



Malaysia Competition Commission

Case No. 700–1/2(2)2024

Competition Act 2010 [Act 712] (“the Act”)

Decision of the Competition Commission

Infringement of section 4(1) read with sections 4(2)(d) and 4(3) of the Act

Competition Commission

v.

1. Bawah Bayu Trading PLT
2. Borneo Kreatif Enterprise PLT
3. Fatijaya Corporation
4. Man Prospek Niaga
5. Mediha Trading
6. Teras Maju Enterprise

DATED: 21 SEPTEMBER 2026

This Decision was deliberated and unanimously decided by the following Members of the Commission:

1. Tan Sri Dato' Sri Idrus bin Harun;
2. Datuk Mairin bin Idang @ Martin;
3. Datuk Surrendren Sathasivam;
4. Datuk Thiyagu Ganesan;
5. Tuan Ahmad Fauzi bin Sungip;
6. Tuan Surya Putra bin Dato' Mohamed Taulan; and
7. Prof. Madya Dr. Mohamed Eskandar Shah Mohd Rasid.

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A. INTRODUCTION

1. This Decision (“the Decision”) concludes that the enterprises named in paragraph 2 herein have infringed the prohibition imposed under section 4(1) read with section 4(2)(d) and section 4(3) (“section 4 prohibition”) of the Competition Act 2010 [Act 712] (“the Act”). In this Decision, the named enterprises shall be individually referred to herein as “Party” and collectively referred to as “Parties”. The Parties have infringed the section 4 prohibition by participating in anti-competitive agreements to engage in bid rigging for the tender of Pembekalan Makanan Mentah, Basah and Kering kepada Pusat Pemulihan Penagihan Narkotik Papar, Agensi Antidadah Kebangsaan Malaysia, Negeri Sabah bagi tempoh 3 Tahun (“AADK Tender”).
2. This Decision is addressed to the following Parties:
 - (i) Bawah Bayu Trading PLT (LLP0010659-LGN), acting through its partners, Awang Haji Bin Sapar @ Sani Ag. Haji and Mohammad Alif Syafiq Bin Awang Haji;
 - (ii) Borneo Kreatif Enterprise PLT (LLP0010657-LGN), acting through its partners, Cathy Ten Yee Ling and Mohammad Nazreen Bin Awang Haji;
 - (iii) Fatijaya Corporation (696618), acting through its proprietor, Fadhullah Faritz Bin Joldah Badar;

- (iv) Man Prospek Niaga (PTT/2016/2422), acting through its proprietor, Ali Azman Bin Irshad;
 - (v) Mediha Trading (PTT/2019/6850), acting through its proprietor, Kasmah Binti Ag Ahmad; and
 - (vi) Teras Maju Enterprise (PTT/2018/5018), acting through its proprietor, Ismail Bin Othman.
3. By this Decision, the Commission hereby, pursuant to section 40 of the Act, imposes a financial penalty and issues direction on each of the Parties for their respective infringement, as elaborated in **PART 3** of this Decision.

PART 1: THE FACTS

A. THE PARTIES

4. Based on the evidence gathered, the Commission finds that the enterprises described in **paragraphs 5 to 23** below had entered into agreements that infringed the section 4 prohibition of the Act to perform acts of bid rigging.

A.1 BAWAH BAYU TRADING PLT

5. Bawah Bayu Trading PLT (LLP0010659-LGN) (hereinafter referred to as “Bawah Bayu”) is a partnership business established on 22.02.2017. Its principal business address is at Lot No.2-B23, Central Shopping Plaza, 88200, Kota Kinabalu, Sabah.¹
6. Bawah Bayu supplies raw, fresh and dry food.²
7. The partners of Bawah Bayu are Awang Haji Bin Sapar @ Sani Ag. Haji (“Awang”) and Mohammad Alif Syafiq Bin Awang Haji (“Syafiq”).

A.2 BORNEO KREATIF ENTERPRISE PLT

8. Borneo Kreatif Enterprise PLT (LLP0010657-LGN) (hereinafter referred to as “Borneo Kreatif”) is a partnership business established on 22.02.2017. Its principal business address is H-08-06, Level 8, Aeropod Commercial Square, Jalan Aeropod Off Jalan Kepayan, 88200, Kota Kinabalu, Sabah.³
9. Borneo Kreatif supplies raw, fresh and dry food.⁴

¹ Companies Commission of Malaysia search on Bawah Bayu dated 19.05.2026.

² Companies Commission of Malaysia search on Bawah Bayu dated 19.05.2026.

³ Companies Commission of Malaysia search on Borneo Kreatif dated 19.05.2026.

⁴ Companies Commission of Malaysia search on Borneo Kreatif dated 19.05.2026.

10. The partners of Borneo Kreatif are Cathy Ten Yee Ling (“Cathy”) and Mohammad Nazreen Bin Awang Haji (“Nazreen”).

A.3 FATIJAYA CORPORATION

11. Fatijaya Corporation (696618) (hereinafter referred to as “Fatijaya”) is a sole proprietorship business. Its principal business address is Unit No. H-06-10, Level 06, Building H, Aeropod Phase 2A, Retail Office, Mile 3.5, Jalan Kepayan, 88300, Kota Kinabalu, Sabah.⁵
12. Fatijaya supplies raw, fresh and dry food.⁶
13. The proprietor of Fatijaya is Fadhullah Faritz Bin Joldah Badar (“Fadhullah”).

A.4 MAN PROSPEK NIAGA

14. Man Prospek Niaga (PTT/2016/2422) (hereinafter referred to as “Man Prospek”) is a sole proprietorship business. Its principal business address is Lot 299, Ground Floor, Jalan Pasir Putih, Taman Pasir Putih, Phase 4, 88200, Putatan, Kota Kinabalu, Sabah.⁷

⁵ Lesen Berniaga (Trading Licence) of Fatijaya Corporation issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by the Mayor Bandaraya Kota Kinabalu (Pihak Berkuasa Pelesenan), Licence No. 696618.

⁶ Lesen Berniaga (Trading Licence) of Fatijaya Corporation issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by the Mayor Bandaraya Kota Kinabalu (Pihak Berkuasa Pelesenan), Licence No. 696618.

⁷ Lesen Berniaga (Trading Licence) of Man Prospek Niaga, (ID Lesen: PTT/2016/2422), issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by Masawi Bin Haji Salleh, Pegawai Daerah, Pejabat Daerah Putatan (Pihak Berkuasa Perlesenan), dated 17 February 2022,

15. Man Prospek supplies raw, fresh and dry food.⁸
16. Man Prospek has a wholesale rice license for ration supplies but does not sell in the open market and focuses solely on supplying to the government.⁹
17. The proprietor of Man Prospek is Ali Azman Bin Irshad (“Ali Azman”).

A.5 MEDIHA TRADING

18. Mediha Trading (PTT/2019/6850) (hereinafter referred to as “Mediha”) is a sole proprietorship business. Its principal business address is Kg Ulu Putatan, 88200, Kota Kinabalu, Sabah.¹⁰
19. Mediha supplies raw, fresh and dry food.¹¹

expiring 31 December 2022, covering the supply of raw fresh food (Makanan Mentah Basah), raw dry food (Makanan Mentah Kering), Muslim cooked food (Makanan Bermasak Islam) and canned/bottled/package food (Makanan Dalam Tin/Botol/Bungkus).

⁸ Lesen Berniaga (Trading Licence) of Man Prospek Niaga, (ID Lesen: PTT/2016/2422), issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by Masawi Bin Haji Salleh, Pegawai Daerah, Pejabat Daerah Putatan (Pihak Berkuasa Perlesenan), dated 17 February 2022, expiring 31 December 2022, covering the supply of raw fresh food (Makanan Mentah Basah), raw dry food (Makanan Mentah Kering), Muslim cooked food (Makanan Bermasak Islam) and canned/bottled/package food (Makanan Dalam Tin/Botol/Bungkus).

⁹ Paragraph 10 of the statement of Ali Azman of Man Prospek dated 20.08.2024.

¹⁰ Lesen Berniaga (Trading Licence) of Mediha Trading, (ID Lesen: PTT/2019/6850), issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by Masawi Bin Haji Salleh, Pegawai Daerah, Pejabat Daerah Putatan (Pihak Berkuasa Perlesenan), dated 11 January 2022, expiring 31 December 2022.

¹¹ Lesen Berniaga (Trading Licence) of Mediha Trading, (ID Lesen: PTT/2019/6850), issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by Masawi Bin Haji Salleh, Pegawai Daerah, Pejabat Daerah Putatan (Pihak Berkuasa Perlesenan), dated 11 January 2022, expiring 31 December 2022.

20. The proprietor of Mediha is Kasmah Binti Ag Ahmad (“Kasmah”).

A.6 TERAS MAJU ENTERPRISE

21. Teras Maju Enterprise (PTT/2018/5018) (hereinafter referred to as “Teras Maju”) is a sole proprietorship business. Its principal business address is at Lot 287, Phase 4, Taman Pasir Putih, 88200, Putatan, Sabah.¹²
22. Teras Maju provides transportation services and supplies raw, fresh and dry food.¹³
23. The proprietor of Teras Maju is Ismail Bin Othman (“Ismail”).

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¹² Lesen Berniaga (Trading Licence) of Teras Maju Enterprise, (ID Lesen: PTT/2018/5018), issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by Masawi Bin Haji Salleh, Pegawai Daerah, Pejabat Daerah Putatan (Pihak Berkuasa Perlesenan), dated 11 October 2022, expiring 31 December 2022.

¹³ Lesen Berniaga (Trading Licence) of Teras Maju Enterprise, (ID Lesen: PTT/2018/5018), issued under the Ordinan Pelesenan Perdagangan, 1948 (Ordinan No. 16 Tahun 1948) by Masawi Bin Haji Salleh, Pegawai Daerah, Pejabat Daerah Putatan (Pihak Berkuasa Perlesenan), dated 11 October 2022, expiring 31 December 2022.

B. BACKGROUND OF PERBENDAHARAAN MALAYSIA SABAH AND THE INDUSTRY

24. Perbendaharaan Malaysia Sabah (“PMS”) derives its administrative authority from the Financial Procedure Act 1957. Section 4 of the Financial Procedure Act 1957 [Act 61]¹⁴ confers upon the Minister of Finance the power to issue Treasury Instructions (*Arahan Perbendaharaan*) governing the management of public funds, including the procedures applicable to government procurement.
25. Paragraph 178A of *Arahan Perbendaharaan*¹⁵ stipulates that any individual, company or firm seeking to supply goods or services to the Federal Government be registered with the Ministry of Finance. In Sabah, PMS discharges the functions of the State Treasury, which include facilitating and overseeing the registration of suppliers and monitoring compliance with the applicable procurement requirements.
26. At the material time, each of the Parties were registered suppliers with the Ministry of Finance and held the relevant field codes required to participate in the AADK Tender. Accordingly, each of the Parties was eligible to participate in and independently competed for the AADK Tender.

¹⁴ Financial Procedure Act 1957 (Revised 1972) [Act 61].

¹⁵ Ministry of Finance Malaysia, *Arahan Perbendaharaan* (Pindaan 2023), (Kuala Lumpur: Ministry of Finance, 2023), AP 178A. AP 184 has been repealed and now it is replaced by 178A.

