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The Interface between Competition Law and Consumer protection: A Malaysian Perspective

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ABSTRACT

Competition law and consumer protection share a common goal: how to benefit consumers. In this way, they are complementary and if applied properly they reinforce each other. Even though both share a common goal, the ways they achieve this goal are different. These differences pose opportunities and challenges. This paper aims to explore the interaction between competition law and consumer protection from the Malaysian perspective. The result of this study shows that there is a positive relationship between competition law and consumer protection in Malaysia. However, there are instances where they are inconsistent with each other. Therefore, it is very important to understand how competition law and consumer protection interact with each other so as to ensure that they do not work at cross purpose.

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INTRODUCTION

Competition law aims to protect the process of competition among firms in the market by preventing anti-competitive conducts such as price fixing and market allocation. On the other hand, development of the law relating to consumer protection is the manifestation of a growing social concern to protect the weak and those unable to take care of themselves in a modern market economy. Consumer law aims to protect the interest of end user of goods and services from all sorts of unfair trade practices and harmful activities of market operators. Competition law and consumer protection strive to achieve a common goal, i.e. a competitive market that promotes consumer welfare. For example competition law protect the process of competition which at the end will be translated into consumer benefits such as the enjoyment of goods and services of good quality at a lower price. Consumer law which concerns with the protection of basic rights of consumer which includes the right to be informed helps consumers to make informed decisions on various products available in the market. It is generally agreed that only when the consumer is able to make an effective choice will they be able to activate competition in the market (Dawar & James, 2005). Consumers' ability to compare prices and quality of the products will encourage firms to innovate and to lower the price of products they sell. To drive out competitors, firms themselves may provide information so that the consumer can make an effective decision (OECD, 2008). Obviously competition law and policy works on the supply side whereas consumer protection on the demand side (Mark Armstrong, 2008). The former deals with structural aspects or external market failures to the consumers, whereas the latter concerns with informational issues which cannot be resolved by market forces (internal market failure to the consumers) (Cseres K. J., 2005).

Even though competition law and consumer protection pursue a mutual objective in some circumstance they may work at cross purpose. Consumer protection may distort competition and may have negative effects on competition. On the other hand, competition policy and law may be enforced in the manner that inconsistent with the consumer welfare. This paper aims to study the nature of interaction between competition law and consumer protection in the context of Malaysia. It is acknowledged that whether or not competition benefits the consumer depends on many factors including the effectiveness of complementary consumer policy (Dawar & James, 2005). In fact, most consumer problems are micro-competition (Cseres K. J., 2005). Therefore, it is important to understand the manner in which competition law and consumer protection interact each other so that they do not act as a conflict but rather as a solution to each other.

This paper will start off by exploring several approaches to understand the interaction between competition law and consumer protection focusing on liberal and paternalistic approaches. The paper will then discuss the

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manner in which competition law and consumer protection is currently enforced in Malaysia. The paper will proceed with exploring the complementary aspect of competition and consumer protection in Malaysia and the possible conflict between the two. Finally the paper will come up with a concluding remarks and suggestion to resolve the issues arising from the interaction between competition law and consumer protection.

Background of Competition Law and Consumer Protection in Malaysia:

Malaysia has been a long-time opponent of the total free market system adopted by other developed countries. The government did not believe that market force will take care of the interest of consumers. The Malaysian economy has been described as interventionist especially after 1969 when the country started to embark on state intervention policies such New Economy Policy and New Development Policy. It has been argued that Malaysia adopted a dual economy approach with a mix of liberal and interventionist economic policies (Hill H. 2005). In export manufacturing sectors for example, Malaysia adopts a liberal approach whereas in other sectors such as service and procurement sector they are still considered as highly interventionist (Athukorala P.C., 2001). Malaysia acceded to the WTO in 1994 and is actively participating in Free Trade Agreements with other countries such as the ASEAN Free Trade Agreement (AFTA). However, Malaysia did not support the inclusion of competition policy in the WTO agenda. (Athukorala P.C., 2001).

