applicant intends to secure a marker, the applicant shall provide the name of the enterprise that is to be covered by the leniency, and sufficient details to identify the infringement. The Leniency Officer will then issue a written confirmation of the marker to the applicant.

19 How much time will an applicant have to perfect its marker?

The applicant will have 30 days from the date the marker is granted to complete its application. Failure to complete the application will result in the enterprise losing its priority position, and the enterprise would have to obtain a new marker if it wishes to make an application for leniency.

20 Can the deadline for perfecting the marker be extended?

Yes. Paragraph 5.10 of the Guidelines provides that the MyCC has the discretion to grant an extension of time, and such extension of time shall be subject to valid grounds.

21 What is required to perfect the marker?

As provided under the Guidelines, an applicant for leniency is required to provide the relevant information and offer other forms of cooperation in relation to an alleged infringement. The following information about a prohibition under section 6(4) should be provided:

- a detailed description of the suspected infringement of a prohibition under subsection 4(2) cartel including:*
 - 1. objectives, activities and functioning of the cartel,*
 - 2. the products or services involved and their geographic scope,*
 - 3. activities of the cartel with dates, times, places, purpose, and content of any meetings, conversations or other contact;*
- b copies of documents such as minutes or notes of meetings or conversations, meeting agendas, price lists, etc.*
- c if the applicant no longer has a copy of a relevant document, the names and persons who may have copies of the document.*
- d name including full legal name, contact details and relevant office locations of the applicant and those of any subsidiary or related companies involved and names and positions of individuals of such enterprises who have participated in or have knowledge of the cartel activities;*
- e names and contact details of all enterprises involved and names and positions of individuals of the enterprises involved who have participated in or have knowledge of the cartel activities;*
- f name, contact details and relevant office locations of any trade association involved and names of employees and officers of the association who have participated in or have knowledge of the cartel activities;*
- g names of competition agencies/authorities to which the applicant has or is contemplating making a leniency application; and*
- h any other relevant information about the cartel and any other information that may assist the MyCC in reviewing the leniency application.*

22 Can the scope of the marker be expanded if additional information is discovered by the applicant?

The CA and the Guidelines do not expressly provide for the scope of the marker to be expanded. If additional information is discovered in relation to a different cartel, another marker may be requested in order to preserve the applicant's priority in receiving leniency while an application is being prepared in respect of that other cartel.

23 Can an applicant lose its marker if a second applicant comes forward with better information?

According to paragraph 5.8 of the Guidelines, an enterprise with a marker with an earlier date and time is given priority over another enterprise with a marker with a later date and time in relation to the same matter if the first enterprise submits its application within 30 days from the date the marker is granted.

The enterprise will lose its priority position to the subsequent marker if it fails to complete its application by the end of the specified period. The enterprise will then have to obtain a new marker to make a fresh application for leniency.

24 What if the applicant's investigation reveals that no violation exists?

The Guidelines do not expressly provide for a situation where no violation exists. However, section 39 of the CA provides that where the MyCC has made a decision that there is no infringement of a prohibition under the CA, the MyCC shall give notice of the decision to any person who is affected by the decisions stating the facts on which the MyCC bases the decision and the reason for making the decision. If there is no violation, under Malaysian law, it would likely be implied that the leniency application cannot amount to an admission as there can be no admission in the absence of an infringement.

25 What if the authority decides not to investigate?

The MyCC's powers of investigation are provided under the CA, and section 14 of the CA states that 'the Commission may conduct any investigation as the Commission thinks expedient where the Commission has reason to suspect that an enterprise has infringed or is infringing any prohibition under this Act or any person has committed or is committing any offence under this Act.'

The MyCC has the discretion on whether to investigate or refuse an investigation as it thinks expedient, and the MyCC is not obliged to investigate due to a leniency application.

Immunity cooperation obligations**26 What is the applicant required to produce?**

See question 21. As provided under the CA and the Guidelines, an applicant for leniency is required to provide information and offer other forms of cooperation in relation to an alleged infringement of a prohibition under the CA.