27. Businesses in Malaysia may be registered or incorporated under various legislation, including the Companies Act 2016¹⁶ and regulated by the Companies Commission of Malaysia (“SSM”). However, certain business entities in Sabah, particularly sole proprietorships, may be lawfully registered and licensed under the Trades Licensing Ordinance 1948.¹⁷ Those businesses that are licensed under the Trades Licensing Ordinance 1948 are permitted to operate within the state of Sabah.
28. Accordingly, the non-registration with SSM does not invalidate the legal existence of a business in Sabah, provided those businesses have a valid license under the Trades Licensing Ordinance 1948 and are properly registered with PMS to become an authorised Federal Government supplier.
29. In the present case, all six Parties participated in the AADK Tender. AADK operates under the Ministry of Home Affairs (*Kementerian Dalam Negeri*) as Malaysia’s principal agency in addressing drug and substance abuse. AADK’s efforts include preventive drug education, enforcement and security programmes, treatment, medical and rehabilitation programmes.¹⁸

¹⁶ Companies Act 2016 (Act 777).

¹⁷ Trades Licensing Ordinance 1948.

¹⁸Official Portal Agensi Antidadah Kebangsaan dated 21.01.2025 (About AADK) <https://www.aadk.gov.my/en/corporate-info/about-nada/>

The details of the AADK Tender are set out in **Table 1** below:

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Table 1: Details of the AADK Tender, the subject matter of this Decision

Tender Name	Advertisement Date	Closing Date	Required Field Code	Parties Participated as Bidder	Winner	Bid Amount (RM)
AADK Tender [REDACTED]	16.06.2022	07.07.2022	040101; 040102	1. Bawah Bayu 2. Borneo Kreatif 3. Fatijaya 4. Man Prospek 5. Mediha 6. Teras Maju	Borneo Kreatif	5,714,520.00

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30. Tender advertisement has specified designated field codes which all prospective bidders may use to assess their eligibility for participation. **Table 2** below describes the required field codes applicable to the procurement in AADK Tender¹⁹, as follows:

Table 2: Field Codes

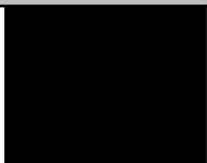
FIELD CODE	SPECIFICATION
040101	<i>Makanan, Minuman dan Bahan Mentah Kering/Basah</i>
040102	<i>Makanan dan Minuman (Tin, Botol dan Bungkus)</i>

C. INVESTIGATION PROCEDURES AND PROCESSES

31. The Commission received information from PMS concerning the conduct of certain enterprises in connection with the AADK Tender. On 12 June 2024, upon considering the information provided, the Commission commenced an investigation into the Parties pursuant to section 14(1) of the Act.
32. In the course of the investigation, the Commission obtained a search warrant pursuant to section 25 of the Act and on 26 June 2024, conducted a search and seizure operation with warrant at one (1) premise as set out in **Table 3** below:

¹⁹ Tender Notice from E-Procurement, Ministry of Finance; <https://www.eperolehan.gov.my/en/home>

Table 3: Summary of the Search and Seizure Exercise Executed

NO.	ADDRESS OF PREMISE	DATE	WARRANT NO. (COURT)
1.	Zirbad Resources Sdn Bhd H-08-06, Level 8, Aeropod Commercial Square, Jalan Aeropod Off Jalan Kepayan, 88200 Kota Kinabalu, Sabah	26.06.2024	

33. During the investigation, the Commission issued a total of 9 notices pursuant to sections 18(1)(a) and (b) of the Act. These notices were issued to request the provision of information and/or documents, to record statements of individuals based on the provided information and documents, or in response to inquiries made by the Commission's officers.
34. The Commission recorded statements from the following individuals in the course of the investigation, as set out in **Table 4** below:

Table 4: Interviews Conducted by the Commission

NO.	NAME	ENTERPRISE	DATE
1.	Adham Bin Abdul Hamid ("Adham")	Zirbad Resources Sdn Bhd	28.06.2024
2.	Nazreen	Borneo Kreatif	19.08.2024
3.	Syafiq	Bawah Bayu	19.08.2024
4.	Ali Azman	Man Prospek	20.08.2024
5.	Fadhullah	Fatijaya	22.08.2024
6.	Mohd Zazlie Bin Rajudin ("Zazlie")	Progresif Puncak Sdn Bhd	14.10.2024
7.	Ismail	Teras Maju	15.10.2024
8.	Cathy	Borneo Kreatif	30.01.2026
9.	Kasmah	Mediha	26.02.2026

35. On 16 June 2026, the Commission served the Proposed Decision on each of the Parties pursuant to section 36(1) of the Act. The Parties were afforded the opportunity to access to the record of the investigation, to submit written and/or oral representation in accordance with sections 36 and 37 of the Act.
36. Nonetheless, none of the Parties exercised its right to access the investigation records or to make oral representations before the Commission. The Parties submitted written representations only, confined to matters relating to the proposed financial penalty, including a letter received from each Party on 8 September 2026 admitting liability for the infringement, agreeing to the penalty amount without seeking any reduction and requesting to settle the penalty by way of instalment payments over a period of either 12 or 15 months. These matters are addressed in **Part 3** of this Decision, including the Parties' request for instalment payments, which is further considered in paragraph 138 below.

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PART 2: LEGAL AND ECONOMIC ASSESSMENT

37. This Part sets out the legal and economic framework that forms the basis for the Commission’s evaluation of the evidence obtained in this case. It also presents the evidence of the horizontal agreements, the object of bid rigging, the analysis of evidence, the inferences drawn and the Commission’s findings and conclusion.

A. THE SECTION 4 PROHIBITION

38. The Commission finds that the conduct of the Parties falls within the scope of sections 4(1) read with 4(2)(d) and 4(3) of the Act. Their coordination in relation to the AADK Tender constitutes a horizontal agreement to rig bid, which is deemed to have the object of significantly preventing, restricting or distorting competition. In accordance with the principles governing ‘object’ infringements, where such a bid rigging arrangement is established, the Commission is not required to demonstrate actual or potential anti-competitive effects in the relevant market.

B. THE DEFINITION OF ENTERPRISE

39. Section 2 of the Act defines “enterprise” to mean “...*any entity carrying on commercial activities relating to goods or services...*”. This definition is broad and is not limited to incorporated companies.²⁰

²⁰ Section 2 of the Competition Act 2010 [Act 712].

40. On the facts set out above, the Commission finds that each of the Parties constitutes an “enterprise” within the meaning of section 2 of the Act. Each Party carries on commercial activities in connection with the supply of raw, fresh and dry food in Papar, Sabah, Malaysia. These activities amount to commercial activities for the purpose of the Act, regardless of whether the Parties are partnerships or sole proprietorships.

C. THE DEFINITION OF AGREEMENT

41. In section 2 of the Act, “agreement” is comprehensively defined and the definition is as follows:

“...any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices;”²¹

42. In the present case, the Commission finds that the existence of an agreement between the Parties need not be established by proof of a formal or legally enforceable contract. It may be inferred from the Parties’ conduct, including their coordination in the submission of bids for the AADK Tender and the exchange of commercially sensitive information, such as bid prices. This conduct, viewed as a whole, evidences a common understanding between the Parties to coordinate their behaviour in relation to the tender. Accordingly, the

²¹ Section 2 of the Competition Act 2010 [Act 712].

Commission finds that the Parties entered into a horizontal bid-rigging agreement prohibited under section 4(1), read with sections 4(2)(d) and 4(3) of the Act.

D. SECTION 4(2)(d) OF THE ACT - HORIZONTAL AGREEMENT WITH THE OBJECT TO PERFORM AN ACT OF BID RIGGING

43. Section 4(2)(d) of the Act prohibits any horizontal agreement whose object is to engage in bid rigging. Bid rigging occurs when bidders coordinate in a manner that undermines competition in a tender process.²²
44. In the case of *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission* [2023] MLJU 2631,²³ the Competition Appeal Tribunal (“CAT”) of Malaysia described the key features of bid rigging as follows:

“(1) there must be two or more enterprises involved in any tender process or price fixing, (2) there must be some form of agreement, regardless whether it is enforceable or not, between the parties with the objective to significantly distort the normal conditions of competition, (3) that the parties to the agreement have agreed amongst themselves who should win the tender, (4) there must be collaboration and collusion between the parties to the agreement with clear intention to distort the normal

²² MyCC Handbook, Help Us Detect Bid Rigging, at page 2.

²³ *Caliber Interconnects Sdn Bhd & Ors. v Competition Commission* [2023] MLJU 2631.

*conditions of competition, and (5) all of the above must done in a concerted effort amongst the parties to the agreement. **But it is not necessary all the five elements to be present in a bid rigging attempt.**" [emphasis added]*

45. The CAT's formulation in *Caliber Interconnects* is significant in two respects. First, it confirms that not all five elements need to be established, the presence of some is sufficient. Second, it confirms that the agreement need not be legally enforceable for bid rigging to be found.
46. Applying the features identified in *Caliber Interconnects* to the present case, the Commission finds: first, six enterprises, being the Parties, were involved in the AADK Tender; second, there was an agreement between the Parties, notwithstanding the absence of a formal or enforceable contract, as evidenced by the centralised preparation of their bids and the exchange of pricing information described below; third, the Parties collaborated in coordinating their bid prices through a centralised pricing document maintained with the assistance of Adham; and fourth, this collaboration was undertaken with the object of distorting the normal conditions of competition in the AADK Tender. Accordingly, the Commission finds that the Parties' conduct, viewed as a whole, amounts to an act of bid rigging.

Information Sharing

47. The disclosure and/or exchange of sensitive commercial information, such as pricing intentions, is a hallmark of collusion and is strong evidence of collusion. Even a single meeting or an isolated exchange of such information may be sufficient to establish an agreement, as it provides the basis for competitors to align their future market conduct.²⁴
48. Agreements involving the sharing of pricing or other commercially significant information among competitors have been recognised as anti-competitive “by object”.²⁵ Any information exchange that removes or significantly reduces strategic uncertainty regarding the timing, extent and details of a competitor’s conduct is deemed to pursue an anti-competitive objective, regardless of its actual effects,²⁶ as such conduct enables competitors to align their actions rather than compete independently. Tenders submitted as a result of such collusion between bidders are, by their very nature, restrictive of competition.²⁷

²⁴ Case C-8/08 *T-Mobile Netherlands BV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, at paragraphs 59, 60, 61 and 63; and CA98/02/2009 *Bid rigging in the Construction Industry*, OFT Decision of 21.9.2009, at pages 350 until 353.

²⁵ Case 50481 *Design, Construction, and Fit-out Services*.

²⁶ Case C-286/13 *P Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; and C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41.

²⁷ *Apex Asphalts and Paving Co Limited v Office of Fair Trading* [2005] CAT 4.

49. In the present case, as set out in paragraphs 81 to 89 below, the Parties' bid prices for the AADK Tender were compiled and recorded in a single centralised pricing document, the *Senarai Harga Tender AADK Papar 2022*, with the facilitation of Adham, rather than each Party maintaining its pricing separately and confidentially. This document recorded the bid prices attributed to multiple Parties in one place, and the prices ultimately submitted by the Parties in their respective bids corresponded with the prices recorded in it.
50. This corresponding pattern indicates that the Parties had access to, or otherwise obtained, information relating to their competitors' pricing, rather than each Party arriving at its bid price through its own independent assessment of the market. This sharing of pricing information amongst the Parties, facilitated through a common document, removed the competitive uncertainty that each Party ought to have faced in preparing its bid independently, since no Party could have been genuinely uncertain of its competitors' pricing intentions once that pricing was recorded in, and accessible from, a single shared document. The submission of bids derived from this centralised pricing structure, rather than from each Party's own independent assessment of the market, constitutes bid rigging.

