



Malaysia Competition Commission

Case No. 700-1/3/1/2019

Competition Act 2010 [Act 712]

Decision of the Competition Commission

Infringement of Section 4(1) read with Section 4(2)(a) and (3) of the
Competition Act 2010

Competition Commission

v.

1. Langkawi Auto Express Sdn. Bhd.
2. Langkawi Ro-Ro Ferry Services Sdn. Bhd.
3. Dibuk Cargo Services Sdn. Bhd.
4. Dibuk Sdn. Bhd.
5. Langkawi Ferry Services Sdn. Bhd.

DATED: 17 DECEMBER 2021

Redacted confidential information in this Decision is denoted by square parenthesis [X]

DECISION

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

- (i) Dato' Seri Mohd Hishamudin bin Md Yunus (Chairman);
- (ii) Datuk Tay Lee Ly;
- (iii) Dato' Jagjit Singh a/l Bant Singh;
- (iv) Dato' Ir. Hj. Mohd Jamal bin Sulaiman;
- (v) Dr. Nasarudin bin Abdul Rahman;
- (vi) Dr. Nor Mazny binti Abdul Majid;
- (vii) Pn. Siti Juriani binti Jalaluddin; and
- (viii) Tn. Arunan a/l K. Kumaran.

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INTRODUCTION

1. This Decision (“the Decision”) concludes that the enterprises that we have named at **paragraph 3** herein have infringed the prohibition under section 4 (“section 4 prohibition”) of the Competition Act 2010 (“the Act”). In this Decision, the named enterprises shall be individually referred to herein as “Party” and collectively referred to as “Parties”.
2. The Parties had infringed the section 4 prohibition by participating in agreements through two memorandums of understanding that had as their object of significantly the prevention, restriction, or distortion of competition in relation to the market of the provision of vehicle transportation via roll-on, roll-off (“ro-ro”) vessels in Langkawi, Kedah, Malaysia, (“the Infringing Agreements”) from 31.12.2017 until 14.9.2020 (“the Infringement Period”).
3. This Decision is addressed to the following Parties:
 - (i) Langkawi Auto Express Sdn. Bhd.;
 - (ii) Langkawi Ro-Ro Ferry Services Sdn. Bhd.;
 - (iii) Dibuk Cargo Services Sdn. Bhd.;
 - (iv) Dibuk Sdn. Bhd.; and
 - (v) Langkawi Ferry Services Sdn. Bhd.
4. By this Decision, the Commission hereby issues directions to the Parties as elaborated in **Part 3** of the Decision. In addition, the Commission imposes on each of the Parties financial penalties for the infringement, as set out in **Table 27**.

PART 1: THE FACTS

A. THE ENTERPRISES CONCERNED

A1. LANGKAWI AUTO EXPRESS SDN. BHD. AND LANGKAWI FERRY SERVICES SDN. BHD.

- 5. Langkawi Auto Express Sdn. Bhd. (“LAE”) (544605-U)¹ is a private limited company incorporated in Malaysia on 11.4.2001 and is engaged in the provision of ferry services for the transportation of motor vehicles. LAE’s registered business address is at No. 37 and 39, Jalan Pandak Mayah, Pusat Bandar Kuah, 07000, Langkawi, Kedah, Malaysia.
- 6. The list of directors and shareholders of LAE at the material time are described in **Table 1** below:

Table 1: List of Directors and Shareholders of LAE

LAE	
DIRECTORS	SHAREHOLDERS
Ooi Cheng Choon	Langkawi Ferry Services Sdn. Bhd.
Loke Chee Beng	(49%)
Ooi Kooi Bee @ Kooi Bee	Dibuk Sdn. Bhd.
Loke Gim San	(40%)
Marzukhi bin Othman	Mohd Azrul bin Adnan
Ezreen Muhaizie bin Marzukhi	(11%)

¹ Companies Commission of Malaysia search on Langkawi Auto Express Sdn. Bhd. dated 27.7.2021.

- 7. LAE was formed through a joint venture between Dibuk Sdn. Bhd. and Langkawi Ferry Services Sdn. Bhd. (“LFS”).² The key shareholder of Dibuk Sdn. Bhd. at the material time, namely, Marzukhi bin Othman (“Marzukhi”) and his son, Ezreen Muhaizie bin Marzukhi (“Ezreen”), are directors of LAE.³

- 8. LFS (410704-H) is a locally incorporated private limited company established on 20.11.1996, and is engaged in the business of operating ferry services. LFS’ registered business address is at 37 & 39, Jalan Pandak Mayah 5, Pusat Bandar Kuah, Langkawi, Kedah, Malaysia.⁴

- 9. The list of directors and shareholders of LFS at the material time is described in **Table 2** below:⁵

Table 2: Directors and Shareholders of LFS

LFS	
DIRECTORS	SHAREHOLDERS
Ooi Kooi Bee@Kooi Bee	Mohd Azrul bin Adnan 30%
Loke Chee Beng	Ooi Cheng Choon 20%
Loke Gim San	Loke Gim San 10%
Ooi Cheng Choon	Ooi Siew Eng 10%

² Companies Commission of Malaysia search on Langkawi Auto Express Sdn. Bhd. dated 27.7.2021; paragraph 3 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019; paragraph 1 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019; and paragraph 6 of the Statement of Tan Toh Eng of LAE recorded on 4.4.2019.

³ Companies Commission of Malaysia search on Langkawi Auto Express Sdn. Bhd. dated 27.7.2021.

⁴ Companies Commission of Malaysia search on Langkawi Ferry Services Sdn. Bhd. dated 26.7.2021.

⁵ Companies Commission of Malaysia search on Langkawi Ferry Services Sdn. Bhd. dated 26.7.2021.

LFS	
Mohd Azrul bin Adnan	Ooi Lay Hoon 10%
	Ooi Chin Huat 10%
	Loke Chee Beng 5%
	Loke Chee Hoay 5%

A2. LANGKAWI RO-RO FERRY SERVICES SDN. BHD.

10. Langkawi Ro-Ro Ferry Services Sdn. Bhd. ("LRFS") (980277-P) is a locally incorporated private limited company established on 29.2.2012, and is engaged in the business of ro-ro ferry services. LRFS' registered business address is at No. 1, Blok B Kompleks Dermaga Tanjung Lembung, Mukim Ulu Melaka, 07000, Langkawi, Kedah, Malaysia.⁶
11. The list of directors and shareholders of LRFS at the material time is described in **Table 3** below:

Table 3: List of Directors and Shareholders of LRFS

LRFS	
DIRECTORS	SHAREHOLDERS
Ku Azhar bin Ku Abdul Razak	Ku Azhar bin Ku Abdul Razak (40%)
Wong Ing Tuang	Wong Ing Tuang 49%
Wong Sie Kiong	Wong Sie Kiong (1%)

⁶ Companies Commission of Malaysia search on Langkawi Ro-Ro Ferry Services Sdn. Bhd. dated 27.7.2021.

LRFS	
Ng Ean Soon	Ng Ean Soon (10%)

A.3 DIBUK CARGO SERVICES SDN. BHD. AND DIBUK SDN. BHD.

12. Dibuk Cargo Services Sdn. Bhd. (“Dibuk Cargo”) (1085670-V)⁷ is a private limited company incorporated in Malaysia on 19.3.2014 and is engaged in the business of transportation, sea transportation and facilities management. Dibuk Cargo’s registered business address is at Lot No. 1667, KM 7, Jalan Simpang Empat 02000, Kuala Perlis, Perlis, Malaysia.
13. The list of directors and shareholders of Dibuk Cargo at the material time is stated in **Table 4** below:

Table 4: List of Directors and Shareholders of Dibuk Cargo

DIBUK CARGO	
DIRECTORS	SHAREHOLDERS
Marzukhi bin Othman	Marzukhi bin Othman (90%)
Ezreen Muhaizie bin Marzukhi	Ezreen Muhaizie bin Marzukhi (10%)

14. The list of directors and shareholders of Dibuk Sdn. Bhd.⁸ is as set out in **Table 5** below. The majority shareholder of Dibuk Cargo at

⁷ Companies Commission of Malaysia search on Dibuk Cargo Services Sdn. Bhd. dated 12.3.2019.

⁸ Companies Commission of Malaysia search on Dibuk Sdn. Bhd. dated 27.7.2021.

the material time, Marzukhi, also holds majority shares in Dibuk Sdn. Bhd. (170600-D)⁹ as reflected in **Table 5**:

Table 5: List of Directors and Shareholders of Dibuk Sdn. Bhd.

DIBUK SDN. BHD.	
DIRECTORS	SHAREHOLDERS
Marzukhi bin Othman	Marzukhi bin Othman (78%)
	Ezreen Muhaizie bin Marzukhi (4%)
Juliana binti Yaakob	Juliana binti Yaakob (18%)

15. The Commission notes that Marzukhi and Ezreen, together, own the entirety of shares (100%) in Dibuk Cargo. Together, they are also the majority shareholders of Dibuk Sdn. Bhd. It is observed that Marzukhi is the common director and holds majority shares in both enterprises.

B. BUSINESS AND INDUSTRY LANDSCAPE

B.1 THE MOVEMENT OF VEHICLES INTO AND OUT OF LANGKAWI

16. Langkawi is an archipelago of 99 islands located in the northern region of Malaysia's Peninsular and forms part of the state of Kedah. The main island is Kuah. Transportation of goods, passengers and vehicles entering and exiting Langkawi, takes place at 4 locations, on the island of Kuah namely, Teluk Ewa, Tanjung Lembung, Tanjung Malai and Kuah Jetty.

⁹ Companies Commission of Malaysia search on Dibuk Sdn. Bhd. dated 27.7.2021.

17. Teluk Ewa is a transportation hub for transporting goods (excluding vehicles) into Langkawi and is mainly used to transport cement cargoes. Tanjung Malai is mainly used for the berthing of cruise ships such as the Star Cruise. On the other hand, Kuah Jetty is the main terminal for passengers to arrive at and depart from Langkawi.¹⁰
18. The transportation of vehicles to and from Langkawi is only possible through a dock/jetty, Dermaga Tanjung Lembung, Kuah, Langkawi, which is equipped with specific facilities to cater for the transportation of vehicles.¹¹ This is illustrated in a diagram in **Annexe 1** below.

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¹⁰ Paragraphs 5 and 18 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

¹¹ Paragraph 5 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

Annexe 1: Diagram of Route between Langkawi, Kuala Perlis and Kuala Kedah



19. The shipment of vehicles between Langkawi and the Kuala Perlis Jetty located at the mainland of West Malaysia is done via 'ro-ro vessels'. Ro-ro vessels are vessels that are used to carry wheeled cargo. The vehicles in the vessel are loaded and unloaded using built-in ramps.
20. For the purpose of this Decision, the term "vehicle" refers to the following:
- (a) Sedan car of all engine types;
 - (b) SUV, MPV, pickup, van and four-wheel drive;
 - (c) Van (below 13 seats);
 - (d) Alphard, Vellfire, Starex or equivalent;
 - (e) Coach (minimum 30 pax/without pax);
 - (f) Coach (14 - 19 seats);
 - (g) Bus (25 - 34 seats);
 - (h) Bus (35 seats and above);
 - (i) Mini Bus;
 - (j) Motorcycle;
 - (k) Bicycle;
 - (l) Super car;
 - (m) Luxury car; and
 - (n) Lorry.
21. Accordingly, the function of a ro-ro vessel is mainly for the shipment of common vehicles such as cars and small lorries.¹² The ro-ro vessels operated by LRFS only carry lorries weighing below 6

¹² Paragraph 15 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

tonnes, and the barge vessels are used for the shipment of heavier lorries.¹³

22. Meanwhile, shipments of vehicles between Langkawi and Kuala Kedah are done via barges that usually operate during the night.¹⁴ A barge is a type of vessel that requires towing by a small ship.¹⁵ Currently, there are 3 operators providing barge services in the route of Langkawi and Kuala Kedah, namely, Pertiwi Shipping Sdn. Bhd. (179750-V),¹⁶ Wantas Shipping (Langkawi) Sdn. Bhd. (26768-V),¹⁷ and Pengangkutan Bersatu Langkawi Sdn. Bhd. (46042-H).¹⁸

B.2 RO-RO SERVICES BETWEEN LANGKAWI AND KUALA PERLIS

B.2.1 OWNERSHIP OF THE RO-RO VESSELS

23. The only companies that provide ro-ro vessel services in Langkawi are LAE, LRFS and Dibuk Cargo.¹⁹ LAE owns two ro-ro vessels; whilst Dibuk Cargo owns one ro-ro vessel.²⁰ LRFS does not own any vessel but it operates two vessels.

¹³ Paragraph 28 of the Statement of Lee Sun Sun of LRFS recorded on 11.3.2019.

¹⁴ Paragraph 16 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

¹⁵ Paragraph 10 of the Joint Statement of Wong Sie Kiong and Wong Yuk Tek of LRFS recorded on 11.3.2019.

¹⁶ Companies Commission of Malaysia search on Pertiwi Shipping Sdn. Bhd. dated 27.7.2021.

¹⁷ Companies Commission of Malaysia search on Wantas Shipping (Langkawi) Sdn. Bhd. dated 27.7.2021.

¹⁸ Companies Commission of Malaysia search on Pengangkutan Bersatu Langkawi Sdn. Bhd. dated 27.7.2021; and paragraph 17 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

¹⁹ Paragraph 21 of the Joint Statement of Wong Sie Kiong and Wong Yuk Tek of LRFS recorded on 11.3.2019; paragraph 23 of the Statement of Lee Sun Sun of LRFS recorded on 11.3.1019; paragraph 26 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019; and paragraph 35 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

²⁰ Paragraph 35 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

24. The two ro-ro vessels owned and operated by LAE are named “Langkawi Auto Express 1” and “Langkawi Auto Express 2”.²¹
25. The ro-ro vessel owned and operated by Dibuk Cargo is named “Dibuk 3”.²²
26. The two ro-ro vessels operated by LRFS are named “Langkawi Ro-Ro” and “My RoRo Langkawi”.²³ Based on the ship transcript issued by the Marine Department of Malaysia, the owner of Langkawi Ro-Ro is J&J Convenience Store Sdn. Bhd. (84043-A);²⁴ and My RoRo Langkawi is owned by MyRoRo Langkawi Sdn. Bhd. (1100560-A).²⁵

B.2.2 SCHEDULES FOR THE RO-RO SERVICES

27. The schedules for the ro-ro vessel services are determined by the Parties based on the variation in water tides.²⁶ The Royal Malaysian Navy periodically issues a book on the nationwide forecast of water tides. The Marine Department of Langkawi relies on the information contained in the book.
28. The Commission observes that the Parties coordinated with each other on the schedules for the arrival and departure of their

²¹ Ship Transcripts of Langkawi Auto Express 1 and Langkawi Auto Express 2 issued by the Marine Department of Malaysia retrieved on 27.3.2019.

²² Ship Transcript of Dibuk 3 issued by the Marine Department of Malaysia retrieved on 27.3.2019.

²³ Paragraph 25 of the Statement of Ku Azhar bin Ku Abdul Razak of LRFS recorded on 8.5.2019; and Ships Transcript on Langkawi Ro-Ro and My RoRo Langkawi issued by Marine Department of Malaysia retrieved on 27.3.2019.

²⁴ Ship Transcript of Langkawi Ro-Ro issued by the Marine Department of Malaysia retrieved on 27.3.2019.

²⁵ Ship Transcript of My RoRo Langkawi issued by Marine Department of Malaysia retrieved on 27.3.2019.

²⁶ Paragraph 7 of the Joint Statement of Wong Sie Kiong and Wong Yuk Tek of LRFS recorded on 11.3.2019; paragraph 28 of the Statement of Tan Toh Eng of LAE recorded on 4.4.2019 and paragraph 19 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019.

respective vessels. The Commission was informed that the Parties are required to coordinate the schedule due to the limited berthing slots available at Dermaga Tanjung Lembung and Kuala Perlis.²⁷ This practice serves to avoid clashes in departure schedules during peak hours. This information provided by the Parties was confirmed by the Marine Department (Northern Region).²⁸

29. The Commission finds that the coordination between the Parties on the schedules is necessary to ensure the efficiency of operations at the berthing point of arrival.

