COMPETITION ACT 2010

COMPETITION APPEAL TRIBUNAL

IN THE COMPETITION APPEAL TRIBUNAL AT PUTRAJAYA
IN THE FEDERAL TERRITORY OF PUTRAJAYA, MALAYSIA

APPEAL NO. TRP 1 – 5/2024

BETWEEN

LEONG HUP FEEDMILL MALAYSIA SDN. BHD. & 4 OTHERS
(Appellants)

AND

COMPETITION COMMISSION
(Respondent)

GROUNDS OF DECISION

[1] This is the written grounds of the unanimous decision of this Competition Appeal Tribunal ("this Tribunal") delivered on 11 February 2026 in relation to five appeals filed by the appellants against the decision of the Competition Commission ("the respondent") dated 11 December 2023 ("the Decision").

[2] As the appeals involved numerous parties, the details of the appellants' law firms and the respondent's law firms with the appeal numbers are tabulated below:

Parties	Appellants	Respondent
Appeal No. TRP 1/2024 Leong Hup Feedmill Malaysia Sdn. Bhd. v. Competition Commission	Tetuan Wen & Co 1. Nicole Leong Wen Ni 2. Heng Jia 3. Sea Jia Wei 4. Chai Zi Yan	Tetuan Jason Teoh & Partners 1. Jason Teoh Choon Hui 2. Khong Siong Sie 3. Nicholas Lai Weng Keong 4. Hashimah binti Abdul Halim 5. Ng Wei 6. Najwa binti Mohd Zin 7. Ling Ru Xin

Appeal No. TRP 2/2024 FFM Berhad v. Competition Commission	Tetuan Wen & Co 1. Ambiga Sreenevasan 2. Janini Rajeswaran 3. Nicole Leong Wen Ni 4. Heng Jia 5. Tan Yoong Chang 6. Sea Jia Wei 7. Chai Zi Yan	Tetuan Jason Teoh & Partners 1. Jason Teoh Choon Hui 2. Khong Siong Sie 3. Nicholas Lai Weng Keong 4. Hashimah binti Abdul Halim 5. Ng Wei 6. Najwa binti Mohd Zin 7. Ling Ru Xin
Appeal No. TRP 3/2024 Dindings Poultry Development Centre Sdn. Bhd. v. Competition Commission	Tetuan Shearn Delamore & Co 1. Shanti Mogan 2. Lilien Wong 3. Ooi Ji Shan	Tetuan Tommy Thomas 1. Tommy Thomas 2. Mervyn Lai 3. Wong Ying Ying

Appeal No. TRP 4/2024 PK Agro-Industrial Products (M) Sdn. Bhd. v. Competition Commission	*Not Applicable*	*Not Applicable*
Appeal No. TRP 5/2024 Gold Coin Feedmills (Malaysia) Sdn. Bhd. v Competition Commission	Tetuan Skrine 1. Tan Shi Wen 2. Manshan Singh 3. Ho Pui Yan 4. Lee Li Zhu	Tetuan Tommy Thomas 1. Tommy Thomas 2. Mervyn Lai 3. Wong Ying Ying

[3] The respondent in the Decision, found the appellants had infringed subsection 4(1) read with paragraph 4(2)(a), and subsection 4(3) of the Competition Act 2010 ("the Competition Act 2010") for entering into a horizontal price fixing agreements and/or concerted practices in respect of the price of poultry feed with soya bean meal ("SBM") and maize as the main ingredients during these three periods. The periods are:

(i) 31 January 2020 to 31 March 2020 (the "First Infringement Period");

(ii) 1 October 2020 to 31 January 2021 (the "Second Infringement Period"); and

(iii) 1 February 2021 to 30 June 2022 (the "Third Infringement Period").

[4] Pursuant to subsection 40(1) of the Competition Act 2010, the respondent directed the appellants to undertake the following:

(i) to cease and desist from participating and engaging in the anticompetitive horizontal agreement in relation to any discussion on price-related matters pertaining to poultry feed;

(ii) to submit a report documenting the increase of poultry feed prices (if any) for each month from July 2022 to December 2023, and along with the report, to furnish a sample of price notice/announcement or invoice as proof of the price change within two months of the date of the Decision;

(iii) to submit a report on poultry feed price increase and decrease (if any) for each month for the months of January to June 2024

(due by 30.6.2024) and the months of July to December 2024 (due by 31.12.2024), and along with furnishing a sample of price notice/announcements or invoices as proof of the price change;

(iv) all employees and board members involved directly in pricing determination of poultry feed price shall be enrolled in the new compliance program at the appellants' own expense;

(v) a report on the enrolment in the reviewed compliance training programme shall be submitted to the respondent within six months from the date of the Decision;

(vi) to include a provision in the Appellants' Code of Conduct, acknowledging that the involvement of any employee or board member in any infringements against Competition Law shall amount to a misconduct under the Appellants' Code of Conduct;

(vii) the appellants shall submit the original and revised Code of Conduct to the respondent within six months from the date of the Decision; and

(viii) the review of the competition law compliance training programme should include updating the content, improving the delivery methods, and incorporating new techniques to make the training more effective and efficient.

[collectively referred to as 'the Directions']

[5] Beside the Directions, the respondent has also imposed financial penalties against the appellants in varying amounts ("the financial penalty"). The details of the financial penalty for each appellant are as follows:

Appeal No. / Appellants	Financial Penalty
Appeal No. TRP 1/2024 Leong Hup Feedmill Malaysia Sdn Bhd	RM157,470,027.02 to be paid within 30 days of the date of the Decision.
Appeal No. TRP 2/2024 FFM Berhad	RM42,689,583.64 to be paid within 30 days of the date of the Decision.
Appeal No. TRP 3/2024 Dindings Poultry Development Centre Sdn Bhd	RM70,023,622.35 to be paid within 30 days of the date of the Decision.
Appeal No. TRP 4/2024 PK Agro-Industrial Products (M) Sdn Bhd	RM47,800,793.00
Appeal No. TRP 5/2024 Gold Coin Feedmills (Malaysia) Sdn Bhd	RM97,511,670.48 to be paid within 30 days of the date of the Decision.

[6] At the outset, prior to the hearing of the Appeal No. TRP 4/2024, involving the appellant PK Agro-Industrial Products (M) Sdn Bhd ("PK Agro"), the appellant (PK Agro) and the respondent had entered into a settlement vide a Consent Order. This Consent Order

was accordingly recorded by this Tribunal. The details of this Consent Order are confidential, hence was not made public including to the other appellants.

[7] As PK Agro had entered into a Consent Order, this Grounds of Decision will not include PK Agro's appeal.

Material Facts

[8] On 2 November 2020, the respondent commenced its assessment of the poultry market by reason of the increasing prices of poultry feed in Malaysia.

[9] On 2 November 2021, the respondent initiated a formal investigation pursuant to subsection 14(1) of the Competition Act 2010.

[10] On 8 March 2022, the respondent carried out dawn raids at the homes and offices of certain employees of the appellants except for Dindings Poultry Development Centre Sdn. Bhd. ("DPDC") and Gold Coin Feedmills (Malaysia) Sdn. Bhd. ("Gold Coin").

[11] On 4 August 2022, the respondent issued the Proposed Decision dated 29 July 2022 to DPDC, FFM Berhad ("FFM"), Gold Coin, Leong Hup Feedmill Malaysia Sdn. Bhd. ("Leong Hup")and PK Agro provisionally finding that the appellants had infringed subsection 4(1) read together with paragraph 4(2)(a) and subsection 4(3) of the Competition Act 2010 by engaging in price fixing agreements and/or concerted practices in relation to the quantum of increase of poultry feed (with SBM and maize as the main ingredients) price in Malaysia

during the alleged infringement periods from 31 January 2020 to 31 March 2020, from 1 October 2020 to 31 January 2021 and from 1 February 2021 to 30 June 2022 (collectively called the "Infringement Periods").

[12] On 22 December 2023, by a notice dated 11 December 2023, the respondent informed the appellants of the Decision pursuant to section 40 of the Competition Act 2010.

[13] As consequence of the Decision, the appellants filed an appeal to this Tribunal.

Common Issues to be Tried

[14] The appellants and the respondent had filed a statement of common issues to be tried. This list of issues is to assist this Tribunal in coming to a decision. The issues are:

(i) Whether the relevant market is the "supply of poultry feed (which contains SBM and maize as the main ingredients) throughout Malaysia ?

(ii) Whether there were agreement(s) and/or concerted practice(s):

(a) Between FFM, Gold Coin, Leong Hup and PK Agro in respect of:

- The First Infringement Period 31.1.2020 – 31.3.2020; and

- The Second Infringement Period 1.10.2020 - 31.1.2021.

