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MARKETER'S PRICING STRATEGY VS. COMPETITION LAW

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ABSTRACT

Marketers put greater emphasis in pricing strategy during their marketing planning simply because pricing is one of the most important elements of marketing mix that can generate revenue. Formulating of product or service prices is a strategic activity because the price or prices assigned to a product or range of products will create an impact on consumer's perception towards a company's products and determine its subsequent purchase. Marketers need to exercise creativity in pricing strategy in order to attract consumer's positive perceptions and purchase decisions. As a result, various pricing strategies have been introduced for products and services such as value-based pricing, bundle pricing, price skimming, penetration pricing, competitors oriented pricing, and discriminatory pricing to name a few. By applying all these creative pricing strategies, to great extent have enable marketers to compete effectively as well as to win over consumer's perception in purchase decisions. On one hand, it is an effective strategy for the marketers to succeed in business. But on the other hand it may be unfavourable to the consumers especially when there are unfair trading practices occurred on the pricing strategies implemented. In this situation it is classified as anti-competition and abuse of dominant position. In order to protect both the business-to-business consumers and end consumers, the Malaysian government has implemented the Competition Act 2010 which came into force on 1 January 2012 with the aim to control anti-competition and abuse of dominant position. The Competition Act 2010 is changing the way marketers formulating and implementing their pricing strategies. This is because the Competition Act 2010 has specific clauses in prohibiting enterprises in setting prices by exploiting consumer's position for their profiteering advantage. Hence, marketers are presently caught in a difficult position when formulating pricing strategy which at the same time has to comply with the Competition Act 2010. To date, limited review has been conducted on marketer's pricing strategy vis-à-vis competition Act pricing policy. The purpose of this paper is to compare the marketer's pricing strategy and competition Act pricing policy and to evaluate how the relevant sections of the competition Act impact marketer's pricing decisions. In the conclusion, non-pricing strategies are recommended to counter the competition Act pricing policy prohibitions.

***Keywords**:* Marketers, Pricing Strategy, Pricing Policy, Competition Act, Anti-competition, Abuse of Dominant position

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Introduction

Pricing is one of the most important elements of marketing mix in generating revenue (LaPlaca, 1997; Shipley & Jobber, 2001) because price is the amount a customer pays for a product/service or the sum of the values in exchange for the benefits derived from it (Bearden, Ingram and Larfforge, 2004). According to Rosa and Rodan (2011), the importance of price as a purchase stimulus play a key role in price management as it is not only could create perceptions and values but it also influences consumer purchase decisions (Rosa, 2001; Simon, 1989; Vanhuele and Dreze, 2002). Since price is so influential towards consumer's purchase decisions, it is revealed that the greater the importance of price in purchase decisions, it contributes to the greater intensity of information and the amount of comparisons between competing brands (Mazumdar and Monroe, 1990). Therefore, pricing strategy is paramount to every manufacturer or producer dealing with consumer goods and services because it provides a cue about the company and its products whereby a company does not set a single price but rather a pricing structure that covers different items in its line (Kotler, Armstrong, Wong and Saunders, 2001). Marketers who assume the duties of pricing policy always face with challenges because choosing a pricing objective and associated strategy is a crucial function of the business owner and an integral part of the overall business plan or planning process. The responsibility is more than simply calculating the cost of production and the markup price (Roth, 2007). Hence, formulating product or service prices is a strategic activity as the price or prices assigned to a product or range of products will create an impact on consumer's perception towards a company's products and determine its subsequent purchase (Faith and Edwin, 2014). Marketers need to exercise creativity in pricing strategy in order to attract consumer's positive perceptions and purchase decisions. As a result, various pricing strategies have been introduced for products and services under the three major pricing approaches: customer value-based pricing, cost-based pricing and competition-based pricing are value-based pricing, bundle pricing, price skimming, penetration pricing, competitors oriented pricing, and discriminatory pricing to name a few. By applying all these creative pricing strategies, to great extent have enable marketers to compete effectively as well as to win over consumer's perception in purchase decisions. On one hand, it is an effective strategy for the marketers to succeed in business. But on the other hand it may be unfavourable to the consumers especially when there are unfair trading practices occurred on the pricing strategies implemented. In this situation it is classified as anti-competition and abuse of dominant position. In order to protect both the business-to-business consumers and end consumers, the Malaysian parliament had passed a Competition Bill on 6 May 2010 as a comprehensive competition law to prevent unfair trade practices which cover all industries and across all economic sectors. The Malaysian Competition Act 2010 (CA) which implemented on 1 January 2012 is aimed to control anti-competition and abuse of dominant position. The CA is changing the way marketers formulating and implementing their pricing strategies. This is because the CA has specific clauses in prohibiting enterprises in setting prices by exploiting consumer's position for their profiteering advantage. For example, the CA prohibited enterprises to underpriced or overpriced a product or service excessively from the market price. Hence, marketers are presently caught in a difficult position when formulating pricing strategy which at the same time has to comply with the CA. The CA has indeed reduced the marketer's flexibility and creativity in pricing strategy to generate revenues. Ever since the CA came into force the marketers would have to ensure their pricing strategies formulated are not breaching the CA whatever their terminology is. Since the CA is relatively new in Malaysia many marketers are still not aware how this CA affects them or some may need time to adapt towards the CA prohibitions on pricing policy. Therefore, this paper reviews the specific marketer's pricing strategies that are directly being impacted by the CA prohibitions. The discussion is supported by reference to section 4 and 10 of the CA. In the end, the paper is concluded with recommendations.