B.3 CHARGES IMPLEMENTED AND REGULATED BY THE MINISTRY OF TRANSPORT

30. The Maritime Division of the Ministry of Transport (“MOT”) informs the Commission that the passenger fares for a ferry to and from Langkawi are regulated by a Cabinet Decision made in 2007, and these fares have been maintained to date.²⁹ The Commission notes that the passenger fares for ro-ro vessels published by the Parties and the passenger fares for ferries enforced by the MOT are the same.³⁰

²⁷ Paragraph 29 of the Statement of Tan Toh Eng of LAE recorded on 4.4.2019; paragraph 20 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019; and paragraph 24 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

²⁸ Paragraph 32 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

²⁹ Paragraph 23 of the Statement of Mohamad Halim bin Ahmed of Maritime Division of the Ministry of Transport recorded on 4.7.2019.

³⁰ Paragraph 21 of the Statement of Ghadzali bin Ahmad of Marine Department (Northern Region) recorded on 10.6.2019.

31. The Merchant Shipping Ordinance 1952 (Ordinance 70/150)³¹ regulates activities relating to shipping within Malaysian waters.
32. Under section 65D(d) of the Ordinance, the Domestic Shipping Licensing Board, with the approval of the MOT, may make regulations that prescribe the rate which may be charged for the carriage of passengers or cargo by any ship engaged in domestic shipping.
33. At the time of the Commission's investigation, there was no regulation for the fares of vehicle transportation via ro-ro vessels approved by the MOT.
34. The arguments raised by the Parties in relation to the involvement of MOT and Maritime Department will be discussed in detail in **Part 2** of this Decision.

**C. LAPORAN ISU HARGA BARANGAN DI LANGKAWI KEDAH
PREPARED BY MINISTRY OF DOMESTIC TRADE AND
CONSUMER AFFAIRS (“KPDNHEP”)**

35. Further to the ministerial direction to investigate the Infringing Agreements on 30.1.2019, the Commission received a report prepared by KPDNHEP, Langkawi Division, on 11.2.2019. The report is entitled “*Laporan Isu Harga Barangan di Langkawi Kedah*”.³²

³¹ Ordinance 70/1952.

³² *Laporan Isu Harga Barangan di Langkawi, Kedah* retrieved on 11.2.2019.

36. The report contains the price analysis of goods (i.e., food, drinks and other necessities) sold in Langkawi. The report alleges that the prices of goods in Langkawi are relatively higher by between 1% - 4% as compared to prices offered in Alor Setar, Kedah.
37. The report further alleges that the higher prices had resulted primarily from the cost of transportation (via land and water) to Langkawi. The majority of the goods are transported to Langkawi from mainland Kedah and Perlis.
38. The report describes the fares imposed by 4 companies, namely, Pertiwi Shipping Sdn. Bhd., Wantas Shipping Sdn. Bhd., LAE and LRFS which transport lorries of different weights between Langkawi and the mainland of West Malaysia as shown in **Table 6** below.

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Table 6: Transportation Fares

TRANSPORTATION	PERTIWI SHIPPING SDN. BHD.		WANTAS SHIPPING SDN. BHD.		LAE		LRFS	
	RATE BEFORE 2019 (RM)	RATE IN 2019 (RM)	RATE BEFORE 2019 (RM)	RATE IN 2019 (RM)	RATE BEFORE 2019 (RM)	RATE IN 2019 (RM)	RATE BEFORE 2019 (RM)	RATE IN 2019 (RM)
Lorry 1/2 tonne	[X]	[X]	[X]	[X]	[X]	540.00	[X]	540.00
Lorry 3 tonnes	[X]	[X]	[X]	[X]	[X]	586.00	[X]	586.00
Lorry 4 tonnes	-	-	-	-	[X]	694.00	[X]	694.00
Lorry 5 tonnes	-	-	-	-	[X]	804.00	[X]	804.00
Lorry 6-10 tonnes	-	-	-	-	[X]	1244.00	[X]	1244.00
Lorry 6 tonnes	[X]	[X]	-	-	-	-	-	-
Lorry 10 tonnes	[X]	[X]	-	-	-	-	-	-
Lorry 4-6 tonnes (10,000kg)	-	-	[X]	[X]	-	-	-	-
Lorry 6-8 tonnes (16,000kg)	-	-	[X]	[X]	-	-	-	-
Lorry 6-8 tonnes (18,000kg)	-	-	[X]	[X]	-	-	-	-
Lorry 9-10 tonnes	-	-	[X]	[X]	-	-	-	-
Lorry 12 tyres (30,000kg)	-	-	[X]	[X]	-	-	-	-

39. **Table 6** also illustrates the increased fares imposed by LAE and LRFS in the year 2019.

D. INVESTIGATION PROCEDURES AND PROCESS

40. On 28.2.2019, the Commission commenced a formal investigation under section 14(2) of the Act pursuant to a ministerial direction based on a suspicion that the Parties have infringed section 4(1) read together with section 4(2)(a) and section 4(3) of the Act by engaging in price fixing agreements and/or concerted practices in relation to the provision of vehicle transportation via ro-ro vessel in Langkawi (“Infringing Agreements”).
41. On 11.3.2019, the Commission, pursuant to section 20 of the Act, conducted an exercise simultaneously to access the records located at the premises of LAE and LRFS. Consequently, the Commission retrieved cogent evidence of the Parties’ involvement in the Infringing Agreements.
42. During the course of the investigation, the Commission issued 10 notices pursuant to section 18(1)(a) and (b) of the Act requiring Parties to provide information and/or documents and to furnish statements to the Commission based on information and documents requested or in relation to any queries made by the Commission’s officers. The Commission had also issued 3 notices pursuant to section 20 of the Act to access the records of the Parties.

43. In addition to the above, the Commission carried out interviews under section 18(1)(a) and (b) of the Act with the key representatives of the Parties and relevant government officers. The interviews with the key representatives of the Parties are described in **Table 7** below:

Table 7: Interviews conducted by the Commission

ENTERPRISE/ ORGANISATION	KEY PERSONNEL INTERVIEWED	DATE OF INTERVIEW	DESIGNATION
LRFS	Lee Sun Sun	11.3.2019	Operations Manager
	Wong Sie Kiong	11.3.2019	Director and Shareholder
	Wong Yuk Tek	11.3.2019	Company Representative
	Ku Azhar bin Ku Abdul Razak	8.5.2019	Director and Shareholder
LFS	Lau Ban Ho	30.6.2020	Finance and Administration Manager
LAE	Ezreen Muhaizie bin Marzukhi	12.3.2019	Director
	Marzukhi bin Othman	30.6.2020	Director
	Ooi Cheng Choon	4.4.2019	Managing Director
	Tan Toh Eng	4.4.2019	Operation Manager
Dibuk Cargo	Marzukhi bin Othman	30.6.2020	Director and Shareholder
	Ezreen Muhaizie bin Marzukhi	12.3.2019	Director and Shareholder

44. On 10.6.2019, the Commission also interviewed Ghadzali bin Ahmad, the Head of Department of the Marine Department (Northern Region); and on 4.7.2019, the Commission interviewed Mohamad Halim bin Ahmed from the Division Secretary of the Maritime Division of the Ministry of Transport.
45. On 14.9.2020, the Commission issued a Proposed Decision against the Parties.
46. On 13.11.2020 and 17.11.2020, the Parties were granted access to the Commission file.
47. On 11.12.2020 and 14.12.2020, the Parties, except for LRFS submitted their written representations to the Commission.
48. On 20.10.2020, LRFS requested an extension of time to submit its written representation to the Commission. LRFS was granted extension till 31.12.2020.
49. The Parties requested for and subsequently made their oral representations to the Commission on 6.4.2021 and 7.4.2021 via online conferencing.

D.1 ISSUE RAISED IN RELATION TO PROCEDURE AND OTHER MATTER

50. LRFS submits that access to the Commission's documents and/or files should have been given without any imposition of charge as it is an integral part of LRFS' right to be heard.

51. The learned counsel for LAE and LFS contends that the Commission failed to grant full and frank disclosure to the information and/or documents relied upon by the Commission in arriving at its Proposed Decision. Moreover, the learned counsel for LAE and LFS submits that the Commission failed to state the relevant provision under the Act which LAE is said to have infringed in its section 18 Notice. The learned counsel for LAE and LFS made reference to the case of *Darahman bin Ibrahim & Ors. v Majlis Mesyuarat Kerajaan Negeri Perlis & Anor.*³³
52. Further, LAE and LFS submits that the Commission erred in refusing to grant LAE access to the audio recordings of the witness statements as it is not the duty of the Commission to decide on behalf of LAE whether or not the recordings will be relevant to LAE's defence.
53. Dibuk Cargo contends that the Commission's investigation was improper, incomplete with inadequate data and biased only towards targeted practice. Dibuk Cargo adds that, despite having the power to conduct a market review, the Commission concluded its investigation without independent expert opinion or conducting a case study on the industry.

The Commission's Findings

54. Access to the Commission's file is intended to enable the effective exercise of the rights of defence against any Proposed Decision by

³³ *Darahman bin Ibrahim & Ors. v Majlis Mesyuarat Kerajaan Negeri Perlis & Anor.* [2008] 4 MLJ 309 at paragraphs 126, 127 and 130.

the Commission in cases brought under section 4 and section 10 of the Act. Nonetheless, by virtue of section 17(2)(c) of the Competition Commission Act 2010 [Act 713], the Commission is empowered to impose fees or charges for services rendered by the Commission.

55. The imposition of the fee does not interfere with the enterprise's right of defence as access was granted subject to the imposition of a nominal hourly rate fee. Therefore, LRFS' argument that the nominal fee has undermined an integral part of LRFS' right to be heard is dismissed.
56. It is the Commission's view that the denial over LAE's request for access to the recordings or the transcripts of its interview sessions with various interviewees is not prejudicial to LAE's right of defence. The Commission had provided and granted LAE access to the evidence which was relied upon in its Proposed Decision.
57. Further, the request for the recordings or transcripts of the interview sessions was also denied as the Commission in its Proposed Decision relied on the witness statements which had been verified and signed by the witnesses. Copies of the witness statements were made available to LAE with the Proposed Decision.
58. The learned counsel for LAE and LFS relied on the case of *Darahman*³⁴ to argue that the Commission has an obligation to inform the charges made against an enterprise when the Commission first commences its investigation against the

³⁴ *Darahman bin Ibrahim & Ors. v Majlis Mesyuarat Kerajaan Negeri Perlis & Anor.* [2008] 4 MLJ 309 at paragraphs 126, 127 and 130.

enterprise. The Commission disagrees with the argument that the Commission failed to notify LAE and LFS of the relevant provision under the Act on the following grounds.

59. Firstly, it is the Commission's view that the facts of the *Darahman* case are irrelevant to the facts in issue. The case of *Darahman* is pertaining to the issue of a State Authority exercising its statutory powers under the National Land Rehabilitation and Consolidation Authority Act 1996³⁵ and the failure of the State Authority to allow the FELCRA settlers the right to be heard before a final decision on land re-settlement was made.
60. Secondly, the Commission acknowledges the defect in the Section 18 Notice in that the notice omitted to state the relevant provision under the Act which LAE and LFS were suspected to have infringed. However, this defect is procedural in nature and does not go to the substance of the case. In any event, the irregularity does not make inadmissible the information, documents or statements obtained pursuant to the notice.³⁶ In such event, such information, documents or statements obtained were relevant and eventually became the basis of the charges as stated in the Proposed Decision. Natural justice was served when the Proposed Decision was issued making known to the enterprises the charges against them, and according them the right to state their defence. Accordingly, in our judgement the omission to state the alleged infringement in the notice neither results in any miscarriage of justice nor fatal to the proceedings against the Parties.

³⁵ Act 570.

³⁶ See *Saminathan v Public Prosecutor* [1937] 1 MLJ 39 and *Hanafi bin Mat Hassan v Public Prosecutor* [2006] 4 MLJ 134.

61. The Commission finds no basis to the argument by the learned counsel for LAE and LFS that the Commission failed to grant full and frank disclosure to the information and/or documents relied upon by the Commission in arriving at its Proposed Decision. The Commission together with its Notice pursuant to section 36 of the Act has served the Proposed Decision and all documents referred to in its provisional findings.
62. In the case of *Rohana bte Ariffin v Universiti Sains Malaysia*,³⁷ it was ruled that access to documents for administrative proceedings is limited only to evidence that is relevant to the charges brought against the person. Guided by the case of *Rohana*, the Commission concludes that the denial of access to recordings is not fatal and does not interfere with the enterprise's right of defence as the Commission in making its decision relies on the written statements that had been duly signed by the witnesses.
63. The Commission had also provided LAE access to the Commission's file on 13.11.2021. The request for the recordings or the transcripts of its interview sessions with the witnesses was denied as the Commission in its Proposed Decision also relied on the witness statements that were signed by the witnesses. A copy of the signed witness statements was made available to LAE and LFS.
64. Section 11 of the Act deals with the Commission's power to conduct market reviews, which differs from the Commission's power to

³⁷ *Rohana bte Ariffin v Universiti Sains Malaysia* [1989] 1 MLJ 487.

conduct an investigation provided under sections 14 and 15 of the Act. The Commission has no obligation to conduct a market review for its investigation. The Commission is also not obligated to rely on independent expert opinion or conduct a case study on the industry for the purpose of investigation. Therefore, the argument by Dibuk Cargo is without merit and hereby rejected.

D.2 OTHER MATTER

Submission by the Parties

65. Dibuk Cargo contends that it is not in a dominant position by relying on the definition of the term “dominant position” in section 2 of the Act and the case of *MyEG Services v Competition Commission*.³⁸

The Commission’s Findings

66. Being in a dominant position is not a requirement that needs to be proved in order to establish an infringement of a section 4 prohibition. Section 4 of the Act applies to any form of collusion between entities carrying on commercial activities related to goods or services. Accordingly, Dibuk Cargo’s submission is without merit and must be dismissed.

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³⁸ *MyEG Services v Competition Commission*, Application for Judicial Review No: WA-25-81-03/2018.

PART 2: LEGAL AND ECONOMIC ASSESSMENT

67. This section begins by setting out the legal and economic framework in which the Commission relies upon in considering the evidence and the facts in this case. It then sets out the evidence and the facts relating to the Infringing Agreements on which the Commission relies upon. Thereafter, it analyses the evidence and the facts and states its inferences, findings, and conclusions that the Commission draws from the evidence and the facts.

A. THE SECTION 4 PROHIBITION

68. Section 4(1) of the Act prohibits agreements between enterprises, decisions by associations of enterprises, or concerted practices, that have, as their object or the effect, of significantly prevention, restriction, or distortion of competition within Malaysia.

69. Under section 4(2)(a) of the Act, without prejudice to the generality of subsection (1), a horizontal agreement between enterprises that have the object of price fixing is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services. Under section 4(3) of the Act, any enterprise who is a party to an agreement that is prohibited under section 4(1) shall be liable for the infringement of the prohibition.

B. APPLICATION OF SECTION 4 PROHIBITION TO PARTIES

B.1 THE CONCEPT OF ENTERPRISE

70. Each of the Parties is carrying on commercial activities relating to, among other things, the provision of vehicle transportation via ro-ro vessels in Langkawi. As such, each of the Parties falls within the definition of “enterprise” under the Act.

B.2 WHEN TWO OR MORE ENTITIES FORM PART OF A SINGLE ECONOMIC UNIT

71. The definition of an “enterprise” in section 2 of the Act provides that a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market. This means that a parent company together with its subsidiary company or companies shall be regarded as forming a single economic unit, if the subsidiary, although having a separate legal personality, has no real autonomy to determine its course of action in the market. The Commission is of the view that the principle of a “single economic unit” (“SEU”) shall not be exclusively limited to the situation prescribed in section 2 of the Act. There may exist other relationships other than a parent-subsidiary relationship, that fall within the scope of the doctrine of SEU.