(b) Between DPDC, FFM, Gold Coin, Leong Hup and PK Agro in respect of the Third Infringement Period 1.2.2021- 30.6.2022.

which had the object to fix, directly or indirectly, the quantum of increment of poultry feed prices in Malaysia with SBM and maize as the main ingredients as found by the respondent?

(iii) Whether the respondent was correct to rely on the deeming provision in paragraph 4 (2) (a) of the Competition Act 2010?

(iv) Whether the appellants, where applicable, have fulfilled the requirements of section 5 of the Competition Act 2010 for relief of liability?

(v) Whether the financial penalty and the Directions in the Decision are in line with section 40 of the Competition Act 2010?.

Analysis and Findings

APPEAL NO. TRP 1/2024 LEONG HUP FEEDMILL MALAYSIA SDN. BHD. V COMPETITION COMMISSION

[15] Leong Hup's appeal against the Decision of the respondent were founded on several grounds. This Tribunal will consider the grounds put forth by the Leong Hup in its appeal.

The respondent Failed to Act Judicially, Reasonably, in Good Faith and Without Bias

[16] It was submitted by Leong Hup that the respondent's investigation was initiated without apparent reason. It was contended that the respondent had initiated the investigation arising from a letter published in Malaysiakini pertaining to the increase of poultry feed prices in Malaysia on 2 November 2020 and a statement issued by the Agriculture and Food Industries Minister on 17 November 2020, among others.

[17] Hence, Leong Hup contended that the respondent had directed the investigation and consequential decision only to the appellants. In so doing, certain employees of the appellants were targeted, it was alleged. It was further the case of Leong Hup that the respondent's conduct at the dawn raid on Leong Hup's employee was unreasonable, excessive and disproportionate, as well as cherry picking of evidence by the respondent.

[18] In relation to investigations, subsection 14 (1) of the Competition Act 2010 provides:

> "**14.** (1) The Commission **may conduct any investigation** as the Commission thinks expedient **where the Commission has reason to suspect that any enterprise has infringed or is infringing any prohibition under this Act** or any **person has committed or is committing any offence under this Act.**

(2) The Commission shall, on the direction of the Minister, investigate any suspected infringement of any of the prohibition or commission of an offence under this Act."

[19] The statutory provision in subsection 14 (1) clearly empowers the respondent to conduct investigations when the respondent has reason to suspect there has been an infringement or a continuing infringement. Therefore, for Leong Hup to even question and challenge the manner the investigation was initiated, this Tribunal finds this to be untenable, as the Competition Act 2010 clearly provides the respondent with the power to do so.

[20] This Tribunal further finds the search and seizure/ dawn raid conducted by the respondent was done according to procedural rules. Search and seizure warrants had been obtained. While there is no legal requirement to share the warrant under the Competition Act 2010, it suffices for an officer of the respondent who executed the warrant to show the warrant, which he did, to the person in charge of the premises of Leong Hup which was to be searched.

[21] This Tribunal therefore finds this ground to be baseless and without merit.

No Agreement and/or Concerted Practice with The Object to Fix Prices

[22] Leong Hup argued that there is no evidence for the respondent to make a finding of infringement based on the agreements and/or concerted practices of the appellants. It was submitted that the

respondent had wrongly relied on the deeming provision in paragraph 4(2) (a) of the Competition Act 2010.

[23] Section 4 of the Competition Act 2010 reads:

"**4.** (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

(2) **Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—**

(a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;

(b) share market or sources of supply;

(c) limit or control—

(i) production;

(ii) market outlets or market access;

(iii) technical or technological development; or

(iv) investment; or

(d) perform an act of bid rigging,

is **deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.**

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.".

[24] It is Leong Hup's case that poultry feed prices must necessarily refer to the selling price of the appellants. The purchase price is the price paid by customers to the appellants for the poultry feed with SBM and maize as the main ingredients. In this regard, it was argued that the "increments in the quantum of poultry feed prices" is the specific amount by which the poultry feed price is increased. It was submitted by Leong Hup that quantum of increase of price is not the selling price or the purchase price.

[25] A further contention by Leong Hup is that paragraph 4(2)(a) of the Competition Act 2010 does not apply and that the deeming provision is wrongly invoked.

[26] The respondent in response submitted that there are several ways in which prices can be fixed [See: *The United Kingdom's Competition and Markets Authority case of Online sales posters and frames (Case 50223)*]. It was argued by the respondent that fixing the quantum of increase of price of poultry feed with SBM and maize as the main ingredients is a component of the selling price, and this amounts to price fixing. This Tribunal agree with this submission that quantum of increase is a component of the selling price, and is also an indirect way to fix the selling price under paragraph 4(2)(a) of the Competition Act 2010.

[27] It was further submitted by the respondent that price fixing at the Malaysian Feedmillers Association ("MFA") meetings pre and post the coming into force of the Competition Act 2010 is evidence of price fixing between appellants.

[28] Pertaining to the deeming provision, this Tribunal is of the view that the respondent had not wrongly or mistakenly applied the provision. The deeming provision has been included in the Competition Act 2010 when the Act was enacted to enable the respondent to invoke the same. In the considered opinion of this Tribunal, the invocation of the deeming provision is not wrong or mistaken, and in fact had been correctly invoked by the respondent.

[29] Moreover, pertaining to increments in the quantum of poultry feed prices with SBM and maize as the main ingredients, the evidence demonstrate that the increments were in tandem with the MFA meetings. Even after the coming into force of the Competition Act 2010, while the MFA did not disclose such practice as price fixing, the price increments as announced by the appellants were still identical during the Infringement Periods. This, in the view of this Tribunal points to an agreement and/or concerted practice. While it may be argued there is no evidence of a physical agreement, the fact is cartels are conducted in secret. It is the very nature of cartels to be secretive in their conducts and dealings. Hence, while there may not be an agreement signed by the appellants, the agreement can be concluded from the conduct of the appellants themselves. Instances of those conduct, which (in addition to identical quantum of increase of price of poultry feed with SBM and maize as the main ingredients and which quantum of price increase were announced by the appellants on the same dates, or on dates which are in close proximity to each other during the Infringement Periods, and which instances had been submitted extensively by the counsel for the respondent), also include the minutes of the meetings of the MFA, the communications evidence between the employees of the

appellants, the internal WhatsApp conversations, the call logs, and also Liew Kai Wah's Personal Notes A and B which were also submitted by the counsel for the respondent. The above are instances of concerted practices and or agreements between the appellants which in the view of this Tribunal, had been correctly found by the respondent on the balance of probability. This Tribunal finds no error in this finding of agreements and or concerted practices by the respondent. This Tribunal therefore finds this ground to be without merit and dismisses it.

Fundamental Failure to Adequately Analyze and Appreciate the Economic Context and the Real Market Conditions in the Relevant Market

[30] Leong Hup argued that the word "object" must be construed in the context of subsection 4 (1) of the Competition Act 2010. Reference was made to the case *of Malaysian Airline System Bhd v Competition Commission & Anor* [2022] 1 CLJ 856.

[31] It was submitted that during the infringement periods, the price of crude palm oil ("CPO") increased significantly. It was argued that in the poultry industry the increase of price of poultry feed in Malaysia during the infringement period was due to the increasing prices of maize and soybean meal. Hence, in short, it was contended that this was the reason or basis of the price increment, not the collusion or agreement between appellants to fix prices.

[32] Richard Whish and David Bailey in their book *Competition Law (2021) Oxford University Press* stated that *"the fact that a competition authority does not need to demonstrate, for example, that a horizontal price-fixing agreement produces adverse economic effects relieves it of some of the burdens that would otherwise rest on it"*. Once the deeming provision has been invoked, there is no requirement to conduct effects that is to see how the price fixing agreement had affected the market.

[33] Here, the respondent had correctly invoked the deeming provision. Hence, there is no necessity for the respondent to see how the price fixing has impacted the market. Furthermore, this Tribunal is of the view that even if all the appellants were similarly affected by fluctuations in raw material costs, this would not have led to identical price increases sustained for 23 months of the Infringement Periods.

[34] This Tribunal therefore dismisses this ground.

No basis for the financial penalty or imposition of 10% on relevant turnover; the Base Penalty is disproportionate to Leong Hup's capacity to influence competition in the market; no evidence of Leong Hup communication with the other appellants to fix prices; there are no aggravating factors and Leong Hup cooperation is a mitigating factor; and that the respondent had acted ultra vires by imposing the Directions.

[35] The relevant subsections under section 40 of the Competition Act 2010 are as follows:

"**40.** (1) If the Commission determines that there is an infringement or a prohibition under Part II, the Commission-

(a) shall require the infringement to be ceased immediately;

(b) may specify steps which are required to be taken by the infringement enterprise, which appear to Commission to be appropriate for bringing the infringement to an end;

(c) may impose a financial penalty; or

(d) may give other directions as it deems appropriate.

