DALAM MAHKAMAH TINGGI MALAYA
DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-231-05/2024

Dalam perkara permohonan oleh IDX Resources Sdn Bhd (605712-U) untuk satu perintah Certiorari;

Dan

Dalam perkara Cadangan Keputusan No. Kes: 700-1/1/109/2019 bertarikh 16 April 2024 daripada Suruhanjaya Persaingan Malaysia yang diterima pada 22 April 2024;

Dan

Dalam perkara Siaran Akhbar bertajuk "Eight Contractors Face Possible Fines For Bid Rigging" oleh Suruhanjaya Persaingan bertarikh 23 April 2024;

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Dan

Dalam perkara laporan berita yang diterbitkan oleh portal berita Utusan Malaysia, MyBerita, Daily Express, The Malaysia Reserve, The Star, Edge Prop, Free Malaysia Today, Malaysia Tribune, The Edge, Berita Harian dan News Straits Times pada 23 April 2023 berhubung Siaran Akhbar oleh Suruhanjaya Persaingan pada 23 April 2023;

Dan

Dalam perkara Akta Persaingan 2010;

Dan

Dalam perkara Akta Suruhanjaya Persaingan 2010;

Dan

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Dalam perkara Artikel 5 (1) dan 8(1) Perlembagaan Persekutuan;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah Mahkamah 2012;

Dan

Dalam perkara Seksyen 25(2) dan Jadual, Akta Mahkamah Kehakiman 1964.

ANTARA

IDX MULTI RESOURCES SDN BHD
[NO. SYARIKAT: 200301003292 (605712-U)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

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DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
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KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-206-05/2024

ANTARA

PINTAS UTAMA SDN BHD
[NO. SYARIKAT: 199401015844 (301524-V)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA

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(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-212-05/2024

ANTARA

KIARA KILAT SDN BHD
[NO. SYARIKAT: 199901027501 (502401-X)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-230-05/2024

ANTARA

MANGKUBUMI SDN BHD
[NO. SYARIKAT: 200101010800 (546556-H)

... PEMOHON

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DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
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DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-232-05/2024

ANTARA

MENANG IDAMAN SDN BHD
[NO. SYARIKAT: 20040100712 (639215-V)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

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DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-233-05/2024

ANTARA

MERANTI BUDIMAN SDN BHD
[NO. SYARIKAT: 200401036368 (674879-W)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
DI KUALA LUMPUR

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DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-234-05/2024

ANTARA

DUTAMESRA BINA SDN BHD
[NO. SYARIKAT: 199801008452 (464579-P)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

DI DENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA
DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
SEMAKAN KEHAKIMAN NO. WA-25-235-05/2024

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ANTARA

NYL CORPORATION SDN BHD
[NO. SYARIKAT: 198601001330 (150472-K)

... PEMOHON

DAN

SURUHANJAYA PERSAINGAN MALAYSIA

... RESPONDEN

JUDGMENT

INTRODUCTION

1. This judgment concerns the substantive stage of Judicial Review Application No. WA-25-231-05/2024 between IDX Multi Resources Sdn Bhd ("the applicant") and the Competition Commission ("MyCC"), which was heard together with seven other connected matters, namely:

(i) WA-25-206-05/2024

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(ii) WA-25-212-05/2024

(iii) WA-25-230-05/2024

(iv) WA-25-232-05/2024

(v) WA-25-233-05/2024

(vi) WA-25-234-05/2024

(vii) WA-25-235-05/2024

2. The decision in the instant application would bind the other seven matters. The applicants had raised identical challenges on the investigative process of the Competition Commission, which culminated in the Notices of Proposed Decision dated 16 April 2024 ("the Proposed Decision") issued under Section 36(1) of the Competition Act ("the CA") to each applicant. The Proposed Decision pertains to the infringement by the applicants of certain provisions in the CA.

3. The principle relief sought in all the matters is for an order of *certiorari* to quash the Proposed Decision. The Proposed Decision was challenged on the ground that the same was obtained through a flawed investigation and thereby resulting in *procedural impropriety*. Also sought was a declaration that the article in the newspapers titled "Eight

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Contractors Face Possible Fines For Bid Rigging" dated 23 April 2024 is *ultra vires* the CA and for damages to be assessed under O 53 r 5 of the Rules of Court 2012.

