

**ANTECEDENTS AND OUTCOME OF
COMPLIANCE WITH COMPETITION
ACT 2010 OF PUBLIC LISTED
COMPANIES IN MALAYSIA**

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**ANTECEDENTS AND OUTCOME OF
COMPLIANCE WITH COMPETITION
ACT 2010 OF PUBLIC LISTED
COMPANIES IN MALAYSIA**

by

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**ANTESEDEN DAN HASIL PEMATUHAN TERHADAP
AKTA PERSAINGAN 2010 SYARIKAT- SYARIKAT DISENARAI AWAM DI
MALAYSIA**

ABSTRAK

Akta Persaingan 2010 (CA 2010) telah diwartakan secara rasminya pada Jun 2010 dan dikuatkuasakan pada Januari 2012. Suruhanjaya Persaingan Malaysia (MyCC) telah diberi mandat untuk menguatkuasakan peruntukan akta tersebut dalam kalangan penggiat industri di pasaran. Walaupun MyCC terus menjalankan program-program advokasi untuk mendidik orang awam tentang CA 2010 dan tahap galakan terhadap persaingan dalam pasaran meningkat, namun bilangan aduan tentang perlakuan anti-persaingan turut meningkat sejak tahun kebelakangan ini. Oleh yang demikian, tujuan kajian ini adalah untuk mengenal pasti tahap pematuhan terhadap CA 2010 dalam kalangan syarikat tersenarai awam (PLCs) di Papan Utama Bursa Malaysia dan untuk menguji perkaitan antara anteseden (1) Kesedaran dan Pengetahuan Lembaga Pengarah, (2) Persepsi terhadap Sekatan (Tanggapan terhadap Kos Sekatan, Tanggapan terhadap Kemungkinan Ditangkap, Tanggapan terhadap Tahap Penguatkuasaan MyCC, Tanggapan Risiko), (3) Kewujudan Budaya Etika, (4) Kualiti (Latihan) BODs yang mematuhi CA 2010 dan hasil pematuhan tersebut terhadap Prestasi Kewangan PLCs. Kajian ini juga mengkaji interaksi moderator, Jenis Industri antara anteseden dan pemboleh ubah bersandar. Kadar respon kajian ini adalah 13% di mana sejumlah 103 daripada populasi 780 borang soal selidik yang lengkap dan boleh digunakan dikembalikan oleh Lembaga Pengarah atau wakil PLCs. Data diproses menggunakan SPSS untuk analisis deskriptif dan WarpPLS

untuk mengukur dan analisis model struktural. Secara keseluruhan, tahap pematuhan CA 2010 dalam kalangan PLCs adalah sederhana. Hasil kajian menunjukkan bahawa Kesedaran dan Pengetahuan Lembaga Pengarah mempunyai perkaitan yang signifikan dengan Pematuhan terhadap CA 2010. Keputusan hasil kajian juga menunjukkan bahawa Jenis Industri secara signifikan menyederhana perkaitan antara Kesedaran dan Pengetahuan Lembaga Pengarah dengan Pematuhan terhadap CA 2010. Selanjutnya, hasil kajian turut mendedahkan bahawa Tanggapan terhadap Kemungkinan ditangkap mempunyai pertalian signifikan dengan Pematuhan terhadap CA 2010 dalam kalangan PLCs. Kajian ini juga mendapati terdapat perkaitan signifikan antara Pematuhan terhadap CA 2010 dengan hasil pematuhan; Prestasi Kewangan. Kajian ini menggalakkan pihak MyCC untuk menjalankan program advokasi yang memfokuskan untuk meningkatkan Kesedaran dan Pengetahuan Lembaga Pengarah terhadap CA 2010 serta meningkatkan aktiviti-aktiviti pemantauan perlakuan anti-persaingan. Kajian ini juga menunjukkan bahawa Prestasi Kewangan adalah lebih baik dengan adanya pematuhan CA 2010. Oleh itu, Lembaga Pengarah perlu memacu agenda pematuhan ini sebagai sebahagian daripada urus tadbir korporat mereka. Hasil kajian menyarankan bahawa menyebarkan usaha kedua-dua pihak iaitu Lembaga Pengarah bagi PLC di Malaysia dan MyCC untuk sama-sama maju ke hadapan untuk memastikan tahap pematuhan yang lebih tinggi terhadap pematuhan CA 2010 sekali gus melindungi proses persaingan.

**ANTECEDENTS AND OUTCOME OF COMPLIANCE
WITH COMPETITION ACT 2010 OF PUBLIC LISTED
COMPANIES IN MALAYSIA**

ABSTRACT

The Competition Act 2010 (CA 2010) was gazetted in June 2010 and enforced in January 2012. The Malaysian Competition Commission (MyCC) was given the mandate to enforce the provisions of CA 2010 among the industry players at the market place. Although MyCC continuously conducts advocacy programmes to educate the public on CA 2010, and the level of promotion of competition in the marketplace increases, the number of complaints of anti-competitive conducts also increases over the years. Therefore, the purpose of this study is to ascertain the level of compliance with CA 2010 among the public listed companies (PLCs) of the Main Board of Bursa Malaysia and to examine the relationship between antecedents (1) the Board of Directors (BOD) Awareness and Knowledge, (2) Perception of Sanctions (Perceived Cost of Sanctions, Perceived Likelihood of Being Caught, Perceived Severity of MyCC's enforcement, Perceived Risk), (3) Presence of Ethical Culture, and (4) the BOD Quality (Training) with Compliance to CA 2010 and the outcome on the Financial Performance of PLCs. This study also intends to examine the moderator interaction, Industry Type between the antecedents and dependent variable. The response rate of this study is 13% of which a total of 103 from the population of 780 completed and usable mailed survey questionnaires were returned by BODs or representatives of PLCs. The data were processed using SPSS for descriptive analysis and WarpPLS for measurement and structural models analysis.