(4) a financial penalty shall not exceed ten per cent of the worldwide turnover of an enterprise during which an infringement had occurred."

[36] It is argued by Leong Hup that there is no basis for the financial penalty or imposition of 10% on the relevant turnover. It is also argued that that the respondent had wrongly taken into account Leong Hup's intra-group sales revenue. Leong Hup further submitted that the disruption of the investigation by Lim Yong Ping cannot be considered as aggravating factor that warrant an aggravated penalty by 10%, and that the respondent erred in not considering mitigating factors.

[37] It is the view of this Tribunal that the respondent had correctly imposed 10% aggravated penalty on Leong Hup as its employee, Lim Yong Ping, had disrupted the investigation process by the

respondent by abruptly detaching his mobile from the cable that was connected to the respondent's laptop.

[38] This Tribunal noted that the data on Leong Hup's worldwide turnover was provided by the Leong Hup to the respondent. In the considered opinon of this Tribunal, the word "turnover" in subsection 40(4) of the Competition Act 2010 does not distinguish between external sales, internal sales, or sales to related parties. Sales are sales in the view of this Tribunal.

[39] As the financial penalty on Leong Hup is well below the statutory limit of 10% on its worldwide turnover, hence, the amount of penalty imposed on Leong Hup in the view of this Tribunal is within the law. This Tribunal takes cognizance of and concur with the respondent's finding that there are no mitigating circumstances that warrant an imposition of a lower penalty.

[40] As to Leong Hup's argument that the respondent had acted ultra vires in imposing the Directions to ensure compliance, it is the humble view of this Tribunal that such argument flies in the face of subsection 40(1) of the Competition Act 2010 which cloth the respondent with powers to "specify steps which are required to be taken by the infringement enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end" and "any other directions it deems fit and appropriate." As to the legitimacy or otherwise of the provisions of the Competition Act 2010, we are of the view that this Tribunal is not the proper forum to address the issue. On this, we are guided by what this Tribunal had

held in *SAL Agencies Sdn Bhd & Others v Competition Commission* [2023] MLJU 425 as follows:

> *"[51] With regard to the complaint that the Commission had 'usurped into the role as an investigator, prosecutor, judge and jury', this Tribunal is of* ***the considered view that the CA sets down the framework for the*** *Commission. The CA allows the Commission to exercise those roles in order to enforce the anti-competitive law.* ***This Tribunal is not in the position to to judge or comment on the wisdom of the legislature in laying down such frame work. This Tribunal is of the considered view that this proceeding is not the right forum to question the legitimacy of the provisions in the CA".***

The Respondent Had Failed to Consider Relief of Liability for Leong Hup

[41] Section 5 of the Competition Act 2010 reads:

> "**5.** Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 4 based on the reasons:
>
> (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
>
> (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement

having the effect of preventing, restricting or distorting competition;

(c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and

(d) the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services."

[42] The burden of proving the elements under section 5 of the Competition Act 2010 is on the party claiming for relief, in this case Leong Hup. This was held by the court of appeal in *Malaysia Airline System Berhad* (supra) as follows:

"[193] *Our s.5 of the Act is only cosmetically different but substantively and substantiality the same as art. 101(3) of the TFEU…*

[194] *As observed by the learned authors Richard Whish and David Bailey in Competition Law at p.119;*

…where the parties to an agreement that is restrictive by object wish to assert that it could produce efficiency enhancing effects, they can do so only by proving that it satisfies criteria of Article 101(3), the burden of proof being on them to prove this is so..."

[43] The onus is on Leong Hup to prove the four conditions under section 5 of the Competition Act 2010, and to do so, it must adduce sufficient evidence to convince the respondent all the conditions are met. In the view of this Tribunal, Leong Hup had failed to do so. Hence the appeal on this ground is also without merit.

APPEAL NO. TRP 2/2024 FFM BERHAD V COMPETITION COMMISSION

[44] FFM in general has similar grounds of appeal as Leong Hup.

The respondent Failed to Act Judicially, Reasonably, in Good Faith and Without Bias

[45] FFM submitted that the respondent commenced its investigation without any apparent justification. The inquiry was said to have stemmed from a Malaysiakini letter dated 2 November 2020 concerning rising poultry feed prices in Malaysia, as well as a statement issued by the Minister of Agriculture and Food Industries on 17 November 2020, among other matters.

[46] Accordingly, FFM contended that the respondent had deliberately steered its investigation and the resulting decision towards the appellants alone, thereby targeting certain employees. It was further argued that the respondent's conduct during the dawn raid on one of FFM's employee was unreasonable, excessive, and disproportionate, and that the respondent had relied on selective evidence.

[47] Subsection 14 (1) of the Competition Act 2010 provides for investigations as reproduced below:

> "**14.** (1) The Commission **may conduct any investigation** as the Commission thinks expedient **where the Commission has reason to suspect that any enterprise has infringed or is infringing any prohibition under this Act** or any **person has committed or is committing any offence under this Act.**
>
> (2) The Commission shall, on the direction of the Minister, investigate any suspected infringement of any of the prohibition or commission of an offence under this Act."

[48] Subsection 14(1) of the Competition Act 2010 expressly empowers the respondent to initiate an investigation whenever it has reason to suspect that an infringement has occurred or is ongoing. In light of this clear statutory mandate, this Tribunal considers FFM's attempt to question or challenge the basis upon which the investigation was commenced to be unsustainable. The Competition Act 2010 unequivocally grants the respondent the authority to act once such suspicion arises.

[49] This Tribunal also finds that the search, seizure, and dawn raid were carried out in accordance with the applicable procedural requirements. The respondent had obtained the necessary search and seizure warrants prior to conducting the operation. Moreover, FFM's challenge on the respondent's conduct of the investigation is

not supported by evidence. The respondent had conducted its investigations as per the statutory provisions of the Competition Act 2010.

[50] This Tribunal therefore finds this ground to be baseless and without merit.

No Agreement and/or Concerted Practice with The Object to Fix Prices

[51] It is FFM's case that the respondent's finding of infringement is based on the finding that the appellants had agreements and/or concerted practice with the object to fix the "quantum of increments of poultry feed prices". It was argued that the respondent had wrongly relied on the deeming provision of paragraph 4(2)(a) of the Competition Act 2010.

[52] It was also submitted by the FFM the increase in the quantum of poultry feed prices with SBM and maize as the main ingredients is not the selling price or the purchase price.

[53] The respondent relied on the case of *Bollore SA and Others v Commission* (**Bollore**) and argued that price fixing agreements may involve the increase in the price itself or the element of the price.

[54] It was further submitted by FFM that the deeming provision does not apply and was wrongly invoked by the respondent. According to FFM, the words of paragraph 4(2)(a) are unambiguous, plain and clear, and relates only to the purchase or selling price or other

trading conditions. Hence, the quantum of increment it was argued, does not fall within this ambit.

[55] Section 4 of the Competition Act 2010 reads:

"**4.** (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

(2) **Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—**

(a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;

(b) share market or sources of supply;

(c) limit or control—

(i) production;

(ii) market outlets or market access;

(iii) technical or technological development; or

(iv) investment; or

(d) perform an act of bid rigging,

is **deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.**

(3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition."

[56] FFM argued that the references to poultry feed prices relate to the selling price charged by the appellants. According to FFM, the purchase price represents the amount paid by customers to the appellants for poultry feed. In that context, FFM contended that the phrase "increments in the quantum of poultry feed prices" refers to the specific numerical increase in the price of poultry feed, rather than to the selling price or purchase price themselves. On this basis, FFM submitted that the respondent had misconstrued the meaning of the price increments.

[57] FFM further contended that paragraph 4(2)(a) of the Competition Act 2010 was inapplicable and that the deeming provision had been invoked erroneously. In response, the respondent submitted that price-fixing may take various forms, as recognised in competition law jurisprudence, including the United Kingdom Competition and Markets Authority's decision in *Online sales of posters and frames (Case 50223)*. The respondent argued that fixing *any component* of a price constitutes price-fixing. The respondent further submitted that the appellants' conduct at MFA meetings, both before and after the Competition Act 2010 came into force, demonstrated coordinated fixing of price components amongst the appellants.

[58] On the issue of the deeming provision, this Tribunal is of the view that the respondent did not misapply the law. The deeming provision was deliberately included in the Competition Act 2010 to empower

the respondent to rely on it where appropriate. This Tribunal therefore finds that the respondent's invocation of the provision was legally sound and properly undertaken.