Leniency will be granted where the applicant fulfils all the terms and conditions for the grant of leniency. The conditions of a leniency include the following:

- (a) Requirements of section 41: admission of involvement in an infringement of a prohibition under subsection 4(2) (section 41(1)(a)) and providing 'significant' assistance as advised in the application process (section 41(1)(b));*
- (b) Cease and Desist: the applicant ceases and desists from engaging in the infringing activities which are the subject of the cartel for which involvement is admitted unless the MyCC expressly authorises continued participation by the applicant in the cartel for the purpose of furthering the MyCC's investigation;*
- (c) Full Disclosure: the applicant provides full and truthful disclosure of its participation in the cartel for which it has admitted cooperation including the submission of all documents and if co-operation is about a different infringement, its knowledge about that other infringement;*
- (d) Continuing Co-operation: the applicant provides promptly and at its own expense to any request for information or other assistance by the MyCC including, if requested, the assistance of any employee, officer or director with respect to the cartel for which involvement is admitted and, as well, if co-operation is provided about a different infringement, with respect to that other infringement;*
- (e) Documents: the applicant agrees not to destroy any relevant documents and confirms that relevant documents have not been destroyed before or during the period leading to the conditional grant of leniency;*
- (f) Harassment or Intimidation: the applicant confirms that it has not harassed or intimidated others to participate in the cartel for which it has admitted involvement;*
- (g) Confidentiality: the applicant undertakes not to disclose to anyone, without the permission of the MyCC, about any aspect of the grant of leniency including the fact that it has applied for leniency and the grant of leniency or its terms except for the purpose of obtaining and receiving legal advice with respect to the cartel or in compliance with a court order, in which case, the applicant should promptly inform the MyCC of any application for such an order;*
- (h) Withdrawal of Conditional Grant of Leniency: the MyCC may upon notice to the applicant withdraw the conditional grant of leniency if the appli-*

cant does not fulfil each and every one of the conditions of the conditional grant of leniency.

27 Will the applicant be required to make a written confession?

The CA and the Guidelines provide that leniency may be available in the case of any enterprise which has admitted its involvement in an infringement of any prohibition under section 4(2) of the CA.

According to the Guidelines, a leniency application should be made in writing containing information such as a detailed description of the suspected infringement of a prohibition.

According to paragraph 7.3 of the Guidelines, the MyCC shall not be allowed to use any self-incriminatory information obtained via leniency applications against any unsuccessful leniency applicant.

28 Can third parties obtain access to the materials provided by the applicant?

Section 21 of the CA provides that the person who discloses or makes use of any confidential information obtained through the provisions of the CA commits an offence. Information or materials may be disclosed only under the circumstances in section 21(2) of the CA (see question 14). The extent of these provisions has not been fully tested in litigation yet.

29 Will the applicant lose its protection if one or more of its employees refuses to cooperate?

See question 26. As provided in the Guidelines, one of the standard conditions for the grant of a conditional leniency is the:

Continuing Co-operation: the applicant provides promptly and at its own expense to any request for information or other assistance by the MyCC including, if requested, the assistance of any employee, officer or director with respect to the cartel for which involvement is admitted and, as well, if co-operation is provided about a different infringement, with respect to that other infringement.

30 Will the applicant lose its protection if one of its employees engages in obstructive conduct before or after the application?

See question 29. Additionally, any person who engages in obstructive conduct commits an offence under the CA and shall on conviction be liable to fines or imprisonment or both.

31 Will the applicant be required to provide materials protected by attorney-client privileges or work-product doctrine?

No. Section 22 of the CA states that:

No person shall be required...to produce or disclose any communication between a professional legal adviser and his client which would be protected from disclosure in accordance with section 126 of the Evidence Act 1950.

However, such privilege is only limited to communications between an enterprise and its external counsel.

Granting immunity**32 How does the authority announce its promise not to charge or sanction?**

Under the Guidelines, the formal (unconditional) grant of leniency will be made in the infringement decision, if any. Please note that a conditional grant of leniency is only made final or unconditional when the applicant has fulfilled all conditions of the conditional grant of leniency. Further, the grant of unconditional leniency is only made if the MyCC decides to make an infringement decision with respect to the cartel concerned.

