ANTI- PROFITEERING MECHANISM: GOOD OR BAD?

Socio-Economic Research Centre (SERC)

This research paper was commissioned and funded by ACCCIM SERC Trust and managed by Socio-Economic Research Centre (operating under SERC Sdn. Bhd.).

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Introduction

When it comes to regulation of markets, the government faces a tough balancing act and choice between not overburdening businesses or industries and preserving consumers' protection in a market economy. This article attempts to put forward rational economic arguments that inappropriate and excessive government intervention in a free market system is not an effective mechanism to distribute resources in an efficient manner and may harm consumers rather than protect.

The price system of capitalism is very important in the market economy. Our well-being and quality of life is largely determined by how well the price system operate and unites all rational consumers, businesses and market players.

In a market economy, consumers want a fair and reasonable price while businesses want to make reasonable profits that make their business viable, continue investing and create jobs. The role of government is to maintain price stability or at least manageable inflation (around 2%) and facilitate businesses and not to burden them with cumbersome regulations.

Price intervention or stabilization measures in the form of price controls and supply controls on essential goods have been put in place to safeguard consumers' interests. These measures have served us well to help stabilizing prices of essential items during festive season celebrations and natural disasters.

The one which continues to draw contentions among the regulators, politicians, businesses, consumers, NGOs as well as researchers is the Anti-Profiteering Mechanism (APM) under the Price Control and Anti-Profiteering Act (PCAPA) 2011.

The PCAPA is a powerful regulator tool that was enacted during the implementation of Goods and Services Tax (GST) to curb "profiteering" by unscrupulous traders to manipulate and justify unreasonably price hikes under the guise of the GST. Bearing in mind that, the GST was implemented when domestic cost pressures were already build up and aggravated by the subsidy withdrawal and rationlisation and other related cost increases such as minimum wage.

It is almost 22 months now after the GST, the supposedly "temporary" anti-profiteering mechanism was extended to 31 December 2016 from the original expiry date of 30 June 2016. Both consumers and businesses have their sides of arguments about the APM.

Government intervention is not the answer to this "problem"

The PCAPA was legislated to prevent profiteering based on the implicit premise that the government can allocate resources more efficiently than the market. It is also premised on the notion that the government knows what the people want better than entrepreneurs, who sink or swim based on their ability to anticipate high variability of costing and profit margin as well as market demand conditions.

Viewed objectively, the government regulation via the APM is nothing short of a disruption to demand and supply as far as satisfying customers is concerned.

In support of a free market

In a free competitive market, product prices must be allowed to adjust as a signal to producers and consumers. As the demand and supply adjusts following the price changes, goods and services will get to those who want them the most and are willing to pay for them. This is what we called "Willing buyer, willing seller". The ability to freely and expeditiously adjust any imbalances between supply and demand will result in fair competition, market efficiency and fair pricing.

The economic logic is pretty simple

Consumer preferences for a product determines how much of it they will buy at any given price. While some people will benefit from anti-profiteering or price gouging or price controls in the short-term, they will lose out eventually.

Why? Artificially holding prices lower than the market clearing prices means that supply will run out and some consumers will have to go without. Serious welfare loss results because not enough of goods to sell.

Worse still, it creates hoarding and shortages, driving prices even higher. Believing that price controls via subsidy would enable consumers to enjoy stable prices and buy more goods is a fallacy as it will come a point that demand will exceed supply and hence, creating a shortage and the situation gets worsen when the subsidy is removed. These were seen when the subsidies on fuel and cooking oil were removed.

For firms, when prices are being "controlled" and held below natural levels as well as profit margins are being "monitored" or limiting price increases in time of high cost of doing business, it not only cripples their business operations but also removes incentive that would have motivated other producers to bring in an additional supply to consumers as investors leave the industry to seek a better return elsewhere. This means a potential loss of foreign investment. This will lead to fewer suppliers thus making it possible for those remaining to act cartel-like and in the extreme monopolistic.

In simple terms, anti-profiteering or price gouging blocks or discourages the entry of new market players to help rectify the imbalance between supply and demand.

Market knowledge and information deters unfair pricing

In a free market system with perfect information and knowledge of prices, it is virtually impossible for businesses to make excessive profit margin and consumers to pay unfair prices. The power of social media facilitates the dissemination of market and price information to customers, and hence curtails the brazen profiteering by businesses and traders. In instances of traders and businesses charging high product prices, customers are often quick to complain about the high prices on social media sites like Facebook, Twitter and Instagram.

Any attempts by businesses to make excessive profit or even collude to raise prices exorbitantly would risk losing market share. If it occurs, the government can deploy existing laws, in particular the Competition Act against abuse of the business concerned which has a monopoly or dominant position in a market.

The measurement of “excessive profit” under APM is in question?