E. THE DEEMING PROVISION UNDER SECTION 4(2) OF THE ACT

51. Section 4(2) of the Act sets out that any horizontal agreement pertaining to sections 4(2)(a) to (d) is deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services. In this regard, this is considered a deeming provision whereby the Commission only needs to prove the existence of a horizontal agreement between enterprises.
52. In light of the foregoing principle, once an anti-competitive object is established, it is unnecessary to prove any actual or potential anti-competitive effects in the market. This approach reflects the broader legal principle on the operation of deeming provisions, as articulated in *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89²⁸ where the Privy Council held:

“Where an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist “unless the contrary is proved”, the test is the same as that applied in civil proceedings: the balance of probabilities.”

²⁸ *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89.

53. In *Triple Zest Trading & Suppliers v. Applied Business Technologies* [2023] 6 MLJ 818²⁹, the Federal Court ruled that:

“[56] To successfully rebut the presumption under s 10OA of the MA51, the respondent must prove on the balance of probabilities that by entering into the loan agreement with the appellants, it was not engaging in an act of ‘lending of money at interest, with or without security, by a moneylender to a borrower’, which is the meaning ascribed to the word ‘moneylending’ by s 2 of the MA51.”

54. Based on the case laws cited above, the Commission is required to satisfy the civil standard of proof, namely on the balance of probabilities, when determining whether an infringement under section 4 of the Act has occurred.
55. In the present case, the conduct in question is the Parties’ coordination of their bids for the AADK Tender in the supply of raw, fresh and dry food in Papar, Sabah, Malaysia. This conduct falls within the category of horizontal agreements described in section 4(2)(d) of the Act, namely an agreement between enterprises in a horizontal relationship which has the object of bid rigging. Accordingly, by operation of the deeming provision under section 4(2) of the Act, this conduct is deemed to have the object of significantly preventing, restricting or distorting competition.

²⁹ *Triple Zest Trading & Suppliers & Ors. v Applied Business Technologies Sdn. Bhd.* [2023] 6 MLJ 818, at paragraph 56.

56. As a consequence of this deeming provision, the Commission is not required to establish that the Parties' bid rigging arrangement actually caused, or was capable of causing, harm to competition in that market. It is sufficient for the Commission to establish, on the balance of probabilities, that the Parties entered into a horizontal agreement with the object of bid rigging; once established, the deeming provision under section 4(2) of the Act operates to complete the finding of an infringement of section 4(1) of the Act, without the need for further inquiry into the actual competitive effects of that agreement.

F. BURDEN AND STANDARD OF PROOF

57. The Commission bears the burden of proving an infringement of section 4 of the Act on the balance of probabilities. This may be established through direct evidence, circumstantial evidence, or inferences drawn from an established set of facts, provided the evidence, viewed as a whole, supports the finding.
58. The UK Competition Appeal Tribunal in *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1³⁰ further affirmed that while the civil standard applies, this does not preclude reliance on inferences or presumptions that

³⁰ *Napp Pharmaceutical Holdings Limited v Director General of Fair Trading* [2002] CAT 1, at paragraphs 110 -111.

naturally arise from a given set of facts in the absence of contrary evidence.

59. In *Malaysia Maritim Enforcement Agency v. Nyuyen Van Dai & Ors* [2020] MLJU 410,³¹ the Session Court further explained that the prosecution must be very certain about which burden of proof they are relying on against the accused persons, to meet the correct standard, i.e., whether to rebut the presumption on the balance of probabilities or to cast a reasonable doubt, which is a lesser burden.
60. Consequently, having regard to the extensive evidence set out in [Part 2: H] of this Decision, the Commission is satisfied that the case against the Parties is established. When viewed in its entirety, the combination of direct evidence, circumstantial evidence and the compelling inferences drawn therefrom, proves to the requisite legal standard on balance of probabilities that the Parties engaged in an agreement prohibited by section 4 of the Act.

G. MARKET DEFINITION

61. The term ‘market’ is defined in section 2 of the Act as “*a market in Malaysia or in any part of Malaysia, and when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.*” The

³¹ *Malaysia Maritim Enforcement Agency v Nyuyen Van Dai & Ors*, [2020] MLJU 410, at paragraph 49.

purpose of defining a market is to identify all the enterprises competing in the same product or geographical market, or to define the boundaries of the product or geographical market in which all the enterprises compete.

62. Market definition serves a dual purpose in the context of section 4 prohibition. First, if necessary, it provides the framework for assessing whether an agreement has a significant anti-competitive effect in a market.³² Second, it provides the basis for determining the relevant tender value for the purpose of calculating financial penalties.³³

The Relevant Market

63. In the context of a bid-rigging infringement, the Commission is not required to undertake an exhaustive market definition exercise where the tender itself identifies the competitive opportunity affected by the conduct. Nevertheless, for the purpose of assessing the context of the agreement, the Commission considers the relevant market by reference to the goods required under the AADK Tender, the geographic area of supply and the tender's eligibility requirements.

³² *Malaysian Airline System Bhd v Competition Commission & Another Appeal* [2022] 1 CLJ [at Para 7] "The requirement to specify and identify the 'market' was embedded in the very 'deemed' provision, and, if this requirement was not met, the deemed effect could not be applied. Only after having identified the relevant market MyCC could assess whether particular conduct (or agreement) was anti-competitive in nature."

³³ Section 40(4) of the Competition Act 2010; and *MyCC Guidelines on Financial Penalties*, para 3.2.

64. The AADK Tender concerned the supply of raw, fresh and dry food in Papar, Sabah, Malaysia, and required participating enterprises to possess the relevant field codes of **04 01 01** and **04 01 02**. Since the Parties possessed the relevant field codes and submitted bids, they were actual competitors for the tender opportunity. Accordingly, the relevant market, for the purposes of this case, may be characterised as the supply of raw, fresh and dry food in Papar, Sabah, Malaysia.³⁴

H. FACTS, EVIDENCE AND ANALYSIS OF THE EVIDENCE

H.1 OVERVIEW OF THE RELATIONSHIP BETWEEN THE PARTIES AND ZIRBAD RESOURCES

65. The Commission considers it necessary to address the relationship between the Parties and Zirbad Resources Sdn. Bhd. (“Zirbad Resources”)³⁵ as such relationship forms an important factual background in understanding the manner in which the collusive conduct relating to the AADK Tender was carried out.
66. Zirbad Resources is a private limited company incorporated on 10 February 2009. The shareholders of Zirbad Resources are Adham, the director of the company, and Nur Shafarina Binti Awang Haji (“Shafarina”).

³⁴ Official Portal for Malaysian Government eProcurement; <https://www.eperolehan.gov.my/en/home>.

³⁵ Registration No. 200901003212 (846139-A), incorporated on 10 February 2009 as a private limited company under the Companies Act 2016.

67. The Commission notes that Zirbad Resources is not a party to this Decision and Adham did not participate as a bidder in the AADK Tender. The evidence concerning Zirbad Resources and Adham is discussed below solely as evidentiary context relevant to establish whether the Parties themselves entered into an agreement in relation to the AADK Tender.
68. The evidence indicates that several of the Parties had, at various times, been associated with a group of businesses referred to by Adham as the enterprises associated with Zirbad Resources. Nevertheless, according to Adham, Man Prospek and Fatijaya were no longer part of the enterprises associated with Zirbad Resources³⁶ during the material period, which was also confirmed by Ali Azman of Man Prospek and Fadhullah of Fatijaya in their respective recorded statements.³⁷
69. According to Adham's recorded statement, he informed that enterprises associated with Zirbad Resources received administrative and financial support in relation to their commercial activities.³⁸ He further stated that the support was intended, among other things, to assist those enterprises in securing tenders, and that profit-sharing arrangements could be discussed between Adham

³⁶ Paragraphs 31 to 34 of the statement of Adham of Zirbad dated 28.06.2024.

³⁷ Paragraph 59 of the statement of Ali Azman of Man Prospek dated 20.08.2024; and paragraph 34 of the statement of Fadhullah of Fatijaya dated 20.08.2024.

³⁸ Paragraph 40 of the statement of Adham of Zirbad dated 28.06.2024.

and the relevant Parties.³⁹

70. The Commission notes that Zirbad Resources was not a bidder in the AADK Tender. Although Adham was not himself a bidder in the AADK Tender, the evidence indicates that he provided logistical, administrative and financial assistance to the Parties and was involved in the preparation and discussion of tender-related pricing, as further elaborated below. Nevertheless, this support remains relevant to the investigation, as the evidence indicates that the Parties made use of Zirbad Resources' premises and Adham's facilitation in the preparation of their tender documents and pricing for the AADK Tender.
71. On 26 June 2024, the Commission conducted a search and seizure operation at Zirbad Resources' premises pursuant to a warrant issued under section 25 of the Act. The materials obtained from that operation form part of the evidence considered by the Commission in assessing the Parties' conduct in relation to the AADK Tender.

H.2 OVERVIEW OF THE INVESTIGATION FOR THE AADK TENDER

72. The AADK Tender was advertised on 16 June 2022 and the deadline for submission of bids was fixed on 7 July 2022.⁴⁰ The evidence before the Commission, including the Parties' confirmations and the

³⁹ Paragraphs 46 to 48 of the statement of Adham of Zirbad dated 28.06.2024.

⁴⁰ Official Portal for Malaysian Government eProcurement.

relevant tender records, establishes that the Parties participated in the AADK Tender.⁴¹

73. On 31 October 2022, the AADK Tender was awarded to Borneo Kreatif by way of a Letter of Acceptance. The Letter of Acceptance was signed on 4 November 2022 by Nazreen, the proprietor of Borneo Kreatif.⁴²

H.3 EVIDENTIARY FINDINGS

74. This section sets out the facts and evidence gathered by the Commission in relation to the procurement of the AADK Tender. The findings are drawn from the evidence obtained, recorded statements of related persons and the Commission's verification of documents conducted during the investigation.
75. The Commission notes that the Parties were communicating with one another during the AADK Tender process. These communications concerned matters relating to bid participation, administrative matters and pricing considerations. During this communication, the Parties received administrative assistance⁴³,

⁴¹ Paragraph 90 to 95 of the statement of Fadhullah of Fatijaya dated 20.08.2024; paragraph 76 of the statement of Ali Azman of Man Prospek dated 20.08.2024; paragraph 112 of the statement of Syafiq of Bawah Bayu dated 19.08.2024; paragraph 83 of the statement of Nazreen of Borneo Kreatif dated 19.08.2024; and paragraph 72 of the statement of Ismail of Teras Maju dated 15.10.2024.

⁴² *Surat Setuju Terima* Borneo Kreatif Enterprise, Tender untuk Pembekalan Makanan Mentah, Basah Dan Kering Kepada Pusat Pemulihan Penagihan Narkotik Papar AADK, Negeri Sabah.

⁴³ Paragraphs 54 to 72, 114, 120 to 129 of the statement of Syafiq of Bawah Bayu dated 19.08.2024; paragraph 41 of the statement of Nazreen of Borneo Kreatif dated 19.08.2024.

financial assistance and logistical support⁴⁴ from Adham including coordination of meetings and assistance with the preparation of tender-related documentation.

76. According to Adham's recorded statement, where certain Parties lacked the liquidity or capital required to participate in tender processes, he provided funds or financial assistance to enable their participation. The Commission does not treat such financial assistance, standing alone, as evidence of an infringement. Rather, it is relevant as part of the factual context showing the Parties' connection to, and engagement with Adham in relation to their participation in the AADK Tender.⁴⁵
77. The evidence further indicates that Adham's involvement was not confined to administrative and financial support. Recorded statements and documents obtained during the investigation indicate that the Parties discussed their bid prices with Adham or adjusted their bid prices by reference to a centralised pricing template associated with the AADK Tender.⁴⁶ This evidence is relevant to the Commission's assessment of whether the Parties prepared their bids independently or coordinated their conduct.