Pricing Strategy in Marketing

Diamantopoulos (1991) argued that, *"price is the most flexible element of marketing strategy because pricing decisions can be implemented relatively quickly in comparison with the other elements of marketing strategy"*. Therefore, marketers leverage pricing as a key strategic tool for creating and capturing customer value. Prices have a direct impact on a firm's bottom line that even a small percentage improvement in price can generate a large percentage increase in profitability (Kotler and Armstrong, 2016). Different types of pricing strategies continued to be applied by marketers to increase their revenues till it has been perceived by the public that pricing strategy is equated with profiteering, high price and monopoly although there is nothing wrong with it (Ezeudu, 2005). Although there are dozens of pricing strategies in the marketing context but this section only review the main pricing strategies that directly related to the CA.

i. Competitors Oriented Pricing

This form of pricing strategy is gauging on competitor's price as the starting point for price setting (Blythe, 2005). It can be achieved when marketers set prices mainly on the basis of what its competitors are charging. As revealed by (Hinterhuber, 2008), competition based pricing uses anticipated or observed price levels of competitors as the primary source for setting prices. Competitors oriented pricing strategy like this can be seen from those close rival competitors' practices such as Burger King and McDonald's; Coca Cola and Pepsi; and Nike and Adidas. Usually, the close competitors may consider to keep its prices lower or higher than their counterparts because it does not seek a rigid relation between its price and its own demand (Kevin, Hartley and Rudelius, 2004). The competitors would always take advantage of the free availability of price information in the market while consumer's expectation would be ignored. Sometimes, competitive oriented pricing may leads to achieve a certain level of revenues that becomes disadvantage to the consumers.

ii. Segmented Pricing

Segmented pricing occur when marketers adjust their basic prices according to differences in customers, products and locations. Marketers would sell a product or service at two or more prices, even though the difference in prices is not based on differences in costs (Kotler et al., 2016). Under customer-segment pricing, different customers required to pay different prices for the same product or service. While the location-based pricing strategy is charging different prices for different locations, even though the production cost of each location is the same. Marketers may use time-based pricing to vary its price based on season, the month, the day, and even the hour (Kotler et al., 2016). The flexibility of segmented pricing to charge customers is an effective approach to maximise profit. However, the targeted market must be segmentable, and the segments must show different degrees of demand. The costs incurred to implement segmented pricing strategy should not exceed the extra revenue obtained from the price difference. Of course, the segmented pricing set must be perceived as fair an acceptable by the customers.

iii. Price Skimming

Although pricing is one of the most flexible 4Ps but it is also a challenging decisions making element. Marketers have to come out with an effective pricing strategy according to different market conditions. For instance, when launching a new product marketers may opt to introduce a price skimming or penetration price. A price skimming strategy involves charging a high introduction price, which later to be lowered (Dean, 1976). It is a pricing policy whereby the marketers introduce a higher price supported with high promotion (Lamb, Hair and Mcdaniel, 2004). Price skimming is an effective pricing strategy under the following situations. First, the product's quality and image must be able to support its higher price as well have the customers demand the product at that price. Second, the production cost for limited units cannot be too high which might set off the advantage of charging more to the customers. Finally, there must be barriers to entry to prevent competitors to enter the market easily as well as undercut the high price (Kotler et al., 2016).

iv. Penetration Pricing

Penetration price is the opposite of price skimming. It is suitable for new product launching as well by setting a low initial price on the new product so as to appeal to the mass market (Kevin et al., 2004; Lamb et al., 2004). At a low or very low price, a product can be marketed into the market quickly and deeply that can attract a large number of buyers in building large market share (Kotler et al., 2016). Marketers could either introduce penetration pricing strategy with low price and high promotion or low price combined with low promotion (Lamb et al., 2004). It works well when the market is highly price sensitive so that a low price produces more market growth. Also, the production and distribution costs must decrease when the sales volume increases. To be effective, this strategy must aim to keep out the competition enable the penetration pricer to maintain its low-price position. Otherwise, the price advantage achieved may not be sustainable (Kotler et al., 2016).