The MyCC will inform the applicant by way of a section 36 CA written notice. Section 36 provides that:

If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under Part II has been or

is being infringed, the Commission shall give written notice of its proposed decision to each enterprise that may be directly affected by the decision.

33 Does the authority put its commitment in writing?

Yes. See question 32. Further, an applicant is required to enter into a written conditional leniency agreement with the MyCC which contains all the conditions that the applicant is required to satisfy in order to receive (unconditional) grant of leniency.

34 Who is given access to the document?

The written notice of the MyCC's proposed decision pursuant to section 36 of the CA shall be given to each enterprise that may be directly affected by the decision.

35 Does the authority publish a model letter for conferring immunity?

No, there have been none to date.

Individual immunity or leniency**36 Is there an individual immunity programme?**

It is not a criminal offence for a company or an individual to be in a cartel per se. However, members of cartels are liable to financial penalties under section 40 of the CA.

An enterprise could be a corporate enterprise or an individual acting as an enterprise. If so, there would be no distinction between a corporate and individual enterprise. Individuals can apply for leniency under the MyCC's leniency regime in the same manner as a company.

37 What is the process for applying?

See questions 17–21.

38 What are the criteria for qualifying?

There is no distinction between corporate and individual enterprise (see question 36). The individual applicants are subject to the same criteria as a company (see question 26).

Revocation of immunity**39 On what basis can corporate immunity be revoked?**

There is no express power under the CA for a leniency to be revoked. However, according to the Guidelines, a grant of leniency (whether conditional or unconditional) may be revoked where the MyCC concludes that the applicant has not fulfilled any conditions of the grant of leniency, for example, provision of false or misleading information to the MyCC.

40 When can it be revoked?

See question 39. According to the Guidelines, a grant of leniency can be revoked at any time where the MyCC concludes that the applicant has not fulfilled any conditions of the grant of leniency. However, there is no express power under the CA which grants the MyCC power to revoke the grant of leniency.

41 What notice is required to revoke?

Pursuant to the Guidelines, the MyCC will serve a written notice on the enterprise concerned before revoking its grant of leniency, which includes the MyCC's explanations for the proposed revocation. The MyCC will also invite the enterprise concerned to submit a written representation to the MyCC within 14 days from the date of service of the notice.

42 Can the applicant file a judicial challenge to a decision to revoke?

The CA does not provide for the right of appeal to the Competition Appeal Tribunal to challenge a decision to revoke a grant of leniency. However, the applicant may challenge the MyCC's decision by way of a judicial review or other appropriate applications to the High Court.

Reduction in sanctions**43 Does the leniency programme allow for reductions in sanctions?**

Yes. As provided under the CA, a leniency regime may permit different percentages of reductions of any financial penalties that would otherwise have been imposed for infringing the CA.

44 What is the process for seeking a reduction in sanctions?

An application has to be made in the same way as making an application for leniency, namely, by admitting to an infringement and by providing significant assistance. See questions 17–21.

45 Is there a marker process similar to immunity applications?

See answer to question 44. An application for seeking reduction in sanctions has to be made in the same way as making an application for leniency. As such, there is only one marker process under the leniency application. See answers to questions 17–23.

46 Are the reductions in sanctions fixed or discretionary?

The grant of leniency and reductions in sanctions are discretionary.

47 How are the reductions in sanctions calculated?

According to the Guidelines, the reductions in sanctions will depend on the stage of the investigation, the nature and the “value added” quality of the information and cooperation provided to the MyCC. An applicant is more likely to receive a greater reduction if the application is made in the earlier stages of the investigation. Further, the first applicant is more likely to receive a greater reduction than subsequent applicants, as applications made by subsequent applicants will be assessed in light of the information the MyCC has already obtained, including the information given by previous applicants.

48 Are there sentencing guidelines?

No. It is not a criminal offence per se to be in a cartel in Malaysia.

49 If an applicant's cooperation reveals self-incriminating information that expands the scope of the conduct known to the authority, will that conduct be factored into the fine calculation?