⁴⁴ Paragraphs 31 to 46 of the statement of Adham of Zirbad recorded on 28.06.2024; paragraphs 50 to 52 and 72 of the statement of Ali Azman recorded on 20.08.2024; paragraphs 31 to 33 of the statement of Fadhullah of Fatijaya dated 20.08.2024.

⁴⁵ Paragraphs 31 to 46 of the statement of Adham of Zirbad Resources recorded on 28.06.2024, paragraph 72 and 78 of the statement of Ali Azman of Man Prospek recorded on 20.08.2024.

⁴⁶ Paragraphs 17 to 40 of the statement of Fadhullah of Fatijaya recorded on 20.08.2024; paragraphs 20, 48, 49, 50, 71 and 72 of the statement of Ali Azman of Man Prospek recorded on 20.08.2024.

78. The investigation further established that the Parties' tender bids were prepared at premises associated with Zirbad Resources. During the search and seizure conducted at those premises, the Commission recovered various documents and materials relating to the Parties. These materials are relevant to the Commission's assessment of the Parties' bid preparation for the AADK Tender.. The materials recovered are as follows:

- (i) Parties' email credentials and passwords (ZR-1) hereinafter referred to as "***Image 1***";
- (ii) E-procurement account details and associated passwords (ZR-2) hereinafter referred to as "***Image 2***";
- (iii) Key contact information of members of the Parties (ZR-3) hereinafter referred to as "***Image 3***";
- (iv) *Senarai Harga Tender AADK Papar* hereinafter referred to as "***Image 4***"; and
- (v) Metadata of *Senarai Harga Tender AADK Papar* hereinafter referred to as "***Image 5***".

79. The Commission does not consider the provision of administrative, financial or logistical assistance, standing alone, to establish an infringement of section 4 of the Act by any person. However, when considered together with the evidence of pricing discussions, the centralised pricing template, and the presence of tender-related credentials and documents for multiple Parties at Zirbad Resources'

premises, this evidence supports the Commission's assessment that the Parties' bids were not prepared independently of one another.⁴⁷

80. The materials recovered from Zirbad Resources' premises are relevant to this Decision not because Zirbad Resources was a bidder in the AADK Tender, but because those materials relate to the Parties' own participation in that tender. The presence of email credentials, e-procurement account details, contact information and pricing materials relating to multiple competing Parties indicates that tender-related information and access to tender submission platforms were centrally stored and handled, rather than kept and managed separately by each Party. Zirbad Resources is not a party to this Decision, and Adham did not participate as a bidder in the AADK Tender; the relevance of Zirbad Resources and Adham to this Decision is accordingly limited to providing the factual and evidential context necessary to assess the Parties' own conduct in relation to the AADK Tender.

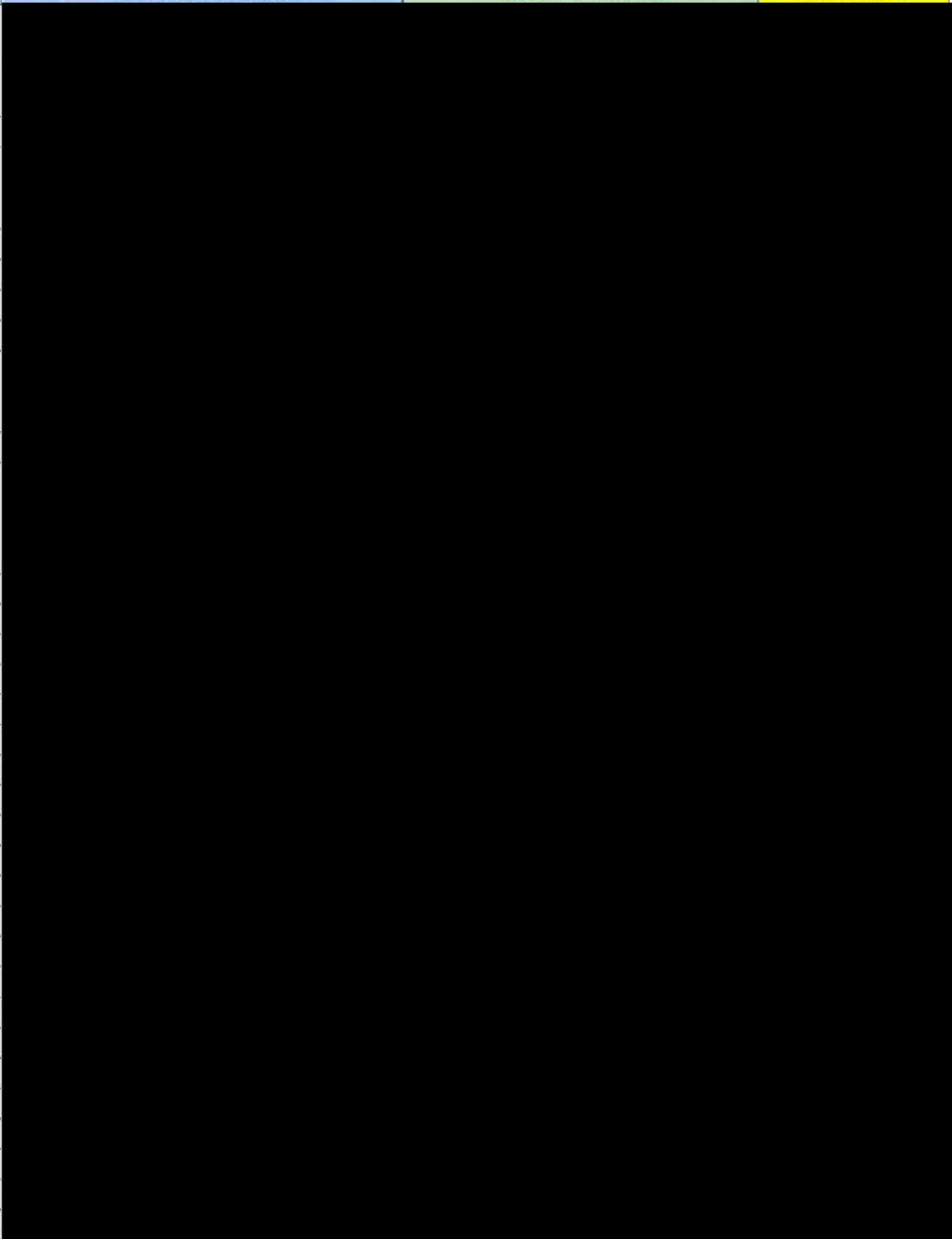
[The remainder of this page is intentionally left blank]

⁴⁷ Paragraphs 30 to 46 of the statement of Adham of Zirbad Resources dated 28.06.2024.

Image 1: Parties' email credentials and passwords

COMPANY'S EMAIL AND PASSWORD

LAST UPDATED : 04/01/2024

NO	COMPANY'S NAME	COMPANY'S EMAIL	PASSWORD
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			

81. Image 1 is a document titled “Company’s Email and Password”, last updated 4 January 2024, recovered from Zirbad Resources’ premises. It records the email addresses and corresponding passwords for each of the Parties, namely Bawah Bayu, Borneo Kreatif, Man Prospek, Fatijaya, Mediha and Teras Maju, together with other enterprises, in a single consolidated record. The fact that the Parties’ email credentials and passwords were recorded and kept together⁴⁸ in this manner indicates that the Parties’ respective email accounts were capable of being commonly accessed from a single location, rather than each Party independently managing and safeguarding its own account. Since these accounts included the Parties’, correspondence relating to the AADK Tender, this indicates that such correspondence was likewise capable of common access.

[The remainder of this page is intentionally left blank]

⁴⁸ Paragraphs 59, 120 to 129 of the statement of Syafiq of Bawah Bayu dated 19.08.2024; paragraphs 34 to 41 of the statement of Nazreen of Borneo Kreatif dated 19.08.2024; paragraphs 20 to 52 of the statement of Ali Azman of Man Prospek dated 20.08.2024

Image 2: E-procurement account details and associated passwords**SENARAI KATA LALUAN E-PEROLEHAN SYARIKAT**

LAST UPDATE : 19/06/2024

HELPLINE EP : 03-79857777

EMAIL : bantuan@eperolehan.gov.my

NO	NAMA SYARIKAT	ID LOG MASUK	KATA LALUAN	SOALAN KESELAMATAN	KATA LALUAN	TEMPOH SAH	TARIKH LUPUT
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							

82. Image 2 is a document recording the e-procurement account details and associated passwords of the Parties, namely Bawah Bayu, Borneo Kreatif, Man Prospek, Fatijaya, Mediha and Teras Maju, recovered from Zirbad Resources' premises. Unlike Image 1, which concerns general email correspondence, the e-procurement accounts recorded in Image 2 are the accounts through which enterprises access the government procurement portal to prepare and submit their tender bids. The fact that the e-procurement account credentials⁴⁹ of multiple Parties were kept together in a single record indicates that the Parties did not each separately and independently manage the mechanism by which they accessed the procurement portal to prepare and submit their respective bids for the AADK Tender.

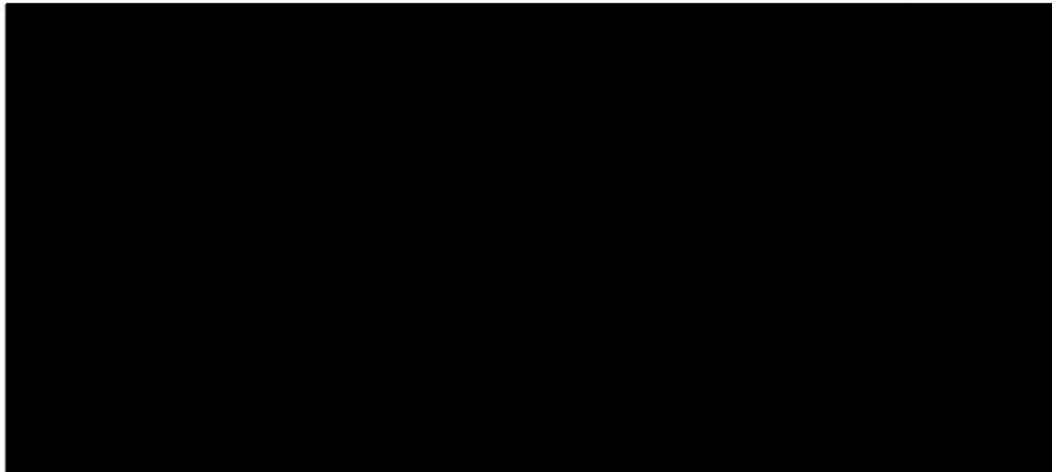
[The remainder of this page is intentionally left blank]

⁴⁹ Paragraphs 19 to 29 of the statement of Fadhullah of Fatijaya dated 22.08.2024; paragraphs 59, 120 to 129 of the statement of Syafiq of Bawah Bayu dated 19.08.2024; paragraphs 34 to 41 of the statement of Nazreen of Borneo Kreatif dated 19.08.2024; paragraphs 20 to 52 of the statement of Ali Azman of Man Prospek dated 20.08.2024

Image 3: Key contact information of members of the Parties

ZIRBAD MEMBER CONTACT NUMBER				
NO	NAME	HP NO.	EMAIL	REMARKS
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				

STAFF PENJARA		HP NO.	STAFF PACKING		HP NO.
1			1		
2			2		
3			3		
4			4		
5					



83. Image 3 is a document recording the key contact information of members or representatives of the Parties, namely Bawah Bayu, Borneo Kreatif, Man Prospek, Fatijaya, Mediha and Teras Maju, recovered from Zirbad Resources' premises. Unlike Images 1 and 2, which concern the Parties' account credentials, Image 3 records the identities and contact details⁵⁰ of the individuals representing each Party. The compilation of this contact information for multiple competing bidders in a single record indicates that the identities of the Parties' representatives were known and organised in one place, rather than each Party's representatives being known only to that Party itself. When considered together with Images 1 and 2, this indicates that the Parties' tender participation was centrally connected, in terms of both account access and personal contact, rather than conducted separately and independently by each Party.
84. In addition, Adham's recorded statement further confirms that representatives of the Parties possessing the relevant field codes were invited to Zirbad Resources' premises for assistance in compiling tender documentation and preparing draft pricing proposals based on information provided by the respective Parties.⁵¹

⁵⁰ Paragraphs 19 to 29 of the statement of Fadhullah of Fatijaya dated 22.08.2024; paragraphs 59, 120 to 129 of the statement of Syafiq of Bawah Bayu dated 19.08.2024; paragraphs 34 to 41 of the statement of Nazreen of Borneo Kreatif dated 19.08.2024; paragraphs 20 to 52 of the statement of Ali Azman of Man Prospek dated 20.08.2024.