4. I allowed leave in view of the decision of the Court of Appeal in **MyTeksi Sdn Bhd & 2 Ors v Competition Commission** [2022] CLJU 3438; [2022] 8 AMR 341 (referred to as "*MyTeksi No. 1*"). There, the Court of Appeal reversed the decision of the High Court refusing leave to apply for judicial review against the proposed decision made under Section 36(1) of the CA. The High Court had held that the proposed decision is not amenable to judicial review on the basis that the decision is not a final decision and hence premature. A final decision is made under Section 40 of the CA when the Commission decides on whether there is an infringement or otherwise after considering the representations of the person or entity accused of infringing provisions of the CA.

5. In *MyTeksi No. 1,* the contents of the proposed decision show that MyCC had in fact made a decision as there was an imposition of a daily penalty of RM15,000, from the date of the service of the proposed decision, in the event the accused entity failed to comply with the directions stipulated therein. In such circumstances, although part of the process remains to be gone through, the accused entity, instead of waiting for the final decision, was entitled to

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challenge the proposed decision. The following paragraph sets out the reasoning of the Court of Appeal:

> [42] However, it does not follow that the appellants are necessarily precluded from mounting a challenge at this earlier stage. There is no automatic bar to challenge at this stage. Therefore, it is necessary to consider at the substantive stage the reasons set out by the respondent for its proposed decision. *It is also necessary to consider whether a useful purpose would be served by allowing that proposed decision under s. 36 to be challenged in advance of a final decision if the court, in its discretion, considers that a useful purpose would be saved by such a challenge. Such challenges may be entertained in appropriate circumstances.*

6. The principle derived from the decision is that a party whose rights are affected by the proposed decision is not precluded from challenging the proposed decision instead of waiting for the final decision. This would apply only in appropriate cases, wherein a useful purpose would be served by allowing the proposed decision to be challenged in advance of a final decision. The Court of Appeal concluded, stating that the question whether a useful purpose is served by a challenge to the proposed decision

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depends on consideration at the substantive stage, in the following words:

> [47] Whether a useful purpose is served by a challenge to the proposed decision depends on consideration at the substantive stage advanced by the parties. For that reason, the court should not have expressed any conclusion on it until it has considered the issues in this case at the substantive stage of the hearing. For that reason, we will not decide on the issue of prematurity in this appeal, and we will not express our own conclusion on it.

7. Needless to say, I am clearly bound by the above judgment on the doctrine of *stare decisis*. The threshold being low, I allowed leave to ventilate the matters raised at the substantive stage, including the question as to the useful purpose to be served by a challenge to the proposed decision, including the issue of prematurity, i.e., that a final decision is yet to be made.

BACKGROUND FACTS

8. MyCC is an independent statutory body established under the CA for enforcing the provisions of the competition laws. The main role is to protect the competitive process for the benefit of businesses, consumers, and the economy. The

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applicants in each of the judicial review applications are private limited companies, involved in the business of construction of roads and/or general construction works.

9. On 4 October 2019, the MyCC received two letters of complaint from the Ministry of Domestic Trade and Consumer Affairs (now known as the Ministry of Domestic Trade and Cost of Living) and the Ministry of Works pursuant to Section 15 of the CA. The complaints concerned the existence of anti-competitive arrangements involving the submissions of bids for two construction projects procured by the Public Works Department (Jabatan Kerja Raya or "JKR").

10. On 6 November 2019, MyCC commenced an investigation in respect of the complaints which concern the CSR 3B & 3C Tenders; and (b) the CSR 3J Tender (also collectively known as the "CSR Projects"). The CSR Projects involve the construction of a toll-free Federal Route Highway, which is intended to connect Kuala Kerai, Kelantan, to Simpang Pelangai, Pahang. It comes under the purview of the JKR. The purpose of the investigation by MyCC was to determine whether or not the purported anti-competitive arrangements between the contractors contravened Section 4(1) read with Sections 4(2)(d) and 4(3) of the CA.

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11. In the course of investigation of the CSR Projects, the MyCC found evidence that some of the applicants were also engaged in agreements and/or concerted practices to perform bid rigging in another project, i.e., the RTB Sungai Buloh Tender. The RTB Sungai Buloh Tender involves a flood mitigation project situated at Sungai Buloh, Selangor. It comes under the purview of the *Jabatan Pengairan dan Saliran* ("JPS"). Notices under Section 18(1) of the CA were sent out, as well as interviewing personnel from the applicants' companies.