The overall level of compliance with CA 2010 among PLCs is medium. The result showed the BOD Awareness and Knowledge about CA 2010, having a significant relationship with Compliance with CA 2010. The results also showed that Industry type significantly moderates the relationship between the BOD Awareness and Knowledge about CA 2010 and Compliance with CA 2010. Furthermore, the result revealed that the Perception of Likelihood of being caught having a significant relationship with Compliance with CA 2010 among PLCs. This study also found a significant relationship between Compliance with CA 2010 and the outcome; Financial Performance. This study encourages MyCC to conduct focused advocacy program to increase the BOD Awareness and Knowledge of CA 2010 and increase its monitoring activities of anti-competitive conducts. This study revealed better Financial Performance when in compliance with CA 2010, thus BODs need to drive the compliance agenda as part of their corporate governance. This study propagates both BODs of Malaysian PLCs and MyCC forging ahead in one togetherness in ensuring a higher level of compliance with CA 2010, thus protecting the process of competition.

CHAPTER 1

INTRODUCTION

1.1 Background of the Study

The Competition Act 2010 (hereafter referred to as the Act or the CA 2010) is a recommended measure by the National Economic Advisory Council (NEAC), which was enforced on 1 January 2012 in Malaysia, after 18 months of moratorium period since its royal assent on 2 June 2010 for the business community to be familiarised with the new legislation. The Malaysian Competition Commission (MyCC), approved by the Minister of Domestic Trade, Co-operative and Consumerism (MDTCC) was established through the Competition Commission Act 2010 to regulate and enforce the provision of the Act independently.

Competition in the marketplace materialises when there is rivalry among firms (Whish & Bailey, 2012), which hinders one single party from influencing the price of goods and services being offered. The Cambridge Dictionary (n.d.) views “rivalry” as “a situation in which people, companies, products, etc. are competing with each other” in which sellers attempts to obtain what other sellers are seeking; sales, profit, and market place, by offering the best practicable combination of price, quality, and service. To get the best offer to the consumers is precisely what the Act wants to achieve by protecting the process of competition, where firms can compete on a level playing field freely and without any market distortion; hence, leading to efficiency, innovation, and entrepreneurship in the market. In totality, the Act or policy aims for the betterment of consumer welfare (Organisation for Economic Co-operation and Development [OECD], 2012a).

More than 100 countries have enacted or are having Competition legislation (Khemani, 2007; Lee, 2005; Whish & Bailey, 2012), and United Nations Conference on Trade and Development (UNCTAD) (1997) stated that countries that have introduced Competition legislation earlier on are having higher Gross National Income (GNI) (Krakowski, 2005, as cited in Ishak, 2013, p. 2). Figure 1.1 reflects the enormous wave of new competition law regimes between 1990 and 2000 with the adoption of 23 new competition laws and establishment of 27 competition authorities.

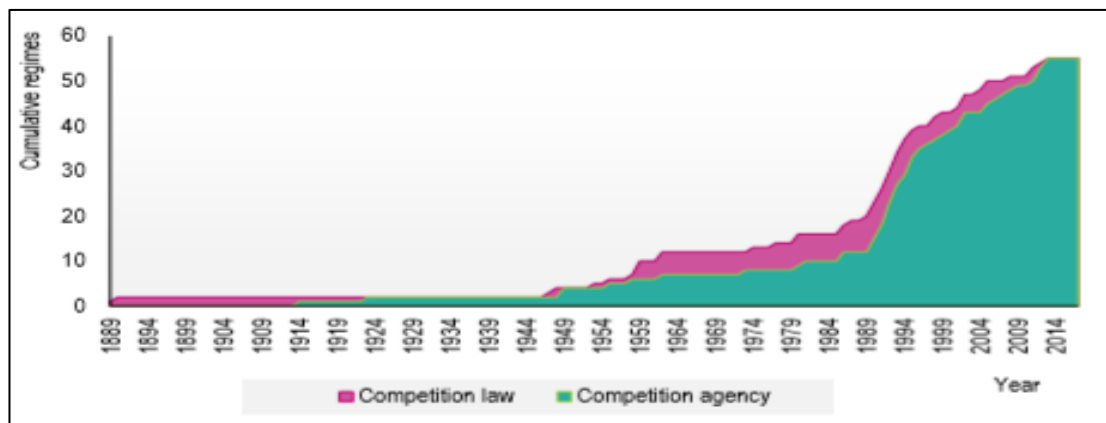


Figure 1.1 *Evolution of Competition Law Regime 1889 - 2014*
 (Source: OECD Competition Trends, [OECD, 2020])

In its latest 2016/17 Annual Report and Accounts, the Competition and Market Authority (CMA) acknowledges the UK government's priorities (the Strategic Steer) that open market competition ignites innovation leading to increase productivity through economic growth (CMA, 2017), as illustrated in Figure 1.2.



Figure 1.2 *The Effect of Competition and Competition Law on Economic Growth*
(Source: OECD, 2014a)

The positive effect of competition and competition policy on a macroeconomic level was summarised by and cited in OECD (2014a) based on earlier studies by Aghion, Braun, and Fedderke (2008), Arnold, Nicoletti, and Scarpetta (2011), Barone and Cingano (2008), Buccirossi, Ciari, Dus, Spagnolo, and Vitale (2013), Clougherty (2010), Comonar and Smiley (1975), Gutman and Voigt (2014), Hsieh and Klenow (2009, 2012), Nickell (1996), Ospina and Schiffbauer (2010), Productivity Commission (2005), Symeonidis (2008), Taylor (2002), and Urzua (2013). The outcome of these studies indicated that productivity, growth, and innovation were the positive effects in countries having competition policy. As shown in Figure 1.3, Porter (1990) established that firm rivalry as a crucial factor for competitiveness (productivity) by creating pressure on firms to innovate and sustain its position in the industry supported by many factors, among which a strong antitrust governmental policy is acknowledged as one core factor for innovation.

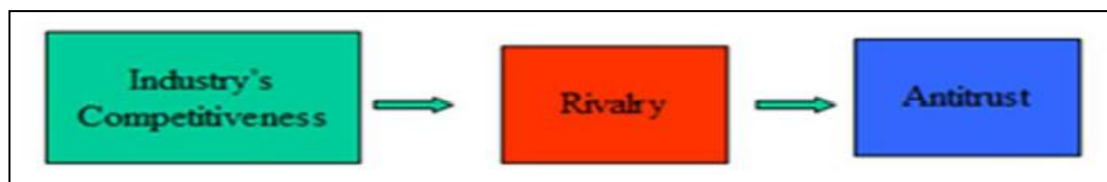


Figure 1.3 *Enhancing Productivity*
(Source: OECD, 2014b)

However, the industry's successful performance depends on the behaviour or conduct of buyers and sellers, which in turn depends on the market structure. According to Structure-Conduct-Performance (SCP) paradigm revolutionised during Industrial Organization in the 1950s, in perfect market competition, resources were allocated efficiently and productively, which when combined would maximise nation welfare and consumer welfare (Whish & Bailey, 2012). In reality, market competition is not always perfect. The way market deviates from the perfect market competition depends on market structure, basically the demand and supply concentration, product differentiation, market entry, and exit barrier, which could lead to a monopolistic competition, where the consumer pays the highest price or oligopoly market with only a small number of firms competing with each other. Due to such implications, the market needs to be regulated; hence, the competition policy plays a very pertinent role in levelling the market and helping the economy achieve better performance (Monti, 2007).