⁵¹ Paragraph 46 and 48 of the statement of Adham of Zirbad dated 28.06.2024.

Image 4: Senarai Harga Tender AADK Papar

TAJUK : PEMBEKALAN MAKANAN MENTAH, BASAH DAN KERING KEPADA PUSAT PEMULIHAN PENAGIHAN
NARKOTIK PAPAR AGENSI ANTIDADAH KEBANGSAAN MALAYSIA, NEGERI SABAH BAGI TEMPOH
TIGA (3) TAHUN

TARIKH TUTUP : 07 JULAI 2022 (KHAMIS)

NO	NAMA SYARIKAT	JUMLAH HARGA (RM)	CATATAN
1			
2			
3			
4			
5			
6			

85. Image 4 is a document titled “*Senarai Harga Tender AADK Papar 2022*”, recovered from a thumb drive belonging to Zazlie, a staff member of Zirbad Resources.⁵² The document records the bid prices of the six Parties in a single compilation. Zazlie confirmed that the document was compiled during the preparation of the Parties’ bid submissions, with the assistance of Adham. The existence of a consolidated record of the Parties’ bid prices, together with the evidence of its preparation at Zirbad Resources’ premises, demonstrates that the bid pricing of multiple competing bidders was handled collectively in the course of preparing their tender submissions.⁵³

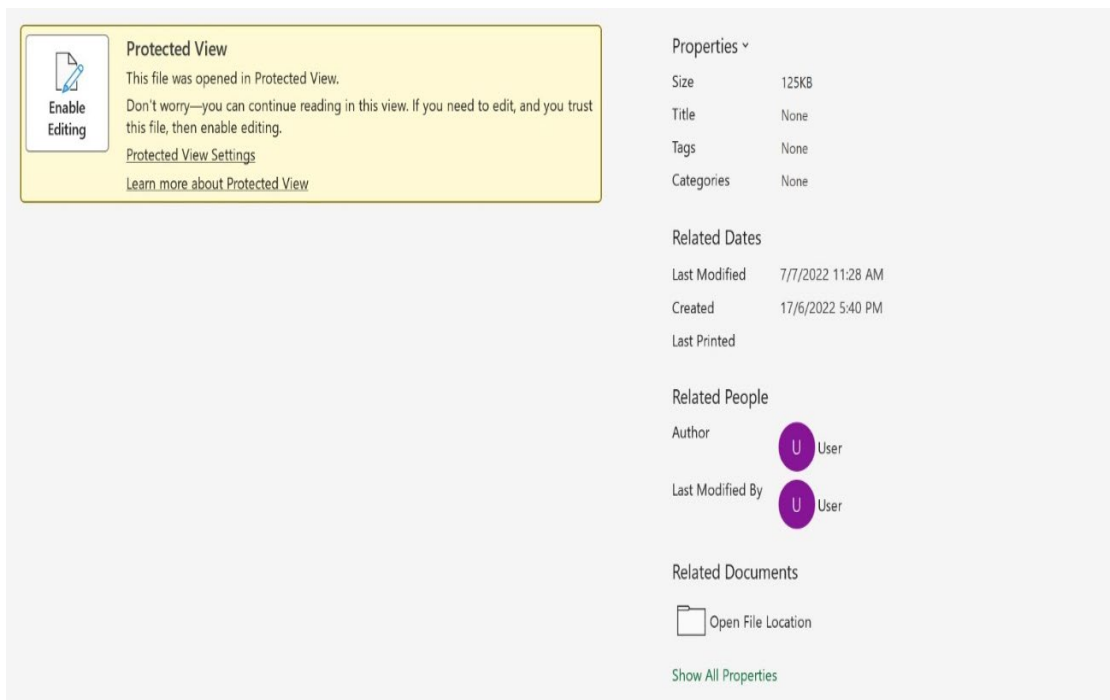
86. The Commission compared the prices recorded in Image 4 with the AADK SST and Kertas Taklimat, which record the prices actually submitted by the Parties. The comparison shows that the prices

⁵² Paragraphs 64 and 77 statement of Mohd Zazlie Bin Rajudin of Progresif Puncak dated 14.10.2024. Zazlie was an employee/staff of Zirbad Resources Sdn. Bhd. (“Zirbad”). Zazlie now holds the position of Director of Progresif Puncak Sdn. Bhd. (formerly known as Modular Advance Engineer Sdn. Bhd.)

⁵³ Paragraph 77 of the statement of Zazlie of Progresif Puncak recorded on 14.10.2024.

recorded for Borneo Kreatif and Man Prospek correspond with the prices respectively submitted by those Parties, supporting the finding that the pricing information in Image 4 was used in, or reflected, the preparation of their bids.

Image 5: Metadata of *Senarai Harga Tender AADK Papar*



87. During the course of the investigation, the Commission examined the metadata of the document titled “*Senarai Harga Tender AADK Papar 2022*” (“Image 5”)”⁵⁴ The metadata records that the document was created on 6 July 2022 and last modified on 7 July 2022, the latter date corresponding with the closing date for submission of bids for the AADK Tender. This metadata is relevant to the Commission’s

⁵⁴ Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad.

assessment of whether the Parties' bid prices were independently determined or prepared through a common pricing arrangement.

88. The metadata is significant because it establishes that the *Senarai Harga Tender AADK Papar 2022* existed before the bid submission deadline, rather than having been created after the event to explain the correspondence between the Parties' bid prices. As set out below, the prices recorded in this document for Borneo Kreatif and Man Prospek correspond with the prices those Parties subsequently submitted in their bids. This correspondence, together with the fact that the document was compiled with Adham's assistance prior to the submission deadline, indicates that the pricing pattern reflects a coordinated pricing exercise rather than each Party's independent assessment of the market.
89. The Commission analysed the document titled *Senarai Harga Tender AADK Papar 2022* and compared it with the AADK SST⁵⁵ and the Kertas Taklimat for the AADK Tender.⁵⁶ Based on this comparison, the Commission finds that the bid prices recorded for Borneo Kreatif and Man Prospek correspond with the bid prices submitted by both Parties for the AADK Tender. This correspondence supports the inference that the pricing information

⁵⁵ Information and procurement records obtained from Perbendaharaan Malaysia Sabah ("PMS") pursuant to a statutory Notice to Provide Information and/or Documents issued by the Commission under Section 18 of the Competition Act 2010.

⁵⁶ Tender Notice, E-Procurement Ministry of Finance.

contained in the document was used in, or reflected, the preparation of the bids submitted by the Parties.

90. When considered together with the recorded statements and other evidence obtained during the investigation, these materials support the Commission's finding that the Parties' bids were not prepared independently. Instead, the evidence indicates that the bid prices were coordinated through a common pricing arrangement involving Adham prior to submission.⁵⁷ Accordingly, the Commission finds that the Parties' conduct is consistent with bid rigging under section 4(1), read with sections 4(2)(d) and 4(3) of the Act.

H.4 LEGAL ANALYSIS AND THE COMMISSION'S FINDING OF INFRINGEMENT

91. Applying the definition of "agreement" in section 2 of the Act to the evidence obtained, the Commission finds that the coordinated preparation and submission of bids by the Parties constitute an agreement for the purposes of section 4(1) read with section 4(2)(d) of the Act. This agreement replaced independent commercial decision-making with coordinated conduct, thereby undermining genuine competition in the AADK Tender.

⁵⁷ Paragraphs 20, 48, 49, 50, 71 and 72 of the statement of Ali Azman of Man Prospek dated on 20.08.2024; and paragraphs 17, 34, 37 and 40 of the statement of Fadhullah of Fatijaya dated 22.08.2024.

92. In a competitive tender process, each bidder is expected to independently determine its commercial conduct, including whether to participate in a tender and the prices to be submitted. In the present case, the Commission finds that the bid prices of the Parties were shared and consolidated in Image 4 prior to the bid submission deadline for the AADK Tender and that Image 4 existed before that deadline as established by the metadata in Image 5. The sharing and consolidation of Parties' bid prices demonstrate that the Parties did not independently determine their respective bid prices, with the aim of increasing their chances of winning the AADK Tender.⁵⁸
93. The evidence set out in paragraphs 81 to 89 above, comprising the recorded statements, Images 1 to 4 and the metadata analysis, demonstrates that the Parties coordinated the preparation of their respective tender submissions and bid prices prior to submission. The fact that tender-related documents and information were prepared and maintained at Zirbad Resources' premises, with administrative assistance provided by Adham, is relevant to the manner in which the Parties coordinated conduct was facilitated.
94. When considered cumulatively, the Commission finds that these circumstances demonstrate a common understanding among the Parties through Adham to coordinate their conduct in the AADK Tender. The absence of a formal written agreement does not alter this finding, as the coordinated conduct and surrounding

⁵⁸ Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad.

circumstances establish an agreement within the meaning of section 2 of the Act.

95. The Commission attaches particular weight to Image 4, the Senarai Harga Tender AADK Papar 2022. The Commission's comparison of the price information in Image 4 with the procurement records established that the prices recorded for Borneo Kreatif and Man Prospek corresponded precisely with their respective bid prices submitted for the AADK Tender. This confirms that Image 4 was not merely a hypothetical or exploratory pricing exercise, but recorded pricing information that was carried through into bids actually submitted by the Parties. Image 4 records pricing information for all six Parties, compiled prior to the submission deadline. Read together with Image 5 and the evidence particular to each Party, this supports the Commission's finding that the Parties did not independently determine their respective bid prices.
96. The correspondence between centrally recorded pricing information and the bids subsequently submitted by competing bidders is inconsistent with the independent formulation of those bids. When considered together with the recorded statements concerning Adham's involvement in the discussion and finalisation of bid prices, the Commission finds that the correspondence and recorded statements referred to above support the existence of a coordinated bidding arrangement.

97. The Commission has further considered whether each Party knowingly participated in the coordinated arrangement. In making this assessment, the Commission has considered the evidence relating to each Party individually, together with that Party's conduct within the wider factual circumstances of the AADK Tender. The Commission's findings in respect of each Party are set out below.
98. In relation to Man Prospek, Ali Azman confirmed that Adham was permitted to use Man Prospek's business registration for the purpose of participating in the AADK Tender.⁵⁹ This is consistent with Man Prospek's email credentials being among those recorded in Image 1, recovered from Zirbad Resources' premises. The recorded statement of Ali Azman is further supported by the price attributed to Man Prospek in Image 4, found at Zirbad's premises, and the price subsequently submitted by Man Prospek in its bid for the AADK Tender.
99. As this correspondence concerns the price specifically attributed to Man Prospek in Image 4 attributes and the price subsequently submitted by Man Prospek itself, it constitutes direct evidence that Man Prospek's bid was not independently determined. This demonstrates that Man Prospek and the Parties, through Adham,

⁵⁹ Information and procurement records obtained from Perbendaharaan Malaysia Sabah ("PMS") pursuant to a statutory Notice to Provide Information and/or Documents issued by the Commission under Section 18 of the Competition Act 2010.

engaged in the anti-competitive agreement with the object to rig the AADK Tender.