72. The Commission takes the position that the principle of SEU under section 2 of our Competition Act 2010 is similar to the principle of a single economic entity under the European Union Competition law.
73. A strict application of the Companies Act 2016 may not be appropriate for the purposes of the Competition Act 2010, in particular, in determining as to whether or not a single economic unit exists; as the subject of the competition rules is “enterprise”, a concept that is not identical with the notion of corporate legal personality in the national company law.³⁹ Moreover, the principles of company law are concerned with the incorporation and dissolution of companies whereas competition law principles are concerned with the economic conduct of the entities in the market as defined in section 2 of the Act.
74. The Commission is guided by the opinion of Advocate General Kokott in the case of *Gosselin Group*,⁴⁰ in which the Advocate General Kokott states that:

74. It is, however, just such formalism to which the General Court succumbed when following the arguments presented by the applicant at first instance, it considered the company law perspective to be the sole determining factor in the question of Portielje’s decisive influence over Gosselin. **By narrowing down its criteria to standards based solely on company law, the General Court erred in law. In particular, the General Court failed to appreciate that a finding that the parent company and subsidiary form an economic unit does not**

³⁹ *Pre-Insulated Pipe Cartel* [1999] OJ I24/1 at paragraph 154; Case 48/69 *Imperial Chemical Industries Ltd (ICI) v E.C. Commission* at paragraph 140; and Case C-440/11 *European Commission v Gosselin Group* at paragraphs 66 and 67.

⁴⁰ Case C-440/11 P Opinion of Advocate General Kokott delivered on 29 November 2012; *European Commission v Stichting Administratiekantoor Portielje and Gosselin Group NV*.

necessarily [require] formal decisions by company organs: that unit may also have an informal basis, consisting in particular in personal links between the two companies.

...

76. It would, however, have been of decisive importance, leaving aside all the formal deliberations on company law, to examine **the actual effects of the personal links between Portielje and Gosselin on everyday business activities and to assess purely on the basis of the facts whether Gosselin**, contrary to the 100 per cent presumption, **really determined its commercial policy independently**. Regrettably, not a word on this is to be found in the judgment under appeal.⁴¹

(The emphasis is ours)

75. The single economic entity findings in *HFB Holdings*⁴² are based on an individual holding key functions within the management boards of the enterprises and represented various enterprises at meetings. The Henss/Isoplus group consist of the Isoplus companies and the Henss companies that were under the control of Mr Henss who is the majority shareholder and managing director of those companies. Mr Henss also represented the Isoplus companies and the Henss companies during the cartel meeting. Consequently, having regard to the role played by Mr Henss, the European Court of First Instance held that the Henss companies and the Isoplus companies acted together on the market as a single economic entity.

⁴¹ Case C-440/11 P Opinion of Advocate General Kokott delivered on 29 November 2012; *European Commission v Stichting Administratiekantor Portielje and Gosselin Group NV*. See also Case C-217/05 *Confederación Española De Empresarios De Estaciones De Servicio v Compañía Española De Petróleos SA* at paragraph 41; Case C-97/08 *Akzo Nobel NV v Commission of the European Communities* at paragraphs 54,55,58 and 59; Case 48/69 *Imperial Chemical Industries Ltd (ICI) v E.C. Commission* at paragraphs 132 to 140 and Case C-293/13 *Fresh Del Monte Produce Inc v European Commission* at paragraphs 75 to 78.

⁴² Case T-9/99 *HFB Holding v Commission of the European Communities*.

B.3 PARENTS OF A JOINT VENTURE

76. The conduct of a joint venture may be imputed to its parent companies where the parent companies exercise decisive influence over the joint venture's strategic business decisions. In *Dow v Commission*⁴³ the European Court of Justice upheld the General Court's judgement⁴⁴ that the parents of a joint venture were responsible for the latter's participation in the *Chloroprene Rubber* cartel and could therefore be fined on a joint and several basis. The Court held that where two-parent companies possess a 50 per cent shareholding each in a joint venture that infringes Article 101 of the Treaty on the Functioning of the European Union (TFEU), where both parents exercise decisive influence over the joint venture, the three entities constitute a single enterprise.⁴⁵
77. The European Commission has affirmed the same in *LG Electronics ("LGE") and Koninklijke Philips Electronics v Commission*⁴⁶ where the fine imposed, jointly and severally, on LGE and Philips for their joint venture's participation in the cartels in which they had no involvement and no knowledge of, was simply on the basis that they had failed to enforce compliance.

⁴³ Case C-179/12 P *Dow v Commission* EU:C:2013:605 and Case C-172/12 P *El du Pont v Commission*.

⁴⁴ Case T-77/08 *Dow Chemical v Commission* EU:T:2012:47; similarly Case T-76/08 *El du Pont de Nemours v Commission*.

⁴⁵ Case C-179/12 P *Dow Chemical v Commission* EU:C:2013:605, at paragraph 58.

⁴⁶ C-588/15 P *LG Electronics and Koninklijke Philips Electronics v Commission*.

B.4 ATTRIBUTION OF LIABILITY

78. Where an SEU infringes competition law, liability for that infringement can be attributed to the SEU as a whole.⁴⁷

B.5 APPLICATION TO THE PRESENT CASE

Submissions by the Parties

79. The learned counsel for Dibuk Sdn. Bhd. and Dibuk Cargo submits the following arguments:

- (i) Dibuk Sdn. Bhd. and Dibuk Cargo are not in a parent-subsidary relationship;
- (ii) Both companies have common directors but do not interfere with each other's decision-making process;
- (iii) Dibuk Sdn. Bhd. and Dibuk Cargo have separate staffs, operation workers, accounts and company management; and
- (iv) Profit and loss of Dibuk Sdn. Bhd. and Dibuk Cargo are accounted for by each company separately.

80. The learned counsel for LAE and LFS argues that the Commission failed to state the reason for imputing liability to LFS for the conduct of LAE.

⁴⁷ C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237 at paragraph 77; Case C-294/98 P *Metsa Serla and Others v Commission* at paragraphs 58 and 59.

The Commission's Findings

81. The Commission views Dibuk Sdn. Bhd. and Dibuk Cargo as single economic unit for the purpose of the Act. The Commission considers the shareholding and directorship composition of Dibuk Sdn. Bhd. and Dibuk Cargo as deliberated in **Part 1** of this Decision. It is also apparent from the witness statements provided to the Commission that:

- (i) Both Ezreen⁴⁸ and Marzukhi⁴⁹ consider Dibuk Sdn. Bhd. to be the parent company of Dibuk Cargo although a search with the Companies Commission shows that Dibuk Sdn. Bhd. does not own any share in Dibuk Cargo; and hence Dibuk Sdn. Bhd. and Dibuk Cargo do not fall within the definition of a “subsidiary and holding company” under section 4 of the Companies Act 2016;
- (ii) Marzukhi is a majority shareholder of Dibuk Sdn. Bhd. and Dibuk Cargo;
- (iii) Marzukhi is the person in charge of making decisions regarding the operations of both Dibuk Sdn. Bhd. and Dibuk Cargo;⁵⁰
- (iv) Every financial, human resources and administration matters of the subsidiary companies of Dibuk Cargo are under the purview of Dibuk Sdn. Bhd.;⁵¹

⁴⁸ Paragraph 4 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019.

⁴⁹ Paragraph 17 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

⁵⁰ Paragraph 28 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

⁵¹ Paragraph 32 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

- (v) Ezreen holds the position of CEO of Dibuk Sdn. Bhd. and a director of Dibuk Cargo;⁵²
- (vi) Ezreen has the authority to sign official documents for both Dibuk Sdn. Bhd. and Dibuk Cargo;⁵³ and
- (vii) Ezreen signed the Infringing Agreements on behalf of Dibuk Cargo.⁵⁴

82. The Commission reiterates that Dibuk Sdn. Bhd. is not the parent of Dibuk Cargo in the sense ‘parent’ is understood under the Companies Act 2016. Indeed, Dibuk Sdn. Bhd. does not own a single share in Dibuk Cargo. Nevertheless, this does not discount the existence of any finding of SEU relationship between the two enterprises for the purposes of competition law. The Commission takes the position that it is important to distance ourselves from company law principles as they do not share the same policy as competition law.

83. Based on the indicia listed in **paragraph 81 (i) to (vii)**, the Commission takes the view that the shareholding, directorship, authority to sign agreements, decision making power, managerial and administrative roles of Marzukhi and Ezreen in Dibuk Sdn. Bhd. and Dibuk Cargo are clear indications of economic, organisational, personal and legal links between the two legal entities.

⁵² Paragraph 33 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

⁵³ Paragraph 33 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

⁵⁴ Paragraph 33 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

84. In his statement provided to the Commission pursuant to section 18(1) of the Act, Marzukhi admitted that Ezreen is his son and the only other director of Dibuk Cargo. The familial tie is significant in the assertion of the existence of an SEU between the two enterprises as both are part of a larger family business.
85. In addition, the Companies Commission report of Dibuk Sdn. Bhd. and Dibuk Cargo shows that both enterprises shared the same registered⁵⁵ and business address.⁵⁶ During the oral representation session, Dibuk Sdn. Bhd. submitted that Marzukhi's personal office is located at the office of Dibuk. Dibuk's office is the epicentre and nucleus of Marzukhi's family business.⁵⁷ Any document, financial statement or agreement that needs to be approved or signed by Marzukhi with regard to Dibuk Sdn. Bhd. and Dibuk Cargo will be sent to Marzukhi's personal office located at Dibuk's office.⁵⁸
86. The Commission finds that the Infringing Agreements were intended to be implemented by Dibuk Cargo although the 2018 Memorandum of Understanding ("MOU") was signed by Dibuk Sdn. Bhd. only.
87. In light of the evidence before the Commission, Dibuk Sdn. Bhd. had the ability and indeed had exercised decisive influence over Dibuk Cargo with regard to the latter's conduct in the market. Dibuk Cargo had no real autonomy to determine its course of action in the market. In addition, Dibuk Sdn. Bhd.'s participation has given effect to the Infringing Agreements. The Commission reiterates its position that

⁵⁵ Companies Commission of Malaysia search on Dibuk Sdn. Bhd. dated 27.7.2021.

⁵⁶ Companies Commission of Malaysia search on Dibuk Cargo Services Sdn. Bhd. dated 27.7.2021.

⁵⁷ Oral Representation Transcript dated 7.4.2021 at page 82, lines 16 to 19.

⁵⁸ Oral Representation Transcript dated 7.4.2021 at page 82, lines 5 to 14.

the parent-subsidary relationship stated in section 2 of the Act is not meant to be the only relationship between enterprises where an SEU could exist. An SEU can also exist where the facts concerning the relationship between enterprise A and enterprise B show that enterprise A exercises decisive influence over enterprise B as to the course of actions in the market, even though the former is not the parent company of the latter.

88. Thereupon, the Commission makes the finding that for the purpose of the Act, on the balance of probabilities, Dibuk Sdn. Bhd. and Dibuk Cargo are an SEU. The Commission also relies on *HFB Holdings*⁵⁹ to reach this finding. Dibuk Sdn. Bhd. may not be the parent of Dibuk Cargo for the purposes of the company law; however, that does not discount any finding of the existence of an SEU pursuant to competition law. The arguments on SEU by Dibuk and Dibuk Cargo are therefore dismissed.
89. Moving on to the argument by the learned counsel for LAE and LFS, it is the Commission's position that we have provided sufficient basis to attribute liability to LFS as well for the anti-competitive conduct of LAE on the basis of an SEU.

⁵⁹ Case T-9/99 *HFB Holding v Commission of the European Communities*.

90. The report from the Companies Commission search⁶⁰ discloses the following:

- (i) LFS is the biggest shareholder (49%) of LAE;
- (ii) Ooi Cheng Choon of LFS is one of the directors of LAE; and
- (iii) Mohd Azrul bin Adnan who is the biggest shareholder (30%) of LFS is also one of the LAE's shareholders.

91. The Commission makes the finding that LFS and Dibuk Sdn. Bhd. as parents of LAE exercise decisive influence over LAE's management and daily operational affairs.⁶¹ The Commission refers to the list of directors and shareholders of LFS,⁶² and concludes that the following individuals are representatives of LFS in LAE:

Table 8: List of Directors and Shareholders of LFS

NO.	NAME	NOTE
1.	Ooi Cheng Choon	Director, manager and shareholder of LFS
2.	Loke Chee Beng	Director and shareholder of LFS
3.	Ooi Kooi Bee@Kooi Bee	Director of LFS
4.	Loke Gim San	Director and shareholder of LFS
5.	Mohd Azrul bin Adnan	Director and shareholder of LFS

⁶⁰ Companies Commission of Malaysia search on Langkawi Auto Express Sdn. Bhd. dated 27.7.2021.

⁶¹ Paragraph 3 of Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019; paragraphs 3 and 20 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020; and Paragraph 4 of the Statement of Tan Toh Eng of LAE recorded on 4.4.2019.

⁶² Companies Commission of Malaysia search on Langkawi Ferry Services Sdn. Bhd. dated 26.7.2021.

92. Ezreen of Dibuk Sdn. Bhd. holds a director position in LAE, affirming that LAE is a joint venture company between LFS and Dibuk Sdn. Bhd.⁶³ Tan Toh Eng, the Operation Manager of LAE also stated that:

*Syarikat LAE merupakan sebuah syarikat usahasama di antara pihak Dibuk Sdn. Bhd. dan Langkawi Ferry Services Sdn. Bhd. Kedua-dua syarikat tersebut mempunyai pegangan saham dalam syarikat LAE.*⁶⁴

93. Ooi Cheng Choon as the managing director of LAE⁶⁵ supervises the business operation of LAE and is also the person who signed the Infringing Agreements on behalf of LAE.⁶⁶ Both Marzukhi and Ooi Cheng Choon are involved in the managing and decision-making process at LAE.

94. The above information is also supported by the statement of Lau Ban Hoo, the Finance and Administration Manager of LFS, who stated the following:

3. I am not employed by Langkawi Auto Express Sdn. Bhd. (LAE). However, I have access to LAE's account because Ooi Cheng Choon as the managing director of LAE and LFS asked me to assist him on the accounts of LAE. I assisted him to check the accounts prepared by LAE's staff for audit and taxation purposes.⁶⁷

⁶³ Paragraph 3 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019.

⁶⁴ Paragraph 6 of the Statement of Tan Toh Eng of LAE recorded on 4.4.2019.

⁶⁵ Paragraph 3 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

⁶⁶ Paragraph 52 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

⁶⁷ Paragraph 3 of the Statement of Lau Ban Hoo of LFS recorded on 30.6.2020.

95. Ooi Cheng Choon of LAE explained the manner in which decisions at LAE are made in the following manner:

16. All decisions related to LAE are made by the shareholders in board meetings...⁶⁸

96. With regard to the decision making in LAE, Marzukhi of Dibuk Sdn. Bhd. provided the following statement:

2. *Di dalam LAE, saya berperanan sebagai Pengarah, di mana saya terlibat dalam membuat keputusan berkaitan polisi-polisi syarikat prestasi syarikat dan juga hal-hal kewangan berkaitan syarikat LAE...*⁶⁹

97. In addition, Marzukhi explained that LAE would discuss issues related to fixing of transportation fares for ro-ro vessels of LAE with Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd. as stated in the following statement:

8. *Namun LAE akan selalunya berbincang dengan LFS dan DIBUK berkenaan isu-isu penetapan harga tambang roro. LAE akan mengadakan perbincangan bersama DIBUK dan LFS berkaitan dengan memberi promosi harga perkhidmatan, rebet, atau jika terdapat apa-apa majlis yang dibuat di Langkawi.*⁷⁰

98. Based on the indicia elaborated above, such as the majority shareholding of LFS in LAE, the representations of LFS in the composition of directors in LAE, the responsibility of Ooi Cheng

⁶⁸ Paragraph 16 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

⁶⁹ Paragraph 2 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

⁷⁰ Paragraph 8 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

Choon as the managing director of LAE and the fact that the Finance and Administration Manager of LFS has access to LAE's accounts, the Commission concludes that LFS has the ability to exercise decisive influence over the conduct of LAE in the market.

99. Relying on *Fresh Del Monte*,⁷¹ where there is a joint venture, both of the parents of the joint venture may be found to form a single economic entity with the joint venture for the purposes of imputing liability. The Commission considers Dibuk Sdn. Bhd., LFS and LAE as an SEU for the purposes of the Act. The Commission, therefore, imputes liability to LFS and Dibuk Sdn. Bhd. for the anti-competitive conduct of LAE.