12. MyCC's investigation revealed that the applicants were involved in the following:

(a) an agreement and/or concerted practice to perform bid rigging in CSR 3B & 3C Tender;

(b) an agreement and/or concerted practice to perform bid rigging in the CSR 3J Tender; and

(c) an agreement and/or concerted practice to perform bid rigging in the RTB Sungai Buloh Tender.

13. MyCC stated as follows in respect of its investigation in arriving at the Proposed Decision concerning the applicants' involvement in the bid-rigging of the CSR Projects and RTB Sungai Buloh Tender:

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(i) In its investigation, MyCC issued a total of 46 notices pursuant to Section 18(1)(a) and (b) of the CA. These notices were issued to request information and/or documents, to record written statements of witnesses based on the information and documents provided, or in response to enquiries made by MyCC's officers.

(ii) Upon completion of the investigation, MyCC issued its Proposed Decision, *inter alia*, stating that the applicants were also found engaged in bid rigging in respect of the CSR Projects and the RTB Sungai Buloh Tender.

(iii) MyCC made it clear that the Proposed Decision is not a final decision. The final decision would only be issued after having considered the written and/or oral representations made by the applicants and/or after a hearing being conducted as required under Sections 36 to Section 40 of the CA.

(iv) MyCC stated that the Proposed Decision does not have any effect on the rights of the applicants until a final decision is made pursuant to Sections 39 or 40 of the CA.

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14. Dissatisfied, the applicants filed the instant judicial review proceedings for an order of *certiorari* to quash the Proposed Decision against them. Leave to commence judicial review proceedings were allowed as alluded to above. However, an application to stay the proceedings and an order of discovery were refused.

THE GROUNDS OF REVIEW

15. The grounds of review to challenge the Proposed Decision as pleaded in the Order 53 Statement in support of the reliefs sought can be summarised as follows:

(a) the Proposed Decision was made pursuant to an invalid investigation under the CA on the following reasons:

(i) there was no complaint in respect of *Tender Rancangan Tebatan Banjir Sungai Buloh* ("RTB Sungai Buloh Tender") for MyCC to commence investigation;

(ii) MyCC acted *mala fide* by going on a "fishing expedition" in making a request for documents and information when carrying out its investigation;

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(iii) MyCC failed to give sufficient information to the applicants on the investigation and/or raids that were carried out;

(iv) MyCC failed to carry out investigations at *Bahagian Perolehan Kerajaan*, Finance Ministry, which is responsible for the awarding of tenders;

(v) MyCC has failed to show that the Government had suffered losses in awarding the Central Spine Road Package 3B and 3C Tender ("CSR 3B & 3C Tender"), Central Spine Road Package 3J Tender ("CSR 3J Tender"), and the RTB Sungai Buloh Tender;

(vi) MyCC failed to consider that there were 216 bidders for the CSR 3B & 3C tenders, 200 bidders for the CSR 3J Tender, and 163 bidders for the RTB Sungai Buloh, which makes it impossible to interfere with the bidding process;

(vii) MyCC failed to prove that the applicants had the objective and had interfered with the bidding process participated in by hundreds of bidders;

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(viii) MyCC failed to consider that the awarding of the tender is subject to the decision and the assessment by the Ministry of Works and the Ministry of Finance, and not by a pact by the applicants; and

(ix) MyCC failed to consider that even if there was a pact by the applicants to rig the tendering process, which is denied, the applicants are entitled to relief from liability under Section 5 of the CA, as the projects are to give benefit to the public and do not give effect to competition.

(b) MyCC had publicised the Proposed Decision against the applicants in the media when it had no powers to do so under the CA.

ANALYSIS AND DECISION

MyTeksi No. 2

16. After *MyTeksi No. 1* was decided, the matter was reverted to the High Court for the substantive hearing. The High Court allowed the application and quashed the proposed decision. MyCC appealed to the Court of Appeal. The Court of Appeal dismissed the appeal, and the same is reported in **Suruhanjaya Persaingan v MyTeksi Sdn Bhd & Ors** [2025] 6 CLJ 229 (*MyTeksi No. 2*).