Previously, Malaysia was sceptical on the implementation of a competition law and argued that other forms of competition policies such as trade policy is sufficient to cater the needs of the country (Kronthaler F., Stephen J & Emmert F, 2003). Even though the effort to introduce a national competition law had been started since 1990 the final effort to introduce the law was taken in 2005 when the need to introduce a competition policy and law was put as an agenda under the 8th Malaysia Plan (2001-2005). Based on this mandate, the Government formulated Fair Trade Practices Policy in 2005. However, it was merely a policy statement issued by the Government containing fair trade practices including competition rules such as anti-competitive agreement and abuse of dominant position. It serves merely as a guidance for business and consumers.

The Government finally passed the Competition Act 2010 in April 2010. The Competition Act 2010 will focus solely on promoting and protecting the process of competition. The provisions of unfair trade practices such as profiteering, unfair burden by large enterprises and concurrent jurisdiction between competition and consumer authorities as shown in the previous draft have been dropped from the Act. The MDTCC argued that it is difficult to determine what constitutes to “fair” and “unfair practices”. It should be noted that Malaysia also has various consumer protection legislations and the inclusion of consumer protection in the Act will cause redundancy and confusion. The law should protect competition not an individual competitor.

On the other hand serious attention to improving consumer protection law in Malaysia started with the establishment of the Ministry of Domestic Trade and Consumer Affairs (currently known as the Ministry of Domestic Trade, Cooperatives and Consumerism) in 1990 after the government realised that rapid growth in the economy has a tremendous impact on domestic transactions and consumer related issues. It then followed by the introduction of the Consumer Protection Act 1999 (the CPA) which basically covers all the main areas of consumer protection such as supply of goods, supply of services, trade practices, unfair contract terms, product safety and liability and redress mechanism. The National Consumer Policy was introduced in 2002 with the aims to encourage the balance of rights and responsibility among consumer, trader and government in ensuring the well-being and welfare of consumer in the globalisation era. In addition to the CPA, protection of consumers interest can also be found in various and scattered legislations such as the Weights and Measures Act 1972, Sale of Goods Act 1957, Contract Act 1950, Trade Description Act 2011, Food Act 1993, Direct Sale and Anti-pyramid Scheme Act 1993, Hire Purchase Act 1967 and Standards of Malaysia Act 1996.

The implementation of various consumer protection legislations indicates that the government did not rely on market forces to take care of the interest of the consumer and acknowledges that some market failures cannot be settled by the free market itself. The government directly intervenes to overcome information asymmetries, to ensure that the consumer is well-informed to make choices, to guarantee good quality of products and services, to promote product safety, to prevent unethical trade practices and to give the consumer the right to be heard and to redress. The extensive state intervention in consumer matters may be due to the structure of the Ministry Domestic Trade, Cooperatives and Consumerism itself which is not only responsible for overseeing consumer matters but also distributive trade, cooperatives and the development of *Bumiputera* entrepreneurs. Notably however consumer protection is also the responsibility of other government agencies depending on the consumer related function performed by the respective ministries. For example the Ministry of Health is responsible in promoting public health, sale of food in public places, sale of medicine and drugs, use and sale of dangerous drugs, poisons and medical services. Whereas the Ministry of Agriculture and Agro-based Industry deals with supervision of the prices, supplies and marketing of agricultural and poultry products and hygiene aspects of animal.

Consumer Protection Law in Malaysia:

One of basic features of consumer protection legislation is that it only protects the interests of the final consumer. Under the Consumer Protection Act (section 3), a consumer is defined as a person who acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose. Obviously, the “consumer” in the definition is confined to the final consumer and thus excluding the producer, intermediaries or other commercial users of goods and services. This is in line with fundamental policy rationale of consumer law which concerns with private individual who is presumably a weaker party in market transactions.

Malaysia has adopted a control and licensing mechanism to protect consumer interests. The control mechanism is undertaken by the Price Control and Anti-Profiteering Act 2010 and Control Supplies Act 1961. The former for example, gives power to the Controller appointed by the Minister to fix maximum prices either for wholesale or retail. The Enforcement Division in the MDTCC is responsible for stabilizing the price of essential goods in the market by determining a reasonable price under the Price Control and Anti-Profiteering Act 2010 and implements the Festive Seasons Price Control and Consumer Goods Price Control Scheme under the Act. The Ministry monitors the prices of essential goods on weekly basis and reports the findings to the cabinet. The price analysis and monitoring mechanism is considered as an early warning system to enable timely measures to be taken to stabilize the price (EPU, 2001-2005). The government also uses price control as a mechanism to resolve various problems such as health problem. For example, a recent proposal to increase the price of cigarette has the objective to discourage the public of this habit (Singh, 2009).