The CA and Guidelines on Leniency do not provide any specific guidance. However, as the conditions of the leniency include obligations by the applicant to provide information or other forms of cooperation that would significantly assist the MyCC in the identification or investigation of any finding of an infringement of a prohibition under the CA, including cooperation provided relating to a different infringement, the MyCC may factor such information and cooperation into the fine calculation.

The Guidelines further provide that the amount of a reduction will depend on “the nature and the ‘value-added’ quality of the information and other co-operation to be provided”.

50 Are there fixed or discretionary discounts for the first applicant to cooperate after the immunity applicant (assuming there is an immunity applicant)?

All reductions in sanctions are discretionary.

51 Other than fine reductions, are there additional incentives offered to an applicant that is the first non-immunity applicant?

No. According to the Guidelines, a leniency granted by the MyCC is only in respect of a financial penalty that may otherwise be imposed under section 40(1)(c) of the CA.

52 Does the competition authority publish guidance regarding sentencing reductions?

Not applicable. There is no criminal offence for being in a cartel in Malaysia.

53 Does the authority provide for “Amnesty Plus” benefits?

See question 49. The CA and the Guidelines provide that the leniency regime may be available in the case of any enterprise that has provided information or other forms of cooperation to the MyCC that 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. Apart from this, there are no specific “Amnesty Plus” benefits.

54 How is the Amnesty Plus discount calculated?

See question 54. There are no specific Amnesty Plus benefits in Malaysia.

Cooperation obligations for sentencing reductions**55 Are the cooperation obligations similar to those for immunity applicants?**

Not applicable. There is no criminal offence for being in a cartel.

56 Will the applicant be required to make a written confession?

Not applicable.

57 Can third parties obtain access to the materials provided by the applicant?

Not applicable.

58 Will an applicant qualify for sentencing reductions if one or more of its employees refuse to cooperate?

Not applicable.

59 Will the applicant lose its protections if one of its employees engages in obstructive conduct before or after the application?

Not applicable. However, the employee who engages in obstructive conduct commits an offence under the CA which, on conviction, is liable to fine or to imprisonment. Pursuant to section 63 of the CA, a company may also be guilty of an offence for obstruction.

60 Will the applicant be required to provide materials protected by attorney-client privilege or work-product doctrine?

Not applicable, but the name and identity of the client may have to be disclosed.

61 Can an applicant challenge the amount of the reduction of sanctions?

Yes. An applicant may challenge the finding of an infringement under section 40 of the CA on the amount of reduction of sanctions by appealing to the Competition Appeal Tribunal pursuant to section 51 of the CA.

Settlements**62 How is the settlement process initiated?**

Malaysia does not have a process described as ‘settlements’. Settlement agreements per se are not specifically contemplated by the CA.

Settlements may be reached and result in the close of an investigation upon receiving undertakings acceptable to the MyCC. This is provided for pursuant to section 43 of the CA.

63 Is the amount of the sanction always fixed in the settlement agreement?

By accepting the undertaking, the MyCC would close the investigation without making any finding of infringement. Accordingly, the MyCC cannot impose a penalty on the enterprise in accordance with section 43(2) of the CA.

64 What role, if any, do the courts play in the settlement process?

The courts are not involved in the settlement process save and except that a ‘settlement’ may be recorded via Consent Orders (if applicable).

65 Are the settlement documents, including any factual admissions, made public?

Yes. The MyCC will publish the Undertaking Document on its website according to section 43(3) of the CA, where it states that ‘any undertaking accepted by the Commission under this section shall be a document available for inspection by the public in a manner determined by the Commission.’ Further, consent orders may be searchable documents.

66 Is an admission of wrongdoing required?

An admission of wrongdoing is not required for an undertaking entered into pursuant to section 43 of the CA. See question 63. In relation to other types of settlement, there are no mandatory rules provided under the CA.

67 Do companies that enter into settlement agreements receive an automatic sentencing discount?

Not applicable.

68 Do all of the subjects of an investigation have to agree to the settlement procedure before it is initiated by the authority?

Yes.

69 Will the authority settle with subjects who refuse to cooperate?

There is no provision under Malaysian law and it is difficult to envision a settlement with an uncooperative party.