Pricing Policies in Competition Law

According to Furse (2008), competition is crucial in an innovative and globalised economy whereby intense competition between firms is the lifeblood of strong and effective markets. Competition enables firms in achieving cost effectiveness, innovation and production efficiency that would benefit end consumers in getting good deal (Furse, 2008). A healthy competitive environment is only sustainable when there are rules governing all firms operating their business fairly. Thus the existence of competition law to examine on firms in practicing anti-competition and abuse of dominant position is crucial to remedy some of the situations that may damage the free market system (Furse, 2008). Like other countries' competition law, the Malaysian government also place great emphasis on pricing policy in the CA to promote economic development through healthy competition. The following four pricing policies are the main concerns of the CA.

i. Price Fixing

Price fixing is a group of enterprises act together to fix a price or a minimum price with the aim to prevent market competition. There are two possible types of price fixing agreements between enterprises, namely horizontal agreement and vertical agreement. Horizontal agreements are the agreements between enterprises at the same level of production or distribution chain. While vertical agreements are between enterprises at different stages of the production and distribution chain. Price fixing is more effective in the oligopolistic than perfect competition market. In the prevailing oligopolistic market, the relatively small group of enterprises will form a cartel to eliminate competition. As a result, the cartelization will provide greater profits to the participants compare to the sum of individual profits derive from the competitive market (Kaserman and Mayo, 1995). Since price fixing is an anti-competition behavior, competition law is prohibiting enterprises from applying it in a competition market.

ii. Price Discrimination

Discriminatory pricing is the supply of goods and services of the same specification at different prices but the differences in price does not reflect cost differences such as transport cost (Furse, 2008). This pricing strategy is possible in a monopolistic market whereby the monopolistic producer may be able to increase income and profits by setting discriminatory prices. The effect would be a transfer of income from consumers to the monopolist and in the situation of perfect differentiation; the consumer surplus is transferred completely to the monopolist. To great extent, price discrimination is considered a form market power abuse by a monopolist. Price discrimination also complementing predatory conduct when monopolist funds predatory prices by profit earned elsewhere derived at a higher price set. (Furse, 2008).

iii. Excessive Pricing

Excessive pricing refers to a firm setting prices of products or services significantly above the competitive level. Rodger and MAcCulloch (2009) termed it as an exploitative abuse by charging a monopoly price or monopoly rent, an undertaking which face no market pressure but can instead maximize profits by reducing production and charging excessive price. Such pricing strategy is suitable in the medium and long term where there exist strong barriers to entry (Furse, 2008). Again, excessive pricing by monopolist is an act of abuse of dominant position to exploit the competition market for one's gain. Therefore, this pricing strategy is prohibited by the competition law in order to protect consumers and enterprises.

iv. Predatory Pricing

Predatory pricing is an extreme form of competition which set prices very low to succeed in the market (Furse, 2008). Although low prices or price reductions are normally considered a successful outcome derived from competition but a predatory behavior classified an act of anti-competitive behavior whereby if prices are too low it would damage the competitive process (Myers, 1994). It is not a healthy way of competition. Most competition authorities concern the predatory pricing policy will promote either as a barrier to entry, or drive competitors out of a market (Furse, 2008). Thus, competition law in all jurisdictions throughout the world had prohibited predatory pricing policy to combat against anti-competition and abuse of dominant position.

Pricing Prohibitions by Competition Act 2010

The CA under the purview of the Malaysia Competition Commission (MyCC) has come into force since 1 January 2012. The aim is to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith (CA, 2010). Thus, section 4 and section 10 of the CA strictly prohibiting firms engaging in anti-competition and abuse of dominant position activities. In the context of this section, only clauses related to pricing policy of the above two sections is discussed.

