Vol 3 No 2 (2023) ISSN: 2785-9266

Issues and Perspectives in Business and Social Sciences

An economic analysis of anti-profiteering law in Malaysia

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Abstract

In Malaysia, the Price Control and Anti-Profiteering Act 2011 contains both price control and anti-profiteering provisions. A profiteering offence is committed when a seller makes an 'unreasonably high profit' which is further defined as exceeding a mark-up percentage or margin percentage from a baseline profit on the first day of the financial year or calendar year of business. Neoclassical microeconomic theory teaches that regulatory control over prices is inefficient and harms consumers more than does any good. Violations of the anti-profiteering provision are challenging to detect as prices may increase due to increased costs. Contrary to the rationale for anti-gouging laws, allowing businesses to increase prices due to a shortage of supply may save consumers from unnecessary searches for the illusive low-price controlled products and further incentivise sellers to seek alternative sources of supply. In a competitive market, market discipline by consumers is sufficient to deter businesses from raising prices beyond competitive market prices. Competition law and mandatory price marking law should be used to address uncompetitive market conditions. Perhaps, for these reasons, there are no more new reported cases of enforcement of the anti-profiteering law in the news since 2016 despite having a reported appeal decision in 2020.

Keywords:
Anti-profiteering law;
Malaysia;
Price control;
Microeconomics theory.

Received June, 2023
Accepted July, 2023
Published July, 2023

1. Introduction

A competitive market is essential to ensure efficiency in producing and allocating goods. It also ensures broader and better choices of goods and services to consumers and ultimately allows the government to generate tax revenue from the market. An efficient economy produces more commodities with the same or lesser resources. An increase in business productivity brings in higher profit and better investment opportunities; while an increase in productivity among workers translates into higher wages and better working conditions. As for the government, high productivity results in higher tax revenue and, thus, better social welfare support and services.

It must be noted that the capitalist system, coupled with people's profit-maximising nature, may, in theory, lead to market failures in the form of deadweight loss when resource allocation is inefficient as prices increase above marginal cost. The term 'profiteering' is used to connote the sense that the price is excessive and sometimes made in an unethical method. What amounts to profiteering depends on the law of the jurisdiction. However, the essence of 'profiteering' remains that it involves taking in an unreasonably high profit. A person may be accused of profiteering when they raise prices unreasonably and unnecessarily to increase their net profit. Frequent

Issues and Perspectives in Business and Social Sciences (2023) Issue 2:48–59.
doi: https://doi.org/10.33093/ipbss.2023.3.2.3.
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URL: https://journals.mmupress.com/index.php/ipbss

occurrences of profiteering in history happen during times of emergencies, e.g., wars, healthy emergencies, and natural disasters (Suranovic, 2015).

The objective of this article is to perform, using microeconomics theory, an economic analysis of the anti-profiteering law in Malaysia. Therefore, the research methodology is economic analysis of law. Pacces and Visscher (2011) call this approach 'normative law and economics', whereby "law is analysed from an economic perspective … [and] policy recommendations are derived on the basis of economic analysis."

2. Anti-profiteering laws around the world

Throughout history, countries have implemented or attempted to implement price control and anti-profiteering measures. Most of these efforts were short-lived, with some attaining the purpose of the said legislation but mostly failing to do so. The rationale for the legislation varies depending on the circumstances and landscape of the country. Five historical instances of anti-profiteering laws are examined here: Greece (1914–1925), Japan (1938–1939), Iran (1975–1977), Australia (1999–2002) and the United States of America. These are countries which, through our research, have in the past or presently enacted some form of anti-profiteering law.

2.1 Greece (1914–1925)

Between 1912 and 1922, Greece was involved in three wars: the Balkan Wars (1912–1913), World War I (1917–1918), and Greco-Turkish War (1919–1922). The wars led Greece into significant economic turbulence and caused high inflation due to a disruption of international commerce and a shortage of goods. The Greek government also failed to collect new taxes or take out loans to fund the war (Mazower, 1991). Inflation caused the price of goods to skyrocket and real wages to be depressed, reducing the standard of living of the masses (Potamianos, 2015). In response, the Greek government introduced price control ('valorisation') towards essential goods such as bread, meat, fish, and rental.