[59] With respect to the increments in poultry feed prices with SBM as the main ingredients, the evidence shows that the timing and pattern of the price increases corresponded closely with discussions held at MFA meetings. Even after the Act came into force, and despite the MFA's non-disclosure of these practices as instances of price-fixing, the price increments among the appellants remained identical and were done on identical dates or on dates in close proximity to each other during the Infringement Periods. In this Tribunal's view, such parallel conduct is indicative of an agreement or concerted practice. While it may be argued that no written agreement has been produced, this Tribunal emphasises that cartel arrangements are typically clandestine by nature, and formal documentation is rarely expected. Agreements can therefore be inferred from conduct, which include communication evidence/pre-pricing communications via WhatsApp conversations, call logs and Liew Kai Wah's Personal Notes A and B which were extensively analysed in detail by the respondent, and which preceded the announcement on the increments in the quantum of poultry feed with SBM and maize as the main ingredients. In the opinion of this Tribunal, the respondent had proved the agreement/concerted practices on a balance of probability, hence the deeming provision had been legitimately applied by the respondent.

[60] This Tribunal finds no error in the respondent's assessment, and this Tribunal affirms the findings of infringement had been proven by

the respondent on the balance of probability. Accordingly, this Tribunal dismisses this ground as being without merit.

Fundamental Failure to Adequately Analyse and Appreciate the Economic Context and the Real Market Conditions in the Relevant Market

[61] FFM contended that the term "object" must be interpreted within the framework of subsection 4(1) of the Competition Act 2010, relying in particular on the Federal Court's discussion in *Malaysian Airline System Bhd v Competition Commission & Anor* [2022] 1 CLJ 856. FFM argued that proper statutory interpretation requires the "object" of an agreement to be assessed in context and not in isolation.

[62] It was further submitted by FFM that during the alleged Infringement Periods, the cost of production (COP) for poultry feed rose substantially. According to FFM, the poultry industry in Malaysia experienced significant increases in the prices of key raw materials, namely maize and soybean meal (SBM) during the same period. These cost pressures, FFM argued, were the true drivers of the rise in poultry feed prices, rather than any form of collusion or coordinated conduct among the appellants. In essence, the price increases were said to be economically justified.

[63] Richard Whish and David Bailey in their book Competition Law (2021) Oxford University Press stated that *"the fact that a competition authority does not need to demonstrate, for example, that a horizontal price-fixing agreement produces adverse economic effects relieves it of some of the burdens that would otherwise rest*

on it". Once the deeming provision has been invoked, there is no requirement to conduct effects that is to see how the price fixing agreement had affected the market.

[64] Here, the respondent had correctly invoked the deeming provision. Hence, there is no necessity for the respondent to see how the price fixing has impacted the market. Furthermore, this Tribunal is of the view that even if all the appellants were similarly affected by fluctuations in raw material costs, this would have not led to identical price increases sustained for 23 months of the Infringement Periods.

[65] This Tribunal is of the view this ground is devoid of merit and therefore dismisses this ground.

There is No Basis for the Imposition of 10% Financial penalty and/or the Amount of Financial Penalty is Disproportionate, and the respondent Acted Ultra Vires by Issuing the Directions.

[66] Subsection 40(4) of the Competition Act allows the respondent to impose financial penalty not exceeding 10% of the worldwide turnover of FFM. In this instance, this Tribunal noted that the financial penalty imposed on FFM is only 2.16% of the worldwide turnover of FFM. This is well below the 10% cap. We agree with the submission of the respondent that the financial penalty should have deterrent effect, and that there are no mitigating circumstances to warrant a lesser financial penalty. In the circumstances, this Tribunal find the appeal on this ground lack merit.

[67] As to FFM's contention that the respondent acted ultra vires in issuing the Directions, this Tribunal repeat its view in paragraph [40] of this written grounds of decision.

APPEAL NO. TRP 3/2024 DINDINGS POULTRY DEVELOPMENT CENTRE SDN. BHD. V COMPETITION COMMISSION

[68] The respondent divided the infringement into three periods. DPDC was not found to be involved in the First Infringement Period (31 January 2020 – 31 March 2020) and in the Second Infringement Period (1 October 2020 – 31 January 2021) but was found liable in the Third Infringement Period (1 February 2021 – 30 June 2022). Despite only being implicated in the Third Infringement Period, DPDC incurred the third-highest financial penalty of RM70,023,622.35 among the five appellants.

[69] For the Third Infringement Period, the respondent's finding against DPDC was based on:

1. Similar increments in poultry feed prices from February 2021 to June 2022;

2. Hearsay evidence indicating DPDC's participation in a concerted practice with the other appellants to fix price increments; and

3. Evidence of information exchange among the appellants.

The Respondent Must Define the Market Correctly

[70] DPDC submitted that the respondent must define the market correctly. The starting point for the respondent is to define the market correctly before invoking the deeming provision in paragraph 4(2)(a) of the Competition Act 2010 and making a finding of infringement premised on subsection 4(1) read together with paragraph (4)(2)(a) and subsection 4(3) of the Competition Act 2010. In this regard, DPDC make reference to the cases of *Malaysian Airline System Bhd v Competition Commission and another appeal* [2021] 1 CLJ 856, and *Persatuan Insurans Am Malaysia (PIAM) & Ors v Competition Commission* [2022] 9 CLJ 268.

[71] Section 2 of the Competition Act 2010 defines market 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."

[72] According to DPDC, the respondent had erred when the respondent defined market as "...the supply of poultry feed (that contains SBM and maize as the main ingredients) in Malaysia ("the relevant market")."

[73] It was submitted this is particularly so when the key elements in defining market: product market and geographical market [para 2.5, the respondent's Guidelines on Market Definition, Tab 3, p 31, DPDC's BOA Vol 1].

[74] According to DPDC, the respondent failed to apply the Hypothetical Monopolist Test (HMT) as required under the respondent's own Guidelines. Instead, it merely compared the feed formulas of the five appellants and concluded they compete in the same product market, namely poultry feed with maize and soybean meal as the main ingredients. On that basis, it determined the relevant product market to be the supply of poultry feed. This approach contradicts the HMT, which mandates identifying the smallest group of products in which a hypothetical monopolist could profitably impose a price increase above the competitive level.

[75] DPDC submitted that the respondent had failed to conduct any proper exercise to determine the relevant market, which is fatal for three reasons: (i) the HMT, being an objective test, was not applied; instead, the market was defined around the five appellants to fit section 4 of the Competition Act 2010; (ii) if poultry feed with SBM and maize as the main ingredients is the product market, then formula differences are immaterial, as at least 27 producers supply such feed nationwide; and (iii) the respondent failed to examine consumer switching behaviour, which is essential in defining the relevant market.

[76] The respondent defined the geographical market as "Malaysia" based solely on the invoices of the five appellants, concluding there were no barriers to nationwide competition. This approach, according to DPDC, is flawed and falls short of the proper assessment required under its own Market Definition Guidelines.

[77] In response, counsel for the respondent submitted that to assess whether the five appellants are competitors, it is necessary to identify the relevant market in which they operate. Based on the poultry feed formulations provided by the five appellants, their respective products comprise approximately 53% to 59% maize and 22% to 29% soybean meal.

[78] The respondent in the Decision, had determined that the relevant market is the supply of poultry feed in Malaysia containing soya bean meal ("SBM") and maize as its primary ingredients ("Relevant Market"). From a geographical standpoint, there are no legal or regulatory barriers in Malaysia that prevent the five appellants from competing nationwide. In practice, they each operate feed mills in multiple states and supply customers beyond those states.

[79] The parallel pricing movements observed among all five appellants during the Infringement Periods further indicate that, within Malaysia, the location of producers and customers does not pose any meaningful constraint. Legally, market definition does not require conditions to be perfectly homogeneous.

[80] In this regard, this Tribunal made reference to the European Union case of *T-229/94 Deustsche Bahn AG v Commission* (1997), as reproduced below:

> *"92 In as much as the applicant submits that the Commission's definition of the geographical market is undermined by the difference in the competitive situation, it is sufficient to state that the definition of the geographical market does not require the objective conditions of competition between traders to be*

perfectly homogeneous. It is sufficient if they are `similar or `sufficiently homogeneous and, accordingly, only areas in which the objective conditions of competition are `heterogenous may not be considered to constitute a uniform market..."

[81] This Tribunal is of the considered view that a narrowly defined relevant market would be artificial. Regardless of the precise composition of each appellant's poultry feed, the products are plainly interchangeable and compete directly with one another. In support of this, reference is made to the judgment of the European General Court in *T-259/02 Raiffeisen Zentralbank Österreich AG and Others v Commission* (2006), which likewise involved a case of horizontal price fixing.