The licensing system applies in direct selling, hypermarket, intellectual property, petroleum distribution, weight and measures and control of supplies under the Control of Supplies Act 1961. The Domestic Trade Division is responsible for administering and monitoring the smooth running of these industries as well to process licenses and application to undertake trade in these areas. The Domestic Trade Division is involved in formulating policies and strategies related to the development of distributive trade in the country. Even though distributive trade sector focuses on traders such as wholesalers and retailers, the division also strives for improving competitive ethical business practice for the benefit of consumers. In addition, the government is also implementing subsidy mechanisms on certain products such as sugar and fuel with the reason to protect consumers from price fluctuations. To implement this mechanism, the Enforcement Division is given responsibility to eradicate subsidized diesel exploitation under the Control of Supplies Act 1961 and to eradicate subsidized controlled goods exploitation under the Supplies Control Regulations 1974 and Control Supplies Act 1961.

Competition Law in Malaysia:

Unlike consumer protection law, competition law takes form of a single legislation i.e. Competition Act 2010 and overseen by a single agency i.e. the Malaysian Competition Commission (MyCC). The remedy available under the Competition Act is of a general nature, i.e. in the form of financial penalty though MyCC has the power to give orders such as to cease the infringed act.

The objective of the law is to promote economic growth, promote and protect the process of competition while this competitive process will also protect consumers in term of products and services of good quality and wider choices. Though the competition law takes into consideration the interest of consumers, it does not mean that competition law is a consumer policy that will automatically serve the consumers interest. The competition law seeks to regulate firm’s behaviour in the market. The consumers’ interest is promoted and protected naturally and indirectly from the protection of the competition process. The overall structure of the law seems favourable to the ultimate consumers.

The main crux of the Competition Act 2010 is contained in Part II of the Act. Chapter I prohibits anti-competitive agreements (Section 4) and Chapter II prohibits abuse of dominant position (Section 10). Examples of anti-competitive agreements are price fixing, market sharing, limiting production and bid rigging while practices which are deemed to be an abuse of a dominant position include unfair selling prices, limiting production, unjustified refusal to supply, bundling and predatory pricing. Clearly, all of these prohibitions are purely on consumer ground. For example, an agreement to fix the price will lessen price competition in a market. The consumers will lose their power to choose lower priced goods and services. The enterprise can simply impose a higher price since the consumers have no other alternatives.

The prohibition of abuse of dominant position by introducing unfair selling prices, limiting production, and predatory prices is also purely on consumer interest ground. A firm in a dominant position may impose an excessive high price to exploit consumers as the consumers may not have any other alternatives but for the products and services offered by the dominant firm. In the same vein predatory prices may benefit consumers in the short term but in the long run it would have adverse effects on consumers as it would lead to higher prices and lesser choices. This is because a dominant firm may impose price below cost to kill the competitors and start to increase price when there are no competitors in the market.

The Act also provides an enterprise which is a party to an agreement relief of liability from the infringement of the prohibition under section 4 (anti-competitive agreement) if there are identifiable technological, efficiency

or social benefits directly arising from the agreement (section 5). The social benefits may include the promotion of consumer interest such as increasing transparency of product and services costs, diminishing the information asymmetry and allowing consumers to make an informed choice of products and services. This is also in line with MyCC Guidelines on Chapter 1 Prohibition which requires the parties claiming for relief under section 5 to prove that the benefits gained are passed on to the consumers (MyCC Guidelines on Chapter 1 Prohibition).

Though Competition Act 2010 is not a consumer policy, it contains provisions empowering consumer to defend their interest. The Act recognizes the consumers' involvement and participation in enforcing the law. Section 15 of the Act gives a person right to complaint to the Commission about the suspected infringement of any prohibition under the Act or against any person who has committed or is committing any offence under the Act. The Competition Commission has the responsibility to inform the complainant of the decision and reason for closing investigation based on the complaint made by the latter (section 16). Section 37 of the Act gives a consumer right to participate in any oral presentation relating to any proposed decision by the Commission and (section 34) protect the individual complainant against the threat and reprisal for making a complaint or co-operating with the Commission. The consumer can also appeal to Competition Tribunal against any decision of the Competition Commission (section 51).