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17. The applicants relied on the decision in *MyTeksi No. 2* in their submissions while MyCC submitted the same is distinguishable on the ground that, in the instant case, there is no decision that affects the rights of the applicants which was existing in *MyTeksi No. 1.* There, the Court of Appeal held that the "proposed decision" was a final decision in the sense that a fine of RM15,000.00 was payable daily if the accused entity failed to comply with the directions stipulated in the proposed decision.

18. In the circumstances, this Court was required by the parties to consider whether the decision in *MyTeksi No. 2* is applicable. In this regard, the first thing observed is that the Court of Appeal agreed with the propositions established in *MyTeksi No. 1*, in particular, that the proposed decision was in fact a decision as it imposed a daily penalty of RM15,000, from the date of service of the proposed decision, in the event the accused entity failed to comply with the directions stipulated therein. This requires the proposed decision to be considered to see if it was a "decision" that affected the rights of the applicants. The Court of Appeal stated that in such circumstances, although part of the process remains to be gone through, the accused entity, instead of waiting for the final decision, was entitled to challenge the proposed decision at this stage.

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19. The Court of Appeal then said that in such challenges, it was necessary to consider *whether a useful purpose would be served by allowing that proposed decision to be challenged in advance of a final decision. If the court, in its discretion, considers that a useful purpose would be saved by such a challenge, such challenges may be entertained in appropriate circumstances.*

20. The Court of Appeal upheld the High Court, which found that the Proposed Decision was "sufficiently connected with" the final decision (although yet to be determined) and therefore that a useful purpose would be saved by such a challenge at this earlier stage instead of waiting for the final decision before mounting a challenge. It was in these circumstances that it was held that the judicial review application was not premature.

21. In respect of investigation, the Court of Appeal held that MyCC is obliged to ensure a valid investigation is carried out pursuant to Part III of the CA for the accused entity to respond when served with the proposed decision. What is required according to the Court of Appeal is a valid investigation into the correct allegation of infringement in order to enable the accused entity to defend and meet the case alleged against them adequately. Otherwise, the accused entity would not be accorded a right to be heard. The end result would be that the Proposed Decision is

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tainted with procedural impropriety and therefore amenable to judicial review.

22. The Court of Appeal stated that a valid investigation requires the following:

(a) the investigation must be predicated on a third-party complaint and tied thereto.

(b) prior notification to the accused entity regarding the investigation, which includes the subject matter of the investigation; and

(c) the power to request information, documents, and statements under Section 18(1)(a) and (b) of the CA must be exercised reasonably.

23. In *MyTeksi No. 2,* there was a complaint by one Mohamed Radzwan bin Abdul Wahab, the complainant, in March 2019, which caused MyCC to initiate an investigation ("the 2019 complaint"). However, MyCC had focussed on complaints made against the accused entity in 2018 ("the 2018 complaint"). Although the 2018 complaint was investigated by notifying the accused entity and obtaining their responses, there was *no evidence that MyCC notified the accused entity regarding the investigation into the 2019 complaint*. The Court of Appeal said that the omission was critical since it deprived the accused entity of the opportunity

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to understand the precise complaint against them. The reason was that the absence of formal notification regarding the 2019 complaint made the request for information from the accused entity ambiguous and something that could not be meaningfully responded to. Further, MyCC had conflation the investigations of the 2018 complaints and the 2019 complaint in the issuance of the proposed decision, which resulted in an error of law of the *procedural impropriety* kind requiring the proposed decision to be quashed.

The instant case

24. It suffices to state that any ground not pleaded in the Order 53 Statement cannot form the basis of the judicial review application and is not considered. This Court will only consider what is pleaded clearly and sufficiently particularised in the Order 53 Statement and not those raised in the affidavits, which are for verifying the facts relied on or during oral submissions or in written submissions.

25. In this regard, the law is trite. In **Ong See Teong & Anor v Tenaga Nasional Bhd** [2008] 5 MLJ 717, advanced the proposition in the following paragraphs:

> [23] To my mind, as in other proceedings, counsel must always remember the general rule that the applicants are bound by the four corners of their pleadings. As a matter of general principle, **the**

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applicants could only rely on the grounds and relief that were set out in the statement. It is also fatal for the applicants to raise new grounds of challenge in the affidavits in support or tendered via oral or written submission at the later hearing stage.