According to Section 4 of the CA (CA, 2010),
"(1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.
(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—
(a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;"

Follow through section 4(1), section 4(2)(a) restrict firms to involve in price fixing through both horizontal and vertical agreements. Horizontal price fixing agreement refers to prices set in either a downstream or upstream market. Price fixing on the price itself or fixing any price elements for example fixing a discount, agreeing a percentage price increase or setting the permitted range of prices between competitors are deemed as infringing and breaching the CA. Agreement or arrangement to indirectly restrict price competition in some way, such as recommended pricing are also not permitted under this section. This includes agreeing to share price information before prices are increased either directly or indirectly through an industry or trade association or to require competitors to discuss with each other before determining the agreed price (MyCC Chapter 1, 2012).

Vertical agreement is between enterprises at different stages of the production and distribution chain. Any other form of Resale Price Maintenance (RPM) including maximum pricing or recommended retail pricing that provides a focal point for downstream collusion is as anti-competitive. RPM is possible to attain when an upstream seller imposes a fixed or a minimum price that a downstream buyer must resell. For instance, a manufacturer sets the price for its products to be sold at the retail level which may be a minimum resale price or possibility as maximum resale price. Such vertical price fixing made the resellers or retailers do not compete on price. This is classified as anti-competition (MyCC Chapter 1, 2012).

Section 10 of the CA (CA, 2010) provides that,
"(1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.
(2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—
(a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;"

As stated in subsection (1), it generally prohibits any agreements between enterprises from engaging in any conduct which may abuse of a dominant position in any market for goods or services in Malaysia. This includes exploitative conduct in pricing excessively due to the availability of market opportunity to do so. For example, if a dominant enterprise foresees no new entrants, then it will set a high price to take advantage of consumers to maximise profit. This pricing policy is not encouraged because the excessive profit gained is not a reward for innovation. As long as enterprise practise excessive pricing that adversely affect consumers and has the object or effect of significantly exclude a competitor, it is deemed abuse of dominant position (MyCC Chapter 2, 2012).

"(d) applying different conditions to equivalent transactions with other trading parties to an extent that may—
(i) discourage new market entry or expansion or investment by an existing competitor;
(ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or
(iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;"

In certain situation, price discrimination can be beneficial to consumers. However, clause (d) more concerns on enterprises setting discriminatory prices that adversely affect consumers. For example, a dominant enterprise could set low prices in geographic locations where there is more competition and cover losses by charging more in other locations with weak competition. This could force the local competitors leave the market in the more competitive areas. By charging one buyer more than another buyer may affect a healthy competition environment in the downstream market. Especially if the dominant enterprise has a subsidiary downstream, then charging a lower price for an important input to the subsidiary will cause other competitors downstream unable to compete. Hence, MyCC will check on enterprises practising this form of pricing policy to drive competitors out of the market (MyCC Chapter 2, 2012).

"(f) any predatory behaviour towards competitors;"
This clause prohibits enterprises from setting low prices below its cost to drive other competitors out of business. Indeed, consumers could initially enjoy the low prices provided by the dominant enterprise. However once the competitors are out of the market, the consumers no longer could benefit from the low price because the dominant can raise back the price to the original level. Hence, enterprises may price below cost as new entrant into the market to gain initial market share or an existing enterprise may price a new product below cost initially to attract consumers. In any of the above situations, enterprises may caught infringing the CA if they failed to comply Section 10(3) of the CA which states that *"This section does not prohibit an enterprise in a dominant position from taking*

any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor." (MyCC Chapter 2, 2012).

Discussion

The above review shows that the CA pricing policy mechanism is similar to the marketer's pricing strategy. It is not coincidence that the CA pricing policy duplicating the same mechanism for the sake of reference. But it was introduced to examine on the pricing strategies practices in the markets as to protect the consumers from exploitation for anti-competition and abuse of dominant position.

As discussed earlier, the marketers used to price products or services based on competitor's price. Competitor's price information will be collated for decision making. There are situations happened that market prices have been fixed between competitors either formally or informally as a way to control the market prices and maximize revenues. As a result the competitors oriented pricing would turn into price fixing. Under the CA definition, any competitive pricing strategy by the enterprises with agreement in fixing which drive the competitors out of the market is prohibited. Thus, price fixing policy in the CA is actually enacted to control on competitors oriented pricing strategy in the markets.

Segmented pricing strategy has been applied by marketers for long in the market to sell the same products or services to different customers at different prices. Although there are benefits could be enjoyed by certain segments from the differential prices. But marketers could exploit this pricing strategy especially in a monopolistic market condition to maximize profits from the consumers. Should there be any abuse of dominant position in setting discriminatory prices marketers are considered breaching the CA. The CA price discrimination policy is legislated to monitor unhealthy segmented pricing strategy in the market.