100. In relation to Teras Maju, Ismail stated that Teras Maju participated in the AADK Tender following an invitation from the Parties.⁶⁰ This is consistent with Teras Maju's email credentials being among those recorded in Image 1, recovered from Zirbad Resources' premises. The Commission does not rely on the invitation to participate, standing alone, as establishing bid rigging. Rather, it considers this evidence together with Teras Maju's presence in Image 1, the centralised preparation of tender documentation at Zirbad Resources' premises and Adham's role in facilitating that preparation, as together demonstrating that Teras Maju's participation in the AADK Tender was connected to, rather than independent of, the wider coordinated arrangement between the competing bidders.

101. On the participation of Mediha in the AADK Tender, Kasmah stated that she had no knowledge of the AADK Tender and that the preparation and submission of Mediha's bid were handled entirely by her son, Syafiq.⁶¹ As the sole proprietor of Mediha, Kasmah remains responsible for the bid regardless of who physically prepared or submitted it on her behalf, and the bid is accordingly

⁶⁰ Paragraph 78 of the statement of Ismail of Teras Maju dated 15.10.2024.

⁶¹ Paragraphs 41 to 47 of the statement of Kasmah of Mediha dated 26.02.2026.

attributed to Mediha. The Commission does not find Kasmah's claimed total lack of knowledge credible. According to Adham's recorded statement, Mediha was among the enterprises associated with Zirbad Resources,⁶² and Mediha's email credentials, e-procurement account details and bid price are recorded respectively in Image 1, Image 2 and Image 4. It is not credible that Mediha's bid was prepared and submitted using its own email and e-procurement credentials, with its price recorded in the same centralised pricing document as the other Parties, while its sole proprietor remained wholly unaware that the AADK Tender was taking place at all.

102. Syafiq, who handled the preparation and submission of Mediha's bid on Kasmah's behalf, was, during the same period also a partner of Bawah Bayu, another bidder for the AADK Tender. In his recorded statement, however, Syafiq informed the Commission that he did not know the other bidders in the AADK Tender except for Borneo Kreatif.
103. This account is inconsistent with Syafiq's own conduct: through his own involvement in preparing Mediha's bid, and through his position as a partner of Bawah Bayu, Syafiq was necessarily aware of at least two further bidders, namely Mediha and Bawah Bayu, in addition to Borneo Kreatif. The Commission finds that Syafiq's simultaneous involvement in the preparation of bids for these two ostensibly independent and competing Parties establishes a direct

⁶² Paragraphs 31 to 47 of the statement of Adham of Zirbad Resources dated 28.06.2024.

link between Mediha's and Bawah Bayu's participation in the AADK Tender, and that his understated account of his knowledge of other bidders undermines the reliability of his evidence on this point. Read together, Kasmah's implausible claim of total ignorance and Syafiq's understated account of his own knowledge point to the same conclusion: that Mediha's participation in the AADK Tender was not conducted independently of the wider coordinated arrangement between the Parties.

104. In light of the documentary evidence and these inconsistencies, the Commission infers that Mediha had knowledge of and participated in the coordinated bidding conduct.
105. In relation to Borneo Kreatif, the evidence confirms that it participated in the AADK Tender and that its bid price was recorded in the centrally compiled *Senarai Harga Tender AADK Papar 2022*. The Commission's comparison of the pricing document with the procurement records further establishes that the price recorded for Borneo Kreatif corresponded with the price subsequently submitted in its bid.
106. This correspondence is corroborated by Nazreen's own recorded statement, in which Nazreen, the partner of Borneo Kreatif, admitted that bid prices were shared with the Parties and that Borneo Kreatif's tender documents were prepared together.⁶³ As established in

⁶³ Paragraphs 41 to 47 of the statement of Nazreen of Borneo Kreatif dated 19.08.2024.

paragraphs above, the metadata of the pricing document confirms that it existed before the bid submission deadline, such that the price-sharing admitted by Nazreen necessarily preceded, and informed, Borneo Kreatif's bid submission rather than occurring after the fact. Borneo Kreatif was ultimately awarded the AADK Tender. When considered together with the evidence concerning the centralised preparation and pricing of the bids, the Commission finds that Borneo Kreatif's bid was not formulated independently but formed part of the coordinated bidding arrangement.

107. In relation to Fatijaya, Fadhullah, its proprietor, confirmed Fatijaya's participation in the AADK Tender. In his recorded statement, Fadhullah stated that bid prices were shared among the Parties, and that the bid prices were prepared at Zirbad Resources' premises.⁶⁴ He further described discussions concerning the preparation of the tender and confirmed that Fatijaya's bid price was discussed and finalised with Adham, consistent with the centralised pricing arrangement described in paragraphs above. As Fadhullah is Fatijaya's own proprietor, his account establishes that Fatijaya's bid price was not arrived at independently, but was discussed, finalised and shared as part of the arrangement centred at Zirbad Resources' premises.

⁶⁴ Paragraphs 19 to 38, 47, 56 to 58, and 90 to 94 of statement of Fadhullah of Fatijaya dated 22.08.2024.

108. The Commission considers this evidence, together with Fatijaya's participation in the AADK Tender, supports the finding that Fatijaya knowingly participated in the coordinated bidding arrangement rather than determining its tender conduct independently.
109. In relation to Bawah Bayu, the evidence confirms that it participated in the AADK Tender. Syafiq, who was a partner of Bawah Bayu during the material period, stated that Bawah Bayu's tender-related activities were conducted at Zirbad Resources' premises and that Bawah Bayu's credentials and information were provided to Zirbad Resources.
110. Syafiq confirms that the preparation of Bawah Bayu's tender submission was assisted and took place at Zirbad Resources' premises using information Bawah Bayu had itself provided.⁶⁵ When considered together with the wider evidence of centralised tender preparation and coordination, the Commission finds that Bawah Bayu participated in the coordinated bidding arrangement and did not determine its tender conduct independently.
111. Having considered the direct and circumstantial evidence, together with the reasonable inferences arising from the established facts, the Commission is satisfied on the balance of probabilities that the Parties knowingly participated in a common arrangement concerning their participation and bids in the AADK Tender.

⁶⁵ Paragraphs 54 to 72 and 121 to 136 of statement of Syafiq of Bawah Bayu dated 19.08.2024.

Accordingly, the Commission finds that the Parties engaged in an agreement which had constituted bid rigging in relation to the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia thereby constituting an infringement under section 4(1) read together with section 4(2)(d) and section 4(3) of the Act.

112. The coordinated submission of bids, derived from a predetermined centralised pricing structure, created a false appearance of independent competitive bidding and undermined the integrity of the public procurement process conducted by AADK. By its nature, such conduct is capable of eliminating genuine competition in a tender process and depriving the procuring authority of the benefits of independent competitive bidding, such that the pricing obtained may not represent the best value for public expenditure.

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PART 3: THE COMMISSION'S DECISION

A. DIRECTIONS UPON A FINDING OF AN INFRINGEMENT

113. In view of the nature of the infringement of the Act, and taking into consideration all evidence obtained throughout the investigation described above, together with the written representations submitted by the Parties, the Commission hereby issues its finding of infringement under section 40 of the Act against the Parties for engaging in bid rigging which amounts to an anti-competitive agreement in breach of section 4(1) read with section 4(2)(d) and section 4(3) of the Act.

B. GENERAL POINTS ON FINANCIAL PENALTIES

114. Pursuant to section 40 of the Act, where the Commission determines that there has been an infringement of a prohibition under Part II of the Act, the Commission may impose a financial penalty on the infringing enterprise, subject to the statutory maximum prescribed under section 40(4) of the Act.

115. Based on the Commission's Guidelines on Financial Penalties, the Commission may take into account some or all of the following factors, where relevant, when deciding the appropriate amount of financial penalty in any given case, as follows:⁶⁶

- (a) the seriousness (gravity) of the infringement;

⁶⁶ MyCC Guidelines on Financial Penalties, at paragraph 3.2.

- (b) turnover of the market involved;
- (c) duration of the infringement;
- (d) impact of the infringement;
- (e) degree of fault (negligence or intention);
- (f) role of the enterprise in the infringement;
- (g) recidivism;
- (h) existence of a compliance programme; and
- (i) level of financial penalties imposed on similar cases.

B.1 THE BASE FIGURE

116. The Commission, in determining the financial penalties to be imposed on the Parties, first establishes a base figure. In the present case, the Commission considers that the value of the AADK Tender provides an appropriate basis for calculating the base figure, as the tender represents the commercial activity affected by the infringing agreement and the tender process in which the Parties participated through the submission of bids, within the affected geographic market as defined in Part 2.

117. The Commission considers that calculating the base figure by reference to the value of the affected tender provides a reasonable and proportionate basis for determining the financial penalty. This approach enables the Commission to take into account the commercial context of the infringement, while ensuring that the penalty reflects the seriousness of the conduct and the need for deterrence.

118. Upon determination of the base figure, the Commission may apply adjustments to account for any aggravating or mitigating circumstances. These adjustments ensure that the financial penalty is reflective of both the conduct and the context in which it occurred.
119. The Commission notes that bid rigging in the context of public procurement is particularly egregious, as it involves the misuse of public funds and undermines the principles of competitive tendering processes. Having regard to the gravity of the conduct and the public interest, the Commission considers that the financial penalties must be sufficiently substantial to deter the Parties and other market participants from engaging in similar conduct.

B.2 DURATION OF THE INFRINGEMENT

120. The Commission establishes that the duration of the infringement covers the following period:

Table 5: Infringement Period

TENDER	PERIOD OF INFRINGEMENT	PARTY
AADK Tender 	Advertisement Date: 16.06.2022 Closing Date: 07.07.2022 Period of Infringement: 22 days (from 16.06.2022 until 07.07.2022)	1. Borneo Kreatif; 2. Bawah Bayu; 3. Man Prospek; 4. Fatijaya; 5. Teras Maju; and 6. Mediha

121. As shown in **Table 5**, it is important to highlight the Commission's reliance on the advertisement date and the closing date to approximate the infringement period. This method is adopted because the Commission is of the view that the anti-competitive agreement among the Parties to manipulate bid submission to the procuring agency occurred within this period. The Commission is of the opinion that the Parties engaged in an anti-competitive agreement to rig bid within this time frame.
122. The Commission observes that the infringement was committed discretely, spanning from 16 June 2022 until 7 July 2022, totalling up to 22 days. In accordance with the principles established by the *Singapore Competition Authority in the case of Maintenance Services for Swimming Pools, Spas, Fountains, and Water Features*,⁶⁷ the Competition and Consumer Commission of Singapore ("CCS") recognises that bid rigging effects are typically irreversible, challenging to rectify and persistently impact stakeholders well beyond the actual duration of the infringements.⁶⁸ Thus, CCS will generally not set a duration of infringement that is less than one year in cases of bid rigging infringements.

⁶⁷ CCS 500/7003/17 *Infringement of the Section 34 Prohibition in relation to the Provision of Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* dated 14.12.2020.