In practice, what constitutes an excessive price or profit margin is a very subjective judgement, giving rise to concerns over the transparency and objectivity when making the assessment. There is a complex of variables that affect the business’ cost and pricing structure as well as profit margin. There are real problems in determining that a price is excessive by comparison with “benchmarks” in the same country or internationally.

Micro managing adds to high compliance cost and counter-productive

It is administratively impractical to comply with the APM given the time-consuming and tedious compliance paperwork requirements. Ultimately, the unproductive compliance accounting would add to higher costs and will inevitably pass on those unproductive compliance costs in the form of higher prices to consumers. It will also be a double-whammy impact on small and medium enterprises as they are still adjusting with the GST and high cost of doing business coming from the subsidy rationalization. It may lead to further number of enterprises to leave the market and shrink the ideal number of players to ensure a competitive marketplace.

Overregulation stifles growth and deters investment

The APM not only restricts a healthy competition but also burdened businesses with unnecessary costs. This coupled with not so favourable demand conditions and moderate economic growth, overregulation and burdensome interference could impede the growth of businesses and private investment.

Faced with the challenging domestic and external conditions ahead, Malaysian businesses have to brace for trying operating environment to keep their business operations going. The government, as an effective facilitator should instead be “hand holding” businesses in overcoming and seeing through these challenging times.

Effective competition keeps prices down

It is in the best interests of the country to embrace a free market system, which runs on the fundamental principle of promoting a liberalized and more business-friendly market environment through creating a healthy culture of competition.

Competition acts as a constraint on businesses for overcharging its customers. Business dares not keep its prices too high for fearing of losing customers to its competitors, which could reduce its profits.

Simplify regulations and remove barriers

What creates a conducive business-friendly environment is to continue to liberalize as well as remove barriers to entry, allowing new players to come in when there is a supply-demand imbalance. The most effective measures to support a well-functioning and competitive market are streamlining bureaucratic red-tape, reducing or abolishing unnecessary licensing requirements, easier application for licenses and automatic approvals of such licenses upon compliance.

Consumers must be pro-active and self-reliant

The existing Acts, namely the Consumer Protection Act 1999, Trade Descriptions Act 2011, Control of Supplies Act 1961, Competition Act 2010 and even the price control provisions under the PCAPA 2011 are adequate to protect the interests of consumers.

Besides strengthening the provisions and stepping up effective enforcement, the regulators and businesses must continue to actively engage with NGOs, including consumer rights groups in promoting an environment of fair and ethical trade practices.

The Ministry of Domestic Trade, Co-operatives and Consumerism must work together with the relevant agencies to promote greater consumer awareness about fair pricing through a regular dissemination of price and products information. Thanks to the

Internet and shopping comparison apps, consumers are price-wise shoppers now, equipped with information to make informed purchasing decisions.

The regulators, business industry and consumer groups must work together to embrace ethical corporate social value and fair price practices, so as to effectively address profiteering, excessive price hikes and anti-competitive practices of businesses instead of adding the regulatory burden on the law-abiding businesses.

Conclusion

We need to advocate best and responsible trade practices and fair competition in our marketplace. Consumers cherish fair prices while businesses need to make normal profits to be viable and sustainable and as rightful reward for their risk-undertakings and entrepreneurship but not too excessive.

Open competition, free pricing and profit incentives are the crucial elements of supporting the foundation of a free market. It is a fallacy that APM would lead to lower prices as the opposite price effect is likely occur as high direct and hidden costs associated with the compliance borne by the businesses would ultimately and eventually be pass onto consumers in the form of higher prices.

The imposition of APM on a well-functioning and free competitive market causes welfare losses to both consumers and producers. Consumers would have fewer choices of competitively priced and quality products and services. This is because of market and price distortions which not only waste resources and reduce economic efficiency but also discourage investors to invest and increase supply in the products market.

Excessive regulations stifle the growth of enterprises, reduce entry of new market players and dampen investment in the long-term as investors seek better returns elsewhere. The price controls and APM can cause hoarding, create black markets, incur costly enforcement for regulator and compliance for businesses.

The PCAPA 2011 is an adequate regulatory tool to protecting consumer interests and maintaining a competitive market. Our research show that Singapore does not have anti-profiteering law while Thailand's anti-profiteering was superseded by Business Competition Act. Australia had disbanded the price exploitation regulation after 24 months of implementation when the GST was introduced. Canada only prohibits profiteering during emergencies while Philippines only targeted to selected goods, especially the basic necessity and primary commodity.

The gazetted price-controlled on essential consumer goods and services during festive celebrations, calamities or emergency situations should be maintained to ensure price stability and minimize the impact on the livelihood of households.

In a nutshell, a more practical and equitable approach of keeping a market economy in a globalized environment is to instill consumer activism and education that help consumers make right decisions. Businesses must be allowed to flourish in a freer open market, which reflects the dynamic interaction of supply and demand. The government must be an effective facilitator and not a deterrent to businesses. Most importantly, the PCAPA 2011 should not at all create a climate of fear and anxiety among the law-abiding businesses.

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