C. AGREEMENTS AND/OR CONCERTED PRACTICES

100. According to section 2 of the Act, an agreement is formed in a contract, arrangement or understanding between enterprises, and includes a decision by an association and concerted practices.⁷² The term "agreement" is widely construed. It catches agreements whether or not they amount to a contract under national rules, whether or not they are intended to be legally binding and whether they are made in writing or oral.⁷³ It is sufficient that the enterprises in question have expressed their joint intention to conduct themselves on the market in a specified way.⁷⁴

⁷¹ Case C-293/13 *Fresh Del Monte Produce Inc v European Commission* at paragraph 78.

⁷² Section 2 of the Act.

⁷³ Paragraph 2.1 of the Commission's Guidelines on Chapter 1 Prohibition (Anti-Competitive Agreements).

⁷⁴ Case T-7/89 *SA Hercules Chemicals v Commission* [1991] ECR II-1711, at paragraph 256.

101. An agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives.⁷⁵ The Commission does not need to establish that the parties have the subjective intention of restricting competition when entering into the agreement.⁷⁶
102. The purported anti-competitive agreement would still be caught under the section 4 prohibition even if an enterprise did not intend to implement or adhere to the terms of the agreement. An agreement may exist even if it is never implemented.⁷⁷

The Commission's Findings

103. In the present case, it has been established that the Parties had entered into the Infringing Agreements in breach of section 4(1) read with section 4(2)(a) and section 4(3) of the Act by entering into price fixing agreements in relation to the market of the provision of vehicle transportation via ro-ro vessels in Langkawi, Kedah from 31.12.2017 until 14.9.2020.

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⁷⁵ Case C-551/03 P *General Motors v Commission* [2006] ECR I-3173, at paragraph 64.

⁷⁶ Joined Cases 29/83 and 30/83 *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission of the European Communities*, at paragraph 26.

⁷⁷ Case COMP/C.37.750/B2 – *Brasseries Kronenbourg, Brasseries Heineken (French Beer)*, European Commission decision of 29.9.2004, at paragraph 64.

D. PARTY TO AN AGREEMENT

104. The Commission's Guidelines on Chapter 1 Prohibition (Anti-Competitive Agreements) states as follows:

2.2 An agreement could also be found whereby competitors attending a business lunch listen to a proposal for a price increase without objection. On the same note, competitors should avoid meetings or other forms of communication with competitors particularly when price is likely to be discussed...⁷⁸

105. A participant at a meeting at which an anti-competitive agreement is concluded will be taken to have participated in that agreement, even if it does not take an active part unless the enterprise can establish that it manifestly opposed them or publicly distanced itself from what was discussed or agreed.⁷⁹

106. The reason underlying the above principle of law is that having participated in the discussion without publicly distancing itself from what was discussed, the company has given the other participants reason to believe that it subscribed to what was decided and would comply with it.⁸⁰

⁷⁸ Paragraph 2.2 of the Commission's Guidelines on Chapter 1 Prohibition (Anti-Competitive Agreements).

⁷⁹ Case C-70/12 P *Quinn Barlo Ltd v Commission* EU:C: 2013:351, at paragraph 42.

⁸⁰ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland AS v Commission* [2004] ECR I-0123, at paragraphs 84 to 86.

D.1 LIMITED PARTICIPATION DOES NOT EQUATE TO PUBLIC DISTANCING

107. The mere fact that an enterprise may have played only a limited part in setting up the agreement or concerted practice or may not be fully committed to its implementation, or participated only under pressure from other parties, does not mean that it was not a party to the agreement or concerted practice.

D.2 APPLICATION TO THE PRESENT CASE

Submissions by the Parties

108. Dibuk Cargo contends the following:

- (i) It never participated in any meeting prior to the formation of the Infringing Agreements;
- (ii) Dibuk Cargo argues that Marzukhi as the decision-maker of Dibuk Cargo had never agreed for any document regarding the ro-ro passenger's fare to be "signed, affixed, endorsed, certified or rectified";
- (iii) Dibuk is not a party to the Infringing Agreements as the Board of Directors of Dibuk Sdn. Bhd. never authorised nor granted Ezreen to act on behalf of Dibuk Sdn. Bhd.; and
- (iv) Marzukhi as the director of Dibuk had no knowledge of the Infringing Agreements.

The Commission's Findings

109. On the evidence, the Commission finds that Dibuk Cargo did indeed participate in an informal discussion that led the Parties to come to an understanding prior to the signing of the Infringing Agreements.⁸¹ Ezreen of LAE and Dibuk Cargo recounted as follows:

*...MOU ini pada asalnya adalah di antara Dibuk Cargo and LAE sahaja yang kedua-duanya merupakan satu group of company. LRFS pula hanya mengikut caj yang dikenakan Dibuk Cargo and LAE...*⁸²

*Perbincangan untuk menetapkan harga dilakukan di pejabat LAE, saya yang menandatangani bagi DIBUK bagi kedua-dua MOU bagi tahun 2018 and 2019.*⁸³

110. The fact that Marzukhi as the decision-maker of Dibuk Cargo never agreed for any document to be “signed, affixed, endorsed, certified or rectified” regarding the Infringing Agreement is incorrect and ought to be dismissed. Marzukhi has informed the Commission that he agreed to the fixing of the ro-ro vessel services fares despite the absence of knowledge on the Infringing Agreements.⁸⁴

⁸¹ Paragraphs 35 and 38 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020; paragraphs 28, 29, 32 and 33 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and LAE and Dibuk Cargo recorded on 12.3.2019; paragraphs 56 and 58 of the Statement of Ooi Cheng Choon recorded on 4.4.2019; and paragraph 18 of the Joint Statement of Wong Sie Kiong and Wong Yuk Tek recorded on 11.3.2019.

⁸² Paragraph 29 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019.

⁸³ Paragraph 33 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019.

⁸⁴ Paragraphs 35,38 and 40 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

111. Marzukhi informed the Commission that Ezreen is the Chief Executive Officer and a shareholder of Dibuk Sdn. Bhd. Ezreen also plays the role of Director and has the authority to sign official documents for both companies.⁸⁵ This affirms that Ezreen is authorised to sign the Infringing Agreements.
112. Based on the evidence obtained in the course of the investigation, Dibuk Sdn. Bhd. and Dibuk Cargo as an SEU had placed a signature and company stamp denoting its agreement to the vehicle transportation fares. In law, the conduct of an employee could be decisive and attributed to the enterprise that employs him. The conduct of a person who is generally authorised to act on behalf of the enterprise is sufficient to bring about liability to the enterprise, even if the owner or the managing director of the enterprise himself did not perform or participate in the act, or was not even informed of the commission of an infringement of competition law.⁸⁶
113. Moreover, by reason of SEU, the fact that Dibuk Sdn. Bhd. is not involved in the transportation business despite being the signatory of the 2018 MOU is irrelevant. In *The Goldman Sachs Group v European Commission*,⁸⁷ Goldman Sachs, an investment bank that does not operate within the submarine power cable market was held to be liable for the anti-competitive conduct of its subsidiary company, Prysmian. Both entities are considered as single economic entity for the purposes of competition law infringement.

⁸⁵ Paragraph 33 of the Statement of Marzukhi bin Othman of Dibuk Sdn. Bhd., Dibuk Cargo and LAE recorded on 30.6.2020.

⁸⁶ Cases 100-103/80 *Musique Diffusion francaise* at paragraph 97; Case C-68/12 *Protimonopolny Urad Slovenskej Republiky v Slovenska* at paragraph 25; and Case C-542/14 *SIA VM Remonts v Konkurences Padome* at paragraph 24.

⁸⁷ Case T-419/14 *The Goldman Sachs Group v European Commission*.

114. Having considered all the evidence and the facts of this case, the Commission is satisfied that there exist agreements involving the Parties which culminated in the signatory of the Infringing Agreements. The issue of whether Infringing Agreements were a result of an exercise of governmental authority by the Ministry of Transportation will be dealt in the later paragraphs.
115. The Commission finds for a fact that the Parties had not raised the issue of public distancing on their own volition nor did the Parties claim to not possess the intention to follow through with the price fixing agreements. The Parties shall be responsible for their participation in the Infringing Agreements.

E. SINGLE CONTINUOUS INFRINGEMENT

116. An infringement of section 4 prohibition may result not only from a single isolated act but also from a series of acts or continuous conduct. Where it can be established that a set of individual agreements are interlinked in terms of pursuing the same objective or as part of a plan, they can be characterised as constituting a single continuous infringement. The Commission is therefore entitled to impute responsibility for those actions based on participation in the infringement considered as a whole.⁸⁸
117. In the case of *Trelleborg Industrie SAS v European Commission*,⁸⁹ the European Court of Justice held that the existence of single

⁸⁸ Case C-204/00 *Aalborg Portland v Commission of the European Communities*.

⁸⁹ Case T-147/09 *Trelleborg Industrie SAS v European Commission* at paragraph 60. See also Case C-204/00 *Aalborg Portland v Commission of the European Communities* at paragraphs 83, 291 and 328.

continuous infringement can be established by looking at the existence of an overall plan pursuing a common objective. Among other criteria that are relevant to be looked into to determine whether a single continuous infringement pursuing an overall plan exists are:

- (i) The identical nature of the objectives of the practices at issue;
- (ii) The identical nature of the goods or services concerned;
- (iii) The identical nature of the enterprises that participated in the infringement;
- (iv) The nature of the detailed rules for the implementation of those practices;
- (v) Whether the natural persons involved on behalf of the enterprises are identical; and
- (vi) Whether the geographical scope of the practice at issue is identical.

118. Moreover, in *Bolloré v Commission*,⁹⁰ the European Court of First Instance clarified that where enterprises agree to increase prices and announce to their customers what those increases will be, it is irrelevant to a finding of an infringement that prices subsequently negotiated with individual customers differs from what was agreed:

452. **Furthermore, the fact that certain applicants' price instructions did not always strictly correspond to the target prices set at the meetings is not such as to undermine the finding that there was an impact on the market** through the taking into account of the agreed price announcements when individual prices were set...

⁹⁰ Joined Cases T-109/02, T-118/02, T-125/02, T-126/02, T-132/02 and T-136/02 *Re Carbonless Paper Cartel: Bolloré Sa and Others v Commission of the European Communities* [2007] 5 CMLR 2.

E.1 APPLICATION TO THE PRESENT CASE

Submission by LRFS

119. The learned counsel for LRFS contends that the Commission has incorrectly evaluated the duration of the infringement by LRFS as a single continuous infringement. LRFS submits that it has deviated from the Infringing Agreements by charging different fares as compared to its competitors. LRFS offers discounts up to 30% negotiated on a case-by-case basis. LRFS also offers discounts of RM10.00 to RM20.00 to its customers who purchased tickets directly from the LRFS website. If an infringement is established, LRFS takes the position that the duration of the infringement shall be from 31.12.2017 until the date LRFS departed from the Infringing Agreements.

The Commission's Findings

120. Upon perusing the tax invoices submitted by LRFS,⁹¹ the Commission observes that LRFS did give discounts to some of its customers.⁹² However, the Commission is unable to accept the argument by LRFS because it did use the fares fixed in the Infringing Agreements as the base fare of the vehicle transportation via ro-ro vessels.⁹³

121. Moreover, LRFS did not publicly distance itself from the Infringing Agreements. Based on the above, the Commission is of the view

⁹¹ Tab 18 of LRFS Bundle of Document.

⁹² Paragraphs 48 to 49 of LRFS Written Representation.

⁹³ Tab 18 of LRFS Bundle of Document and Oral Representation Transcript dated 7.4.2021 at page 32 lines 2 to 5.

that there was an intentional contribution by LRFS to the overall plan of the Infringing Agreements despite discounts granted.

122. The Commission finds that the Parties, including LRFS, are aware of the general scope and the essential characteristics of the Infringing Agreements as a whole.⁹⁴ The Commission also considers that the Parties are aware of each other's anti-competitive conduct due to:

- (i) The identical nature of the services concerned, namely, the provision of vehicle transportation via ro-ro vessels in Langkawi;
- (ii) The same enterprises involved in the Infringing Agreements where the signatories agreed to be bound by the same terms;
- (iii) The Infringing Agreements contain the same terms which includes the revised ticket fares charges, implementation date and the termination clause in the event of a breach;
- (iv) The natural persons involved in the Infringement Agreements on behalf of the Parties were the same; and
- (v) The geographical scope of the market of the Infringing Agreements is identical, namely, Langkawi.

123. In relying on the principle applied in *Trelleborg Industrie SAS v European Commission*⁹⁵ and *Bolloré v Commission*,⁹⁶ the

⁹⁴ Paragraph 37 of the Statement of Ku Azhar bin Ku Abdul Razak of LRFS recorded on 8.5.2019; paragraphs 29 and 32 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019; and paragraphs 56, 57 and 58 of the Statement of Ooi Cheng Choon recorded on 4.4.2019.

⁹⁵ Case T-147/09 *Trelleborg Industrie SAS v European Commission*.

⁹⁶ Paragraphs 196 and 424 of Joined Cases T-109/02, T-118/02, T-125/02, T-126/02, T-132/02 and T-136/02 *Re Carbonless Paper Cartel: Bolloré Sa and Others v Commission of the European Communities* [2007] 5 CMLR 2.

Commission is of the view that a single continuous infringement pursuing an overall plan exists between the Parties. The overall plan of the Infringing Agreements is to fix the vehicle transportation fares via ro-ro vessels to avoid price war between the Parties. Accordingly, the arguments by LRFS that deviation from the Infringing Agreements altered the Infringement Period and consequently has an effect on the findings of single continuous infringement is hereby rejected.

F. OBJECT OR EFFECT SIGNIFICANTLY PREVENTING, RESTRICTING OR DISTORTING COMPETITION

124. Section 4(1) of the Act prohibits “a horizontal or vertical agreement between enterprises in so far as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services”.
125. Therefore, where it is established that an agreement has the *object* of restricting competition, it is unnecessary for the Commission to further prove that the agreement would have an anti-competitive *effect* to establish a finding of infringement of section 4 prohibition.
126. The Commission’s Guidelines on Chapter 1 Prohibition (Anti-Competitive Agreements) states the following:
- 2.13...If the “object” of an agreement is highly likely to have a significant anti-competitive effect, then the MyCC may find the agreement to have an anti-competitive “object”.

2.14 Once anti-competitive “object” is shown, then the MyCC does not need to examine the anti-competitive effect of the agreement.⁹⁷

127. Section 4(2) of the Act is a deeming provision.

Prohibited horizontal and vertical agreement.

(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.

(Emphasis is ours)

The Commission and the Parties are bound by this deeming provision once the prerequisite facts have been established. In other words, once the prerequisite facts have been established, the deeming provision is automatically triggered and comes into effect, and the horizontal agreement in question shall be deemed to have the object of significantly preventing, restricting or distorting competition in the market; thus, the prohibition stipulated provided by section 4(1) has been infringed.

⁹⁷ Paragraphs 2.13 and 2.14 of the Commission’s Guidelines on Chapter 1 Prohibition (Anti-Competitive Agreements).

F.1 APPLICATION TO THE PRESENT CASE

Submissions by the Parties

128. The learned counsel for LAE and LFS submits that the Commission should not immediately be deemed an agreement anti-competitive “by object” by taking it only at face value. The learned counsel takes the position that the Commission should not rely on the “deeming provision” under the Act as a shortcut in establishing that an agreement is anti-competitive “by object” without undertaking a further assessment.

129. In addition, the learned counsel contends that the Commission must dissect the Infringing Agreements and determine whether there is a “sufficient degree of harm” arising from the Infringing Agreements in order to meet the prerequisite that the agreement has the object of significantly preventing, restricting or distorting competition. The learned counsel referred to the case of *Dole Food Company, Inc. & Dole Fresh Fruit Europe v European Commission*⁹⁸ and *Groupement des cartes bacaires v European Commission*⁹⁹ to support his argument.

The Commission’s Findings

130. The Commission is of the view that the wordings of section 4(1), section 4(2)(a) and section 4(3) of the Act are not ambiguous, and

⁹⁸ Case C-286/13 P *Dole Food Company, Inc. & Dole Fresh Fruit Europe v European Commission* at paragraph 117.