⁶⁸ CCS 500/7003/17 *Infringement of the Section 34 Prohibition in relation to the Provision of Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* dated 14.12.2020, at paragraph 178.

123. In the present case, given the severity and irreversible effects of bid rigging, the Commission determines that, for the purpose of calculating penalties, the duration of the infringement shall be considered as one full year for the infringement period.
124. The treatment of the infringement as one full year is solely for the purpose of calculating the financial penalty and does not alter the period of infringement as stated in **Table 5** above.
125. Accordingly, the Commission considers the financial year 2022 to be the appropriate reference year for determining the applicable turnover, as it provides an objective and consistent reference point for reflecting the financial position of the enterprise at the time of the infringement.

B.3 AGGRAVATING FACTORS

126. The Commission will take into account the presence of aggravating factors and will apply upward adjustments to the base figure when determining the financial penalty for the Parties.

Involvement of Senior Management in the bid rigging

127. The Commission considers the involvement of proprietors or senior management in an anti-competitive agreement to constitute an aggravating factor warranting an upward adjustment to the financial penalty. This reflects the additional responsibility borne by directors

and senior management, beyond that of other employees, to ensure that the enterprise does not infringe the law, a principle recognised by the UK Competition Appeal Tribunal in *Ping Europe Ltd v Competition and Markets Authority* [2018] CAT 13⁶⁹.

128. The Tribunal in that case explained that director-level involvement is properly treated as an aggravating factor where the infringement takes the form of a secret cartel, since cartelists intend to restrict competition and conceal their conduct precisely because they know it has adverse effects; it is the fact that this intention extends to the highest levels of the undertaking which aggravates the offence.
129. This principle was subsequently affirmed by the Tribunal in *Advanz Pharma Corp Ltd and others v Competition and Markets Authority* [2023] CAT 57⁷⁰, where the Tribunal held that the involvement of directors and senior management justified an uplift to the penalty, observing that society has a greater expectation that senior management will lead by example and abide by the law. As the present case concerns a covert bid-rigging arrangement rather than a publicly adopted policy, it falls within the category of case which the Tribunal in *Ping Europe* recognised as warranting an uplift for director-level or senior management involvement.

⁶⁹ *Ping Europe Ltd v Competition and Markets Authority* [2018] CAT 13, at paragraphs 242 and 246;

⁷⁰ *Advanz Pharma Corp Ltd and others v Competition and Markets Authority* [2023] CAT 57, at paragraph 458.

130. The Commission considers that the involvement of proprietors or partners in the anti-competitive conduct may constitute an aggravating factor warranting an upward adjustment to the financial penalty. Such involvement is relevant because persons with ownership, control or senior responsibility are expected to ensure that the enterprise complies with competition law, and their participation may indicate that the conduct formed part of the enterprise's commercial decision-making rather than being isolated or inadvertent. Accordingly, the Commission applies a 10% upward adjustment to the base figure to reflect the involvement of each Parties, being proprietors or partners, in the bid rigging agreement.

B.4 MITIGATING FACTOR

131. The Commission shall take into account the presence of any mitigating factors, and where applicable, apply downward adjustments to the financial penalty imposed on each of the Parties. In the present case, the Commission finds no such mitigating factors.

B.5 FINANCIAL PENALTY IMPOSED SHALL NOT EXCEED 10% OF WORLDWIDE TURNOVER

132. Section 40(4) of the Act sets the statutory limit on the financial penalty that the Commission may impose on an enterprise found to have infringed section 4(1), read together with sections 4(2)(d) and 4(3) of the Act. Under this provision, the total financial penalty cannot

exceed the statutory limit of 10% of the enterprise's worldwide turnover for the period during which the infringement occurred.

C. ARGUMENTS BY THE PARTIES ON THE FINANCIAL PENALTY

133. Each of the six Parties submitted a separate written representation via email on 13 July 2026 to the Commission. None of the Parties disputed the Commission's proposed finding of infringement. Their representations were limited to requests for a reduction of the financial penalty and/or an approved instalment payment arrangement.

Parties' Request for Consideration

- (a) Bawah Bayu submitted a written representation requesting a 50% reduction of the proposed financial penalty of RM[~~3~~] and approval to pay the reduced penalty by instalments over 36 months⁷¹;
- (b) Borneo Kreatif submitted a written representation requesting a 60% reduction of the proposed financial penalty of RM[~~3~~] and approval to pay the reduced penalty by instalments over 36 months⁷²;

⁷¹ Written representation of Bawah Bayu received via email dated 13.07.2026.

⁷² Written representation of Borneo Kreatif received via email dated 13.07.2026.

- (c) Fatijaya submitted a written representation requesting a 50% reduction of the proposed financial penalty of RM[~~3~~] and approval to pay the reduced penalty by instalments over 36 months⁷³;
- (d) Man Prospek submitted a written representation requesting a 50% reduction of the proposed financial penalty of RM[~~3~~] and approval to pay the reduced penalty by instalments over 36 months⁷⁴;
- (e) Mediha submitted a written representation requesting at least a 70% reduction of the proposed financial penalty of RM[~~3~~] and approval to pay the reduced penalty by instalments over 5 years⁷⁵; and
- (f) Teras Maju submitted a written representation requesting a reduction of the proposed financial penalty of RM[~~3~~]. It also requested approval to pay the financial penalty by instalments over 36 months⁷⁶.

⁷³ Written representation of Fatijaya received via email dated 13.07.2026.

⁷⁴ Written representation of Man Prospek received via email dated 13.07.2026.

⁷⁵ Written representation of Mediha received via email dated 13.07.2026.

⁷⁶ Written representation of Teras Maju received via email dated 13.07.2026.

134. Each of the Parties relied on the prevailing uncertain economic climate and cash flow or financial constraints affecting its capacity to make a single lump-sum payment as the principal ground for seeking a reduction of the financial penalty and payment by instalment.⁷⁷
135. In addition to the general ground above, Borneo Kreatif submitted that the AADK Tender itself resulted in a financial loss to the company rather than a profit and enclosed a Profit and Loss Statement for the AADK Project in support of its submission.⁷⁸
136. Mediha and Teras Maju further submitted that the age of their respective sole proprietors, Kasmah Binti Ag Ahmad and Ismail Bin Othman and their correspondingly reduced involvement in the day-to-day financial management and operations of their businesses, ought to be treated as mitigating factors warranting a substantial reduction in the financial penalty.⁷⁹
137. On 8 September 2026, the Parties admitted liability for the infringement and agreed to adhere to the penalty amounts without seeking any reduction. However, all Parties requested that the penalties be allowed to be paid by way of instalments over a period of either 12 or 15 months. The Parties' requests for instalment

⁷⁷ Written representations of the Parties dated 13.07.2026.

⁷⁸ Written representations of the Parties dated 13.07.2026.

⁷⁹ Written representations of the Parties dated 13.07.2026.

payments are considered below.

The Commission's Decision

138. Having carefully considered the matters raised by the Parties in their written representations dated 13 July 2026 and, in their letters, dated 8 September 2026, the Commission directs that each party pay its financial penalty in twelve (12) equal monthly instalments, as set out in Table 6.

PENALTY FOR BAWAH BAYU

139. Bawah Bayu has participated in the AADK Tender in 2022. The tender value for the AADK Tender is **RM5,714,520.00**.

Calculation of Base Figure

140. In line with the Commission's methodology, the tender value is used as the base figure, and 10% of the tender value is adopted as the starting point for the calculation. The base figure for calculating the financial penalty for Bawah Bayu is **RM571,452.00** (10% x RM5,714,520.00).

Adjustment for Aggravating Factors

Senior Management involvement:

141. As partners of Bawah Bayu, Awang and Syafiq held authority over the commercial and strategic decisions of the enterprise, including its participation in the AADK Tender. The Commission finds that Awang and Syafiq were both involved in the bid rigging agreement in relation to the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia⁸⁰. The Commission considers that the involvement of Bawah Bayu's partners as senior management in the bid rigging agreement constitutes an aggravating factor warranting a 10% uplift to the base figure, amounting to **RM[~~3~~]** (10% x **RM[~~3~~]**).

Adjustment for Mitigating Factors

142. The Commission finds that there are no mitigating factors available to Bawah Bayu that warrant any reduction in the amount of the financial penalty.

Financial Penalty Calculation

143. The financial penalty for Bawah Bayu, after accounting for the aggravating factor, is **RM[~~3~~]** (**RM[~~3~~]**+ **RM[~~3~~]**).

⁸⁰ Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad; paragraphs 54 to 72, 121 to 129 and 136 of the Statement of Syafiq of Bawah Bayu dated 19.08.2024.

Maximum Penalty under section 40 of the Act

144. Pursuant to section 40 of the Act, the total financial penalty imposed on a party cannot exceed 10% of its worldwide turnover. The Commission has considered the financial information submitted by Bawah Bayu and ascertains that the worldwide turnover of Bawah Bayu for the period of 2022 amounted to RM[~~3~~].⁸¹ Therefore, the statutory maximum financial penalty that may be imposed upon Bawah Bayu is **RM[~~3~~]**, being 10% of the worldwide turnover (10% x RM[~~3~~]).

Financial Penalty

145. The financial penalty of **RM[~~3~~]** exceeds the maximum penalty of **RM[~~3~~]** that the Commission may impose. The Commission has therefore decided that the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM[~~3~~]**.

PENALTY FOR BORNEO KREATIF

146. Borneo Kreatif has participated in the AADK Tender. The tender value for the AADK Tender is **RM5,714,520.00**.

⁸¹ Revenue information provided by Bawah Bayu on 20.05.2025 pursuant to section 18 Notice dated 6.4.2025.

Calculation of Base Figure

147. In line with the Commission's methodology, the tender value is used as the base figure, and 10% of the tender value is adopted as the starting point for the calculation. The base figure for calculating the financial penalty for Borneo Kreatif is **RM571,452.00** (10% x RM5,714,520.00).

Adjustment for Aggravating Factors

Senior Management involvement:

148. As a partner of Borneo Kreatif, Nazreen held authority over the commercial and strategic decisions of the enterprise, including its participation in the AADK Tender. The Commission finds that Nazreen was involved in the bid rigging agreement in relation to the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia⁸². The Commission considers that the involvement of Borneo Kreatif's partner as senior management in the bid rigging agreement constitutes an aggravating factor warranting a 10% uplift to the base figure, amounting to **RM[REDACTED]** (10% x **RM[REDACTED]**)

⁸² Paragraphs 41 to 76 of the Statement of Nazreen of Borneo Kreatif dated 19.08.2024; Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700-1/2(2)2024, /DFR_PMS_Zirbad.

Adjustment for Mitigating Factors

149. The Commission finds that there are no mitigating factors available to Borneo Kreatif that warrant any reduction in the amount of the financial penalty.

Financial Penalty Calculation

150. The financial penalty for Borneo Kreatif, after accounting for the aggravating factor, is **RM[~~3~~]** ($RM[~~3~~] + RM[~~3~~]$).

Maximum Penalty under section 40 of the Act

151. Pursuant to section 40 of the Act, the total financial penalty imposed on a party cannot exceed 10% of its worldwide turnover. The Commission has considered the financial information submitted by Borneo Kreatif and ascertains that the worldwide turnover of Borneo Kreatif for the period of 2022 amounted to RM[~~3~~].⁸³ Therefore, the statutory maximum financial penalty that may be imposed upon Borneo Kreatif is **RM[~~3~~]**, being 10% of the worldwide turnover (10% x RM[~~3~~]).