The CA excessive pricing policy has connotation to marketer's price skimming strategy. It is a common practice for marketers to use price skimming strategy when launching of new product with no competitors in the market. The objective is to recoup back the investment especially for innovative products that involved heavy research and development cost. However, there are instances that marketers may abuse of dominant position to charge excessive price for a product or service to maximize profits. This practice is discouraged by the competition authorities and that is why the CA excessive pricing policy came out with a clause to prohibit marketers to impose unfair purchase or selling price or other unfair trading condition on any supplier or customer.

Penetration pricing is another new product launching strategy applied by marketers to enter market quickly and gain initial market shares. Most of the time, penetration price is set at a low level below the market price in order to attract a large number of buyers. In the context of competition law, setting low prices with the aim to create barriers to entry and eliminate competitors out of the market is termed as predatory behavior. Therefore if marketers apply penetration pricing strategy with predatory behavior purposes, it is prohibited by the CA. Save for the legal terms, predatory pricing mechanism in the competition law is matching the marketer's penetration price practices.

Conclusion

As far as marketer is concern, to achieve bottom line is the key objective and priority to survive in the business. That is why marketers always leverage on pricing as the most important elements of marketing mix in generating revenue (LaPlaca, 1997; Shipley & Jobber, 2001). Marketers would strategize its pricing policy to create an impact on consumer's perception towards a company's products and services to determine its subsequent purchase (Faith and Edwin, 2014). The various types of pricing strategies including the four discussed above have been effective in generating revenues for marketers all the while. However the flexibility of formulating and implementing of pricing strategies is no longer any lenient in the market environment ever since the CA was

implemented since 1 January 2012. As reviewed above, the CA has laid down a few specific sections checking on the marketer's pricing strategy practices in the markets. The CA became an obstacle for the marketers in their day-to-day marketing planning. Despite the CA has becomes a big challenge to the marketers particularly when setting prices of products and services but marketers should remain focus on their bottom line objective to stay competitive. Hence, marketers should come out with alternative counter strategies to cope with the CA pricing policy besides complying the law which is a must. It is recommended the following non-pricing strategies to overcome the CA obstacles:

i. Price Fixing

The main reason why marketer wishes to fix prices between enterprises is due to the intense competition in the markets. A less competitive product may not be able to cover its cost when it price lower than the competitors. However, if the marketers fix a standard market price between enterprises, it will infringe the CA. So marketers should focus to build its brand to increase competitiveness. When a product has strong brand equity, it will command higher prices vis-à-vis competitors price. In the long run, the product will be independent in the market to attract consumers and maximize profits without the need to price fixing.

ii. Price Discrimination

Apart from the legitimate price discrimination allowed to impose on a product with different cost the CA is more concern on price differential to different customers with the same basic costing. In this situation if marketers still wish to set discrimination price on the product, it can enhance a little feature or add intangible values for the product with the same basic costing and then sell it as higher price as a way to discriminate to another segment of customers. It is in fact a win-win for all parties because the consumers would appreciate better value with higher prices and marketers can maximize profits while without breaching the CA prohibitions.

iii. Excessive Pricing

Excessive pricing strategy may be useful sometimes but practically it is not as frequent as penetration pricing being applied for market entry except that there is a monopoly market condition exists. Excessive pricing or in marketing context called price skimming is normally used during new products launching. Apart from recovering capital for innovation products, enterprises should not exploit the monopoly market condition to set high prices to maximize profits. But marketers still could set "excessive pricing" by creatively produce product accessory to support the main product. Create a joint demand for both products that split into two prices. When combined the total price, it could ended up an excessive price to the consumers. As a result, marketers still can maximize profits from the split prices without infringing the CA.

iv. Predatory Pricing

Penetration price is becoming a common pricing strategy for many enterprises due to ever increasing of product launching to meet customers expectation. Every times a product new launching would normally come with introductory price which is always low and below market price. However, in the eyes of competition authorities, any predatory pricing set to create a barrier to entry or drive competitors out of the market is a breach. The alternative non-price strategy here is to price a product at permitted low level with enhanced quality to compete effectively with competitors. In the longer terms, a better quality product vis-a-vis competitors' product with basic quality selling at the same market price will perceived as cheaper by the consumers. That will naturally force the competitors leave the market.

By formulating the above non-pricing strategies not only that it will provide marketers alternative solutions to cope with the CA obstacles but the non-pricing strategies itself may increase marketers'

competitive advantage. Hence, the recommended non-pricing strategies above are regarded as killing two birds with one stone.

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