[82] Therefore, based on the facts and the cases cited, this Tribunal finds that the respondent had not erred in in defining the Relevant Market.

The Respondent Failed to Satisfy the Requirements in Paragraph 4(2)(a) of the Competition Act 2010

[83] It is DPDC's contention that the respondent had wrongly applied the deeming provision. The applicable law is not disputed by DPDC. The respondent relied on the deeming provision in paragraph 4(2)(a) of the Competition Act 2010, which requires strict compliance. This provision carries an inherent risk of presuming anti-competitive conduct without proving actual object or effect. To invoke it, the respondent must establish three elements: (i) a

horizontal agreement; (ii) between enterprises; and (iii) with the object of fixing prices or trading conditions.

[84] The Court of Appeal case of *Malaysian Airline System Bhd v Competition Commission and another appeal* [2022] 1 CLJ 856 [Tab 6, p 90 – 143, DPDC's BOA Vol 1] held as follows:

> "[116] *However, for a "deemed" clause to be triggered the conditions set for it to operate must be strictly complied with because of its inherent bias in producing a certain set result."*

[85] DPDC submitted that the respondent's finding was based on a "price increase quantum" rather than the actual selling prices of poultry feed. It did not establish that the parties' selling prices were identical or known to each other. Since each appellant's final prices remained different, the alleged parallel increments could not function as a cartel, which requires uniform pricing to eliminate competition. Such increments do not amount to price-fixing or trading conditions under paragraph 4(2)(a). Therefore, it was submitted that the respondent erred in invoking the deeming provision when the statutory requirement of price-fixing was not satisfied.

[86] The respondent accepted that parallel conduct alone is not enough evidence of concerted practice, and it had to show evidences of concerted practice between the five appellants to fix prices [paras 349 – 350 of the Decision]. The respondent acknowledged that parallel conduct alone does not prove concerted practice. Its case rested on two elements: (i) parallel price increase quantum; and (ii) such parallelism resulted from an anti-competitive agreement through communications. If both elements are not established, the

Decision must be set aside. According to DPDC, the respondent relied on the deeming provision without any independent economic assessment and, despite recognising that parallel pricing is not the same as concerted practice, failed to identify any agreement evidencing price-fixing during the Infringement Periods.

[87] The respondent submitted that an 'agreement' / concerted practice is prohibited under subsection 4(1) of the Competition Act 2010 only if it has the object or effect of significantly preventing, restricting, or distorting competition, as reproduced below:

"***4.*** *(1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services."*

[88] Thus, the elements for a prohibition under Section 4 comprises: - i) an agreement between enterprises, ii) which has the object (intention) or effect, iii) of significantly preventing, restricting or distorting competition.

[89] The requirement for the prevention, restriction, or distortion of competition to be significant means that it must have, or be intended to have, more than a minimal impact on competition. Ordinarily, the respondent would need to undertake some form of analysis to demonstrate such significance. For cases involving abuse of dominance under Section 10 of the Competition Act 2010, significance may be shown where an enterprise holds a sufficiently large market share.

[90] An unlawful 'agreement' may be anti-competitive either by its *object* (i.e., intention) or by its actual *effect*. As observed by this Tribunal in *Caliber Interconnects & Ors v Competition Commission* [2023] MLJU 2631, once anti-competitive object is established, it is unnecessary to prove actual effects.

> *"It has been established in European Union (EU) law that it is not necessary to characterize the conduct in question as exclusively an agreement or a concerted effort. It would be sufficient that the conduct in question amounts to one or the other. Also, the 'object' and 'effect' in section 4(1) of the Act, are alternative and not cumulative requirements. This is the plain reading of that section. Also, to be noted is that the MyCC has stated in its guidelines that if an agreement has its object the restriction of competition, it is unnecessary to prove that the agreement would have an anti-competitive effect in order to find an infringement of section 4".*

[91] Pursuant to the deeming provision under paragraph 4(2)(a), certain horizontal agreements (i.e., between competitors) are automatically deemed to be significant based on their object. Paragraph 4(2)(a) states:

> *"(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—*
>
> *(a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;*
>
> *...*

is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services."

[92] Section 2 of the Competition Act 2010 further defines a 'horizontal agreement' as "horizontal agreement" means an agreement between enterprises each of which operates at the same level in the production or distribution chain.

[93] This Tribunal is of the view that in this case, the applicable provision is paragraph 4(2)(a), as the matter concerns a horizontal agreement or concerted practice among the five appellants to fix the quantum of the price increase for poultry feed with SBM and maize as the main ingredients. All five appellants operate at the same level of the production chain and compete in the sale of poultry feed.

[94] Moreover, in *Langkawi Ro-Ro Ferry Services v Competition Commission* [2022] MLJU 2900, where this Tribunal agreed with the respondent's stance that where the object of fixing price is established, there is no need to conduct an effect analysis by reason of the subsection 4(2) deeming provision:

> "[26] ... the MOUs (a horizontal agreement) between the enterprises had a clear object to fix (directly) the purchase and selling price of ticket fares. The object of the MOUs, by its nature and purpose, had triggered the application of the deeming provision of s.4(2) of the CA. The Commission at paragraphs 131 and 132 of its Final Decision states as follows:
>
> "131. Where it is deemed by law that an agreement has the object of significantly preventing, restricting or

distorting competition in the market, it is unnecessary for the Commission to prove the anti-competition effect or to conduct any effect analysis. It is imperative that the deeming provision be given effect.

132. A deeming provision is applied after all the facts have been established. ..."

[28] This Tribunal agrees with the finding of the respondent in invoking the deeming provision because the three requirements or conditions to invoke the deeming provision have been satisfied. The first one is there must be a horizontal agreement, and the second is that the horizontal agreement is entered between enterprises, and lastly, it has the object to fix, directly or indirectly, a purchase or selling price or any other trading condition."

[95] As paragraph 4(2)(a) of the Competition Act 2010 is a "deeming" provision, it does not create a rebuttable presumption. In other words, once a horizontal agreement or concerted practice falls within paragraph 4(2)(a), the appellants cannot challenge its application by arguing that the conduct did not significantly prevent, restrict, or distort competition.

[96] Moreover, this Tribunal is satisfied that the evidence shows the five appellants are competitors who all operate in the same level in the distribution chain, that is, the supply of poultry feed (with SBM and maize as the main ingredients) in Malaysia. Also, both the Parallel Conduct and Communication Evidences as found by the respondent show that the five appellants had the object of fixing, whether

directly or indirectly, the quantum of monthly changes of the selling price of poultry feed (with SBM and maize as the main ingredients).

[97] For the aforementioned reasons, this ground, in the view of this Tribunal, is without merit.

Error in Making a Finding of Infringement When Similar / Identical Price Increase Quantum Observed Across the Industry

[98] According to DPDC, paragraph 4(2)(a) of the Competition Act 2010 requires proof of an agreement with the object of fixing selling prices. Instead, the respondent focused on poultry feed price increases, inferred parallel conduct among five appellants without considering market-wide pricing, and relied on sporadic communications to allege an infringing agreement. It was submitted that the core requirement, which is mutual understanding and agreement to fix prices, was absent.

[99] It is the contention of DPDC that the respondent's investigation was not prompted by farmer complaints but by a Malaysiakini article dated 2.11.2020. According to DPDC, the article referred to industry-wide poultry feed price increases, attributing them to higher raw material costs and exchange rate fluctuations, not to cartel conduct by the five appellants. The increase of poultry feed prices that affected the industry as a whole was due to raw material costs increases according to DPDC. It was further submitted that from the evidence gathered by the respondent, even the small feed millers had increased their prices.

[100] DPDC further submitted that the respondent's own evidence showed poultry feed price increases occurred industry-wide, reflecting independent responses to market forces rather than concerted practice among the five appellants. DPDC argued that in cases of parallel conduct, the respondent must establish that such conduct cannot be explained other than by coordination. It failed to do so here. It was submitted that parallel prices are compatible with competition.

[101] Where there is a parallel conduct, it is necessary for the respondent to ascertain whether the alleged parallel conduct, taking account of the nature of the products, the size and the number of the undertakings and the volume of the market in question, cannot be explained otherwise than by concertation.

[102] The respondent acknowledged rising raw material costs but relied on "IndexMundi" data to claim that while maize and SBM prices fell between July–August 2021, poultry feed prices still rose. This reliance was misplaced according to DPDC as the "IndexMundi" data did not reflect the actual raw material costs incurred by DPDC and other Malaysian suppliers.

[103] Based on price announcements by FFM, Leong Hup, Gold Coin, and PK Agro, and the respondent's evaluation of the price movements of DPDC's invoices, the five appellants had, respectively, parallel price movements (in monthly intervals).