Legislation against 'shameful profits' too was enacted. It imposed heavy penalties against merchants trading at prices above the fixed price or at prices which 'lead to too much profit'. What amounts to 'shameful profit' was decided by the 'profiteering courts' after examining the market's specific circumstances. The profiteering courts had the jurisdiction to impose high fines, imprisonment of up to five years, shutting down the business and even a six-month exile from the nation. This mobilisation against profiteering remained common in Greece until 1925 (Berger & Przyrembel, 2019).

2.2 Japan (1938–1939)

In 1917, the price of rice in Japan rose to a point where it was higher than the wages earned by ordinary people. This price hike led to hardships and brought about 'rice riots' in the country. To combat this, the Japanese government introduced an Anti-Profiteering Ordinance in September 1917 to prevent the rise in the price of foodstuffs, particularly rice. The initiative was ineffective in preventing rice speculation as the fine for contravention was only 100 yen, although that was a substantial sum in 1917. It was inadequate to prevent rice speculators from following their usual practices (Ladejinsky, 1936).

Later in July 1937, the Marco Polo Bridge incident catapulted Japan into a war with China. With the drop in gold prices during that period, inflation occurred, and the economy of Japan suffered a severe decline (Hara, 2003). Thus, in August 1937, the Anti-Profiteering Ordinance 1917 was

revived to control the rising prices. Ultimately, the government learned that control measures had little noticeable effect on prices (Odell, 1940).

2.3 Iran (1975–1977)

In July 1975, the Iranian government unleashed an aggressive price control campaign alongside its anti-corruption campaign against the bazaar. When bazaar traders were found to have sold goods above the government's recommended price, they were fined, imprisoned, and forced to close shop. This attempt, however, was unsuccessful in stemming inflationary forces significantly (Mazaheri, 2006). Instead, the Shah government's aggressive enforcement antagonised many wealthy and socially powerful groups of businessmen, and the government's inability to properly manage the economic problems sparked an uprising among Iran's bazaar communities which ultimately led to the downfall of the Shah Mohammad Reza Pahlavi regime (Mazaheri, 2006).

2.4 Australia (1999–2002)

The Australian government had a better experience in enforcing an anti-profiteering law. In mid-1999, the government amended the existing Trade Practices Act 1974 to include provisions against price exploitation practices in preparation for introducing goods and services tax (GST) on 1 July 2000 (Sweeney, 2000). The anti-profiteering measures were enforced from July 1999 to June 2002. The statute conferred various enforcement powers to the Australian Competition and Consumer Commission, among which is the responsibility to formulate guidelines on what amounts to price exploitation and to seek penalties before the Federal Court for breach of the price exploitation law. The law allowed the Commission to issue price exploitation notices and penalise companies up to $10 million and individuals up to $500,000 if found to be charging 'unreasonably high prices', as provided in Section 75 of the Act. The Australian authorities executed the provision well and attained its primary goal of protecting consumers against improper price increases incidental to the introduction of GST. As per its sunset clause, the provisions relating to anti-profiteering practices expired in 2002.

2.5 United States of America

Today, most states in the United States of America have some form of anti-price gouging law. These operate during emergencies, such as natural disasters, to prevent retailers from charging excessive prices when demand increases but supply remains limited. Most academic commentators are not in favour anti-price gouging laws as they are said to distort the market and hamper the incentive to rush new supplies to areas of need (Bae, 2009; Beatty et al., 2020; Bourne, 2021; Carden, 2010; Chakraborti & Roberts, 2020, 2021, 2023; Gaziano, 2006; Giberson, 2011; Montgomery et al., 2007; Oladosu, 2022; Rapp, 2006).

3. Anti-profiteering law in Malaysia

Since at least 1946, the British Malayan colonial government implemented and enforced some form of price control on consumer goods in Malaya. In post-World War II Malaya, prices of goods were excessively inflationary due to the post-war reconstruction efforts, which increased demand even when the shortage caused by the war had yet to be alleviated (Drabble, 2000). To stem the tide of inflation, the British administration suppressed workers' wages. Unfortunately, wage suppression, supply shortage, the rising cost of living and political discontent led to social unrest across the nation. Thus, a new approach to control inflation in the form of a Price Control Ordinance of 1946 was introduced. This statute allowed the government to impose a price ceiling on selected goods and services and penalise those who failed to comply with the ordinance. When

Malaya gained independence in 1957, the Price Control Ordinance (later renamed Price Control Act 1946) survived and has been amended numerous times.