For competition law to truly serve the consumers interest there must be a willingness to allow consumers to go beyond their role as complainants and informants (S. Sothi, 2003). The Competition Act empowers consumers who suffer loss or damage directly as a result of infringement of any prohibition under Part II to bring private action for relief in civil proceedings in a court irrespective of whether such person dealt directly or indirectly with the enterprise (section 64). Permitting consumers to bring private action will permit them to play a supportive role in competition law enforcement. However, class action in Malaysia is discouraged by existing court procedures and court decisions have always thwarted public interest litigation by invoking the "locus standi" rules (CAP, 2008). Furthermore consumers may not be aware of the existence of anti-competitive behaviors or the individual loss may be small (although the aggregate loss to consumer at large may be very significant) or litigation cost may discourage private action.

Another feature of this law and what is seen as a powerful tool by some, is a provision for market reviews (section 11). It is intended to allow the Commission to understand how markets are working, if there are any competition issues in the market and whether the needs of consumers are being met. The market review includes a study into the conduct of suppliers and consumers to the enterprises in the market. This mandates the Commission to not only focus on the supply side but also on the demand side by understanding and focusing on consumer behaviour, in particular search behaviour (i.e. how much consumers search and how many players they search amongst) and switching behaviour (i.e. how they respond to differences in prices between players in the industry). These two features of consumer behaviour impact directly on competition. The power to conduct a market review also provides the Competition Commission authority to scrutinize the extent to which some legislation might have a harmful effect on the way in which markets work. This includes consumer legislations which have a possibility of distorting and preventing the effective functioning of the market system.

The Commission has power to impose any interim measures in case of urgency to prevent serious or irreparable damage, economic or otherwise, to a particular person or category of person or protecting the public interest (section 35) The Commission may consider that it is necessary to act urgently to protect the public interest, for example to prevent damage being caused to particular industry or consumers as a result of suspected infringement. The level of penalty imposed under the Act is quite high which includes criminal penalty. Therefore the effect of the infringement to the consumer interests should be one of the criteria for the determination of the level of punishment.

Interdependent of Competition Law and Consumer Protection:

Both competition law and consumer protection may reinforce each other. Competition law and policy does this by keeping the market competitive which can reduce the work that needs to be done by consumer policy. For example in a competitive environment the risk of being forced out of the market creates incentives for firms to develop and protect a reputation for being good quality of suppliers since it allows them to secure repeat business and reduce marketing costs. This reduces the burdens that would otherwise fall on consumer protection regulations in terms of enforcing product and service standards.

Competition law prevents anti-competitive conduct that lessens competition market. Conspiracy to fix price may restrict price competition and result in a higher price for consumer. For example, on 6 December 2012 the Malaysia Competition Commission issued a final decision against the Cameron Highlands Floriculturist Association (CHFA) for contravening Section 4(2) of the Competition Act 2010 (CA2010). This was in pursuant to the decision by the CHFA and agreement between members to fix, directly or indirectly, the selling price by increasing the price of flowers by 10% beginning 1 April 2012. (MyCC, Press Release, 6 Dec 2012). Higher price imposed on the dealer or wholesaler will then be translated into a higher price for flowers that may be bought by end consumer. By preventing this conspiracy, competition reduces the burden on consumer policy to regulate and control price of products and services.

Another example is an agreement to allocate market. This can be further illustrated in the case taken against MAS-Air Asia by the MyCC. It was alleged that MAS and AirAsia had entered into a collaborative agreement to allocate market i.e.MAS will focus on a full service premium carrier while AirAsia and AirAsia X will be regional low cost and medium-to-long haul low cost carriers. Though the original intention of the agreement is to improve competencies and to offer better products and services for consumers, there was a complaint by a consumer association that the agreement resulted in a termination and cancellation of certain flight services (MyCC, Press Release, 6 Sept, 2013). MyCC viewed that the agreement has the object of restricting, preventing and distorting competition thus contravened section 4 of the Competition Act 2010. The agreement allows the parties involved a freedom to impose higher price of airfares for consumers to maximise profits. It also has the effect of limiting the services that can be offered by the airlines operators.