⁹⁹ Case C-67/13 *Groupement des cartes bacaires v European Commission* at paragraphs 65, 69 and 71.

instead are plain and clear; as such the provisions should be given their natural and ordinary meaning.¹⁰⁰

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-competitive 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. Our investigation reveals that the Parties who are in a horizontal relationship with each other had engaged in a horizontal agreement that had the object of fixing the prices of ro-ro vessel transportation in Langkawi through the 2018 and 2019 MOUs.
133. With regard to the second contention, it is the Commission's view that the learned counsel for LAE and LFS has failed to appreciate the full context of *Dole*¹⁰¹ and *Groupement des cartes bancaires*¹⁰² cases. Both cases do not concern a deeming provision like the provision provided for in section 4(2) of the Act. Therefore, these two cases are irrelevant. In any case, the European Court of Justice in *Groupement des cartes bancaires*¹⁰³ held that certain collusive behaviour such as horizontal price fixing by cartels may be

¹⁰⁰ *Master Mulia Sdn. Bhd. v Sigur Rus Sdn. Bhd.* [2020] 12 MLJ 198 at paragraph 27; *Tebin bin Mostapa v Hulba-Danyal bin Balia* [2020] 4 MLJ 721 at paragraph 30; and *Tunku Yaacob Holdings Sdn. Bhd. v Pentadbir Tanah Kedah & Ors.* [2016] 1 MLJ 200 at paragraph 32.

¹⁰¹ Case C-286/13 P *Dole Food Company, Inc. & Dole Fresh Fruit Europe v European Commission.*

¹⁰² Case C-67/13 *Groupement des cartes bancaires v European Commission.*

¹⁰³ Case C-67/13 *Groupement des cartes bancaires v European Commission.*

considered to have negative effects in particular on the price, quantity or quality of goods and services.¹⁰⁴

134. In *Archer Daniels Midland*,¹⁰⁵ the European General Court held that:

The fixing of a price, even one which merely constitutes a target, affects competition because it enables all the participants in a cartel to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors will be. More generally, such cartels involve direct interference with the essential parameters of competition on the market in question. By expressing a common intention to apply a given price level for their products, the producers concerned cease independently determining their policy in the market and thus undermine the concept inherent in the provisions of the Treaty relating to competition.¹⁰⁶

135. In establishing the instant case, the Commission relies on, among other evidence, the 2018 and 2019 MOUs and the statements recorded from the Parties' representatives which were to a great extent corroborated.

136. In light of the foregoing paragraphs, the arguments submitted by the learned counsel for LAE and LFS are hereby rejected.

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¹⁰⁴ Case C-67/13 *Groupement des cartes bancaires v European Commission* at paragraphs 49 and 51.

¹⁰⁵ Case T-224/00 *Archer Daniels Midland*.

¹⁰⁶ Case T-224/00 *Archer Daniels Midland* at paragraph 120.

G. SECTION 4(2)(a) OF THE ACT – HORIZONTAL PRICE FIXING AGREEMENT

137. Section 4(2)(a) of the Act refers to horizontal agreement that “fix, directly or indirectly, a purchase or selling price or any other trading conditions” as an example of anti-competitive conduct. Price is the main instrument of competition in most markets.

G.1 APPLICATION TO THE PRESENT CASE

138. It is evident from Ezreen’s statement to the Commission that the Parties had discussions to fix prices at LAE’s premises. In his evidence, he said:

33. *Perbincangan untuk menetapkan harga dilakukan di pejabat LAE, saya yang menandatangani bagi DIBUK bagi kedua-dua MOU bagi tahun 2018 dan 2019.*¹⁰⁷

139. Similarly, Wong Sie Kiong and Wong Yuk Tek of LRFS jointly recounted that:

18. *Kami pernah berbincang dengan pesaing berkenaan kadar harga selepas mendapat maklumat daripada Ku Azhar. Walaubagaimanapun, kami masih bersaing dengan memberikan diskaun kepada pelanggan...*¹⁰⁸

¹⁰⁷ Paragraph 33 of Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019.

¹⁰⁸ Paragraph 18 of Joint Statement of Wong Sie Kiong and Wong Yuk Tek of LRFS recorded on 11.3.2019.

G.1.1 THE INFRINGING AGREEMENTS

140. The Commission's investigation reveals that the Parties were engaged in agreements and/or concerted practices to fix prices, to discuss and to exchange price information in connection with the provision of vehicle transportation via ro-ro vessels in Langkawi. The Commission retrieved copies of the Infringing Agreements in the form of two memorandums of understanding.¹⁰⁹ The Infringing Agreements outline the Parties' agreements as described hereinbelow:

- (i) The MOU dated 31.12.2017 outlines the agreement to implement standard ticket fares and the premium for insurance coverage for the provision of vehicle transportation via ro-ro vessels in Langkawi for the year 2018; and
- (ii) The second MOU which is undated outlines the Parties' agreement to standardize the fares for the provision of vehicle transportation via ro-ro vessels in Langkawi for the year 2019.

141. Listed in **Table 9** below are the names of the signatories to the Infringing Agreements representing the Parties:

Table 9: The Signatories to the 2018 MOU and 2019 MOU

YEAR	PARTY	REPRESENTATIVE
2018	LAE	Ooi Cheng Choon
	LRFS	Ku Azhar bin Ku Abdul Razak

¹⁰⁹ 2018 and 2019 Memorandums of Understanding retrieved from LRFS in response to Section 18 Notice on 11.3.2019.

YEAR	PARTY	REPRESENTATIVE
	Dibuk Sdn. Bhd.	Ezreen Muhaizie bin Marzukhi
2019	LAE	Ooi Cheng Choon
	LRFS	Ku Azhar bin Ku Abdul Razak
	Dibuk Cargo	Ezreen Muhaizie bin Marzukhi

142. The objective of the Infringing Agreements, according to Ooi Cheng Choon of LAE, is primarily to avoid a price war between the competing companies.¹¹⁰ The Parties also claimed that the Infringing Agreements served to cover the rising operational costs and the depreciation of the Ringgit Malaysia.¹¹¹ The Parties further informed the Commission that the purpose of the Infringing Agreements was to agree on a uniform fare for the provision of vehicle transportation via ro-ro vessels in Langkawi¹¹² to avoid losses and to increase profitability of the Parties.¹¹³
143. The Commission notes from **Table 9** above that the signatory to the Infringing Agreement for the year 2018 is Dibuk Sdn. Bhd. and not Dibuk Cargo, and likewise the signatory to the Infringing Agreement for the year 2019 is Dibuk Cargo only and not Dibuk Sdn. Bhd. However, be that as it may, the Commission takes the view that the Infringing Agreements signed by Ezreen are based on the cognizance that Dibuk Sdn. Bhd. and Dibuk Cargo are interlinked through the directorship and shareholding of these two companies.

¹¹⁰ Paragraph 48 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

¹¹¹ Paragraph 48 of the Statement of Ooi Cheng Choon of LAE recorded on 4.4.2019.

¹¹² Paragraph 29 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019; and paragraph 37 of the Statement of Ku Azhar bin Ku Abdul Razak of LRFS recorded on 8.5.2019.

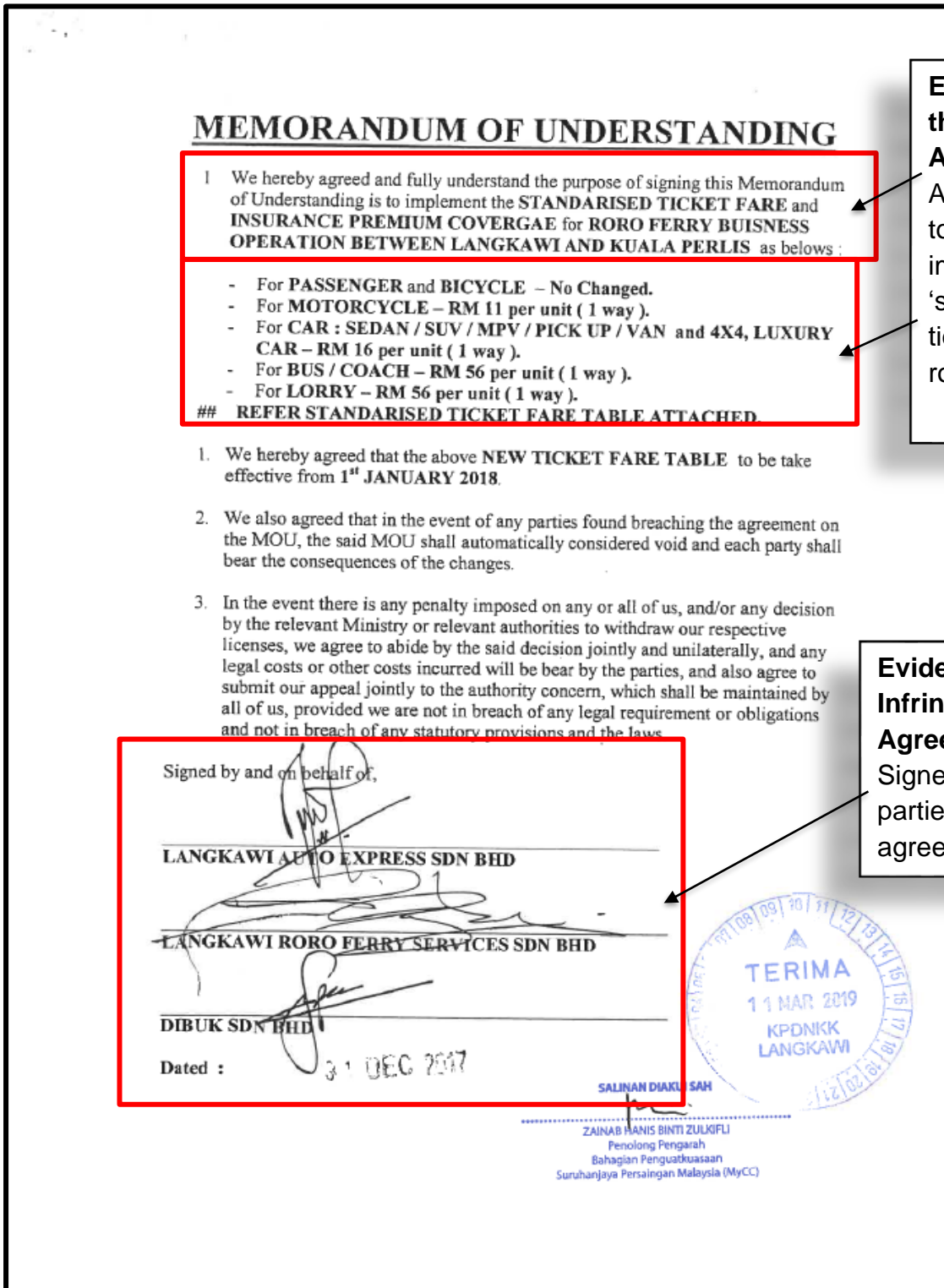
¹¹³ Paragraph 29 of the Statement of Ezreen Muhaizie bin Marzukhi of LAE and Dibuk Cargo recorded on 12.3.2019; and paragraph 37 of the Statement of Ku Azhar bin Ku Abdul Razak of LRFS recorded on 8.5.2019.

Moreover, there is a close familial relationship between Marzukhi and Ezreen as father and son. We have elaborated the application of the SEU principle in **Part 2:B**.

144. The evidence relied upon by the Commission in support of its findings on the Infringing Agreements are as **Image A, Image B, Image C and Image D** below:

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Image A: Infringing Agreement for the year 2018



Evidence of the Infringing Agreement:
An agreement to fix and implement a 'standardised ticket fare' for ro-ro services.

Evidence of Infringing Agreement:
Signed by parties to the agreement.

Image B: Standard Ticket Price List for 2018

LANGKAWI AUTO EXPRESS SDN BHD / LANGKAWI RORO SERVICES SDN BHD / DIBUK SDN BHD
STANDARD TICKET PRICE LIST - WEF 01-01-2018

Sl. No.	Passenger and Vehicle Types	Langkawi Auto Express						Langkawi RORO Ferry						DIBUK						INCREASE	
		1 way		2 ways		1 way		2 ways		1 way		2 ways		1 way		2 ways		Fare	Insurance		
		Published fare	Promotion fare	Web booking fare	Promotion fare	Web booking fare	Promotion fare	Web booking fare	Promotion fare	Web booking fare	Promotion fare	Web booking fare	1 way	2 ways							
1	Adult	18 (15)	36 (30)	18	36	18	36	18	36	18	36	18	36	18	36	18	36	0	0		
2	Child / Disable / Senior Citizen Child (2-11 yrs), Senior (60-100 yrs)	13 (10)	26 (20)	13	26	13	26	13	26	13	26	13	26	13	26	13	26	0	0		
3	Infant (8 days - 23 months)	7	14	3	6	3	6	3	6	3	6	3	6	3	6	3	6	0	0		
4	Sedan Car																				
	i Below 1500CC	150	260	156	302	146	282	156	302	146	282	156	302	146	282	156	302	10	6		
	ii Below 2000CC	200	350	186	352	176	332	186	352	176	332	186	352	176	332	186	352	10	6		
	iii Below 3000CC	250	450	226	432	216	412	226	432	216	412	226	432	216	412	226	432	10	6		
	iv More than 3001CC	300	550	266	532	256	512	266	532	256	512	266	532	256	512	266	532	10	6		
5	SUV, MPV, Pick Up, Van and Lorry																				
	i Below 2000CC	300	590	206	392	196	372	206	392	196	372	206	392	196	372	206	392	10	6		
	ii Below 3000CC	350	690	226	432	216	412	226	432	216	412	226	432	216	412	226	432	10	6		
	iii More than 3001CC	400	750	256	492	246	472	256	492	246	472	256	492	246	472	256	492	10	6		
	Van (Below 15 Seats) Alphard, Vellfire, Starex							236	472	236	472	236	472	236	472	236	472	10	6		
	Coach (min. 30 pax / without pax) & Mini Bus (min. 15 pax / without pax)							266	532	266	532	266	532	266	532	266	532	10	6		
	Bus (25-34 Seats)			456				456	912	456	912	456	912	456	912	456	912	50	6		
	Bus (35 Seats & Above)			635				635	1272	635	1272	635	1272	635	1272	635	1272	50	6		
6	Mini Bus	500	950	356/505	712/912													50	6		
8	Coach	800	1500	456/656	912/1212													50	6		
9	Coach (14-19 Seats)							285	570	285	570	285	570	285	570	285	570	50	6		
9	Motorcycle																				
	i Below 125CC	60	100	61	112	56	102	61	112	56	102	61	112	56	102	61	112	5	6		
	ii Below 250CC	100	180	71	122	66	112	71	122	66	112	71	122	66	112	71	122	5	6		
	iii Below 500CC	150	280	96	172	91	162	96	172	91	162	96	172	91	162	96	172	5	6		
	iv More than 501CC	-	-	116	212	111	202	116	212	111	202	116	212	111	202	116	212	5	6		
10	Bicycle	40	70	30	50	30	50	30	50	30	50	30	50	30	50	30	50	0	0		
	Super car			366				366	732	366	732	366	732	366	732	366	732	10	6		
11	Luxury Car			376	752	366	732	376	752	366	732	376	752	366	732	376	752	10	6		
12	Lorries (without cargo/pass) (6% G.T. WILL BE applied)																				
	i Below P-UP 1 ton / 2 ton (BTM)	-	-	246	492			246	492			246	492			246	492	50	6		
	ii Below 3 ton (BTM)	-	-	276	532			276	532			276	532			276	532	50	6		
	iii Below 4 ton (BTM)	-	-	316	632			316	632			316	632			316	632	50	6		
	iv Below 5 ton (BTM)	-	-	366	732			366	732			366	732			366	732	50	6		
	v More than 5 ton / Less than 10 ton	-	-	566	1132			566	1132			566	1132			566	1132	50	6		

LANGKAWI AUTO EXPRESS SDN BHD LANGKAWI RORO-FERRY SERVICES SDN BHD DIBUK SDN BHD DATE: 31 DEC 2017.

SAJUAN DIARU SAH
 ZAINAL HANIS BIN ZILMURI
 Pengerusi Pengarah
 Bahagian Pengurusan
 Suruhanjaya Pengangkutan Melaya (MPC)

Evidence of the Infringing Agreement: Standardised prices for ro-ro services.