[24] **It is also a cardinal requirement that the applicants must set out their grounds clearly in the statement, supported by sufficiently detailed and comprehensive particulars of the facts and matters on which the applicants intend to rely in support of their application**. The requirement for the precision is to ensure that judicial review is conducted within the ambit or scope of the specific impugned decision.

26. The proposition in *Ong See Teong* was approved by the Court of Appeal in **Sunway University College v Mahkamah Perusahaan Malaysia & Anor** [2019] 7 CLJ 55, where it was held as follows:

[34] It is a cardinal requirement that **the claimant must set out her grounds clearly in the statement, supported by sufficient details and comprehensive particulars of the facts and matters which the claimant sought to rely on** (see *Ong See Teong & Anor v Tenaga Nasional*

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Bhd [2007] 4 MLRH 421; [2008] 5 MLJ 717). **The above general averments were not supported by any particulars and thus were insufficient to warrant a review on the merits by the High Court**.

27. The latest case on the subject is **Lembaga Tatatertib Kumpulan Sokongan (No.1) Jabatan Perlindungan Hidupan Liar dan Taman Negara & Ors v Mariani Ramli** [2021] 9 CLJ 695 at 707-709, where the Court of Appeal held as follows:

> [41] We are also of the considered opinion that the learned judge has committed an error of law when he decided on issues not pleaded in the grounds of the application.
>
> [43] Justice Chang Min Tat FJ added that the **High Court should not have resorted to the affidavit for the grounds on which the application was brought, as the rule was clear that all grounds had to be set out in the statement**.

28. I found that the test that a useful purpose would be saved by a challenge to the investigation process at this earlier stage of the proposed decision not satisfied. Firstly, the grounds that were featured in MyTeksi No. 2 do not exist in the instant case. Secondly, the grounds pleaded do not

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show that the investigation carried out rendered the Proposed Decision something that the applicants could not respond to. My reasons are as follows.

29. The first complaint was that there was no complainant in respect of *Tender Rancangan Tebatan Banjir Sungai Buloh* ("RTB Sungai Buloh Tender") for MyCC to commence investigation is devoid of merit. MyCC is permitted to investigate in two circumstances: (i) Section 14 of the CA; and (ii) Section 15 of the CA. Section 14 of the CA provides that an investigation may be initiated by MyCC itself or on the direction of the Minister in the following words:

> (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 prohibitions or commission of an offence under this Act.

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or pursuant to Section 15 of the CA, which provides for investigations upon a complaint received by a third party in the following words:

> (1) The Commission may, upon a complaint by a person, conduct an investigation on any enterprise, agreement, or conduct that has infringed or is infringing any prohibition under this Act or against any person who has committed or is committing any offence under this Act.
>
> (2) The complaint shall specify the person against whom the complaint is made and details of the alleged infringement or offence under this Act.

30. MyCC said that during the investigation into the CSR Projects, the applicants were also found to be engaged in bid rigging activity in the RTB Sg. Buloh Tender. MyCC had also considered the admission made by one of the applicant's directors for having engaged in the big rigging process for all the said projects. This is what the MyCC stated in the Proposed Decision:

> 248. The bid rigging arrangements by the Parties had enabled parties to skew the bidding outcomes to their favor. The manipulations of the bidding process were further corroborated by the admission

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made by Mangkubumi's Director, namely Tan Sri Zainudin Karjan, who stated that the arrangements were necessary "to increase the group's change to win the tender". The Commission finds that this admission highlights the motive of the arrangement to enter into agreements and/or concerted practices to rig the bidding outcome for Tender CSR 3B and 3C, Tender CSR 3J, and Tender RTB Sungai Buloh to their favour, which unfairly deprived their competitors of the opportunity to compete on fair terms in a similar market."

31. If there is a complaint and evidence of any infringement of the provisions of the CA is detected while investigating the complaint, the CA confers power on MyCC to act. In this case, it was found that there was bid rigging for the RTB Sg. Buloh Tender. Thus, although there was no separate complaint for this project, MyCC has the power to investigate pursuant to section 14 of the CA. In this regard, it suffices to state that in *MyTeksi No. 2,* Section 14 of the CA was not in consideration. So, in respect of the issue of a complaint to commence investigation, that case is distinguishable on the facts.