In Malaysia, the competitiveness has dropped over the years, ranked at 23 of 137 countries surveyed from 2017 through 2018, ranked at 25 of 140 countries in the Year 2018, and ranked 27 of 141 countries in the Year 2019 under the Global Competitiveness Index (GCI) (World Economy Forum [WEF], 2017, 2018, 2019). In tandem with competitiveness fundamentally moving along side by side with productivity, Malaysia's productivity has also declined tremendously from 3.7% in

the Year 2017 to 2.4% in the Year 2018 (Malaysia Productivity Corporation [MPC], 2019), as depicted in Figure 1.4. Hence, Malaysia is lagging behind the productive economics of the world, as shown in Figure 1.5.

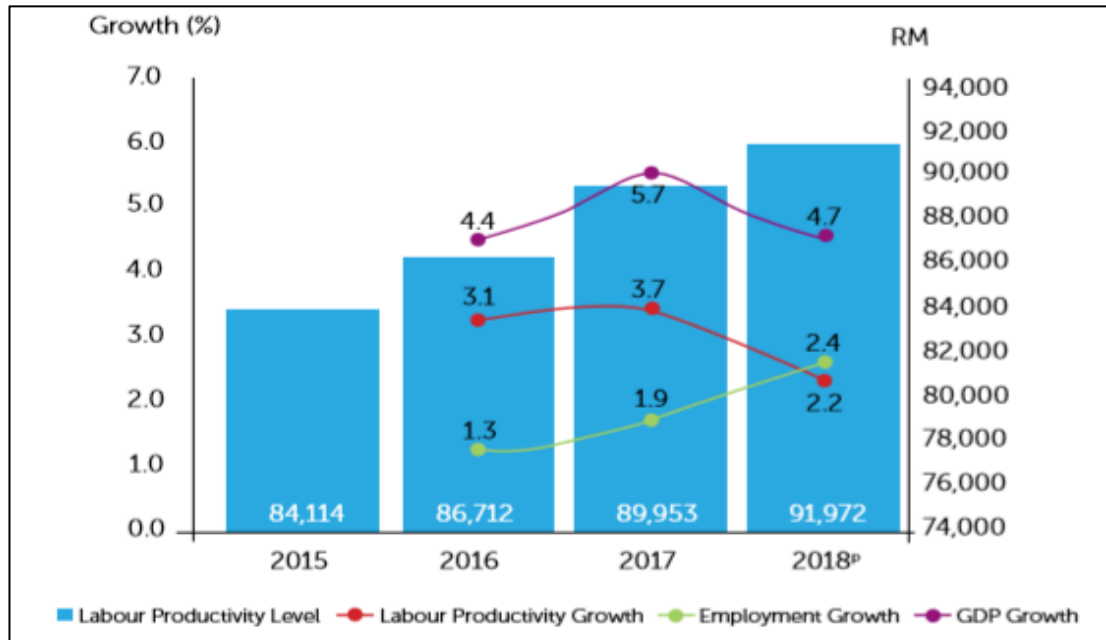


Figure 1.4 *Malaysia's Labour Productivity Performance (2015-2018)*
 (Source: MPC, 2019)