In 2010, the Malaysian legislature passed and gazetted the Price Control and Anti-Profiteering Act 2011 to repeal and replace the Price Control Act 1946. This change happened in anticipation of a potential price hike brought about by the introduction of Goods and Services Tax (GST), which was initially scheduled to be implemented in 2011 but was delayed until 2015. The new Malaysian Act is a piece of two-in-one legislation incorporating both price control and anti-profiteering laws. The experiment of implementing GST in Malaysia lived a short life. Due to widespread opposition from the public, GST was reverted to a Sales and Services Tax in 2018.

When the Price Control and Anti-Profiteering Bill was introduced, the then Deputy Minister of Domestic Trade and Consumer Affairs explained the *raison d'être* of the Act. The old Price Control Act was difficult to use as the government had to gazette the prices of each item that was to be regulated. An anti-profiteering provision instead can be used to prohibit unreasonable increases in prices. The Australian Trade Practices Act 1974 inspired the Malaysian anti-profiteering provisions. Like Australian law, a sunset clause for the anti-profiteering provision was initially proposed, but this was extended indefinitely in 2017.

Since 2011, the Price Control and Anti-Profiteering Act has undergone several rounds of amendment. When it was first passed, the Act and its regulations only applied to household goods and necessities. In 2018, its scope was expanded to all goods and services sold and offered for sale in Malaysia.

Under the Act, an offence is committed when a person, "in the course of trade or business, profiteers in selling or offering to sell or supplying or offering to supply any goods or services" (section 14(1)). The term 'profiteer' is defined as 'making a profit unreasonably high' (section 14(2)). The penalty for profiteering is, for a corporation, a fine of not exceeding RM500,000 in the first instance and RM1 million for a subsequence offence; and for an individual, a fine of not exceeding RM100,000 or imprisonment for a term not exceeding three years or to both, and a fine of not exceeding RM250,000 or to imprisonment for a term not exceeding five years or to both for a subsequent offence (section 18).

It must be noted that anti-profiteering laws prohibit making an unreasonably high profit, while price control measures set the maximum price of goods and services. The former is infringed when sellers mark up prices to an amount which, when calculated using the formula prescribed by the Regulations, is deemed unreasonable. On the other hand, the breach of price control laws occurs when sellers sell their goods exceeding the price cap fixed by the authorities.

3.1 Mechanism to Determine Unreasonably High Profit

The anti-profiteering provision of the Price Control and Anti-Profiteering Act 2011 applies to all types of goods and services (section 14(1)). Presently, the Minister of Domestic Trade and Cost of Living is empowered to prescribe a mechanism to determine when profit is unreasonably high by taking into consideration "(a) any tax imposition, (b) the supplier's cost; (c) supply and demand conditions; (d) the conditions and circumstances of geographical or product market; or (e) any other relevant matters in relation to the prices of goods or charges of services" (section 15). This is achieved through the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018.

Under the 2018 Regulations, a profit is deemed unreasonable if either the mark-up percentage (section 3(a)) or the margin percentage (section 3(b)) exceeds that at the beginning of the financial or calendar year, calculated on a formula so provided. To comply with the law, the profit on any subsequent date must not exceed these mark-up and margin percentages.

A mark-up percentage is defined as the ratio of $\frac{Selling\ price-Cost}{Cost}$. On the other hand, a margin percentage is defined as the ratio of $\frac{Selling\ price-Cost}{Selling\ price}$. Detailed definitions for various scenarios of selling prices and costs are given in the Regulations. Since either condition in paragraph (a) or (b) falls foul of the anti-profiteering requirement, sellers must ensure that their mark-up percentage and margin percentage, on any day, do not exceed that at the beginning of their financial or calendar year.

The Regulations provide several situations where the baseline selling price is obtained from days other than the first day of the financial or calendar year. Firstly, when the selling price on the first day is at a cheap sale price, in which case the selling price is the price immediately before the sale or offer. 'Cheap sale price' means the price of goods indicated in any manner to be less than the price at which the goods, or goods of the same description or same class, were previously sold or offered for sale.

Secondly, where there are new goods or services, and the selling price of the goods or service on the first day of the year was an introductory price or charge. In this scenario, the selling price to be taken into calculation will be the selling price immediately after the said introductory price or charge. Thirdly, when the transaction or offer for transaction only occurred for the first time after the first day of the financial year or calendar year. In this circumstance, the selling price is the price of said goods or services on the first day of its business, even when that day is not the first day of the financial or calendar year.