Financial Penalty

152. The financial penalty of **RM[~~3~~]** exceeds the maximum penalty of **RM[~~3~~]** that the Commission may impose. The Commission has

⁸³ Revenue information provided by Borneo Kreatif on 20.05.2025 pursuant to section 18 Notice dated 6.5.2025.

therefore decided that the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM[~~8~~]**

PENALTY FOR FATIJAYA

153. Fatijaya has participated in the AADK Tender. The tender value for the AADK Tender is **RM5,714,520.00**.

Calculation of Base Figure

154. In line with the Commission's methodology, the tender value is used as the base figure, and 10% of the tender value is adopted as the starting point for the calculation. The base figure for calculating the financial penalty for Fatijaya is **RM571,452.00** (10% x RM5,714,520.00).

Adjustment for Aggravating Factors

Senior Management involvement:

155. As the proprietor of Fatijaya, Fadhullah held authority over the commercial and strategic decisions of the enterprise, including its participation in the AADK Tender. The Commission finds that Fadhullah was involved in the bid rigging agreement in relation to

the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia⁸⁴.

156. The Commission considers that the involvement of Fatijaya's proprietor as senior management in the bid rigging agreement constitutes an aggravating factor warranting a 10% uplift to the base figure, amounting to **RM[~~3~~]** ($10\% \times \text{RM}[\text{~~3~~}]$).

Adjustment for Mitigating Factors

157. The Commission finds that there are no mitigating factors available to Fatijaya that warrant any reduction in the amount of the financial penalty.

Financial Penalty Calculation

158. The financial penalty for Fatijaya, after accounting for the aggravating factor, is **RM[~~3~~]** ($\text{RM}[\text{~~3~~}] + \text{RM}[\text{~~3~~}]$).

Maximum Penalty under section 40 of the Act

159. Pursuant to section 40 of the Act, the total financial penalty imposed on a party cannot exceed 10% of its worldwide turnover. The Commission has considered the financial information submitted by Fatijaya and ascertains that the worldwide turnover of Fatijaya for

⁸⁴ Paragraphs 19 to 38, 47, 56 to 58, and 90 to 94 of the Statement of Fadhullah of Fatijaya dated 22.08.2024; Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad.

the period of 2022 amounted to RM[~~8~~].⁸⁵ Therefore, the statutory maximum financial penalty that may be imposed upon Fatijaya is **RM[~~8~~]**, being 10% of the worldwide turnover (10% x RM[~~8~~]).

Financial Penalty

160. The financial penalty of **RM[~~8~~]** exceeds the maximum penalty of **RM[~~8~~]** that the Commission may impose. The Commission has therefore decided that the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM[~~8~~]**.

PENALTY FOR MAN PROSPEK NIAGA

161. Man Prospek has participated in the AADK Tender. The tender value for the AADK Tender is **RM5,714,520.00**.

Calculation of Base Figure

162. In line with the Commission's methodology, the tender value is used as the base figure, and 10% of the tender value is adopted as the starting point for the calculation. The base figure for calculating the financial penalty for Man Prospek is **RM571,452.00** (10% x RM5,714,520.00).

⁸⁵ Revenue information provided by Fatijaya on 10.06.2025 pursuant to section 18 Notice dated 6.5.2025.

Adjustment for Aggravating Factors

Senior Management involvement:

163. As the proprietor of Man Prospek, Ali Azman held authority over the commercial and strategic decisions of the enterprise, including its participation in the AADK Tender. The Commission finds that Ali Azman was involved in the bid rigging agreement in relation to the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia⁸⁶. The Commission considers that the involvement of Man Prospek's proprietor as senior management in the bid rigging agreement constitutes an aggravating factor warranting a 10% uplift to the base figure, amounting to **RM[~~3~~]** (10% x **RM[~~3~~]**).

Adjustment for Mitigating Factors

164. The Commission finds that there are no mitigating factors available to Man Prospek that warrant any reduction in the amount of the financial penalty.

Financial Penalty Calculation

165. The financial penalty for Man Prospek, after accounting for the aggravating factor, is **RM[~~3~~]** (**RM[~~3~~]** + **RM[~~3~~]**).

⁸⁶ Paragraphs 20 to 52, 72 and 78 of the Statement of Ali Azman of Man Prospek dated 20.08.2024; Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad.

Maximum Penalty under section 40 of the Act

166. Pursuant to section 40 of the Act, the total financial penalty imposed on a party cannot exceed 10% of its worldwide turnover. The Commission has considered the financial information submitted by Man Prospek and ascertains that the worldwide turnover of Man Prospek for the period of 2022 amounted to RM[×].⁸⁷ Therefore, the statutory maximum financial penalty that may be imposed upon Man Prospek is **RM[×]**, being 10% of the worldwide turnover (10% x RM[×]).

Financial Penalty

167. The financial penalty of **RM[×]** exceeds the maximum penalty of **RM[×]** that the Commission may impose. The Commission has therefore decided that the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM[×]**.

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⁸⁷ Revenue information provided by Man Prospek on 23.05.2025 pursuant to section Notice 18 dated 6.5.2025.

PENALTY FOR MEDIHA

168. Mediha has participated in the AADK Tender. The tender value for the AADK Tender is **RM5,714,520.00**.

Calculation of Base Figure

169. In line with the Commission's methodology, the tender value is used as the base figure, and 10% of the tender value is adopted as the starting point for the calculation. The base figure for calculating the financial penalty for Mediha is **RM571,452.00** (10% x RM5,714,520.00).

Adjustment for Aggravating Factors

Senior Management involvement:

170. As the proprietor of Mediha, Kasmah held authority over the commercial and strategic decisions of the enterprise, including its participation in the AADK Tender. The Commission finds that Kasmah was involved in the bid rigging agreement in relation to the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia⁸⁸. The Commission considers that the involvement of Mediha's proprietor as senior management in the bid rigging

⁸⁸ Paragraphs 41 to 47 of the Statement of Kasmah of Mediha dated 26.02.2026; paragraphs 54 to 72, 121 to 129 and 136 of the Statement of Syafiq of Bawah Bayu dated 19.08.2024; Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad.

agreement constitutes an aggravating factor warranting a 10% uplift to the base figure, amounting to **RM[~~3~~]** ($10\% \times \text{RM}[\text{~~3~~}]$).

Adjustment for Mitigating Factors

171. The Commission finds that there are no mitigating factors available to Mediha that warrant any reduction in the amount of the financial penalty.

Financial Penalty Calculation

172. The financial penalty for Mediha, after accounting for the aggravating factor, is **RM[~~3~~]** ($\text{RM}[\text{~~3~~}] + \text{RM}[\text{~~3~~}]$).

Maximum Penalty under section 40 of the Act

173. Pursuant to section 40 of the Act, the total financial penalty imposed on a party cannot exceed 10% of its worldwide turnover. The Commission has considered the financial information submitted by Mediha and ascertains that the worldwide turnover of Mediha for the period of 2022 amounted to **RM[~~3~~]**.⁸⁹ Therefore, the statutory maximum financial penalty that may be imposed upon Mediha is **RM[~~3~~]**, being 10% of the worldwide turnover ($10\% \times \text{RM}[\text{~~3~~}]$).

⁸⁹ Revenue information provided by Mediha on 13.02.2026 pursuant to section Notice 18 dated 30.1.2026.

Financial Penalty

174. The total financial penalty of **RM[×]** exceeds the maximum penalty of **RM[×]** that the Commission may impose. The Commission has therefore decided that the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM[×]**.

PENALTY FOR TERAS MAJU ENTERPRISE

175. Teras Maju has participated in the AADK Tender. The tender value for the AADK Tender is **RM5,714,520.00**.

Calculation of Base Figure

176. In line with the Commission's methodology, the tender value is used as the base figure, and 10% of the tender value is adopted as the starting point for the calculation. The base figure for calculating the financial penalty for Teras Maju is **RM571,452.00** (10% x RM5,714,520.00).

Adjustment for Aggravating Factors

Senior Management involvement:

177. As the sole proprietor of Teras Maju, Ismail held authority over the commercial and strategic decisions of the enterprise, including its participation in the AADK Tender. The Commission finds that Ismail

was involved in the bid rigging agreement in relation to the AADK Tender for the supply of raw, fresh and dry food in Papar, Sabah, Malaysia⁹⁰. The Commission considers that the involvement of Teras Maju's proprietor as senior management in the bid rigging agreement constitutes an aggravating factor warranting a 10% uplift to the base figure, amounting to **RM[×]** (10% x *RM[×]*).

Adjustment for Mitigating Factors

178. The Commission finds that there are no mitigating factors available to Teras Maju that warrant any reduction in the amount of the financial penalty.

Financial Penalty Calculation

179. The financial penalty for Teras Maju, after accounting for the aggravating factor, is **RM[×]** (*RM[×]* + *RM[×]*).

Maximum Penalty under section 40 of the Act

180. Pursuant to section 40 of the Act, the total financial penalty imposed on a party cannot exceed 10% of its worldwide turnover. The Commission has considered the financial information submitted by Teras Maju and ascertains that the worldwide turnover of Teras Maju

⁹⁰ Paragraph 72 to 78 of the Statement of Ismail of Teras Maju dated 15.10.2024; Digital Forensics Report, Perbendaharaan Malaysia Sabah, Case Ref: MyCC No. 700–1/2(2)2024, /DFR_PMS_Zirbad.

for the period of 2022 amounted to RM[~~3~~].⁹¹ Therefore, the statutory maximum financial penalty that may be imposed upon Teras Maju is **RM[~~3~~]**, being 10% of the worldwide turnover (10% x RM[~~3~~]).

Financial Penalty

181. The financial penalty of **RM[~~3~~]** exceeds the maximum penalty of **RM[~~3~~]** that the Commission may impose. The Commission has therefore decided that the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM[~~3~~]**.

J. CONCLUSION ON THE FINANCIAL PENALTY

182. In conclusion, and in accordance with section 40 of the Act, the Commission imposes financial penalties on the Parties, to be paid in twelve (12) equal monthly instalments for each Party, as set out in Table 6 below.

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⁹¹ Revenue information provided by Teras Maju on 20.05.2025 pursuant to section 18 Notice dated 6.5.2025.

Table 6: Penalty instalment amounts to be paid by each Party

PARTIES	FINAL FINANCIAL PENALTY	MONTHLY INSTALMENT (12 MONTHS)
Bawah Bayu	RM[×]	RM[×]
Borneo Kreatif	RM[×]	RM[×]
Fatijaya	RM[×]	RM[×]
Man Prospek	RM[×]	RM[×]
Mediha	RM[×]	RM[×]
Teras Maju	RM[×]	RM[×]
TOTAL	RM[×]	RM[×] (per month)

K. DIRECTION BY THE COMMISSION

183. In this case, as well as in general cases involving bid rigging, financial penalties alone would be insufficient to bring the infringement to an end or to address the harm caused by the anti-competitive agreement. Accordingly, the Commission considers it appropriate to impose an additional direction to ensure effective deterrence.

184. Accordingly, the Commission hereby directs the following measure:

Carrying Out of the Competition Law Compliance Programme

185. The Parties are to implement a comprehensive competition law compliance program. This program must involve proprietors and/or partners as well as employees directly engaged in the preparation and submission of tenders.

186. The compliance program must be conducted by competition law experts or legal practitioners with demonstrable knowledge of competition law. The program shall be delivered twice a year for a period of two years given that the Parties have been found to have infringed the Act under this section 40 Decision.

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187. Upon completion, the Parties must submit a report from the experts or legal practitioners to the Commission detailing the training provided, the individuals who participated, and the level of competition law knowledge attained by the proprietors and/or partners and relevant employees.

DATED: 21 SEPTEMBER 2026

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a dotted line.

CHAIRMAN
TAN SRI DATO' SRI IDRUS BIN HARUN