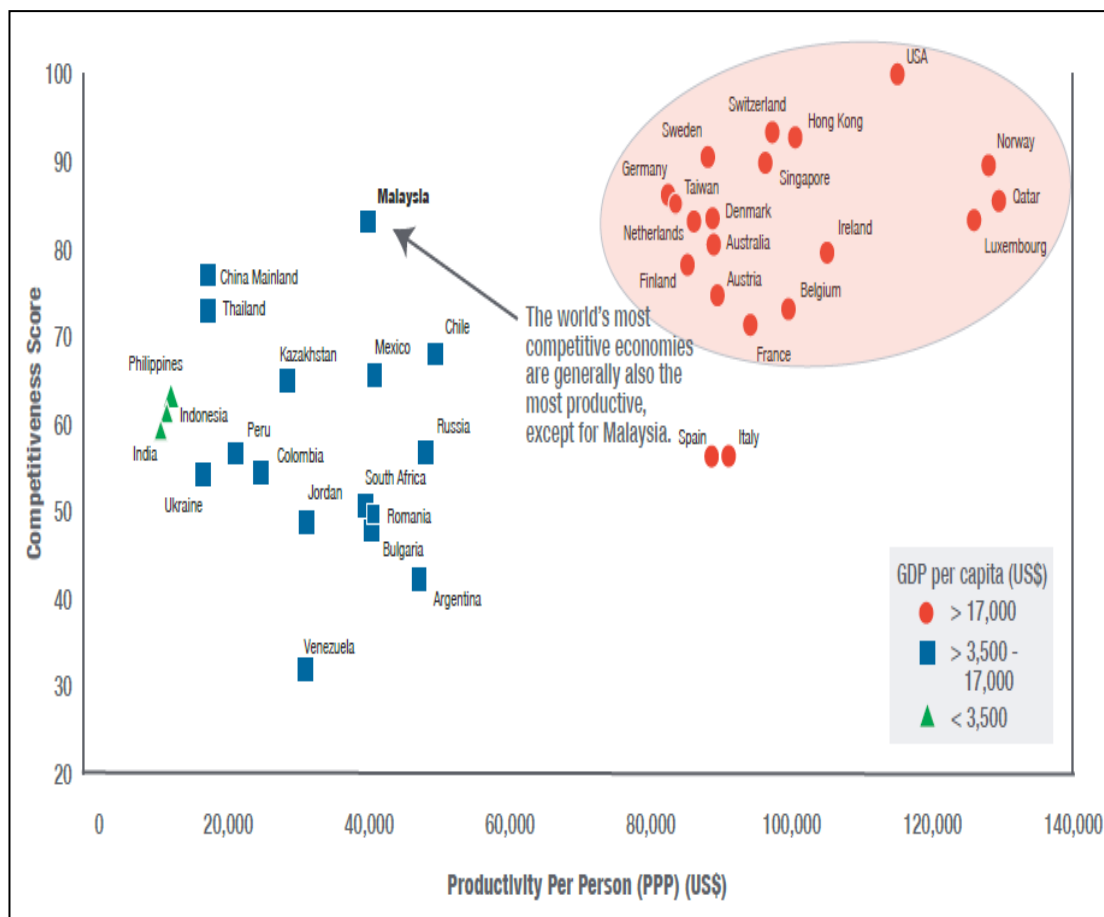


Figure 1.5 *Most Productive Economies vs. Least Productive Economies*
 (Source: IMD World Competitiveness Yearbook 2014, as cited in Malaysia Productivity Corporation - Productivity Report 2014/2015 [MPC, 2015])

Further, although Malaysia’s Corruption Perceptions Index has improved from rank 61 (Score 47) in the Year 2018 (Transparency International [TI], 2018) to rank 51 (Score 53) in the Year 2019 (TI, 2019) among the 180 countries, respectively, in both years, based on 0 to 100, where 0 is highly corrupted and 100 is very clean; in reality, the score for index component 1.14 “Incident of Corruption” of the first pillar of the Global Competitiveness Index had a score 47 for the Year 2018 (WEF, 2018). It remained the same with no improvement for the Year 2019 (WEF, 2019), based on 0 to 100 with 100 being the best score. Ades and Di Tella (1999) cautioned that corruption is higher in countries, where among other factors; competition regulations are ineffective in prohibiting anti-competitive practices. All

the more, this Act is pertinent in providing a good platform for entities to comply with in order to conduct business fairly (without indulging in bad behaviour such as corruption), reduce cost and innovate, drive productivity and economy growth for the betterment of the nation and consumer society.

According to European Commission (EU) (2011), firms complying with competition legislatures bring forth the following benefits: (i) safeguards from reputational damages, (ii) portrays as an ethical business entity, (iii) places improved and safer internal procedures, (iv) solicits morally attuned consumers and investors, (v) employs and retains employees of high-standing moral, (vi) lowers the risks of fines or other solutions with competition agencies, and (vii) reduces legal costs.

Compliance towards the Act that goes hand in hand with enforcement activities leads to direct and indirect effects, as indicated in Figure 1.6.

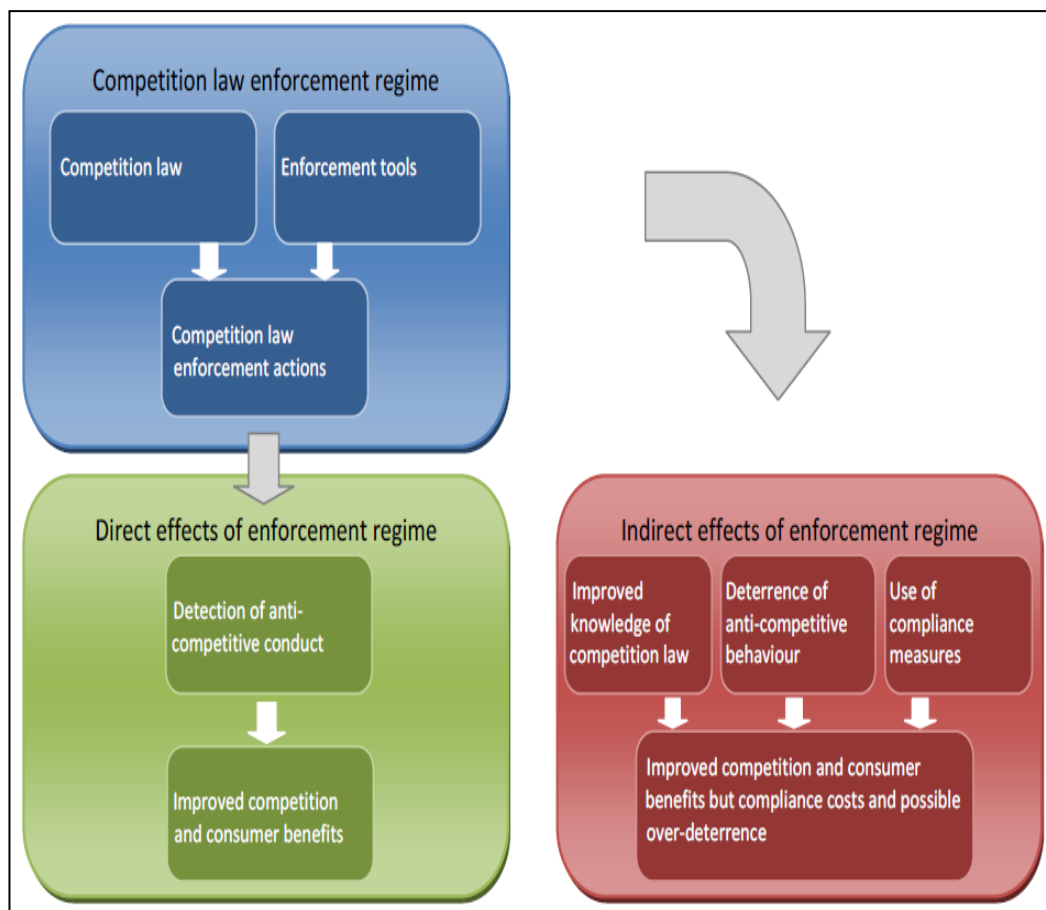


Figure 1.6 *Possible Effects of Competition Law Enforcement*

(Sources: London Economics [2009], as cited in Office of Fair Trade [OFT] 1391 [OFT, 2011a])

OFT 1493 (2013) demonstrated the direct effect of competition law enforcement in terms of consumer savings. Although the full impact was not observed, between the financial years from 2010 to 2013, the aggregate consumer savings was £409 million with an annual average consumer-direct financial saving of £136 million. OFT 1493 (OFT, 2013) also claimed that the overall indirect impact to be significantly from 12 to 40 times higher as the estimated direct financial savings did not take into account the indirect deterrence effect. In another study, OFT 1391 (OFT, 2011a) attempted to quantify the deterrence ratios by indicating the number of cases deterred with OFT intervention, as depicted in Table 1.1. For example, for each cartel cases investigated by OFT, 28 other cases were deterred. Between the financial

years 2015 and 2018, CMA, the successor of OFT, reported the direct financial benefit to consumer estimated an annual average of £1.1 billion with benefit costs ratio of 17.0:1 (CMA, 2018).