Image C: Infringing Agreement for the year 2019

MEMORANDUM OF UNDERSTANDING

1 We hereby agreed and fully understand the purpose of signing this Memorandum of Understanding is to implement the **STANDARISED TICKET FARE FOR YEAR 2019 for RORO FERRY BUISNESS OPERATION BETWEEN LANGKAWI AND KUALA PERLIS** as follows :

- For **PASSENGER** – No Changed.
- For **MOTORCYCLE & BICYCLE** – 10% For all Categories.
- For **CAR : SEDAN / SUV / MPV / PICK UP / VAN** and 4X4, **LUXURY CAR** – 10% For all Categories.
- For **BUS / COACH** – 10% For All Categories.
- For **LORRY** – 10% For all Categories.
-

REFER STANDARISED TICKET PRICE LIST 2019 – AS ATTACHED.

1. We hereby agreed that the above **NEW TICKET FARE TABLE** to be take effective from **1st JANUARY 2019**.
2. We also agreed that in the event of any parties found breaching the agreement on the MOU, the said MOU shall automatically considered void and each party shall bear the consequences of the changes.
3. In the event there is any penalty imposed on any or all of us, and/or any decision by the relevant Ministry or relevant authorities to withdraw our respective licenses, we agree to abide by the said decision jointly and unilaterally, and any legal costs or other costs incurred will be bear by the parties, and also agree to submit our appeal jointly to the authority concern, which shall be maintained by all of us, provided we are not in breach of any legal requirement or obligations and not in breach of any statutory provisions and the laws.

Signed by and on behalf of,

LANGKAWI AUTO EXPRESS SDN BHD

LANGKAWI RORO FERRY SERVICES SDN BHD

DIBUK CARGO SERVICES

JIDUK CARGO SERVICES SDN. BHD.
1095670-T

Dated :

TERIMA
11 MAR 2019
KPDNKK
LANGKAWI

SALINAN DIAKUI SAH
ZAINAB WANIS BINTI ZULKIFLI
Penolong Pengarah
Bahagian Penguatkuasaan
Suruhanjaya Peralihan Malaysia (MyCC)

Evidence of the Infringing Agreement:
An agreement to fix and implement a 'standardised ticket fare' for ro-ro services.

Evidence of Infringing Agreement:
Signed by parties to the agreement.

Image D: Standard Ticket Price List of 2019

LANGKAWI AUTO EXPRESS SDN BHD / LANGKAWI RORO SERVICES SDN BHD / DIBUK SDN BHD
STANDARD TICKET PRICE LIST - WEF 01-01-2019

#	Passenger and Vehicle Types	Langkawi AUTO Express				Langkawi RORO Ferry				DIBUK Cargo				UP	
		1 way	2 ways	1 way	2 ways	1 way	2 ways	1 way	2 ways	1 way	2 ways	1 way	2 ways	Fare	%
1	Adult	18	36	18	36	18	36	18	36	18	36	18	36	1 way	%
2	Child / Disable / Senior Citizen Child (2 -11 yrs), Senior (60 - 100 yrs)	13	26	13	26	13	26	13	26	13	26	13	26	1 way	0
3	Infant (8 days - 23 months)	3	6	3	6	3	6	3	6	3	6	3	6	1 way	0
4	Motor Car														
	Below 1500CC	171	332	161	332	171	332	161	332	171	332	161	332	15	10%
	Below 2000CC	204	388	194	388	204	388	194	388	204	388	194	388	16	10%
	Below 3000CC	248	476	238	456	248	476	238	456	248	476	238	456	22	10%
	More than 3001CC	292	584	282	564	292	584	282	564	292	584	282	564	26	10%
5	STV, MPV, Pick Up, Van and Van														
	Below 2000CC	226	452	216	412	226	452	216	412	226	452	216	412	20	10%
	Below 3000CC	248	476	238	456	248	476	238	456	248	476	238	456	22	10%
	More than 3001CC	281	542	271	522	281	542	271	522	281	542	271	522	25	10%
	Van (Below 13 Seats) Alphard, Vellfire, Starex	292	584	282	564	292	584	282	564	292	584	282	564	26	10%
	Coach (min. 30 pax / without pax) & Mini Bus (min. 15 pax / without pax)														
	Bus (25-34 Seats)					501	1002	501	1002	501	1002	501	1002	45	10%
	Bus (35 Seats & Above)					698	1358	698	1358	698	1358	698	1358	63	10%
6	Mini Bus	391/556	782/1012	Please Call										55/50	10%
8	Coach	501/721	1002/1342	Please Call										45/65	10%
	Coach (14-19 Seats)					313	586	313	586	313	586	313	586	28	10%
9	Motorcycle														
	Below 125CC	67	124	62	114	67	124	56	102	67	124	56	102	6	10%
	Below 250CC	78	136	73	126	78	136	66	112	78	136	66	112	7	10%
	Below 500CC	105	190	100	180	105	190	91	162	105	190	91	162	9	10%
	More than 501CC	127	234	122	224	127	234	111	202	127	234	111	202	11	10%
10	Bicycle	33	56	33	56	33	56	30	50	33	56	30	50	3	10%
	Super car	402	804	402	804	402	804	402	804	402	804	402	804	36	10%
	Luxury Car	413	826	403	806	413	826	403	806	413	826	403	806	37	10%
12	Lorries (without cargo/pax)														
	Below P-UP 1 ton / 2 ton (BTM)	270	540	Please Call		270	540	Please Call		270	540	Please Call		24	10%
	Below 3 ton (BTM)	303	586	Please Call		303	586	Please Call		303	586	Please Call		27	10%
	Below 4 ton (BTM)	347	694	Please Call		347	694	Please Call		347	694	Please Call		31	10%
	Below 5 ton (BTM)	402	804	Please Call		402	804	Please Call		402	804	Please Call		36	10%
	More than 5 ton & Less than 10 ton	622	1244	Please Call		622	1244	Please Call		622	1244	Please Call		56	10%

LANGKAWI AUTO EXPRESS SDN BHD (1544605-U)
LANGKAWI RORO FERRY SERVICES SDN BHD (1512277-D)
DIBUK CARGO SERVICES SDN. BHD. (1085670-T)
 KM 7, JALAN SIMPANG EMPAT
 02000 KUALA PERLIS, PERLIS.
 TEL/FAX: 04-9807945
 WAB: 012-430000012-4450000

SALINAN DIKUJI SAM
 ZAINAB HANIS BINTI ZULKIFLI
 Penguasa Pengarah
 Bahagian Pengangkutan
 Suruhanjaya Kemajuan Malaysia (MJC)

Evidence of the Infringing Agreement: Standardised prices for ro-ro services.

G.1.2 IMPLEMENTATION OF THE INFRINGING AGREEMENTS

145. The Commission obtained samples of invoices from each of the Parties.¹¹⁴ Upon examining these invoices, the Commission observes that LAE and LRFS followed the fares prescribed in the Infringing Agreements. However, Dibuk Cargo did not implement the same. Even though Dibuk Cargo did not implement the agreed fares, the Commission, nonetheless, is of the view that there was concurrence of wills between the Parties to enter into price fixing agreements when they collectively signed the Infringing Agreements.
146. The Commission takes note that although LAE had imposed separate insurance charges, the final amount shown on their invoices are the same as the agreed fares.¹¹⁵

H. EXCEPTION UNDER SECTION 3(4)(a) OF THE ACT

147. Section 3(1) and (2) provides that the Act applies to any commercial activity transacted both within and outside of Malaysia if they have an effect on competition in any market in Malaysia. Section 3(4)(a) of the Act, however, excludes from the application of the Act –

- (a) Any activity, directly or indirectly in the exercise of governmental authority.

¹¹⁴ Sample of invoices provided by LAE on 11.3.2019; Sample of invoices provided by LRFS on 11.3.2019; and Sample of invoices provided by Dibuk Cargo on 23.4.2019.

¹¹⁵ Sample of invoices provided by LAE on 11.3.2019.

148. The Competition Act does not define ‘governmental authority’. However, ‘Government’ is defined in the Interpretation Acts 1948 and 1967 (Consolidated and Revised)¹¹⁶ as –

“Government” means the Government of Malaysia.

149. It is the Commission’s view that, for the purposes of section 3(4)(a) of the Act, for an activity to be regarded as being carried out directly or indirectly in the exercise of governmental authority the entity must an activity carried out directly or indirectly by a machinery of the Government of Malaysia having the power to carry out such as by a Ministry or by Government department having the power to carry out such activity. The legal burden is on the party relying on section 3(4)(a) of the Act to establish before the Commission that the activity that it is carrying out is of such a nature.

H.1 APPLICATION TO THE PRESENT CASE

Submission by LRFS

150. The learned counsel for LRFS argues as follows:

- (i) The Commission failed to take into consideration of all evidence surrounding the situation when it concluded that the transportation of vehicles via ro-ro vessels are not regulated by the Government;

¹¹⁶ Act 388.

- (ii) The act of entering into the Infringing Agreements ought to be excluded from the application of the Act as it was done in accordance with the decision made by the MOT and the Marine Department in the exercise of governmental authority provided by section 3(4)(a) of the Act; and
- (iii) LRFS entered into the Infringing Agreements in good faith as it has a legitimate expectation that the decision that was made during the January 2013 meeting would be implemented in which the ro-ro passengers' fares would be standardised.

151. The learned counsel for LRFS contends that an exercise of governmental authority by MOT and Marine Department was carry out vide the decision made during the January 2013 meeting to which was confirmed and recorded by the authorities. The excerpt of the minutes of the meeting is reproduced below:

*Mesyuarat bersetuju supaya harga tiket diseragamkan. Harga tiket kenderaan dicadangkan supaya mengikut tariff seperti pengangkutan kenderaan di Jeti Kuala Kedah - Langkawi dengan mengambil kira jarak perjalanan dan kualiti perkhidmatan. Manakala harga tiket penumpang pula dicadangkan menggunakan harga tiket feri penumpang Kuala Perlis - Langkawi. Walau bagaimanapun, pihak syarikat perlu mengemukakan cadangan harga tiket tersebut kepada Kementerian Pengangkutan Malaysia (MOT) untuk kelulusan.*¹¹⁷

¹¹⁷ Item 3.1, page 5 of the Minutes of Meeting “Membincangkan Kawasan Pendaratan Feri Ro-Pax di Langkawi-Kuala Perlis-Kuala Kedah” dated 17.1.2013 prepared by the Jabatan Laut Kuah Office on behalf of the Marine Department.

152. LRFS submits that, after the January 2013 meeting, it wrote a letter to the MOT to seek MOT's approval for the ro-ro passenger and vehicle transportation fares.
153. Relying on the cases of *Van den Bergh en Jurgens BV et Van Dijk Food Products (Lopik) BV v Commission of the European Communities*¹¹⁸ and *Fresh Del Monte Produce, Inc. v European Commission*,¹¹⁹ the learned counsel for LRFS submits that the decision made during the January 2013 Meeting was 'clear and unambiguous'. LRFS had reasonably relied on the decision when it entered into the MOUs.
154. The MOT and Marine Department are entities that are part of the machinery of the Government of Malaysia. The MOT and Marine Department have administrative authority and control over matters related to the operations of ships engaged in domestic shipping.
155. Meetings between LRFS, the Marine Department and MOT were held in January and May of 2013.¹²⁰ In between the meetings, there were exchanges of correspondences between LRFS with the MOT via letters dated 17 February 2013,¹²¹ 30 May 2013,¹²² and 1 July 2013.¹²³ Based on these letters, LRFS was aware that approval of the MOT was required prior to the standardization of the fares related to

¹¹⁸ Case 265/85 *Van den Bergh en Jurgens BV et Van Dijk Food Products (Lopik) BV v Commission of the European Communities* at paragraph 44.

¹¹⁹ T-587/08 *Fresh Del Monte Produce, Inc. v European Commission* (2013) at paragraph 827.

¹²⁰ *Minit Mesyuarat Membincangkan Kawasan Pendaratan Feri Ro-Ro di Langkawi-Kuala Perlis-Kuala Kedah* dated 17.1.2013; and *Mesyuarat Membincangkan Perkhidmatan Ro-Ro Bil.2/2013* dated 28.5.2013.

¹²¹ Tab 11 of LRFS' Bundle of Document.

¹²² Tab 12 of LRFS' Bundle of Document.

¹²³ Tab 14 of LRFS' Bundle of Document.

ro-ro vessel services. Significantly, there was no evidence that such approval was ever given by the MOT.

156. The Commission is of the opinion that the meetings and exchanges of correspondence were merely preliminary steps and did not confer on the agreements via the 2 MOUs the status of activities carried out in the exercise of governmental authority. It would be far-fetched to regard them as such. Moreover, there was no express approval by the MOT to the standardization of relevant fares. This is supported by the representative of MOT in his statement below:

7. Dari segi pengawalan fi dan tambang, Bahagian Maritim Kementerian Pengangkutan Malaysia akan membuat kajian dari stakeholders, iaitu Jabatan Laut, Lembaga Perlabuhan dan pemain industri sebelum membuat usul kepada Menteri Pengangkutan untuk membuat keputusan.¹²⁴

157. The minutes of January 2013 meeting that was relied on by LRFS stated that the Parties were required to submit a pricing proposal for approval of MOT. Furthermore, based on the title of that meeting held in January 2013 which is “*Mesyuarat Permohonan untuk Meluluskan*” (Application Meeting for Approval), the subject matter of the meeting was still at the stage of application. There was no letter of approval issued by MOT following the series of meetings between LRFS and MOT.

¹²⁴ Paragraph 7 of the Statement of Mohamad Halim bin Ahmed of Maritime Division of the Ministry of Transport recorded on 4.7.2019.

158. There is no evidence submitted by the learned counsel to support the argument that MOT granted the approval for the Parties to enter into the Infringing Agreements. The learned counsel for LRFS conceded during the oral representation session that there was no conclusive decision or regulations issued by the MOT with regard to the request by LRFS to standardize fares.¹²⁵
159. The arguments by LRFS were further diminished by the fact that there was an unexplained long lapse of time between the January 2013 meeting and the Infringing Agreements in 2018 and 2019. Furthermore, the procedure for fixing of fares as provided for under Section 65D(d) of the Merchant Shipping Ordinance 1952 was not followed.¹²⁶ The fact remains that the fares were agreed upon by the Parties via the Infringing Agreements without any regulations made by the Domestic Shipping Licensing Board with the approval of the MOT.
160. The learned counsel invoked the principle of legitimate expectation relying on the case of *Van den Bergh en Jurgens*¹²⁷ in support for his argument that LRFS had entered into the Infringing Agreements in good faith with the understanding that the Infringing Agreements were in accordance with the government's objectives. There is no merit in this argument based on the principle of legitimate expectation that was relied upon by LRFS. The Commission takes the position that when an enterprise asserts section 3(4)(a) of the Act as a defence, but fails to establish that its activities were carried out directly or

¹²⁵ Oral Representation Transcript dated 7.4.2021 at page 16, lines 27 to 34.

¹²⁶ Ordinance 70/150.

¹²⁷ Case 265/85 *Van den Bergh en Jurgens BV et Van Dijk Food Products (Lopik) BV v Commission of the European Communities*.

indirectly in the exercise of governmental authority, that should be the end of the matter. Any argument based on the principle of legitimate expectation has no place or relevance here.

161. In any case, for the sake of completeness, even assuming that the principle of legitimate expectation has any relevance here, we hold that for a legitimate expectation to arise, it must be shown that a public authority has made a clear and unambiguous representation to the individual within its power. Is there any such representation by the Domestic Shipping Licensing Board and the Minister of Transport in the January 2013 letter? With respect, we see none. In the case of *The State of Government of Sabah v Clarence Chiu Ken Loong*,¹²⁸ the Court of Appeal held that the plaintiff had no legitimate expectation purely on offer letters to alienate lands. The letter clearly stated that the offer was conditional upon a survey being conducted on the land to see if the land was is encumbered or not. The Sabah Land Rules state that alienation of land is completed when the land title has been issued and the land has been properly surveyed.
162. With respect, based on authorities cited above, the Commission holds that the decision of the January 2013 meeting as referred to above between LRFS, MOT, and Marine Department did not give rise to a legitimate expectation that the enterprises could fix the fares for carriage of vehicles via ro-ro vessel. We repeat what we said earlier that the decision of the January 2013 meeting. It was merely a preliminary step. Therefore, the argument by LRFS that the

¹²⁸ *The State Government of Sabah v Clarence Chiu Ken Loong* [2017] 2 CLJ 379 at paragraph 26. (See also the case of *The Government of Sabah v Sipadan Dive Centre Sdn. Bhd. & Ors.* [2013] 5 CLJ 107 at paragraphs 11,12 and 14).

exercise of governmental authority had been made through series of meetings, and LRFS had a legitimate expectation for the fares to be standardized by the MOT, is devoid of merit and are hereby dismissed.