Consumer protection on the other hand, enhances the ability of consumers to exercise choice, can help markets to be more competitive and force firms to compete on its merits thereby advancing the goal of competition policy. The same applies to many consumer protection interventions. Regulations on misleading advertising, deceptive conduct, ensuring product safety and quality will force firms to compete on merit rather than on fraudulent, misleading claims and unfair trade practices. Similarly product standard regulation can help in ensuring quality, fitness and safety of goods and services. It also helps in ensuring good designing of products and provides means for improving manufacturing process. This regulation encourages competition on merit and performance rather than on features that are inessential to it, thereby supporting the ends of competition policy and law.

As mentioned before, consumer legislation plays an important role in resolving the issue of information deficiency. Poorly informed consumers are usually not aware of alternative choices especially in relation to price and quality of products and services. Due to information deficiency consumers will be locked in and tend to be exploited by enterprises with market power. Consumers with imperfect information about price and quality of goods or services will also have to spend search costs to acquire the lacking information (Cseres K.J, 2005). This will discourage consumers to be active participants in the market which activate competition.

Malaysian consumer legislations were formulated to overcome this problem. For example, Consumer Protection Act 1999 prohibits misleading and deceptive conduct which includes representation or practice which is capable of leading a consumer into error. The misleading involves the nature, manufacturing process, characteristics suitability for a purpose, or quantity of the goods or services. The Act also obliges the seller to guarantee the quality goods, future availability of identical goods; the return of money should the goods not meet with any undertaking by guarantee. The Trade Descriptions Act 1972 prohibits misdescription of goods provided in the course of trade and false misleading indications as to the price of goods. The Price Control and Anti-profiteering Act 2010 on the other hand, require traders to display a price tag on goods on sale. All of these laws enacted to resolve the problem of information deficiency. In the absence of a law obliging retailer to display price, consumers are unable to make comparisons and discourage the retailers to compete with each other and lure consumers by lowering prices of goods or services.

In sector specific like financial sector, the Central Bank of Malaysia (BNM) has issued transparency and fair treatment guidelines which requires financial service providers to publish fees and charges on product offered to individuals and small and medium enterprises. The BNM has also issued Guidelines on Product Transparency and Disclosure to enhance quality, requiring the disclosures be timely, clear and concise, accurate and relevant, consistent and comparable (GGAP, 2009). In insurance sector, the BNM has issued the Guidelines on Unfair Practices which is applicable to both life and general insurers. The Guidelines prohibit an insurer to force a consumer to purchase another insurance policy from the insurer as a condition to the purchase of the initial policy (Baker & McKenzie, 2010). This consumer policy will definitely encourage competition in insurance industry in Malaysia.

Unfair contract terms which usually can be found in standard terms contract may have adverse effects on competition because it can increase switching costs by making comparison and choice harder. It has been reported that the practice of incorporating unfair contract terms is prevalent in the financial, airlines and telecommunication industry. In the financial sector, unfair contract terms have been practiced not only by monopoly banks but also other commercial entities. For example, there are cases where housing loan contracts allow the bank the right to amend the agreed interest rate. Some contracts also force the borrower to purchase a mortgage reducing term insurance from the bank's insurance company of choice. One unfair term that keeps popping up in agreements is the one that says that the company deserves the right to delete, alter or amend any terms or conditions at any time with or without notice and they shall become effective on such date as the company chooses (CAP, 2006). These kind of unfair contract terms force consumers to be locked in and will make the choice harder. Without an Unfair Contract Terms Act, enterprises with market power have the ability to increase prices without any constraint.

Malaysia has no a single Unfair Contract Term Act dealing with unfair contract terms. However, Malaysia has recently amended its Consumer Protection Act 1999 incorporating the provisions on unfair contract terms. Unfair term is defined as a term in a consumer contract which, with regard to all the circumstances, causes a

significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer. Apart from unfair contract term provisions in the Consumer Protection Act 1999, section 10 (2) of the new competition Act 2010 prohibits an enterprise with market power to impose an unfair purchase and selling price or other unfair trading condition on any supplier or customer.