Table 1.1 *Deterrence Ratios 2003-11: Number of Cases Deterred for Every OFT Investigation*

Types	Deterrence Ratio
Cartel	28
Other commercial agreements	40
Abuse	12

(Source: OFT, 2011a)

The Act clearly states that certain actions in the marketplace are deemed anti-competitive and are legally prohibited. This includes horizontal and vertical agreements. These agreements can prevent, restrict or distort competition in the market place. The horizontal agreement is an agreement between firms of the same level in the market, for example, between manufacturers, wholesalers or retailers, whereas the vertical agreement is an agreement between firms of different level in the market, for example, resale price maintenance is when a manufacturer instructs its retailer not to resell the goods below a certain level (MyCC, 2012a). Generally, horizontal agreements are more likely to harm competition than vertical agreements (Whish & Bailey, 2012). Therefore, this study focuses on the cases regarding horizontal agreements in Malaysia context.

In Section 4 (2) of the Act, the horizontal agreement is enlisted as follows:

- (a) fix, directly or indirectly, a purchase or selling price of any other trading conditions;
- (b) share market or sources of supply;
- (c) limit or control –

- (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or
- (d) perform an act of bid rigging

Most of the cases concerning the Act in Malaysia are in relation to horizontal agreements. For instance, MyCC's first investigated case was a horizontal agreement of price fixing, infringement of Section 4 (2) (a) by the Cameron Highlands Floriculturist Association (CHFA) (MyCC, 2012b). The President of CHFA issued a statement in the online newspaper portal of The Star on 4 March 2012 that a 10% flower price increase will be effective starting 16 March 2012, agreed by all 150 members in their association meeting. On 26 November 2012, MyCC instructed CHFA to stop fixing prices of flowers, provide an undertaking that all of its members will restrain from anti-competitive conduct and announce such actions in the local media. Following suit, on 31 March 2014, MyCC issued a decision to an imposed penalty of RM10 million on Air Asia Berhad and Malaysian Airlines System (MAS), respectively, for infringing Section 4 (2) (b) of market sharing (MyCC, 2014a); however, this decision was set aside by the Competition Appeal Tribunal on 4 February 2016 (The Star Online, 2016), subjected to judicial review. Subsequently on 20 December 2018, The High Court of Malaya found that the decision of the tribunal "tainted with the error of law and unreasonableness", and reinstated the Final Decision of MyCC (MyCC, 2018a, p. 22).

In January 2014, MyCC probed 26 ice manufacturers for the cartel-like price increase of edible tube ice by RM0.50 per bag and block ice by RM2.50 per big block; by 30 January 2015, financial penalty amounting to RM242, 970 was imposed on 24 ice manufacturers (MyCC, 2015a). In a separate case, on 12 February 2015, a

fine amounting to RM247, 730 was placed on 14 members of Sibu Confectionary and Bakery Association (SCBA) for collectively fixing price (MyCC, 2015b). In another case, following the Proposed Decision issued in February 2018, MyCC found seven tuition and daycare centres infringed Section 4 (2) (a) read with 4 (3), and had imposed a penalty totalling RM33,068.85 (MyCC, 2020a). Further, in September 2020, MyCC decided that the General Insurance Association of Malaysia (PIAM) and 22 other insurance agencies had infringed Section 4 (1) read with Sections 4 (2) (a) and (3) by fixing prices of auto parts and hourly labour rate and were fined ranging between RM137,918.45 to RM24,732,794.62 totalling to RM173,655,300 (MyCC, 2020b).

To recapitulate the history of complaints received and cases investigated, by June 2012, MyCC received seven official complaints of anticipated anti-competitive conducts; two complaints from the consumer groups and two complaints from the industry (Salian, 2012). By September 2013, MyCC received 40 complaints of companies' non-compliance with the Act in which 26 complaints need to be investigated (Main Section, 2013). By October 2013, MyCC had nine priority cases being investigated inclusive of four trade associations and cases relating to container depot operators, Megasteel Sdn Bhd and Pan-Malaysia Lorry Owners Association (Ismail, 2013). By September 2014, MyCC had 47 reports relating to many sectors and companies (MyCC, 2014c). By October 2015, MyCC had made seven decisions (five non-infringements and two infringements) on reported cases (MyCC, 2015e). By September 2016, MyCC had received 271 complaints (MyCC, 2016). By October 2017, MyCC had received 340 complaints since 2012 (MyCC, 2017b).

Table 1.2 shows the complaints received and probed by MyCC between 2012 and 2017. In totality, between 2012 to February 2018, MyCC had received 359

complaints in which 323 were resolved (MyCC, 2018b). Further, from 2018 to 2020, MyCC had received 383 complaints and expects the number of complaints to increase (MyCC, 2020c).