I. EXCEPTIONS UNDER SECTION 3(4)(b) OF THE ACT

Application

3. (1) This Act applies to any commercial activity, both within and subject to subsection (2), outside Malaysia.

...

(4) For the purposes of this Act, “commercial activity” means any activity of a commercial nature but does not include —

(a) any activity, directly or indirectly in the exercise of governmental authority;

(b) any activity conducted based on the principle of solidarity;
and

(c) any purchase of goods or services not for the purposes of offering goods and services as part of an economic activity.

163. An enterprise is said to be operating on the basis of the principle of solidarity when benefits are available to individuals not in reference to their economic contributions but in accordance with their needs.¹²⁹
164. In the opinion of Advocate General Fennelly, social solidarity envisages the inherently uncommercial act of involuntary

¹²⁹ Case T-319/99 *Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica Y Dental (FENIN) v Commission of the European Communities* at paragraph 38; and Joined Cases C-159/91 and C-160/91, *Christian Poucet and Assurances Générales de France (AGF) v Caisse Mutuelle Régionale du Languedoc-Roussillon (Camulrac) and between Daniel Pistre v Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans (Cancava)* at paragraph 18.

subsidization of one social group by another.¹³⁰ The European Court has held that social security schemes that pursues non-profit activities¹³¹ of a social character or objective,¹³² provides compulsory social protection¹³³ and is subjected to the control of the state¹³⁴ are not considered as commercial activities that are subjected to the competition law.

165. In Malaysia, examples of activities conducted based on the principle of solidarity are the pension scheme for public servants administered by the Public Service Department pursuant to Pensions Act 1980 and the *Pertubuhan Keselamatan Sosial* (PERKESO) Scheme that is under the purview of the Ministry of Human Resources pursuant to the Employees Social Security Act 1969.

I.1 APPLICATION TO THE PRESENT CASE

Submissions by the Parties

166. Dibuk Sdn. Bhd. and Dibuk Cargo rely on the case of *Labuan Ferry Corporation Sdn. Bhd. v Chin Mui Kien & Ors. and Other Appeals*¹³⁵ to submit that the services provided by Dibuk Cargo are “service of prime necessity”. Dibuk Sdn. Bhd. and Dibuk Cargo further argue that

¹³⁰ Opinion of Advocate General Fennelly in Case C-70/95 *Sodemare SA, Anni Azzurri Holding SpA and Anni Azzurri Rezzato Srl v Regione Lombardia* at paragraph 29.

¹³¹ Case C-264/01 *AOK Bundesverband v Ichthyol-Gesellschaft* at paragraphs 51 and 52.

¹³² Case C-159/91 *Christian Poucet v Assurances Générales de France* at paragraphs 8 and 18, Case C-218/00 *Cisal di Battistello Venanzio v INAIL* at paragraphs 34 to 36.

¹³³ Case C-159/91 *Christian Poucet v Assurances Générales de France* at paragraph 7.

¹³⁴ Case C-159/91 *Christian Poucet v Assurances Générales de France* at paragraphs 14 and 15; Case C-218/00 *Cisal di Battistello Venanzio v INAIL* at paragraph 43; Case C-264/01 *AOK Bundesverband v Ichthyol-Gesellschaft* at paragraphs 51 and 52; and Case C-350/07 *Kattner Stahlbau GmbH v Maschinenbau* at paragraphs 61 and 65.

¹³⁵ [2018] 3 MLJ 256.

their services fall under the category of essential services under Item 4 of the First Schedule of the Industrial Relation Act 1967.

167. Dibuk Sdn. Bhd. and Dibuk Cargo submit that the services rendered by Dibuk Cargo are essential services that were not operated purely for monetary gains but services in to the interest of the public. They are activities conducted on the principle of solidarity under section 3(4)(b) of the Act. Therefore, the services are not commercial activities.
168. We find the case of *Labuan Ferry Corporation Sdn. Bhd.* as irrelevant as that case deals with the common law doctrine of prime necessity. The Industrial Relation Act 1967 is also irrelevant to the case at hand. The Industrial Relation Act 1967 is a statute that provides for the regulation of the relations between employers, workmen and their trade union and the prevention and settlement of any differences of disputes arising from their relationship and are generally to deal with trade disputes and matters arising therefrom.¹³⁶
169. Whilst we accept that the carriage of cargo and the provision of ro-ro ferry services for Langkawi are essential services, Dibuk Sdn. Bhd. and Dibuk Cargo fail to elucidate how the principle of solidarity as referred to in section 3(4)(b) of the Act could be invoked here in their defence. The legal burden is on them to establish the defence of principle of solidarity. Based on the reasons set in the preceding paragraphs, the arguments by Dibuk Sdn. Bhd. and Dibuk Cargo are hereby rejected.

¹³⁶ Long Title of the Industrial Relation Act 1967 (Act 177).

J. BURDEN AND STANDARD OF PROOF

170. It is trite law that the Commission bears the burden of proving that an infringement under section 4 of the Act has been committed. The standard of proof to be applied is the civil standard which is on the balance of probabilities.
171. The Commission finds that there is strong and convincing evidence that an infringement of section 4 prohibition had been committed, and this we have elaborated in **paragraphs 68 to 169**.

K. RELEVANT MARKET

172. The term “market” is defined in section 2 of the Act as:

a market in Malaysia or in any part of Malaysia, and when used in relation to any goods or services, includes a market for those goods or services and other goods and services that are substitutable for, or otherwise competitive with, the first-mentioned goods and services.

173. The purpose of defining market is to identify all enterprises competing in the same product or geographical market or to define the boundaries of product or geographical market in which all enterprises compete.¹³⁷
174. The Commission has to determine the relevant market in order to calculate the Parties’ relevant turnover in the market affected by the Infringing Agreements for the purposes of establishing the level of

¹³⁷ Paragraph 2.3 of the Commission’s Guidelines on Market Definition.

financial penalties that the Commission decides to impose. This will be discussed in **Part 3** of this Decision.

175. The relevant market, in the present case, is the market for the provision of vehicle transportation via ro-ro vessels in Langkawi.

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PART 3: THE COMMISSION'S DECISION

A. DIRECTIONS UPON A FINDING OF AN INFRINGEMENT

176. In light of the nature of the infringement of the Act, and taking into consideration all evidence obtained throughout the investigations as described above, the Commission hereby issues this Decision pursuant to section 40 of the Act against the Parties for entering into anti-competitive agreements in breach of section 4(1) read with section 4(2) and section 4(3) of the Act.
177. Section 40(1) of the Act provides that where the Commission has decided that an agreement has infringed the section 4 prohibition, the Commission may direct the infringing enterprises as it considers appropriate to bring the infringement to an end.
178. Accordingly, the Commission hereby directs the Parties to undertake the following:
- (i) to cease and desist from implementing the agreed charges for the provision of vehicle transportation via ro-ro vessel in Langkawi; and
 - (ii) the future charges for the provision of vehicle transportation via ro-ro vessel are to be determined independently by each of the 5 enterprises.

B. GENERAL POINTS ON FINANCIAL PENALTIES

179. By virtue of section 40(1)(c) of the Act, where the Commission has determined that an agreement has infringed the section 4 prohibition, the Commission may impose on any person who is a party to that agreement a financial penalty.

C. METHODOLOGY FOR COMPUTING QUANTUM OF PENALTIES

180. Based on the Commission's Guidelines on Financial Penalties, in determining the amount of financial penalty in a specific case, the Commission may consider some or all of the following factors:

- (a) the seriousness (gravity) of the infringement;
- (b) turnover of the market involved;
- (c) duration of the infringement;
- (d) impact of the infringement;
- (e) degree of fault (negligence or intention);
- (f) role of the enterprise in the infringement;
- (g) recidivism;
- (h) existence of a compliance programme; and
- (i) level of financial penalties imposed on similar cases.¹³⁸

181. In calculating financial penalty for each of the Parties, the Commission begins by setting a "base figure", which is worked out by taking a proportion of the "relevant turnover" during the period of infringement. What is "relevant turnover" and how this proportion is

¹³⁸ Paragraph 3.2 of the Commission's Guidelines on Financial Penalties.

determined will be explained hereinbelow. This base figure is then adjusted after taking into account various factors such as deterrence, aggravating and mitigating considerations to arrive at the ultimate value of the financial penalty.¹³⁹

182. For the purpose of computing the financial penalty, the Commission relies on the financial information submitted by the Parties pursuant to the section 18 Notices dated 11.3.2019 and 12.3.2019 issued by the Commission. The Commission also makes reference to the submissions pertaining to the insurance charges as raised by LAE in its written and oral representations.

C.1 SERIOUSNESS OF THE INFRINGEMENT

183. The Commission considers that the seriousness of the infringement should be taken into account in setting the base figure.
184. With regard to the seriousness of the infringement in question, the Commission will take into account the nature of the infringement and the size of the relevant market. The Commission considers the Infringing Agreements, which have the object of significantly preventing, restricting or distorting competition, to be a very serious infringement of the Act.

¹³⁹ Paragraph 3.2 of the Commission's Guidelines on Financial Penalties.

C.2 RELEVANT TURNOVER AND THE BASE FIGURE

185. The relevant turnover used to determine the base figure is the enterprise's turnover in the relevant service market and the relevant geographic market affected by the infringement.
186. The Commission identifies the relevant service market affected by the Infringing Agreements as being no wider than the scope as stated in **Part 2:K** above. The relevant geographic market for the focal service is no wider than the geographical location of Langkawi, Kedah.
187. The based figure of the financial penalty is calculated by taking into account the relevant turnover of the enterprise and the seriousness of the infringement.
188. The Commission, after taking into account the seriousness of the infringement, is of the view that the appropriate proportion in determining the base figure of the financial penalty for each of the Parties ought to be 10% of the relevant turnover of each of the Parties.

C.3 THE INFRINGEMENT PERIOD

189. The Parties were involved in a single continuous infringement from 31.12.2017 until 14.9.2020. The period is considered to be from the date the first MOU was signed up until the Commission issued our Proposed Decision to the Parties on 14.9.2020.

C.4 AGGRAVATING FACTORS

190. The Commission will consider the presence of aggravating factors and make upward adjustments to the base figure in determining the ultimate financial penalty in respect of each of the Parties.

C.5 MITIGATING FACTORS

191. The Commission will consider the presence of mitigating factors and make downward adjustments to the penalty where there are mitigating factors in respect of each of the Parties. However, in the present case, we find none.

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

192. Section 40(4) of the Act prescribes a statutory limit on the final amount of the financial penalty that the Commission could impose on a Party determined to have infringed a prohibition under Part II of the Act. The statutory limit is that the financial penalty shall not exceed 10% of the worldwide turnover of the Party over the period during which the infringement occurred.

E. PENALTY FOR DIBUK SDN. BHD., LANGKAWI FERRY SERVICES AND LAE AS AN SEU

193. Three enterprises, namely, Dibuk Sdn. Bhd., Langkawi Ferry Services and LAE, which we find constitute an SEU, were involved in a single continuous infringement with the object of significantly

preventing, distorting and restricting competition in the market for the provision of vehicle transportation via ro-ro vessels in Langkawi.

194. For the purpose of calculating the penalty in respect of the infringement by the three enterprises as mentioned aforesaid as an SEU, the Commission has the discretion to choose the appropriate entity out of the three entities as the basis of calculating the penalty.¹⁴⁰ In the present case, the Commission has chosen the joint venture entity, namely, LAE's turnover as the basis to calculate the penalty to be imposed on the SEU. We do so because LAE is the operator in the Relevant Market for the purpose of the joint venture between Dibuk Sdn. Bhd. and Langkawi Ferry Services Sdn. Bhd.
195. Accordingly, the Commission relies on the data submitted by LAE on 12.3.2019¹⁴¹ and 17.7.2019¹⁴² respectively, pursuant to the section 18 Notice dated 11.3.2019.
196. Based on the available data, the Commission has segregated and summarized the turnover into 3 different markets, namely, the (1) Relevant Market, (2) the Passengers Market and (3) the Others Market.
197. The Commission takes note that LAE submitted turnover data that only covers the period from January 2018 until March 2019 for the Relevant Market and Passengers Market. As for the Others Market,

¹⁴⁰ Case T-541/08 *Sasol v Commission* at paragraph 182. See also page 98 of Richard Whish and David Bailey, *Competition Law Textbook* (9th Edition).

¹⁴¹ Revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

¹⁴² Revenue information provided by LAE dated 17.7.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

the Commission notes that LAE submitted turnover data that only covers the period from January 2018 until January 2019. This is shown in **Table 10A** and **Table 10B** below:

Table 10A: Turnover of LAE for the Relevant Market and Passengers Market

MARKET	2018 (RM)	2019 UP TO 31 MARCH 2019 (RM)
Relevant Market ¹⁴³ (Exclude passengers)	[X]	[X]
Passengers Market ¹⁴⁴	[X]	[X]

Table 10B: Turnover of LAE for the Others Market

MARKET	2018 (RM)	2019 UP TO 31 JANUARY 2019 (RM)
Others Market ¹⁴⁵	[X]	[X]

198. The Commission notes that the turnover for the Relevant Market from 1.1.2018 to 31.3.2019 is RM [X] (RM [X] + RM [X]); and the turnover for Passengers Market for the same period is RM [X] (RM [X] + RM [X]). Meanwhile, the turnover of LAE for the Others Market

¹⁴³ "Relevant Market" refers to the market for vehicle transportation via ro-ro vessels for Bicycles, Motorcycles, Cars: Sedan, Cars: SUV/MPV/Pick Up/Van/4x4/Luxury Car, Buses/Coaches, Lorries (without cargo), Other Vehicles, and Vehicle Insurance; as shown in the Revenue information provided by LAE dated 17.7.2019; pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

¹⁴⁴ "Passengers Market" refers to the market for Passengers as shown in the Revenue information provided by LAE dated 17.7.2019; pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

¹⁴⁵ "Others Market" refers to the market for Canteen Sales, "Other Income", and "Others" as shown in the Revenue information provided by LAE dated 12.3.2019; pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

for the period from 1.1.2018 until 31.1.2019 is RM [x] (RM [x] + RM [x]).¹⁴⁶

199. Considering that the Parties were involved in a single continuous infringement from 31.12.2017 until 14.9.2020, there is a gap of turnover information from 1.4.2019 until 14.9.2020 ('gap period 1') for the Relevant Market and Passengers Market. Similarly, there is a gap of turnover information for the Others Market from 1.2.2019 to 14.9.2020 ('gap period 2'). Due to the unavailability of data for gap period 1 and gap period 2, the Commission uses proxy turnover figures in the computation of the turnovers for both gap periods.¹⁴⁷
200. In order to determine the value of the proxy turnover figures for the gap periods for the Relevant Market and the Passengers Market, the Commission first divides the total turnover values of each market with the number of days from 1.1.2018 to 31.3.2019 (a period of 455 days) to arrive at a daily turnover figure of RM [x] for the Relevant Market (RM [x] ÷ 455 days) and a daily turnover figure of RM [x] (RM [x] ÷ 455 days) for the Passengers Market.
201. Similarly, in determining the value of the proxy turnover figure for the gap period for "Others Market", where data are only available from 1.1.2018 to 31.1.2019, the Commission first divides the total turnover values of the market with the number of days from 1.1.2018

¹⁴⁶ Revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019; and Revenue information provided by LAE dated 17.7.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

¹⁴⁷ Paragraph 3.2(b) of the Commission's Guidelines on Financial Penalties.

to 31.1.2019 (a period of 396 days) to arrive at a daily turnover figure of RM [x] for the Others Market (RM [x] ÷ 396 days).