However, the ability of these new laws to protect the ultimate consumers may be questioned. For example, the new Consumer Protection Act 1999 divides unfairness of a contract or a term of a contract into two, namely, procedurally unfair and substantively unfair. A contract is procedurally unfair if it has resulted in an unjust advantage to the supplier or unjust advantage to the consumer on account of the conduct of the consumer (section 24C). In determining the unfairness the Tribunal or court may take into accounts *inter alia*, the knowledge and understanding and bounded rationality of the consumer and the bargaining strength of the parties. A contract or a term of a contract is substantively unfair if the contract or the term of the contract is harsh, oppressive and unconscionable etc (section 24D). The unfairness in this category may be determined by taking into account for example, whether or not the contract is in standard form or whether or not the contract or the term of the contract imposes conditions which are not reasonably necessary for the protection of the legitimate interest of the supplier who is a party to the contract. It is still not clear whether the standard contract term or the contract (or the term of the contract) that is necessary for the protection of legitimate interest of the supplier will not be caught by this provision even though it is unfair to the consumer.

Conflict and Tensions:

At the same time each of these instruments can create challenges for the other. There are instances where trade-offs need to be made. As competition law deals with firms' behaviour in the market, the term of consumer under the Competition Act include wholesaler, retailer and final consumer. Most of the time competition law takes into consideration producers' interest rather than the end consumer interests. The benefits arise from the enforcement of a competition law may not pass to the final consumers.

Competition law may be used to protect competitors than the process of competition especially small and medium firms to disadvantage of larger firm. In this case, competition law enforcement may harm the consumer interests especially when it protects weak and inefficient firm. For an example, lower price (predatory price) may not necessarily anti-competitive. In 2009, the government instructed supermarkets not to offer discounts on four subsidised items in an effort to protect smaller businesses and to create a level playing field. The government viewed promotions held by the supermarkets that offered those items at below the fixed price as predatory behaviour that could adversely affect smaller businesses. However, this move was criticised to be distorting the market since lower prices could lead to consumer welfare, especially among the low-income groups (New Straits Times, August 2009). A firm may offer lower price due to economies of scale that it enjoys or a firm may lower its price as short term promotion when it introduces a new product. Though this happened before the enactment of the Competition Act 2010 the possibility that the competition law becomes tool to promote the producers interest to the detriment of consumer cannot be ruled out. Since there is no precise definition of predation there is significant room for the Commission to make a mistake.

It can be further argued that rigorous competition may result in price war and may force firms in the market to lower the quality of their products and services. In order to avoid this problem price fixing is sometimes needed to stabilize the price. In the case of legal professional service, professional fees are fixed via the scale of fees system under the Solicitors Remuneration Order 2005. Though this regulatory scheme may be used a platform by legal firms to collude to fix price of legal service, scale of fee is needed to ensure high standard and integrity of the legal profession, to avoid unhealthy competition that compromises the quality of legal services.

Little has been studied as to the effect of consumer policy on competition in Malaysia. However, there are instances where consumer policies may affect competition for example, price control. According to Consumer Association of Penang (CAP), the control of prices of essential goods and services is absolutely necessary for the protection of the lower income group which is vulnerable to the market forces beyond their control (CAP, 2000). Essential goods are not limited to food items but also other goods and services such as drugs and hospital services. Price and supply control may also be an effective form of consumer protection in circumstances where there are immature markets with very few sellers and non-existent (or weak) price competition between and among sellers.

However, it has been argued that the government may artificially control the price (Sujata, 2008). If the price is kept artificially low by regulation, firms have less incentive to innovate and are prone to lower the quality of the goods and services to maintain a certain price or profit margin. The imposition of price control may make companies less likely to invest in Malaysia. Low prices discourage new entrants into the market which subsequently discourage competition. When there is less competition, inefficient firms will remain in the market. As a result the consumer will enjoy inferior goods or services even though at the supposed "lower cost" (Yee Swee Lin, 2006).

Price control in Malaysia is carried out by setting ceiling prices of various goods and services. This mechanism is complex in term of setting fair and reasonable price ceiling and the difficulty to enforce and

ensure compliance (CAP, 2000). Weak enforcement will render the law ineffective to protect the interest of consumers. There are many cases where traders are selling goods above the controlled price without being punished (CAP, 2001). It further distorts the market when the traders can simply charge the price at their whim. Price controls may distort the market if it is only applied to the retail price and not the wholesale price. Many retailers are unable to sell below the ceiling price because they themselves had to buy the goods from wholesalers at price higher than ceiling prices (CAP, 2001).