Table 1.2 *Complaints Received and Probed by MyCC 2012 – 2020*

2012	2013	2014
25 February 2012 The Federation of Malaysian Consumer Association (FOMCA) submitted complaints against MAS & Air Asia. [PLCs]	09 February 2013 Further research needed on domestic broiler market.	02 January 2014 26 Ice manufacturers announced a price increase of edible tube ice by 50 cents per bag and block ice by RM2.50 per bag.
20 June 2012 MyCC received seven complaints – two from consumer groups and the rest from enterprises	01 June 2013 Received complaints from Federation of Malaysian Manufacturer (FMM) & Federation of Malaysian Freight Forwarder (FMFF) on raising depot charges in Penang.	02 January 2014 Federation of Stationers & Booksellers Association of Malaysia (FSBAM) announced a price increase by 1 st quarter 2014
03 September 2012 Melewar lodged complaints against Megasteel Sdn. Bhd.	03 September 2013 MyCC received 40 complaints mainly from pharmaceuticals and logistics/shipping sectors (26 of 40 active cases).	29 January 2014 MyCC was looking into 25 cases involving transportation, pharmaceutical & manufacturing sectors.
28 October 2012 Flower price increased by 10% by the Cameron Highland Floriculturist Association (CHFA) agreed by 150 members.	[Not applicable]	23 May 2014 MyCC catches lorry owners' association (PMLOA) fixing price – transport charge up to 15%.
2 November 2012 Probed into hen culling – based on press report on farmers culling more than 10% due to the increase in production cost.	[Not applicable]	26 September 2014 MyCC probes into 47 cases.
2015	2016	2017
15 January 2015 Received complaints about permit renewal issue – MyEG Services...	11 October 2016 Received 31 complaints involving pharmacy industry from 2011 till now..	30 October 2017 Received 56 complaints from January till now, resolved 36 cases.
[Not applicable]	21 October 2016 Probed into general insurance companies related to the motor vehicle repair industry.	30 October 2017 Received 340 complaints about CA2010 since 2012 till now.
[Not applicable]	27 September 2016 Received 271 complaints.	[Not applicable]
2018	2019	2020
31 March 2018 Probed 16 anti-competitive cases – Six industries (pharmaceutical, IT, financial products, services and logistics) including government procurement.	06 March 2019 Cracks down on bid-rigging practices penalized eight firms, probing two other cases.	10 January 2020 Calling seven warehouse operators to explain.
11 April 2018 Continued monitoring Grab post-merger.	26 September 2019 .Probed into Grap – the investigation follows from multiple complaints.	[Not applicable]

(Source: MyCC website: <http://mycc.gov.my/>)

Apart from investigating cases and probing complaints, MyCC had conducted a total of 257 advocacy programmes from 2011 to September 2018 to educate the public about the Act (MyCC, 2015c). These advocacy efforts have successfully increased the level of promotion of competition in the marketplace over the years, from score 2 to score 3 by the Year 2017, as indicated in Figure 1.7.

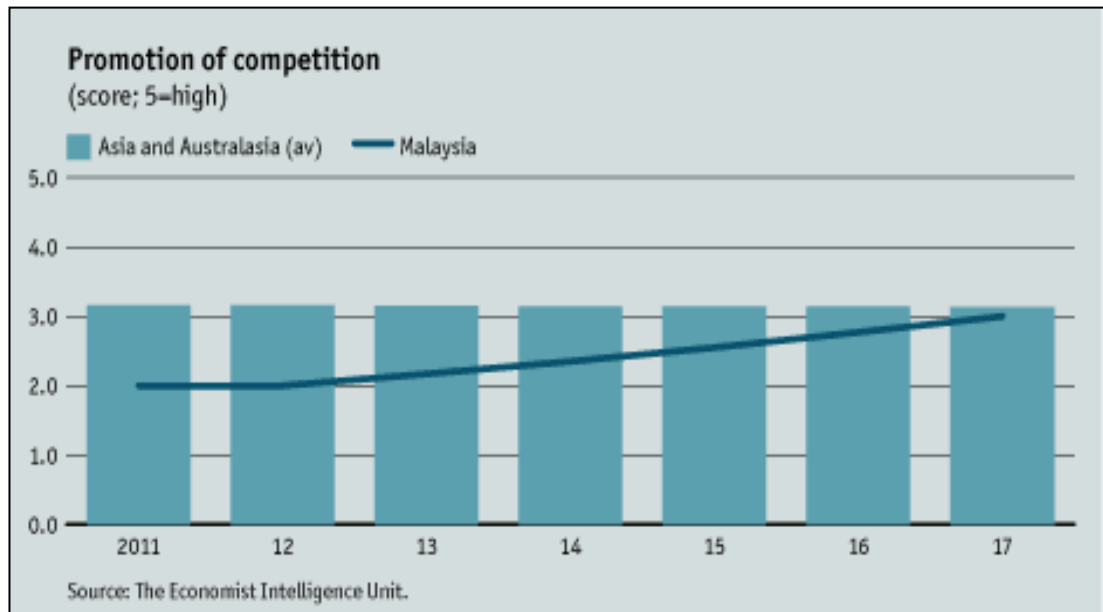


Figure 1.7 *The Level of Promotion of Competition in Malaysia (2011-2017)*
(Source: The Economist Intelligent Unit, 2015)

1.2 Problem Statement

Despite competition compliance being an old agenda of the world, although it is relatively new to Malaysia, a very limited number of empirical studies have been conducted by compliance regulators and researchers over the years.

Most of the pioneering studies were carried out by OFT from 2010 to 2011. For example, OFT 1391 (OFT, 2011a) propagated three fundamental elements as drivers of competition compliance after conducting studies on 809 businesses, 93

online behavioural experimental of compliance officers, stakeholders' discussions, and telephone interviews with legal professionals in the UK. These competition compliance drivers were knowledge, sanctions and enforcement, and voluntary compliance measures. In another study by OFT 1270 (OFT, 2011b), it was also highlighted that lack of competition compliance is due to lack of knowledge on competition laws by business entities. Similar results were produced in a qualitative research of 22 businesses (OFT 1227) (OFT, 2010a) in which business entities fear reputational damage, individual criminal sanctions, and corporate fines. Business entities avoid formalising compliance measures; instead, prefer to adopt voluntary compliance measures such as top management participation, training, and code of ethics or compliance program. An earlier study by OFT on 416 contractors and 252 procurers also suggested the competition law-based policy manual or code of conduct as a compliance measure (OFT 1240) (OFT, 2010b).

Nielsen and Parker (2005), who are ones of the pioneering researchers, did a preliminary study of 999 businesses in Australia by exploring a combination of few factors, namely awareness and knowledge of rules, the influence of third parties, the barometer of regulatory threat, regulates opinion, gains and cost of compliance or non-compliance, internal gains of compliance, possible internal gains of non-compliance, normative motivation, the morality of laws and rules, and company resources. Upon review, these factors can be categorised into the three fundamental compliance drivers propagated by OFT 1391 (OFT, 2011a). In another study, Parker and Nielsen (2011) researched on the perceived cost and gains of compliance and non-compliance by investigating 999 Australian businesses. Parker and Nielsen (2011) concluded that the perceived likelihood of detection and enforcement makes

significant and positive differences in compliance management behaviour and not the severity and fearsomeness of the sanctions.

