

# COMPETITION ACT 2010

## ENFORCEMENT ISSUES

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## INVESTIGATION POWERS

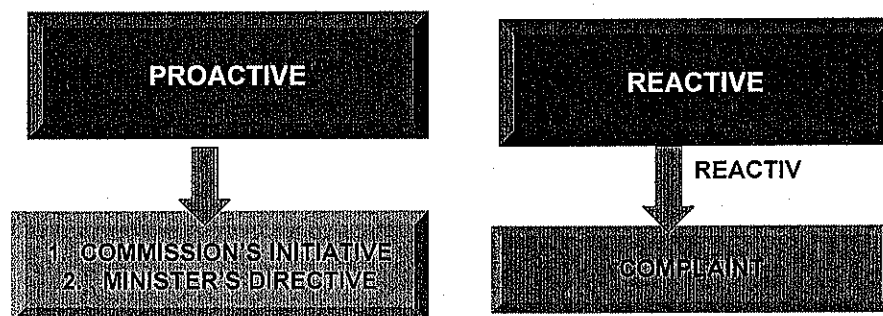
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- A Commission officer shall have ALL the powers of investigation and enforcement under the Act
- Also have all or any of the powers of a police officer to investigate an OFFENCE as provided under CPC



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## HOW INVESTIGATION INITIATED?



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## POWER TO OBTAIN INFORMATION OR DOCUMENT

- **Do you know anything about an infringement?**
  - Legally obliged to provide information or relevant document
  - Make a statement with regards to the information or document

Information provided shall be true, accurate and complete

**Q: What if you fail to provide the information?**

**Q: What if you provide false or misleading information?**

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## **WHAT IF I DONT HAVE THE DOCUMENT!**

- State where the document can be found
- Identify the last person who had the custody of the document and where he may be found

**INFORMATION PROVIDED SHALL BE TRUE,  
ACCURATE AND COMPLETE**

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## **ACCESS TO RECORDS etc**

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A person when directed by Commission **AT ANY TIME** shall **allow access to his records, books, accounts or other things.**

Any person who **fails to comply with the direction** commits an **offence**.

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## ACCESS TO COMPUTERISED DATA



- CO shall be given access to computerised data
- For this, the CO shall be provided with the necessary password, encryption code, decryption code, software or hardware for his access



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## "DAWN" RAID! SEARCH! SEIZURE!



- With or Without Search Warrant
- Reasonable hour of day or night
- Enter by force, if necessary
- Seize record, book, account, document, computerised data etc
- Not practical to remove - shall seal
- Body search with strict decency.....seize all things other than the necessary clothing found on the person

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## WHAT IF I OBSTRUCT?

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Any person who –

- refuses a CO access to any premise or
  - Assaults, obstructs, hinders or delays any CO in effecting entry,
- commits an offence

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## What if my confidential information is disclosed?

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- Any person who discloses the information commits an offence
- However the disclosure is allowed –
  - if the person consents
  - if necessary for the performance of the functions and powers of the Commission
  - if reasonably made during the proceedings by the Commission or CAT, unless order otherwise
  - if made in connection with an investigation
  - if made with the authorisation of the Commission to any competition authority of another country upon request

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## PRIVILEGED COMMUNICATION

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- Communication between advocate & solicitor and client would be protected – s.126 EA
- But if the client agrees to provide the information now with the lawyer but if the lawyer refuses, he shall furnish in writing the name and address of the person to whom or by whom the communication was made.



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## FAILURE TO DISCLOSE INFORMATION

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- What if I fail to provide the information?

Failure to disclose or omit to give any relevant information or evidence or document or provide information or document that you know is false or misleading....offence

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## What if I Destroy the Documents etc?



**ITS AN OFFENCE to destroy, conceal, mutilate or alter or send or attempt to send out of Malaysia, any record, book, account, document, computerised data...with intent to defraud the Commission or prevent, delay or obstruct the carrying out of an investigation!**



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## TIPPING OFF



- Any person discloses to any other person information that is likely to prejudice the investigation, commits an offence



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## TIPPING OFF



- Disclosure of information between a lawyer and his client is not an offence if in the course of professional employment unless it is with a view to furthering any illegal purpose
  
- However defence available

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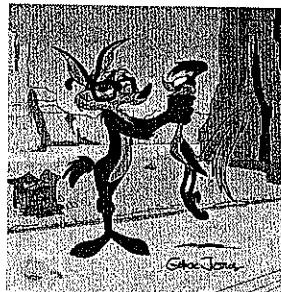
## THREAT AND REPRISAL



No person shall -

coerce or attempt to coerce any person to refrain from making a complaint or co-operating with Commission in any investigation, or  
subject any person to any commercial or other disadvantage as a reprisal against the person for making a complaint or co-operating with the Commission in any investigation.

ITS AN OFFENCE!



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## ENFORCEMENT OF DECISION



- The Commission empowered to give directions, make decision and impose penalty :
- A Direction under section 35 ( Interim Measures)
- Upon finding of infringement, the Commission :
  - Shall order that the infringement is ceased
  - May specify steps to bring the infringement to an end
  - May impose financial penalty
  - May give other direction deemed appropriate

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## ENFORCEMENT OF DECISION



- Failure to comply with the direction or a decision, Commission may bring proceedings before the High Court
- If the person has failed to comply with the direction or decision, High Court shall make an order requiring to comply the direction or decision
- If the failure includes a failure to pay the penalty imposed, High Court shall order the penalty be paid with interests
- Any breach would tantamount to CONTEMPT OF COURT



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## PENALTIES

### INFRINGEMENTS (MAIN PROHIBITION)

MAXIMUM 10% OF THE  
WORLDWIDE TURNOVER



ENTERPRISE

### GENERAL OFFENCES

FIRST OFFENCE - RM 5 MILLION,  
SUBSEQUENT OFFENCE - RM10 MILLION



BODY  
CORPORATE

FIRST OFFENCE -  
RM 1 MILLION OR 5 YEARS IMPRISONMENT,  
SUBSEQUENT OFFENCE -  
RM 2 MILLION OR 5 YEARS IMPRISONMENT



INDIVIDUAL

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# THANK YOU

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