Price controls may also facilitate collusion between retailers to fix price even at the ceiling level in compliance with the regulation. The consumers may lose the opportunity to enjoy lower prices. In the interim report issued by MyCC relating to Review of Domestic Broiler Market: It was stated that "MyCC understands that the "permitted maximum" retail price will prevent consumers from being charged exorbitantly by retailers. But it may also inadvertently weaken retailers' competition with one another, and engenders market distortions and opacity in the commercial relationships between wholesalers and retailers." (MyCC, Interim Report, 21 Dec, 2012)

Subsidies, import regulation and legislation that control the supply and entry into several industries may give advantage to rent-seekers to get profit but will undermine the competitive position of others (ThillainathanR, 2008). For example it has been argued that sugar subsidies and limit of import on sugar may give monopoly to certain parties thus limit the competition even though the government denies the claim saying that sugar subsidies are important to protect the industry from price speculation and fluctuation in the international market (Thestar, 2009).

A licensing and monitoring system in distributive trade may also directly limit the competitors in the market. A licensing system is applied in direct selling, optical disc industry, marketing and distribution of petroleum products in the downstream sector and licensing under the Control of Supplies Act. Under the Act, the Minister may prohibit, regulate or control the import or export of any controlled article or the movement of any controlled article (section 6(2) (b), (c)). The Minister may limit wholesale or retail dealing in any controlled article to persons who hold licences or permits, may restrict the sale of any controlled article in any manner as the Minister shall deem fit and may prohibit, restrict or control the manufacture or production of any controlled article with regards to its form, shape, quantity, quality, and constituents (section 6 (d), (e) (f)). The controller may authorize any person by written consent to sell any controlled article (section 7 (1)). The controller may revoke or suspend the license without assigning any reason (section 7 (5)).

The control of supply will cause market distortion in the sense that it reduces players in the market. Few players in the market may facilitate the formation of cartel such as a conspiracy to refuse the supply of goods for the purpose of increasing the price. This situation will also cause shortage of supply and at the end, will injure the ultimate consumers' interest (CAP, 2003). Weak enforcement of licensing system may also distort competition. Some businesses abuse their license by offering other products not stated in the license. This situation has forced other licensees who complied with the condition of the license out of the market (Parliamentary Debate, 2010). The Ministry has imposed a licensing rule to sell controlled items such as sugar, flour and oil cooking. While the government's reason for this ruling is to prevent smuggling and hoarding, many market players are of the opinion that this new ruling will restrict the supply of goods to particular persons and will cause a shortage of supply. The shortage would hamper foreigners from investing in the food manufacturing sectors (Zolkepli, 2010).

Conclusion:

There is a positive relationship between competition law and consumer protection in the context of Malaysia. Both branches of law reinforce each other. However, the implementation of competition law and policy especially in the form of trade liberalization may have consumer issues for example in terms of higher prices and abuse of market power by multinational companies. With the enactment of the Competition Act 2010, the issue of excessive prices and abuse of dominant position will be taken care of. Malaysian scenario presents a good example where both competition policy and competition law enforcement are needed to fully reap the benefit of trade liberalization and market competition.

There is extensive state intervention in consumer matters in Malaysia. Consumer legislations have been implemented not only to promote the ultimate consumers' interest but also to promote the interest of traders and other social-economic objectives. Implementing consumer protection measures may also raise competition concerns such as price control. Some consumer legislations may even be detrimental to the ultimate consumers' interest. The government should review and abolish these legislations for the benefit of consumers. The Government should also be cautious when introducing a new consumer law which may have an adverse effect on competition. To ensure the market ecological systems works well, consumer policy should not be enforced in the manner that is incompatible with market principles.

Competition law in Malaysia is still at an infant stage. The enforcement of competition law should allow consumers a fair share of the resulting benefit from the enforcement. When the otherwise anti-competitive agreement is exempted from the competition, the pass-on benefit should at least compensate the consumers for

the harm caused to them from the restriction of the competition. It was argued that “a sound market regulatory system should take account of the useful effect competition law enforcement has for consumers’ economic well-being and identify those consumer interests and market failures that competition laws cannot take care of and that can be addressed by other regulatory means” (KJ Cseres, 2007)

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