[104] Across a span of 23 months of the three Infringement Periods, the price movements were identical. This Tribunal notes a gap of six months between 31 March 2020 and 1 October 2020, which

corresponds with the COVID-19 pandemic and the implementation of Movement Control Orders. No MFA meetings were convened during this interval; the 191st Meeting took place on 28 February 2020, while the next meeting, the 192nd, was only held on 25 March 2021. DPDC's invoices as early as the 1st – 2nd day of the relevant month show identical price increases with the other four appellants for that relevant month.

[105] The timing of the price announcements thus, does not reflect reactive pricing, but rather a consistent and uniform pattern of announcing or implementing price changes. Their conduct followed a predictable pattern over a substantial period, and it is unlikely to be merely coincidental.

No Similar/Identical Price Increase Quantum During The Third Infringement Period on the part of DPDC (1 February 2021 – 30 June 2022)

[106] According to DPDC, the respondent made an erroneous finding that DPDC increased the prices of poultry feed in the same manner as the other four appellants from February 2021 until June 2022. DPDC contended it did not.

[107] DPDC argued that the first error lies in the respondent's finding, which contradicts its own analysis. It did not identify a similar pattern of price increases by DPDC in June 2022, yet still implicated DPDC in the infringement finding for that month. The respondent stated that its finding was "based on the earliest invoices in each month" of DPDC.

[108] In this regard, it was contended by DPDC that the respondent departed from its earlier position in the Proposed Decision. There, the respondent prepared a comparison table by examining invoices issued by DPDC to two of its customers, Huat Lai and NB Poultry. The finding of similar price increments covered the period from February 2021 to May 2022 and did not include June 2022.

[109] The respondent submitted in response that while the Parallel Conduct of the other four appellants was identified through their respective price announcements, the respondent employed a different methodology to detect Parallel Conduct by DPDC. DPDC submitted its invoices and price lists for poultry feed supplied to 14 customers during the Third Infringement Period in 2021 and 2022. The respondent observed that most of DPDC's invoices demonstrating Parallel Conduct were issued as early as the 1st or 2nd of the relevant month.

[110] The respondent's methodology for determining DPDC's price increases is as follows:

(i) For each customer's price listings, the respondent identified only the relevant products, specifically "Broiler Starter" and "Broiler Grower" feed;

(ii) It then extracted the earliest data for these two products in each month for each customer;

(iii) For each of these earliest sales entries, the respondent calculated the sale price per 50kg bag by dividing the "Sales Amount" by the "Quantity"; and

(iv) Finally, the the respondent compared the sale prices across consecutive months to determine any price movement.

[111] Founded on this methodology, the respondent found that the price increments in DPDC's sales to 13 out of the 14 customers reflected the Parallel Conduct.

[112] This Tribunal is of the view, based on the identical price movements observed for 13 customers, which mirrored the Parallel Conduct of the other four appellants, the respondent correctly concluded that DPDC's price increases were aligned with those of the other four appellants.

[113] Thus, DPDC cannot avoid liability under the Competition Act 2010 merely because one of its 14 customers, namely Chop Cheong Bee, did not implement the Parallel Conduct. See: *Langkawi Ro-Ro Ferry Services v Competition Commission* [2022] MLJU 2900.

[114] Thus, This Tribunal finds this ground to be without merit.

The Finding of Concerted Practice by DPDC With the Other 4 Appellants to Fix Price Increments is Flawed

[115] DPDC submitted that the respondent's finding of infringement against DPDC for the entire Third Infringement Period is flawed. On one hand, the respondent concluded that all five parties engaged in agreements or concerted practices to increase the price of poultry feed by RM2 in February 2021, RM3 in March through May 2021,

RM3 in April 2022, RM4 in May 2022, and RM3 in June 2022. However, the respondent did not identify a similar price increase for DPDC in June 2022, while it did find such increases for the other four appellants and Cargill. More critically, the respondent's entire case and its finding of infringement also rely heavily on communications between the appellants.

[116] Identical deliberations regarding raw materials and votes on whether to increase, maintain, or reduce feed prices are recorded in Item 3 of the minutes of the 80th, 81st, and 83rd to 85th MFA Meetings. Price movements were therefore determined on a monthly basis. Prior to the enactment of the Competition Act 2010, it was the open and documented practice of the five appellants to:

i) share information on the cost of raw materials for poultry feed; and

ii) determine the quantum of increases or decreases in their poultry feed prices.

[117] It is undisputed that, had such conduct occurred after the Competition Act 2010 came into force, it would constitute a price-fixing agreement prohibited under Section 4 of the Competition Act 2010, representing a clear anti-competitive practice.

[118] By the 87th Meeting, held on 25 February 2011, such discussions no longer appear in the MFA meeting minutes. The Competition Act 2010 was scheduled to take effect on 1 January 2012. However, the minutes contain no notes or votes indicating that discussions on raw

materials and future pricing had formally ceased. Such agreements are no longer seen in the official minutes of the MFA Meetings.

[119] From the conduct of the appellants, this Tribunal is of the view that the appellants were well aware their conduct would be in breach of the Competition Act 2010, and hence any such meetings to discuss the price of raw materials and future pricing is not seen in subsequent minutes of the MFA meeting once the Competition Act 2010 came into force.

[120] It is this Tribunal's view, the nature of cartel is secret, hence any such agreement would not be made known for fear of being caught. Therefore, while the MFA minutes may not specifically mention the price increase, this, in the view of this Tribunal, does not mean it was not discussed. It is particularly so taking into consideration the price movements which occurred during the First, Second and Third Infringement Periods. In short, this argument by DPDC, cannot be sustained and is dismissed.

Attendance at The MFA Meetings Does Not Amount to A Horizontal Agreement to Fix Price Increase

[121] DPDC submitted that the respondent had erred in basing its findings against DPDC under paragraph 4(2)(a) of the Competition Act 2010 on DPDC's attendance at MFA meetings. It was argued that none of the MFA meetings were conducted in secrecy, as would be expected in a cartel. The respondent acknowledged that MFA comprised 13 members, all of whom were invited to attend the

meetings. In many instances, other members were present in addition to the appellants.

[122] It was argued by DPDC that the appellants' attendance at MFA meetings does not support the respondent's findings of a Section 4 infringement. It would have been impossible for the parties to enter into agreements or concerted practices to fix the quantum of increase of poultry feed price with other members present at the meetings.

[123] DPDC contended that the respondent implicated DPDC solely on the basis of Mr. Chee Choon Shean's attendance at the MFA meetings, asserting that, as DPDC's key representative, he was presumably involved in price-fixing discussions on behalf of DPDC during these meetings.

[124] According to DPDC that is misconceived as there is no nexus between Mr. Chee's joining of MFA and alleged infringement by DPDC. At the time when Mr. Chee was asked to attend the MFA meetings, Mr. Hideki Oya was the Chief Executive Officer of Premier Grain and Mr. Chee was reporting to him as the General Manager of Premier Grain, not DPDC.

[125] For the period from April to June 2021, the respondent also obtained evidence of a WhatsApp conversation between Yong Kim Loon of PK Agro and his colleague Dr. Sakda. On 24 March 2021, Yong Kim Loon informed Dr. Sakda about his discussion with Jimmy Kueh Swee Chai (James) of Gold Coin regarding future pricing for April to June 2021. Further supporting the credibility of Yong Kim Loon's WhatsApp message is an email from James dated 1 April 2021, in

which he informed his colleagues that Gold Coin would "follow the competitors."

[126] Although DPDC contends that Mr. Chee Choon Shean (as referenced in Liew Kai Wah's notes) did not attend the MFA meetings as its representative, Mr. Chee himself admitted in his statement to the respondent on 20 April 2022 that he did represent DPDC at the MFA meeting as reproduced below:

> Q.18: What is the name of the company/companies that you represented in the MFA meetings?
> 30. As far as the records of MFA is concerned, I am representing DPDC.
> 31. I think why I was chosen to represent DPDC would be due to commodity prices have fluctuated.
> 32. The management would think it would be strategic to appoint me as the representative of DPDC in MFA meetings. Given that my background is in raw material trading, I may be able to give a different perspective on the issue faced by the industry gs. as compared to merly [sic] having a one-dimensional discussion on issues relating to the feed industry only.
>
> Q.19 Are you the sole representatives of the said companies in the MFA meetings?
> 33. Yes. Mr. Kong Pak Cheong would also been in these meetings as he is the president but he does not represent DPDC after his retirement.

34. To the best of my knowldge [sic], he retired either early 2021 or late 2020.

Q.20 Do you report to your superiors on the issues discussed in MFA meetings.?
35. Yes, I report to Mr. Oya.

