

**MyCC not the right body to act against us when there's Mavcom, says MAS**

January 18, 2021

PUTRAJAYA (Jan 12): Malaysia Airline System Bhd (MAS) today questioned whether the Malaysian Competition Commission (MyCC) was the rightful body to take action against MAS and AirAsia Bhd in relation to a collaboration agreement entered into in 2011 by the two airlines as well as AirAsia X Sdn Bhd.

Submitting in the Court of Appeal, MAS's counsel Logan Sabapathy said the matter was within the purview of the Malaysian Aviation Commission (Mavcom) since its formation in 2016 as a specialised body to look into the aviation industry.

The High Court had in December 2018 allowed MyCC's judicial review application and quashed the decision of the Competition Appeal Tribunal (CAT). It reinstated the March 2014 decision of MyCC, which imposed a fine of RM10 million each on MAS and AirAsia.

Noting that the aviation industry and CAT had accepted that MyCC should not have imposed the fine, Logan questioned why MyCC had proceeded to appeal against the decision made by its own appeal tribunal.

Logan said Mavcom had been set up specifically to regulate the aviation industry and should be the body to oversee the airline industry.

**MyCC imposed fine in 2014**

Ruling that the 2011 collaboration agreement had violated the Competition Act 2010, MyCC had in April 2014 fined each airline RM10 million. It found that both airlines had breached Section 4(2)(b) of the Act by entering into an agreement which saw the two airlines sharing markets in the local air transport services sector.

The complaint to MyCC was made by the Federation of Malaysian Consumers Associations (Fomca) on the grounds that the proposed tie-up between the airlines would affect consumers.

MAS and AirAsia noted that Fomca was not even an interested party throughout the proceedings and had later not participated in the complaint.

At that time, MyCC said it had the power to fine both airlines 10% of their global revenue for infringing the law, but had levied a far lower penalty because the airlines were cooperative during the investigation.

It added that the fine quantum was arrived at based on the flights mounted by both AirAsia and MAS in the four months between Jan 1 and April 30, 2012, on routes encompassing Kuala Lumpur-Kota Kinabalu, Kuala Lumpur-Kuching, Kuala Lumpur-Sandakan and Kuala Lumpur-Sibu.

sans-serif;">However, CAT set aside the RM10 million fine on Feb 4, 2016. MyCC then filed for a judicial review to quash CAT's decision.

In December 2018, High Court judge Datuk Nordin Hassan (now Court of Appeal judge) reversed the 2016 decision by CAT, which was presided by Datuk Hasnah Mohamed Hashim (now Federal Court judge).

In allowing the appeal by MAS and AirAsia, Justice Nordin said the CAT ruling was tainted with error of law and unreasonableness.

**Not re-writing business model**

Logan along with AirAsia's counsel Datuk Ambiga Sreenevasan told the appellate court today that despite entering into the share-swap agreement, both airlines were not re-writing their respective business model as MAS would remain as a full service carrier and AirAsia as a low-cost carrier.

Ambiga said MyCC's decision was not proper as the government had sanctioned the collaboration agreement, and the parties were still discussing the issue of MyCC turning the complaint by Fomca into an investigation.

◆ This is not proper as both parties did not distort the market. Everything was done in the open, she added.

◆ The collaboration agreement was initiated with Khazanah Nasional and we (AirAsia) even informed MyCC about it and told them that it does not involve competition of routes, she said.

For these reasons, Logan and Ambiga told the appellate court that the CAT decision should be reinstated, and that the High Court verdict two years ago should be set aside.

While AirAsia and MAS took about five hours to submit on this issue, MyCC's counsel Datuk Lim Chee Wee indicated to the bench he may take three hours to reply and maybe it was wise for the court to fix another day.

The Court of Appeal bench was chaired by Justice Datuk Hanipah Farikullah and included Datuk Lee Swee Seng and Datuk Mohd Sofian Abdul Razak.

Justice Hanipah fixed Feb 5 to hear both MyCC's response and AirAsia and MAS's reply.

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