

Price Control and Anti-Profiteering Act 2011 Enhancing Consumer Protection

Introduction

The Government recently enacted the Price Control and Anti-Profiteering Act 2011 (“**Act**”), which came into force on 1 April 2011. The purpose of the Act is to enable the Government to determine prices of goods or charges for services with the object of curbing excessive profiteering of essential goods and services by unscrupulous traders.

Previously, the Price Control Act 1946 was the main legislation regulating the prices of goods and services. However, the Government recognized the need to revamp and update the law to deal with today’s realities. The Act is also meant to prevent businesses from hiking up prices excessively once the proposed Goods and Services Tax (“**GST**”) is implemented.

Anti-Profiteering

Under the Act, it is an offence for any person who, in the course of trade or business, makes unreasonably high profit in selling goods or services, and this is not restricted to price-controlled goods or services. The Ministry of Domestic Trade, Co-operatives and Consumerism (“**Ministry**”) will prescribe the mechanisms to determine when profit would be deemed unreasonable. Factors such as tax, supplier’s cost, conditions of supply and demand, and geographical and product market considerations may be taken into account in formulating these mechanisms. Different mechanisms may be prescribed to cater for different conditions and circumstances. The Ministry is currently working with the Malaysian Institute of Economic Research, Institute of Strategic and International Studies Malaysia as well as other organizations to formulate these mechanisms.

Therefore, anyone who unreasonably increases prices of goods or services, especially during festive seasons, when there is a shortage of supply of goods, or where there is an increase in petrol or commodity prices, none of which may have any tangible impact on the cost of the goods or services, would commit an offence under the Act.

Key Provisions of the Act

The Price Controller may, with the approval of the Minister of Domestic Trade, Co-operatives and Consumerism, determine the maximum, minimum or fixed price for any goods or services. Where prices or charges are determined by the Price Controller, such prices or charges would include all government taxes, duties and any other related charges, and businesses are not allowed to impose higher prices or charges just because of taxes such as GST. A list of the prices or charges must also be displayed in a conspicuous position so as to be easily read by anyone intending to purchase such goods or services.

The Act also sensibly gives the Price Controller the power to determine different prices and charges for different geographical areas in respect of like or similar goods and services.

Offences and Penalties

Under the Act, anyone who sells or offers to sell any price-controlled goods or services inconsistent with the prices or charges determined by the Price Controller commits an offence. Interestingly, the Act also makes buyers liable to prosecution. Therefore, anyone who purchases or offers to purchase any price-controlled goods or services at prices different from those determined by the Price Controller is liable to prosecution unless he can prove that he had no knowledge of the price-controlled goods or services, and that he acted in good faith in acquiring the goods or services at that price.

If the offence is committed by a company, it will be liable to a maximum fine of RM500,000 and, for a second or subsequent offence, up to RM1,000,000. A director or CEO of a company may also be charged severally or jointly with the company unless he can prove that the offence was committed without his knowledge, consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

If the offence is committed by an individual, he is liable to a maximum fine of RM100,000 or to imprisonment for a term not exceeding 3 years or both and, for a second or subsequent offence, to a fine of up to RM250,000 or to imprisonment for a term not exceeding 5 years or both.

Conclusion

While the Act will have an impact on businesses, it is not anti-business or intended to stop people from making profit. What it aims to do is to prevent greedy traders and unscrupulous businesses from charging exorbitant prices for their goods and services. The enactment of the Act should therefore be welcomed as a safeguard for consumers against opportunistic profiteers. However, as it gives the Price Controller broad powers that will have a direct effect on the *rakyat*, prices should only be determined after thorough consideration of the impact on stakeholders. The success of the Act in achieving its objective is therefore very much dependent on its implementation.

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