[127] From the above, it can be seen that Mr. Chee acknowledged that he was appointed to represent DPDC at MFA meetings because of his expertise in raw material pricing. This, in turn, implies that raw material prices were discussed at the MFA meetings, a point also conceded by PK Agro. Therefore, this Tribunal finds the argument of DPDC unsustainable and hence, this Tribunal is of the considered view this ground is without merit.

APPEAL NO. TRP 5/2024 GOLD COIN FEEDMILLS SDN. BHD. V COMPETITION COMMISSION

[128] Gold Coin raised several grounds in their appeal against the Decision of the respondent. The first ground raised by the appellant Gold Coin is Fresh Evidence.

Fresh Evidence

[129] It is Gold Coin's contention that the respondent had included fresh evidence without leave of this Tribunal on evidence and/or matters which did not form part of the Decision. In this regard, Gold Coin reserved their right to file additional submissions and/or adduce further evidence on this issue, if necessary, as well as to protect

their interests regarding their objections in the event this Tribunal does not provide a response.

[130] In response, the respondent argued that the Competition Act 2010 and the Competition (Appeal Tribunal) Regulations 2017 do not prohibit the appellants and the respondent from adducing further evidence before this Tribunal.

[131] In this regard, paragraph 57(1)(f) of the Competition Act 2010 provides this Tribunal with powers in relation to admitting evidence. For ease of reference, paragraph 57(1)(f) of the Competition Act 2010 is reproduced below:

> "**57.** (1) *The Competition Appeal Tribunal shall have power –*
>
> ...
>
> *(f) to admit evidence or reject evidence adduced, whether oral or documentary, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence".*

[132] This Tribunal's procedural regulations grant it broad discretion in managing appeals and do not bar the admission of documents that were not referenced in the respondent's decision. Under subsection 57(1) of the Competition Act 2010, this Tribunal may reject any evidence. Hence, the five appellants should have raised their objections during submissions instead of "reserving" their rights.

[133] This Tribunal had directed the filing of further documents before Written Submissions were due on 10 July 2024. If the five appellants chose not to adduce additional evidence, that was their own choice and they must accept the consequences.

[134] As for the respondent's redacted Document Bundles, the redactions exist to safeguard the confidential interests of the five appellants, who declined to give consent. The current situation stems from their own refusal to agree to a Confidentiality Ring during the respondent's Proposed Decision hearing, and they likewise did not pursue such an arrangement before this Tribunal.

Independent Pricing Strategy

[135] Gold Coin argued that its pricing decisions were independently determined based on internal factors and market conditions. In this regard, it was submitted that the respondent had failed to consider the independent economist report from RBB Economics ("RBB Report") or conduct its own empirical analysis, which Gold Coin argues would have demonstrated that Gold Coin's pricing decisions were independently determined based on internal factors and market conditions.

[136] According to Gold Coin, the RBB Report offered three potential explanations which the respondent had wrongly disregarded. Firstly, the increase in and volatility of raw material prices; secondly, that competitors of Gold Coin who were non-MFA members such as Cargill also increased their prices; and thirdly, a high degree of

transparency over increase in list prices which comes from customer feedback.

[137] In this regard, this Tribunal finds that the respondent did not overlook or fail to consider the explanations and economic analysis presented in the RBB report. As reflected in Paragraphs 338 to 343 of the Decision, the respondent not only examined those explanations but also tested their plausibility with Gold Coin's economist (Chris Hart), its representative (James Kueh), and its Counsel. The respondent noted that none of them could satisfactorily explain how variations in poultry-feed formulations could nonetheless result in identical price increases.

[138] Furthermore, this Tribunal is of the view that even if all the appellants were similarly affected by fluctuations in raw material costs, this would not have led to identical price increases sustained for 23 months of the Infringement Periods. Gold Coin's economist himself accepted that an additional factor must account for the uniform price movements. Consequently, the first explanation put forward in the RBB report cannot be sustained.

[139] Gold Coin argues that its price-increase decisions are unconnected to the MFA meetings. However, the attendance at these meetings is only one component of the extensive Communication Evidence showing exchanges and concerted practices among the five appellants. We find the MFA meeting minutes from before the Competition Act 2010 came into force in 2012, explicitly recording discussions agreeing on price-increase amounts and reveal the purpose of those meetings.

[140] Pertaining to Cargill, this Tribunal is of the view that the respondent is not obliged to investigate every party allegedly engaged in parallel conduct. The fact that Cargill was not investigated does not exonerate the five appellants from liability under the Competition Act 2010.

[141] Regarding the third explanation from RBB Economics, that the high degree of price transparency accounting for the parallel conduct, this Tribunal finds the explanation is unsupported for several reasons:

(i) There is no evidence that Gold Coin raised its prices to align with competitors' price increases based on information obtained from customers.

(ii) The timing of the parallel conduct among the five appellants is extremely close, with some price movements occurring on the very same day.

(iii) The five appellants' price announcements or revisions occur monthly, in a systematic pattern, and on predictable dates. If Gold Coin had truly adjusted its prices only after receiving customer feedback on competitors' price increases, one would expect initial price differences among the five appellants for each affected month before Gold Coin made its adjustments. No such variations appear in any month.

[142] We find Gold Coin's reliance on 'price transparency' unsustainable by the fact that the infringing Parallel Conduct ceased entirely from June 2022 to June 2023, after the respondent began its investigations and interviewed the five appellants in March 2022. Gold Coin also asserts that the respondent wrongly distinguished *the Wood Pulp case* without properly considering the other 'potential explanations' it had put forward. This Tribunal finds the respondent did in fact evaluate all alternative explanations advanced by the appellants and their economists. Importantly, the respondent's finding of concerted practice is not based solely on the presence of Parallel Pricing. In *Wood Pulp*, the EU Commission had no communication evidence at all.

[143] Unlike in *Wood Pulp*, the respondent's findings are supported by extensive communication evidence showing clear collusion among the appellants. The only credible explanation for the Parallel Conduct is their coordinated effort to influence the market; if a legitimate economic explanation existed, such communication would not have been necessary.

[144] In addition to the evidence of Parallel Conduct during the infringement periods, this Tribunal is of the view, the respondent's findings are supported by, among other things, direct and indirect communications between the five appellants and their attendance at MFA meetings. Gold Coin argued that reliance on an individual's personal notes to infer communications on price increases is unsafe, as the notes were unknown to Gold Coin, may only have circulated after the meetings, and are partially redacted, making context unclear.

[145] This Tribunal is satisfied that the respondent did not base its conclusions solely on one individual's handwritten notes. Rather, it considered the totality of evidence. The fact that Gold Coin was unaware of the notes does not diminish their evidential value. LKW's Personal Notes A and B were, in any event, part of the documents supporting the Proposed Decision.

[146] We find Gold Coin's claim that LKW's notes could not reflect the MFA meeting discussions because minutes were circulated only afterward is misleading. LKW's notes for the 192nd MFA Meeting were recorded on the minutes of the 191st meeting. This was confirmed by LKW in his statement dated 13 June 2022 and is evident in the document itself, which notes the 192nd meeting along with its date and location at the Mandolin Restaurant & Bar.

Errors of Law

[147] Gold Coin argued that there was no agreement, concerted practice/parallel conduct, or fixing of prices under Section 4 of the Competition Act 2010. On the ground of error of law and fact made by the respondent, Gold Coin mainly relied on the RBB Report. According to Gold Coin, the RBB Report, including the explanations therein offers an accurate account for the price changes that Gold Coin faced. It was argued that based on the RBB Report, there were legitimate reasons for the price change which were not anti-competitive agreement and/or concerted practice among the appellants.

[148] Gold Coin acknowledged that the respondent could rely on circumstantial evidence but argues that, in doing so, the respondent should apply principles from Malaysian criminal law and meet a higher standard of proof. The respondent, however, maintains that the appropriate standard is the civil standard of the balance of probabilities—not the criminal standard of beyond reasonable doubt—and this standard has been consistently applied in decisions by the Competition Appeal Tribunals of Malaysia and Singapore.

[149] In this regard, this Tribunal makes reference to the case of *SAL Agencies Sdn Bhd & Ors v Competition Commission* [2023] MLJU 425 (CAT):

"[28] In relation to the burden and standard of proof, this Tribunal finds no error has been committed by the Commission in identifying the burden of proof and in relying on the civil standard of balance of probabilities."

[150] In issuing a Proposed Decision and a Final Decision under sections 36 and 40 of the Competition Act 2010, the respondent is exercising its regulatory authority over commercial activities conducted by enterprises as provided for in the Competition Act 2010. In line with the authorities cited above, this Tribunal finds the respondent had conducted a holistic assessment of all evidence, including both Parallel Conduct and Communication Evidence among the appellants, meets the civil standard of proof on the balance of probabilities. We therefore find this ground without merit.