Given the studies reviewed above, the focus of investigations failed to go beyond the businesses and employees of business entities surveyed such as compliance officers, legal advisors, secretaries, CEOs or those who can be considered as one of the Board of Directors (the BOD). Thus, this research aims to fill the gap by examining the factors influencing compliance with the Act from the BOD's perspective. The principal (or stakeholders) are highly dependent on BOD to safeguard their business interest and entrust BOD with the ultimate authority to ensure business entities do not engage in any anti-competitive behaviour in the marketplace.

Trailing along from the three fundamental drivers of compliance recommended by OFT 1391 (OFT, 2011a), the factors to be studied are BOD Awareness and Knowledge of the Act, Perception of Sanctions taken as BOD perceived behaviour of gain and cost of complying or not complying with the Act and the Presence of Ethical Culture driven by BOD through the voluntary measure of corporate code of ethics. Added to these factors is the BOD Quality to fulfil the gap left unexplored by earlier studies. Consistent with the notion of emphasising the BOD's stand on driving the compliance activities, this study aims to explore the quality BOD should possess by incorporating Malaysian Code of Corporate Governance (MCCG)'s recommended practices, further to fulfil the vacuum left open by having less empirically tested competition compliance researches within Malaysian's context.

The World Trade Organization (WTO), through its Trade Policy Review Body had called for Malaysia to have a comprehensive competition policy from 1997 up to

2010. WTO highlighted that Malaysia's growth during 1993 to 1996 was capital-based rather than on efficiency allocation topped up with the foreign restriction on the trade service sector and encouraged by not having any competition laws, had reduced competition and efficiency at the domestic level (WTO, 1997). If the Act were never introduced and mandated in Malaysia, business entities would be competing at an unlevelled playing field with their own set of rules with a lack of motivation to innovate neither to incorporate technological advancement in their industry, which would lead to allocation inefficiency. Hence, the business entities would not only deter in providing consumers with various quality products and services at reasonable prices at national level, but also dampen nation's productivity and overall growth.

Therefore, MyCC has a vital role in awareness creation among business entities and the public through education as the initial stage in promoting the Act. This study also examines the level of awareness of the Act and compliance to the Act.

Although MyCC had conducted 257 advocacy programmes from 2011 to September 2018 to educate the public on the Act (MyCC, 2015c), but the official complaints continued, and the level of promotion of competition in the marketplace has only increased over the years from score 2 to score 3 by the Year 2017. In addition, the survey conducted by MyCC (2013a) indicated that only 61.9% of the respondents opined that their companies probably took appropriate actions to comply with the Act, 27.5% respondents were not sure if their companies have a compliance program in placed and the remaining 10.6% indicated that no compliance effort being taken. The survey carried out by the Federation of Malaysian Manufacturer in

2012 resulted in 17% of the respondents responded not taking any steps in complying with the Act (FMM, 2012). An awareness study conducted throughout the nation by MyCC in March 2014 shows that Melaka and Perlis business communities have zero awareness of the Act (MyCC, 2014b). In the 2017 Baseline Comparative Study, the respondents (Practitioners–Lawyers & Economist, Government Agencies and Consumer/Trade Associations) opined that there is not enough competitions in the market place as the Malaysian market are run by only a few large players (MyCC, 2017a).

With such disparity between the effort in advocating the Act to the business entities and the number of complaints received and probed up until 2020, in addition to the unsatisfactory results indicated by surveys conducted, this study is interested in examining the level of compliance and the factors influencing compliance with the Act, targeting on the public listing companies (PLCs) in Malaysia. PLCs have been a significant force in the nation's capital market growth with a market capitalisation of RM5.4 billion with 905 PLCs as of 31 December 2017 (Bursa Malaysia [BM], 2017). By studying the factors driving compliance legislatures within those listed companies, this study hope to give insightful findings for assisting MyCC and MDTCC to provide a better and healthier playing field for the PLCs to compete, innovate, and expedite Malaysia into achieving a high-income economy status. Therefore, the main goal of this research is to study the level of compliance and factors influencing compliance with the Act among the PLCs in Malaysia.

1.3 Research Objectives

This study has seven main research objectives as follows:

- (1) To measure the level of compliance with the CA 2010 among the PLCs in Malaysia.
- (2) To evaluate the relationship between the BOD's Awareness and Knowledge and Compliance with the CA 2010.
- (3) To evaluate the relationship between Perception of Sanctions and Compliance with the CA 2010.
- (4) To evaluate the relationship between Presence of Ethical Culture and Compliance with the CA 2010.
- (5) To evaluate the relationship between the BOD's Quality represented by board training and Compliance with the CA 2010.
- (6) To evaluate whether Industry Type positively moderates the relationship between the BOD's Awareness and Knowledge, Perception of Sanctions, Presence of Ethical Culture and the BOD's Quality and their Compliance with the CA 2010.
- (7) To evaluate the outcome of Compliance with the CA 2010 in terms of related Financial Performance.

1.4 Research Questions

This study has seven main research questions as follows:

- (1) What is the level of compliance with the CA 2010 among the PLCs in Malaysia?
- (2) What is the relationship between the BOD's Awareness and Knowledge and Compliance with the CA 2010?
- (3) What is the relationship between Perception of Sanctions and Compliance with the CA 2010?
- (4) What is the relationship between Presence of Ethical Culture and Compliance with the CA 2010?
- (5) What is the relationship between the BOD's Quality represented by board training and Compliance with the CA 2010?
- (6) Does Industry Type moderates the relationship between the BOD's Awareness and Knowledge, Perception of Sanctions, Presence of Ethical Culture and the BOD Quality and their Compliance with the CA 2010?
- (7) What is the outcome of Compliance with the CA 2010? Does Compliance with the CA 2010 result in influencing related Financial Performance measures?

1.5 Significance of the Study

From the theoretical perspective, this study would contribute towards introducing the moderator variable, Industry Type, in the relationship between antecedent variables and their Compliance to the Act. Moderator variables are not commonly researched in the field of competition legislatures; thus, this study would be pioneering the study of moderator and its interactions between the relationships.

Undoubtedly, this study adds to the current knowledge body of competition literature worldwide, specifically from the BOD perspective driving competition compliance in PLCs. The role of the BOD is emphasised in each contributing factors

influencing compliance with the Act simultaneously fulfilling the board's fiduciary duties towards legislative compliance.