Fourthly, when on any day after the first day of the year, the goods or service was to be priced above the cost for the first time, the selling price is that price. Fifthly, when the first day of business is after the first day of the financial year or calendar year, as there was no business operation on the first day of the year, the selling price is the one on the first day of business.

One exception the Regulations allow is if the excess is not due to an increase in the selling price but the reduction in cost compared to the beginning of the financial or calendar year (regulation 4(6) and regulation 5(6)). This can potentially encourage businesses to operate more efficiently over time toto reduce cost and reap high profits legally.

3.2 Application of anti-profiteering law in Malaysia

Ever since the coming into force of the Price Control and Anti-Profiteering Act 2011 in 2015, a total of six news reports have appeared in the news on the enforcement of the anti-profiteering provision in the lower courts. No case has been brought to the High Court, as the Act provides that the Sessions Court is the competent court to try any offences (section 54), and hence no written judgment has been published relating to the application of the anti-profiteering provision.

As reported, the first criminal prosecution under the Act was on 5 May 2015 against Trendcell Sdn Bhd, owner of Jaya Grocer Supermarket, for a price increment of lady's fingers from RM3.10 per kilogramme on 1 January 2015, to RM9.70 from 3 to 20 January 2015. It was reported that the director of Trrendcell pleaded not guilty, but there was no follow-up news report on the case's outcome (Bernama, 2015a).

In 2016, Trendcell was again charged for increasing its profit margin of Sweet Meadow New Zealand Wild Flower Honey 500g by raising its price from RM28.90 on 6 January 2015 to RM43.99 on 6 May 2015. It was reported that the director representing Trendcell pleaded guilty, and the company paid the fine of RM30,000 (Chan, 2016).

Sengheng Electric (KL) Sdn Bhd was charged with making unreasonably high profit by marking up the price of a Pensonic Mini Bar from RM459 to RM479. The company pleaded guilty to the charge, and the Deputy Public Prosecutor asked the court to impose a deterrent sentence as a

lesson to others. Considering public interests, the Sessions Court judge sentenced Senheng Electric (KL) Sdn Bhd to a fine of RM30,000 (Bernama, 2015c).

From the reported cases, it appears that even a small increment would be penalised. The owner of Restoran Silvas Curry House was charged for increasing the price of a plate of nasi lemak from RM2.50 in January 2015 to RM3.50 in June 2015. He pleaded guilty but the Deputy Public Prosecutor pressed for a deterrent punishment, saying the restaurant had been operating for three years. The judge imposed a fine of RM4,000 (Lai, 2016).

In September 2016, a restaurant chain, Secret Recipe, and its CEO were fined RM45,000 for profiteering. Secret Recipe raised the price of Pepsi drinks at its Subang Parade branch from RM4 to RM5, which translated to an increase of profit margin of 24 sen per unit from previously 77 sen to RM1.01. In addition, they were charged for raising the price of Iced Caffe Latte from RM7.80 to RM9, which yielded an increase profit margin of 13 sen; and raising the price of Lasagna Beef from RM16.50 to RM19, which yielded an increase of profit margin of 28 sen (Bernama, 2016).

One of the largest fines reported occurred in 2015. AEON Co (M) Bhd was charged for increasing the sale price of almond muffin bread, vanilla muffin bread, chocolate chips muffin bread and blueberry muffin bread from RM1.20 to RM1.50 at its La Boheme bakery in Melaka. The Sessions Court imposed a fine of RM110,000 after the company pleaded guilty to four charges. The fines were RM20,000, RM25,000, RM30,000, and RM35,000, respectively (Bernama, 2015b).

A decision applying the anti-profiteering provision was finally being reported in the law reports in 2021. In *Shihan bin Mohd Salim v Public Prosecutor* [2021] 11 MLJ 375, the appellant Shihan appealed against his conviction by a Sessions Court Judge in 2016 for failure to respond to enforcement officers' notices for pricing and costing information, upon report by members of the public for not displaying prices and for charging unreasonable prices for drinks in his *nasi kandar* restaurant. The appellant's main ground of appeal focused on the disputed identity of the appellant as the owner of the restaurant. However, on appeal, the High Court judge pointed out that the relevant section of the Act empowers an enforcement offer to require 'any person' to furnish the required information. Hence, the High Court found that the Sessions Court Judge's decision was sound. It is notable that this decision did not discuss the application of an actual anti-profiteering offence as the appellant was not charged as such.