32. The second complaint was that the MyCC acted *mala fide* by going on a "fishing expedition" in making a request for documents and information when carrying out its investigation. I found that the request for documents was

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properly made and the complaint devoid of merit. Section 18 of the CA confers the power on MyCC to obtain information for investigation purposes in very wide terms as follows:

> (1) The Commission may, by notice in writing, require any person whom the Commission believes to be acquainted with the facts and circumstances of the case –
>
> (a) to provide or produce to the Commission, within the period and in the manner specified in the notice, any information or document which is relevant to the performance of the Commission's powers and functions; or
>
> (b) to make a statement to the Commission providing an explanation on any information or document referred to in paragraph *(a)* within the period and in the manner specified in the notice.

33. A consideration of the facts does not reveal that MyCC acted unreasonably in non-compliance with the CA. In fact, it is the converse; MyCC had acted according to its powers of investigation.

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34. The third complaint was that MyCC failed to give sufficient information to the applicants on the investigation and/or raids that were carried out. This complaint is also devoid of merit. I found the notices issued to the applicants and requiring certain personnel of the applicants to be present at the MyCC office to produce information and documents as requested said as well as to record a statement under Section 18(1)(a) and (b) of the CA, sufficient information on the investigation.

35. As such, the issue of breach of natural justice and right to be heard does not arise in our present case. The applicants knew exactly what the complaints and investigation were about as the required notices under Section 18(1) of the CA were issued and served on the applicants.

36. The other complaints, namely:

(i) MyCC failed to carry out investigations at *Bahagian Perolehan Kerajaan*, Finance Ministry, which is responsible for the awarding of tenders;

(ii) MyCC has failed to show that the Government had suffered losses in awarding the Central Spine Road Package 3B and 3C Tender ("CSR 3B & 3C Tender"), Central Spine Road Package 3J Tender ("CSR 3J Tender"), and the RTB Sungai Buloh Tender.

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(iii) MyCC failed to consider that there were 216 bidders for the CSR 3B & 3C tenders, 200 bidders for the CSR 3J Tender, and 163 bidders for the RTB Sungai Buloh, which makes it impossible to interfere with the bidding process;

(iv) MyCC failed to prove that the applicants had the objective and had interfered with the bidding process participated by hundreds of bidders;

(v) MyCC failed to consider that the awarding of the tender is subject to the decision and the assessment by the Ministry of Works and the Ministry of Finance, and not by a pact by the applicants; and

(vi) MyCC failed to consider that even if there was a pact by the applicants to rig the tendering process, which is denied, the applicants are entitled to relief from liability under Section 5 of the CA, as the projects are to give benefit to the public and do not give effect to competition.

The above matters are to be raised by the applicants in their representation and considered when the final decision is made. They do not fall within the scope of an invalid investigation resulting in a breach of the right to be heard. An invalid investigation is one that is not carried out pursuant to

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Part III of the CA according to *MyTeksi No. 2*. The above matters are, in fact, matters and/or defences to be raised in the representations against the Proposed Decision. The applicants have already put in their representations, and these matters would be dealt with there.

37. Based on the above reasons, the application for judicial review was dismissed.

DATED: 22 SEPTEMBER 2025

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AMARJEET SINGH SERJIT SINGH

JUDGE

HIGH COURT OF KUALA LUMPUR

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WA-25-231-05/2024

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Cases referred to:

1) **MyTeksi Sdn Bhd & 2 Ors v Competition Commission** [2022] CLJU 3438; [2022] 8 AMR 341.
2) **Suruhanjaya Persaingan v MyTeksi Sdn Bhd & Ors** [2025] 6 CLJ 229.
3) **Ong See Teong & Anor v Tenaga Nasional Bhd** [2008] 5 MLJ 717.
4) **Sunway University College v Mahkamah Perusahaan Malaysia & Anor** [2019] 7 CLJ 55.
5) **Lembaga Tatatertib Kumpulan Sokongan (No.1) Jabatan Perlindungan Hidupan Liar dan Taman Negara & Ors v Mariani Ramli** [2021] 9 CLJ 695 at 707-709.

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***ADMINISTRATIVE LAW**: Judicial review – Certiorari – Investigation conducted by Malaysia Competition Commission regarding complaints against company for bid rigging –Proposed decision issued – Proposed decision challenged for invalid investigation – When challenge available – Procedural impropriety – Sections 14, 15, 18, 36, and 40 of the Competition Act 2010*

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