Further, this study uses the scenario-based questions as part of its questionnaire to examine one of its antecedents, the BOD's Awareness and Knowledge with Compliance to the CA 2010. These scenario-based questions enrich the study by providing uniqueness in engaging the respondents in a more profound sense of meaning and interconnectedness when comprehending the subject matter being asked.

With a very limited academic research examining the contributing factors that influence compliance with competition legislatures worldwide, the theoretical framework is developed and tested empirically to provide a better understanding of the contributing factors that could drive compliance with the Act within the local business environment. Trailing from this, the study intends to fulfill the gap of having less empirical studies conducted or published on compliance with the Act in the context of Malaysia.

From a practical perspective, the findings of this study would benefit the regulators such as MDTCC and MyCC in strategising their advocacy efforts and investigation works as well as overseeing the business communities compete on a level playing field benefiting both the consumers and nation.

This study intends to serve Securities and Exchange Commission (SEC) and Bursa Malaysia with the understanding of the results and analysis, which are tested empirically, in order to enhance governance policy, code, and recommended mechanism in place within the PLCs towards competition legislature compliance.

This study means to provide valuable insight to the PLCs in Malaysia on a strategic and operational level of businesses in complying with the Act, including the cost-effective internal mechanism of compliance that can be put into practice in daily operational activities. By assisting PLCs in understanding the contributing factors towards compliance with the Act within their entities, areas lacking compliance efforts can be improved.

1.6 Definition of Key Terms

The following definitions of key terms are provided to enhance the understanding of this study.

1.6.1 Level of Compliance to the CA 2010

Compliance to the Act means confirming the provisions of the Act encompassing general principles and antitrust practices, specifically the horizontal agreement activities, which is well articulated by the Act in Section 4 (2), literature reviews from competitive and other related fields, and case laws. Within this context, the level of compliance to the Act is measured using the Turkey Competition Authority (TCA)'s compliance checklist (OECD, 2011), which encompasses both general- and horizontal-based antitrust company practices in conducting businesses.

1.6.2 Level of the BOD's Awareness and Knowledge

The BOD's awareness and knowledge of the Act aim specifically at horizontal agreements of Section 4 (2). The horizontal agreement covers the following activities in which entities operate at the same level of production or distribution chain:

- (a) fix, directly or indirectly, a purchase or selling price of any other trading conditions;
- (b) share market or sources of supply;
- (c) limit or control –
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or
- (d) perform an act of bid rigging.

An index of scenario-based questions covering all four dimensions above, which are price fixing, market sharing, limitation or product controlling, and bid rigging, is used to assess the BOD's level of awareness and knowledge about the Act. These measurement items are adapted from Canada Competition Bureau Competitors Collaboration Guideline (CBC, 2009), Australia Competition and Consumer Commission Cartels Deterrence and Detection (ACCC, 2011), and Company Directors and Competition Law Guidance - OFT 1340 (OFT, 2011c).

This study excludes the vertical agreement, an agreement entered by an entity, each of which operates at a different level of production or distribution chain (i.e. between manufacturer, wholesaler, and retailer).

1.6.3 Perception of Sanctions

Sanctions are defined as formal legal sanctions (financial penalty) and informal sanctions (reputational damage) (Nielsen & Parker, 2005). This definition is further enriched by Parker and Nielsen (2011) by considering various elements of businesses calculative thinking influencing compliance behaviour. In this study, the basic elements of calculative thinking operationalising Perception of Sanctions are (1) perceived cost of sanctions, (2) perceived likelihood of being caught, (3)

perceived severity of regulatory enforcement actions, and (4) perceived risk of being caught by third parties mainly customers, suppliers, and business partners. For example, the measurement items for the perceived cost of sanctions are adapted to suit the clauses under the Act, which are fines (Section 40 [4]), conviction in court (Section 42), enforceable undertakings (Section 43), severally and jointly charging a person with position (Section 63), and private lawsuits (Section 64).

1.6.4 Presence of Ethical Culture

Ethical culture is defined as organisational accepted doctrine or principled culture (Schein, 2004), measured by code of conduct and/or ethics (Corporate Integrity System Malaysia [CISM], 2015) in which organisation's presence via tone from the top is expressed on the expected conduct of employees representing the organisation in carrying out their responsibilities and duties.

1.6.5 BOD Quality

Based on the minimum requirements listed by Bursa Malaysia and by incorporating the recommended practices by MCCG (Security Commission Malaysia [SCM], 2017) and relevant literature supports, this study defines the BOD Quality from the board's monitoring role in terms of board training. The types of board training are adapted from Nielson and Parker (2005).

1.6.6 Industry Type

Industry Type is considered as a moderator in this study. It is categorised into service and non-service types. As compared to non-services, services are characterised as intangible, heterogeneous, perishable, and inseparable in the

production of the service and its consumption (Che-Ha, Mavondo, & Mohd-Said, 2014). In this research, the service industry is represented by sectors of Trading or Services, Technology Finance and Properties. In contrast, sectors that represent non-service industry are Consumer Products, Industrial Products, Agriculture or Plantations, Construction, and Mining (Department of Statistics, 2017).

1.6.7 Financial Performance

An entity's performance is the deliverance of "result at or beyond stakeholders' expectation" defined by Ramakrishnan (2012, p. 38), which to be measured by traditional financial measures, namely Return on Asset (ROA) and Return on Equity (ROE). This study also includes Return of Investment (ROI), Sales, and Profit Margin. Together, these measures are studied as composite measurements.

1.7 Organisation of Chapters

The chapters are organised in the following manner:

Chapter 1: Introduces the background of the study, problem statement, research objectives and research questions. This chapter also includes the significance of the studies to narrate the need for conducting this study. This chapter ends with the definition of key terms and organisation of chapters.

Chapter 2: Presents an overview of background, history and information of the Act. This chapter also includes comparing and contradicting the different Acts implemented by jurisdictions of countries regulating their marketplaces in ASEAN.

Chapter 3: Reviews literature of previous research, relevant case laws, theoretical framework and hypotheses development related to this study. This review also

includes the Agency Theory and the General Deterrence Theory. It ends with a summary of the chapter.

Chapter 4: Illustrates the methodology for this study, including the research design, data collection method, measurement of variables, data analysis, and summary of the chapter.

Chapter 5: Presents the results of the statistical analysis of data collected.

Chapter 6: Provides discussion, implication, and conclusion of the results. This chapter also includes the limitations of this study and proposals for future research.