[151] Pertaining to the Deeming Provision under paragraph 4(2)(a) of the Competition Act 2010, Gold Coin argued that the respondent erred in applying paragraph 4(2)(a) of the Competition Act 2010, claiming there was no concurrence of wills, no price-fixing, and no anti-competitive effect. The respondent had correctly inferred a "concurrence of wills" from circumstantial evidence, including Parallel Conduct and communications among the appellants.

[152] Under Section 2 of the Competition Act 2010, an agreement includes any arrangement or concerted practice. Based on the totality of the evidence, the respondent found that Gold Coin and its competitors engaged in horizontal concerted practices to fix the quantum of poultry-feed with (SBM and maize as the main ingredients) price increases within an agreed time frame. This Tribunal finds no error in the respondent's findings and therefore is of the considered view this ground is baseless and ought to be dismissed.

[153] In respect of Gold Coin's submission that there is no price-fixing because this was not a straightforward price-fixing agreement, paragraph 4(2)(a) states as follows:

> "fix, directly or indirectly, a purchase or selling price or any other trading conditions"

[154] This Tribunal makes reference to the EU case of *Bollore v Commission (2012)* and the Singapore case of *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand Case Number: CCS 500/003/08,* which held that 'price-fixing' need not be

confined to the fixing of a selling price per se, but can be done in many ways, and regardless of whether it was fully implemented.

[155] Founded on these cases, this Tribunal is of the view that the argument by Gold Coin bears no merit, as the price-fixing agreement may be done in numerous ways.

Errors of Fact

[156] Gold Coin submitted that the respondent had misconstrued the evidence it relied on in reaching its Final Decision on appellants' price fixing agreement and concerted practice. This Tribunal is of the view that no such misconstruction had occurred as the respondent had duly and correctly relied on communication evidences, LKW personal notes and parallel conduct.

Natural Justice

[157] According to Gold Coin, there was a breach of natural justice as Gold Coin was not provided the full audio conversation between Lim Yong Ping & Vincent (sales employee of Gold Coin), that certain decisions in the Final Decision varied from the Proposed Decision, that the respondent purportedly failed to establish the Confidentiality Right, and that there was delay in notifying Gold Coin of the Final Decision.

[158] It is contended that there was a breach of natural justice and/or procedural impropriety for the following reasons:

i) Gold Coin was allegedly denied a fair opportunity to respond to or explain the evidence relied upon by the Commission:

(a) Gold Coin was not provided with the complete audio WhatsApp conversation between Lim Yong Ping and Vincent, a Gold Coin sales employee, preventing it from rebutting or commenting on the content;

(b) certain decisions in the Final Decision differ from those in the Proposed Decision, and the respondent did not explain these discrepancies.

ii) The Commission failed to establish a Confidentiality Ring; and

iii) There was a delay in notifying Gold Coin of the Final Decision.

[159] Having considered the facts before us, this Tribunal is of the view Gold Coin cannot be said to have been deprived of the opportunity to rebut or comment on this evidence when they were in the position to produce the full WhatsApp conversation between their own employee and Lim Yong Ping should they deem it relevant and helpful for their defence. They choose not to do so.

[160] In relation to the argument that the variation of the Proposed Decision and Final Decision constituted a breach of natural justice, Gold Coin has not demonstrated how the omission of a discussion on the law of price signaling in the Final Decision hinders or

prejudices its ability to understand, respond to, or challenge the respondent's Proposed Decision. The *Container Shipping case* and the issue of price signaling were addressed only in Paragraphs 67 and 68 of the Proposed Decision, merely as part of the respondent's discussion on forms of agreement or concerted practice under Section 4 of the Competition Act 2010. In both the Proposed and Final Decisions, the respondent's findings are based on the Communication Evidence. Gold Coin's argument in this Tribunal's view is entirely unsubstantiated.

[161] Regarding Gold Coin's argument that the respondent in its Proposed Decision had "detailed Cargill Feed's involvement in determining poultry feed prices before 2012", but no longer refers to Cargill in the Final Decision, Gold Coin fails to explain as to how it has been purportedly prejudiced.

[162] Cargill publicly withdrew their participation in price discussions during MFA meetings as recorded in the MFA's Minutes of Meeting of 28.6.2010, while the five appellants continued to proceed to do so. There is no such public withdrawal by either of the five appellants as reflected in the MFA's Minutes of Meetings or otherwise.

[163] The respondent did not find that poultry feed formulations were similar among the appellants and Cargill, noting differences in Cargill's formula. Even if variations exist, this reinforces that the appellants engaged in Parallel Pricing despite differing costs, rather than independently setting price increases. Moreover, the respondent's decision not to determine Cargill's liability does not constitute a procedural irregularity or breach of natural justice, nor does it aid Gold Coin's defence.

[164] Pertaining to the Confidentiality Ring, it is clear the respondent made every effort to ensure that the five appellants had access to the documents, whilst balancing the confidentiality interests of the five appellants. On 6 January 2023, the respondent granted Gold Coin, DPDC, FFM, and Leong Hup the opportunity to redact their confidential information and documents based on a set of Guidelines for Redaction provided by the respondent.

[165] Gold Coin was notified of the Final Decision on 22-12-2023, 11 days after the date of the respondent's Final Decision on 11-12-2023. This period falls squarely within the 14-day period stipulated under subsection 40(2) of the Competition Act 2010. This Tribunal finds no delay in informing Gold Coin of the Final Decision as it is within the time prescribed under subsection 40 (2) of the Competition Act 2010.

Financial Penalty & Directions

[166] Gold Coin contended that the Financial Penalty imposed on Gold Coin by the respondent is excessive, unreasonable and disproportionate, that the respondent had allegedly failed to provide justification for imposing maximum penalty, and failed to consider mitigating factors.

[167] Gold Coin contends that the RM97,511,670.48 financial penalty imposed by the respondent is excessive and disproportionate. It was argued that the respondent did not justify the determination of the relevant periods, the calculation of proxy and base figures, the application of the 10% maximum of worldwide turnover given the

short infringement period of 1 year 11 months, adherence to its own Guidelines and EU fining trends, or the consideration of mitigating and aggravating factors in setting the penalty.

[168] In response, the respondent submitted that the Financial Penalty of RM97,511,670.48 is within the maximum cap imposed by the Competition Act 2010, which is 10% of Gold Coin's worldwide turnover. Therefore, the respondent's calculation is lawful and that Gold Coin's turnover calculated by the respondent were based on information submitted by Gold Coin. Hence, Gold Coin is estopped from disputing the figures.

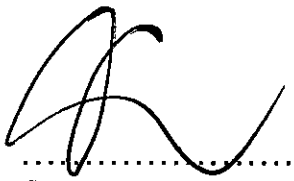
[169] In this regard, this Tribunal finds that the respondent had followed its Guidelines in determining the financial penalty, taking into account factors such as Gold Coin's market turnover and the duration of the infringement. It exercised discretion in setting the base figure, even reducing it in line with this Tribunal's *Caliber Interconnects* decision. The respondent is not bound by EU cases. Gold Coin's argument for lower fines in early years of a competition law regime ignores the seriousness of this case, which involved price-fixing of poultry feed with SBM and maize as the main ingredients. The appellants' omission of price discussions from MFA meeting minutes in 2011 demonstrates their awareness of the Competition Act 2010 prohibitions from the outset.

[170] Hence, this Tribunal is satisfied this ground is without basis and bears no merit.

CONCLUSION

[171] For the abovementioned reasons, this Tribunal unanimously finds no merit in the appeal of Leong Hup, FFM, DPDC and Gold Coin. Their appeals are therefore dismissed with no order as to costs.

The presiding members of the
Competition Appeal Tribunal



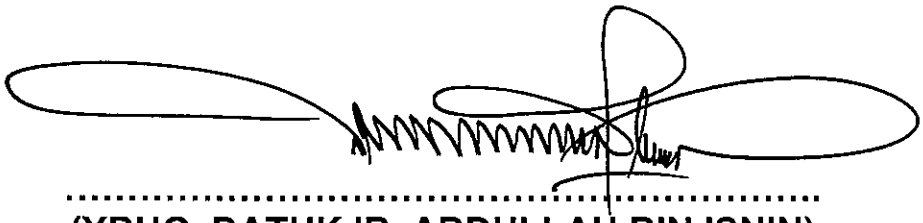
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(YBRS. TUAN CHAMBAI ANAK LINDONG)
Chairman



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(YBHG. DATUK DR. MOHD GAZALI BIN ABAS)



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(YBHG. DATUK IR. ABDULLAH BIN ISNIN)

Dated: 11th February 2026