70 If the settlement discussions terminate without an agreement, may any information provided or statements made during the negotiations be used against the parties?

There is no express provision under the CA. The general principles of Malaysian law would apply to correspondence and exchanges that are marked “without prejudice”.

71 May a party to the settlement agreement void the agreement after it is entered?

Yes. Under Malaysian law such an agreement may be vitiated, set aside or held to be void on the same grounds as agreements in general; in other words, for illegality, unenforceability, mistake of law, fact, misrepresentation, failure to fulfil agreed conditions or terms, etc.

72 Does the competition authority publish guidance regarding settlements?

No specific guidance has been published but the range of fines imposed to date can be seen in this table:

Date	Issues/ Allegations	Company/ Association	Outcome
6.12.2012	Horizontal	Cameron Highlands Floriculturist Association	No fine: a “cease and desist” type order was issued
30.1.2014	Horizontal	Malaysia Indian Hairdressing Saloon Owners Association (MIHSA)	No fine: Undertaking to discontinue given by MIHSA
31.3.2014	Horizontal	Malaysian Airline System Berhad, AirAsia Berhad and AirAsia X Sdn. Bhd (MAS/Airasia)	Total Fine of 10,000,000 ringgit respectively (Overruled by Competition Appeal Tribunal (COMPAT) on appeal but may be subject to judicial review)
7.5.2014	Horizontal	Pan Malaysia Lorry Owners’ Association (PMLOA)	No fine: Undertaking was given by PMLOA to ensure that they would not engage in any anticompetitive conduct in future
October 2014	Horizontal	Federation of Malaysian School Bus Operators Associations	MyCC warned school bus operators against price-fixing
1.10.2014	Abuse of Dominance	Giga Shipping Sdn Bhd & Nexus Mega Carriers Sdn Bhd (Giga & Nexus)	No fine: Undertaking to discontinue given by Giga & Nexus
14.10.2014		Guidelines on Financial Penalties & Guidelines on Leniency Regime issued	
30.1.2015	Horizontal	24 Ice Manufacturers of Kuala Lumpur	Total fine of 252,250 ringgit imposed on the 24 infringing enterprises
12.2.2015	Horizontal	Members of the Sibü Confectionery and Bakery Association	Total fine of 247,730 ringgit imposed on 14 infringing enterprises Note: 1 infringing enterprise had an insignificant amount of total turnover, hence no fine was imposed

Date	Issues/ Allegations	Company/Association	Outcome
12.2.2015	Abuse of Dominance	Pangsapuri Perdana	Non-infringement: allegations do not have merit.
April 2015	Horizontal	Sarawak Restaurants Association	Non-infringement: no evidence of agreement to fix prices of food and beverages in Sarawak
May 2015	Horizontal	My Egg Consortium Sdn Bhd (My Egg)	Non-infringement: no evidence of infringing conduct by My Egg
4.8.2015	Horizontal	Nursery and Nanny Association	Warning issued by MyCC
12.10.2015	Horizontal	Malaysia Heavy Construction Equipment Owners' Association	No fine: undertaking to discontinue given by MHCEOA
26.10.2015	Horizontal	Federation of Stationers and Booksellers Association of Malaysia	Non-infringement: alleged announcement to increase prices in local newspaper did not represent the view of the association
2.4.2016	Abuse of Dominance/ Vertical	Megasteel Sdn Bhd	Non-infringement: Megasteel did not abuse its dominant position nor practise margin squeeze Complainant has lodged an appeal to COMPAT
1.6.2016	Horizontal	An information technology service provider to the shipping and logistics industry and four container depot operators	Total fine of 645,774 ringgit imposed on the five infringing enterprises
24.6.2016	Abuse of Dominance	My EG Services Berhad	Total fine of 2,272,200 ringgit imposed
22.2.2017	Alleged Horizontal	General insurance industry	Total proposed fine of 213,454,814 ringgit imposed on 22 general insurers. The insurance companies are disputing this Note: At the time of writing, this case is at the proposed decision stage. The companies have the statutory right to appeal against a finding of infringement (if any)

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KNOW-HOW ► FIRM

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