After a few sting operations in 2015 and 2016, no new report of a profiteering offence has appeared in the media. Also, no report has been made on using the Act against service providers. The few reported cases in the media suggest that the accused parties tend to plead guilty when charged instead of claiming trial. Although it is not clear whether the Act is still being actively enforced, the Malaysian government, via the Ministry of Domestic Trade and Cost of Living, periodically issues threats of prosecution under the Price Control and Anti-Profiteering Act 2011 as a means to dissuade businesses from raising prices (Bernama, 2023; Nizam, 2023).

4. Price theory and economic analysis of price control

Neoclassical microeconomics theory postulates that an equilibrium price for a particular good will be obtained when sellers in a competitive market do not observe excess demand and excess supply. In such a situation, the equilibrium price is the market-clearing price. In theory, this equilibrium price is also the marginal cost of the last unit of good at a market-clearing price. The idea of marginal cost, first introduced by Alfred Marshall (1890), is the analytical device used in microeconomics to explain how competitive sellers achieve their profit-maximising objective.

On the other hand, if the market is not competitive, such as one characterised by a monopoly seller, the profit-maximising seller will no longer sell at the marginal cost, for he can do better by selling at a quantity where the marginal cost equals to marginal revenue, whereby the marginal

revenue curve is solely determined by the market demand curve. At this profit-maximising quantity, the monopoly seller will sell at the price on the demand curve, for the monopoly seller is a price-setter and faces no competitor which can undercut his business. Naturally, this monopoly price will be higher than the competitive market price. This simple analysis of microeconomic theory tells us that a product's selling price is primarily determined by cost structure and the market's competitiveness. Seen in this way, a policy to lower selling prices should therefore focus on ensuring a competitive market structure (Scherer, 1987).

According to microeconomics theory, forcing sellers to sell at a selling price below the equilibrium price will lead to the problem of excess demand, which usually translates into potential buyers waiting in queues in the form of a 'shadow price' (Barzel, 1997, p. 16). This excess demand indicates that such a market is not operating efficiently. Neoclassical microeconomic theory does not favour government intervention in pricing goods and services.

Even when demand suddenly surges, such as at the beginning of the COVID-19 pandemic when everyone was looking for surgical masks as a form of protection against the COVID-19 virus, and additional supply was not forthcoming due to interruption in the supply chain of raw materials and import from overseas manufacturers being disrupted due to restriction of movements (Shaharuddin et al., 2021), neoclassical microeconomics theory would recommend to let the market achieve an equilibrium price on its own without government's intervention.

One way of thinking about the conundrum of price control is this: if quantity is truncated due to limited supply, sellers will be incentivised to sell at the corresponding marginal willingness-to-pay on the demand curve because that is the market clearing price with that limited supply. From a consumer's point of view, many will be disappointed because consumers can observe that the price has increased compared to the pre-pandemic level. This can be explained as the deadweight losses in price theory.

If, on the other hand, the government imposes price control, there will be excess demand, as the limited supply will be taken up swiftly by some consumers leaving many others not being able to find any supply even though a controlled price is imposed by the government, which in turn still leads to disappointment. This consumer disappointed is further exacerbated as consumers excessively search for goods selling at the controlled price (Chakraborti & Roberts, 2023).

Hence, in such a situation, price control only shifts surplus from increased pricing from sellers to consumers, but those consumers who didn't get any goods are none the wiser. More crucially, price control results in inefficiency from a dynamic point of view: sellers may horde their stock hoping to sell at a higher price in the black market, and price control also disincentivises sellers from working harder to source new raw materials and seek new sources of supply with a view for higher profit. In conclusion, price control translates to a disincentive to supply in times of emergency (Gwartney et al., 2015). This same conclusion was highlighted by Lott and Jones (2005) when they wrote an editorial criticising the government's plan to punish price-gouging following the Hurricane Katrina disaster in the United States.

Apart from limited supply, other circumstances for higher than marginal cost pricing can be attributed to some level of market power by the sellers. For example, monopolies price their goods and services at their profit-maximising price, which is higher than a competitive price. The same applies when the market is oligopolistic, i.e., with a small number of sellers, where each may have some influence over the market price above marginal cost. Another situation where price may be above marginal cost is when sellers have some market power resulting from product differentiation, such as those protected by intellectual property rights like copyright, patent, or trademark.

Finally, another circumstance where higher than marginal cost pricing may appear is when consumers cannot observe the product or service prices easily, making price comparison difficult, if not impossible. This situation may occur when a consumer is informed of the price after a

product has been consumed or a service rendered. Price marking law may overcome this deficiency to some extent but not always. In many situations, sellers or service providers would not be able to predetermine the price payable until after consumers have made the choices or received the service rendered, an example of which is food items pricing for self-service mixed rice (Lim, 2018). This scenario may be considered a form of information asymmetry between consumers and sellers.

5. Economic analysis of anti-profiteering law

One question we seek to answer is that if price control and anti-profiteering law are as inefficient as they appear to be, why does it remain enthralling to lawmakers? One answer from the Malaysian experience is that it is less about effective law enforcement but the potential threat of prosecution as a deterrent to sellers for increasing prices.

In a competitive market, prices increase due to one of two reasons: limited supply and an increase in cost. The first scenario has been discussed above, and legal literature considers it a form of price gouging. The price hike of face masks at the beginning of the COVID-19 pandemic can be explained by the sudden increase in demand and limited supply. Price hikes due to limited supply are best illustrated with the example of unique antique pieces. In such a situation, particularly if antiques are sold in auctions, the price is the highest bidding price, and microeconomic theory considers that as an optimal use of property rights (Coase, 1959). On the other hand, much has been written on the effects of price gouging laws in the United States. The general consensus of academics is that complaints of price gouging are a form of emotional response which do not accord with economic realities (Brewer, 2007; Giberson, 2011; Lee, 2015; Rapp, 2006; Zwolinski, 2008).

A demand-supply analysis will demonstrate that an increase in per unit cost of a good or provision of service will shift the supply curve upwards, leading to a new equilibrium price which is higher than previously and with a corresponding lower equilibrium quantity. Therefore, it is unsurprising that when the cost of goods or services increases, the price will also increase. This scenario assumes that the market is competitive, i.e., there are many suppliers of the same goods and services, consumers can make price comparisons, and there is no barrier to prevent consumers from going from one seller to another cheaper seller. In such a competitive market, a seller who unilaterally raises his price above the competitive market price will be disciplined by the market when consumers avoid him. Conversely, when one or more conditions for a competitive market are not present, sellers can raise prices without significantly losing customers.

If the market failure is due to non-disclosure of prices by sellers, such as one to deter price comparisons, a law can be enacted to make it mandatory for sellers to disclose prices. An example of such in Malaysia is the Price Control and Anti-Profiteering (Price Marking for Goods and Charges for Services) Order 2020 (PU(A) 314/2020), which makes it mandatory to mark prices on products or near products and services, failure of which is punishable as a criminal offence. On the other hand, voting by foot may be difficult if there are no other suppliers in the vicinity or relevant market. This situation may happen when the business is in some form a monopoly or when the product is differentiated (Lancaster, 1987).

Perhaps, the anti-profiteering provision may be best explained as an interventionist mechanism to correct deviations from a competitive market. From a more conservative perspective, it is desirable for consumers to voluntarily choose sellers selling at a low price and reject sellers selling at a high price. If market imperfections allow sellers to raise prices above a competitive market price, the ideal solution is to correct those imperfections rather than prevent price competition.

Despite its potential noble intention, the anti-profiteering provision of the Price Control and Anti-Profiteering Act 2011 is challenging to enforce. The Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018 uses a baseline date of the preceding first of the financial year or calendar year to determine whether the profit of goods or services on a particular day is unreasonably high. Hence, the only justifiable reason for a price increase is when the cost has increased. Indeed, we can observe sellers increasing the price of their products in recent years as a response to inflationary pressure.

From an enforcement point of view, there is severe information asymmetry between the enforcer and the enforced. It is impossible for the enforcing agency to monitor by themselves the profit margin of each product on the first day of the financial year or calendar year and to determine whether the profit margin at any particular moment is higher than that on the baseline date. Apart from the sheer amount of data that is impossible to collect, determining the cost of a particular product is problematic because it includes not only the possibly fluctuating material costs but also fixed costs, such as the cost of fixed asset financing and shared costs among different product lines, such as workers' wages. Indeed, traders can justify the increase in their costs by raising wages.

For this reason, the Act requires "any person who supplies or offers to supply any goods or services" to keep all business records for seven years, failure of which amounts to an offence under the Act (section 53A). A person is required by law to furnish any record when required by the authority (section 23), and the destruction, concealment, mutilation, and alteration of records is an offence (section 27).

Even with the above record-keeping provision, it is challenging for enforcers or members of the public to detect violations. For example, an increase in a price higher than a corresponding increase in cost would be a violation, even if it were done for rounding-up purposes. Naturally, an increase in price without a corresponding increase in cost would also be a violation. Also, the Act is silent on how to deal with the problem of fluctuations in cost. It is also for this reason that the enforcement of the anti-profiteering provision has been sparse after the initial fervour, and investigation is only being carried out after complaints by the public, usually for unexpected high prices for food consumed in restaurants.

In microeconomics theory, the competitive market price is determined not by the average cost of sellers but by the marginal cost of the product in the market and the marginal willingness-to-pay of consumers as represented by the demand curve. No doubt, determining the marginal cost, in reality, is more theoretical than practical. The inconsistency between microeconomic theory's marginalism and business practices of full-cost pricing was a debate among economists in the middle of the twentieth century called 'the Marginalist Controversy' (Lee, 1984). This controversy started with Hall and Hitch's (1939) observation that businesses do not make pricing decisions based on economists' conception of marginal cost and marginal revenue but instead on a mark-up on the 'full cost', also known as 'cost-plus' pricing. Eventually, this controversy died off after Heflebower (1955) suggested that variation in profit margin by businesses in response to changes in consumer demand is a profit-maximising strategy consistent with neoclassical microeconomics' idea of marginalism.

It must be noted that neoclassical microeconomics theory of pricing at marginal cost is not the marginal cost of every producer, but just the marginal cost of that 'last' producer where market clearing quantity is achieved. In other words, other producers and sellers may be selling at a price which earns them a handsome profit. Businesses' adjustments of the profit margin, by a slight increment to overcome excess demand or a slight reduction to clear stock because of excess supply, can be explained as a profit-maximising strategy. The problem thus arises with the Price Control and Anti-Profiteering Act 2011 when the definition of unreasonably high profit prevents sellers from adjusting prices upwards to clear excess demand; this means that the anti-profiteering provision of the Price Control and Anti-Profiteering Act 2011 is inefficient.

In an ideal world, the law should only be enforced against sellers who hide price information or determine the price after a contract has been formed, such as after consumers have consumed the product. Perhaps, enforcers at the Ministry of Domestic Trade and Cost of Living have come to realise the fallibility of the Act and hence, slowed the enforcement of the anti-profiteering provision since 2016 to the extent that there has been no new news report on such enforcement in recent years.

6. Conclusion

This article examined the anti-profiteering provision of the Malaysian Price Control and Anti-Profiteering Act 2011. We show that the original intention of the anti-profiteering provision was to prevent traders from using the introduction of the Goods and Sales Tax (GST) as a pretax to raise prices. Still, even after GST has been withdrawn, the anti-profiteering law remains on the books. In essence, the anti-profiteering law is meant to prevent sellers from raising prices beyond a fixed profit margin established on the first day of the financial year or calendar year. Enforcement of the anti-profiteering provision is difficult because of the severe information asymmetry between the authorities and the sellers.

The economic literature in the middle of the twentieth century debated the efficiency of cost-plus pricing after raising concerns that business practices need to accord with economic theory on marginalism. The discussion eventually died out when it was pointed out that businesses do adjust their profit margins to cater to the increase or decrease in the demand for goods.

In an ideal world, prices should be determined by the free market. Sellers who charge too high will be disciplined by consumers when they are shunt by customers. Hence, the only necessary laws are competition law to prevent collusive behaviours and price marking law so consumers can make an informed and rational choice before purchasing. Unfortunately, we do not live in an ideal world, so interventionist laws such as the Price Control and Anti-Profiteering Act may occasionally be needed to scare sellers into not taking advantage of consumers when there is information asymmetry as to the price or when the market is less than competitive.

Acknowledgement

An early incomplete version of this article was presented at the 16th Annual Conference of the Asian Law and Economics Association, organised by the Multimedia University in 2020. Kind comments of the participants are acknowledged.

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