202. The daily turnover figures for each market are summarized in **Table 11A** and **Table 11B** below:

Table 11A: Daily Turnover Figures for the Relevant Market and Passengers Market

MARKET	TURNOVER FROM 1.1.2018 TO 31.3.2019 (RM)	DAILY TURNOVER FIGURE (RM)
Relevant Market (Exclude passengers)	[x]	[x]
Passengers Market	[x]	[x]

Table 11B: Daily Turnover Figure for the Others Market

MARKET	TURNOVER FROM 1.1.2018 TO 31.1.2019 (RM)	DAILY TURNOVER FIGURE (RM)
Others Market	[x]	[x]

203. Next, each of the daily turnover figures for the Relevant Market and Passengers Market is multiplied by the number of days from 1.4.2019 to 14.9.2020 (533 days) to derive the proxy turnover figure of RM [x] (RM [x] x 533 days) for the Relevant Market and the proxy turnover figure of RM [x] (RM [x] x 533 days) for the Passengers Market for the said period of 533 days.

204. Similarly, the daily turnover figure for the Others Market is multiplied by the number of days from 1.2.2019 to 14.9.2020 (592 days) to derive the proxy figure of RM [x] (RM [x] x 592 days) for the Others Market for the said period of 592 days.

205. The total turnover calculation (turnover figure + proxy turnover figure) for LAE throughout the Infringement Period for the Relevant Market, Passengers Market and Others Market is illustrated in **Table 12A** and **Table 12B** whereas the total worldwide turnover for LAE throughout the Infringement Period is illustrated in **Table 12C**.

Table 12A: Total Turnover Calculation for the Relevant Market and Passengers Market

MARKET	TURNOVER FROM 1.1.2018 TO 31.3.2019 (RM)	PROXY TURNOVER FIGURE FROM 1.4.2019 TO 14.9.2020 (RM)	TOTAL TURNOVER (RM)
Relevant Market (Exclude passengers)	[x]	[x]	[x]
Passengers Market	[x]	[x]	[x]

Table 12B: Total Turnover Calculation for the Others Market

MARKET	TURNOVER FROM 1.1.2018 TO 31.1.2019 (RM)	PROXY TURNOVER FIGURE FROM 1.4.2019 TO 14.9.2020 (RM)	TOTAL TURNOVER (RM)
Others Market	[REDACTED]	[REDACTED]	[REDACTED]

Table 12C: Total Worldwide Turnover Calculation

MARKET	TOTAL WORLDWIDE TURNOVER (RM)
Relevant Market (Exclude passengers)	[REDACTED]
Passengers Market	[REDACTED]
Others Market	[REDACTED]
TOTAL	[REDACTED]

206. LAE's worldwide turnover throughout the Infringement Period is RM [REDACTED], whereas its relevant turnover for the same period is RM [REDACTED].

207. It is to be recalled that the Commission has determined earlier in this Decision that the base figure in calculating the financial penalty for a Party found guilty of an infringement shall be fixed at 10% of the relevant turnover. In the case of LAE this amounts to RM [REDACTED] (10% x RM [REDACTED]).

208. The learned counsel for LAE submits the following arguments in regard to financial penalty:

- (i) The Commission failed to consider the deductibles based on the “relevant accounting standards” adopted by LAE in relation to the calculation of the revenue;
- (ii) The proposed imposition of the maximum financial penalty of 10% of LAE’s worldwide by the Commission is excessive;
- (iii) The Commission double-counted the “Vehicle Insurance” item in computing LAE’s turnover in the relevant market and LAE’s worldwide turnover;
- (iv) The Commission failed to take into consideration the impact of the Covid-19 pandemic on LAE’s business in computing the proxy figure for LAE’s worldwide turnover;
- (v) The Commission erred in finding that LAE played the role of an instigator or ringleader of the Infringing Agreements; and
- (vi) The Commission failed to take into consideration LAE’s full cooperation during investigation as a mitigating factor.

209. In relation to the first argument, LAE submitted that the Commission has failed to take into consideration the relevant “accounting standards” adopted by LAE, namely, the “Malaysian Private Entities Reporting Standard” (MPERS), in computing its turnover and urged the Commission to consider the position taken by the United Kingdom and Singapore Competition Authorities to compute the turnover after deduction of sales rebates, value added taxes and other taxes directly related to the turnover. In this regard, LAE has submitted to the Commission for consideration of vehicle levy, passenger levy, advertisement expenses, ticket refunds, and insurance expenses to be considered as deductible.

210. As to the above contention, the Commission is not legally obligated to consider deductibles submitted by LAE to the Commission. Furthermore, LAE did not submit any information to substantiate their claim that passenger and vehicle levies were in fact paid to the relevant port authority, namely, the Langkawi Port Sdn. Bhd. Despite the mention of “port charges” in both the audited reports and the Profit and Loss Statements as provided to the Commission by LAE,¹⁴⁸ the Commission is unable to accept that these sums were actually paid to the Langkawi Port Sdn. Bhd. for the passenger and vehicle levies. Besides, LAE also failed to satisfy the Commission that advertisement expenses, ticket refunds, and insurance expenses are considered as sales rebates which warrant to be omitted from the turnover.
211. Moving on to the second argument, the Commission has the discretion in determining the quantum of financial penalty to be imposed, subject to adhering to established principles on penalty, and subject to the statutory maximum as prescribed in section 40(4) of the Act.
212. For the third argument, the Commission takes note that LAE has inadvertently recorded “Other Income – Vehicle Insurance” in the revenue information provided to the Commission on 12.3.2019.¹⁴⁹ This resulted in the Commission adding the sum of RM [x] in its calculation of the turnover for LAE’s Others Market for the year 2018.

¹⁴⁸ LAE Reports and Financial Statements for the Financial Year ended 30.6.2018 provided by LAE pursuant to the section 18 Notice issued by the Commission dated 30.6.2020; LAE Reports and Financial Statements for the Financial Year ended 30.6.2019 provided by LAE pursuant to the section 18 Notice issued by the Commission dated 30.6.2020; and Bundles of Documents LAE and Langkawi Ferry Services [Tab 20], LAE’s Monthly Profit and Loss Statements from January 2018 to September 2020.

¹⁴⁹ Revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

The Commission has deliberated on the matter and agrees that the sum of RM [X] be deducted from the Others Market for the year 2018. This deduction has been reflected in **Table 12B** above.

213. As for the fourth argument, the Commission has taken into account the COVID-19 pandemic in the computation of financial penalty to be imposed on the Parties. This will be discussed in **Part 4**. Therefore, the LAE's fourth argument is dismissed.
214. In relation to the fifth argument, upon hearing the submissions presented by the counsels for LAE, the Commission accepts that there is insufficient evidence that unequivocally shows that LAE had induced or persuaded other Parties to participate in the Infringing Agreements. As such, the Commission finds that LAE was not an instigator.
215. As to LAE's sixth submission, the Commission is of the view that LAE's responses to the Commission's requests for information do not constitute a mitigating factor. By merely responding to specific enquiries from the Commission, the enterprise is simply doing what it is obligated to do under the Act.¹⁵⁰
216. For an enterprise to be able to claim the benefit of full cooperation as a mitigating factor, the enterprise must establish that the cooperation given went beyond its legal obligation to cooperate.¹⁵¹ In other words, a party wishing to benefit from mitigating

¹⁵⁰ The Opinion of Advocate General Kokott in Case C-293/13 *Fresh Del Monte v European Commission* at paragraphs AG240 to AG241; Case T-58/01 *Solvay v Commission* at paragraphs 331 to 332; Case T-230/00 *Daesang Corp. and Sewon Europe GmbH v Commission of the European Communities* at paragraphs 135 and 136; and Case T-317/94 *Weig v Commission* at paragraph 283.

¹⁵¹ Case T-705 /14 *Unichem Laboratories Ltd v European Commission* at paragraph 561.

circumstances must do more than just the normal conduct which may be reasonably expected of any party to the proceedings. It must put all its cards on the table on its own initiative.¹⁵²

217. The Commission takes the position that it is not bound to follow its fining practices as adopted in the previous cases before the Commission. This proposition is affirmed in the case of *Musique Diffusion Francaise SA v European Commission* which the European Court of Justice held that:

[109] ... the fact that the Commission, in the past, imposed fines of a certain level for certain types of infringement does not mean that it is estopped from raising that level within the limits indicated in Regulation 17 if that is necessary to ensure the implementation of Community competition policy. ... the proper application of the Community competition rules requires that the Commission may at any time adjust the level of fines to the needs of that policy.¹⁵³

218. As there are no aggravating or mitigating factors to be considered, the financial penalty to be imposed on LAE shall be RM2,261,753.75.

219. This financial penalty of RM2,261,753.75 does not exceed the maximum financial penalty of RM [∞] that the Commission may legally impose as prescribed by section 40(4) of the Act, i.e., not exceeding 10% of LAE's worldwide turnover.

¹⁵² Opinion of Advocate General Kokott in Case C-293/13 *Fresh Del Monte v European Commission* at paragraph AG241.

¹⁵³ Joined Cases 100-103/80 *Musique Diffusion Francaise SA v European Commission*.

220. Accordingly, the Commission concludes that financial penalty of RM 2,261,753.75 is imposed jointly and severally on LAE, Dibuk Sdn. Bhd. and Langkawi Ferry Services. These three enterprises, as we have determined, constitute an SEU.

F. PENALTY FOR LRFS

221. As discussed in **Part 3**, LRFS was involved in a single continuous infringement with the object of significantly preventing, distorting and restricting competition in the market for the provision of vehicle transportation via ro-ro vessel in Langkawi.

222. For the purposes of computing the financial penalty, the Commission relies on the data submitted by the LRFS pursuant to the section 18 Notice dated 12.3.2019.¹⁵⁴

223. Based on the available data, the Commission has segregated and summarized the turnover into 2 different markets, namely, the (1) Relevant Market and (2) the Passengers Market as shown in **Table 13** below.

¹⁵⁴ Revenue information provided by LRFS dated 18.3.2019 pursuant to the section 18 Notice issued by the Commission dated 12.3.2019.

Table 13: Turnover for LRFS

MARKET	2018 (RM)	2019 UP TO 28.2.2019 (RM)
Relevant Market (Exclude passengers)	[REDACTED]	[REDACTED]
Passengers Market	[REDACTED]	[REDACTED]

224. The Commission notes that the turnover for the Relevant Market from 1.1.2018 to 28.2.2019 is RM [REDACTED] (RM [REDACTED] + RM [REDACTED]); and the turnover for Passengers Market for the same period is RM [REDACTED] (RM [REDACTED] + RM [REDACTED]).
225. Considering that the Parties were involved in a single continuous infringement from 31.12.2017 until 14.9.2020, there is a gap of turnover information from 1.3.2019 until 14.9.2020 ('gap period') for the Relevant Market and Passengers Market.
226. In order to determine the value of the proxy turnover figures for the Relevant Market and the Passengers Market, in respect of the gap period, the Commission first divides the total turnover values of each market with the number of days from 1.1.2018 to 28.2.2019 (a period of 424 days) to arrive at a daily turnover figure of RM [REDACTED] for the Relevant Market (RM [REDACTED] ÷ 424 days) and a daily turnover figure of RM [REDACTED] (RM [REDACTED] ÷ 424 days) for the Passengers Market.
227. The daily turnover figures for each market are summarized in **Table 14** below:

Table 14: Daily Turnover Figures for the Relevant Market and Passengers Market

MARKET	TURNOVER FROM 1.1.2018 TO 28.2.2019 (RM)	DAILY TURNOVER FIGURE (RM)
Relevant Market (Exclude passengers)	[<]	[<]
Passengers Market	[<]	[<]

228. Next, each of the daily turnover figures for the Relevant Market and Passengers Market is multiplied by the number of days from 1.3.2019 to 14.9.2020 (564 days) to derive the proxy turnover figure of RM [<] (RM [<] x 564 days) for the Relevant Market and the proxy turnover figure of RM [<] (RM [<] x 564 days) for the Passengers Market for the said period of 564 days.
229. The total turnover calculation (turnover figures + proxy turnover figures) for LRFS throughout the Infringement Period for the Relevant Market and Passengers Market is illustrated in **Table 15**.

Table 15: Total Turnover Calculation for the Relevant Market and Passengers Market

MARKET	TURNOVER FROM 1.1.2018 TO 28.2.2019 (RM)	PROXY TURNOVER FIGURE FROM 1.3.2019 TO 14.9.2020 (RM)	TOTAL TURNOVER (RM)
Relevant Market (Exclude passengers)	[X]	[X]	[X]
Passengers Market	[X]	[X]	[X]
TOTAL			[X]

230. LRFS' worldwide turnover throughout the Infringement Period is RM [X] whereas its relevant turnover for the same period is RM [X].

231. The base figure in calculating the financial penalty for LRFS, as we have determined earlier in this Decision, is fixed at 10% of the relevant turnover. In light of the aforesaid calculation, this amounts to RM [X]. (10% x RM [X]).

232. LRFS submitted the following should be considered as mitigating factors:

- (i) In entering into the Infringing Agreements, LRFS was acting in good faith pursuant to an exercise of governmental authority;
- (ii) LRFS played a minor or limited role in the events leading to the Infringing Agreements; and
- (iii) LRFS has given its full cooperation throughout the investigation by providing the Commission with all the requested data, documents and information.

233. Firstly, as we have found earlier in this Decision, the Parties in entering into the Infringing Agreements, were not acting in pursuant to an exercise of governmental authority. The *Airfreight*¹⁵⁵ case referred to by LRFS in its submission is irrelevant.

234. It is evident from the information obtained in the course of the investigation that LRFS attended discussions on fare prices with other cartel members.¹⁵⁶ It is also disclosed by the evidence that LRFS did implement the fares fixed under the Infringing Agreements as the base fare to its customers. Accordingly, we reject the argument by LRFS that it played a minor role in the Infringing Agreements.

235. The Commission is not bound to follow the level of fines imposed in the cases that it had dealt with previously. The Commission takes the position that LRFS' responses to the Commission in the course of the investigation are mere compliance with its legal obligation to

¹⁵⁵ Case COMP/39258 *EU Airfreight*.

¹⁵⁶ Paragraph 18 of the Joint Statement of Wong Sie Kiong and Wong Yuk Tek of LRFS recorded 11.3.2019.

the Commission as required by the Act, and as such they do not amount to a mitigating factor.

236. The Commission wishes to reiterate that the statements provided by Lee Sun Sun,¹⁵⁷ Wong Sie Kiong,¹⁵⁸ Wong Yuk Tek,¹⁵⁹ and Ku Azhar bin Ku Abdul Razak¹⁶⁰ of LRFS were all given according to section 18 of the Act.
237. The Commission does not consider the factors submitted by LRFS in paragraph **232 (i) to (iii)** to be mitigating factors that warrant a reduction in the level of financial penalty.
238. As there are no aggravating and mitigating factors to be considered, the financial penalty to be imposed on LRFS shall be RM1,625,999.83.
239. This financial penalty of RM1,625,999.83 does not exceed the maximum financial penalty of RM [∞] that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, the penalty shall not exceed 10% of LRFS' worldwide turnover.

¹⁵⁷ Section 18 Notice dated 11.3.2019.

¹⁵⁸ Section 18 Notice dated 11.3.2019.

¹⁵⁹ Section 18 Notice dated 11.3.2019.

¹⁶⁰ Section 18 Notice dated 8.5.2019.

G. PENALTY FOR DIBUK SDN. BHD. AND DIBUK CARGO SERVICES SDN. BHD. AS AN SEU

240. As discussed in **Part 3**, Dibuk Sdn. Bhd. and Dibuk Cargo, as an SEU, were involved in the single continuous infringement with the object of significantly preventing, distorting and restricting competition in the market for the provision of vehicle transportation via ro-ro vessels in Langkawi.
241. For the purpose of calculating the penalty in respect of the infringement by the two enterprises as mentioned aforesaid as an SEU, the Commission has the discretion to choose the appropriate entity out of the two entities as the basis of calculating the penalty.¹⁶¹ In the present case, the Commission has chosen Dibuk Cargo's turnover as the basis to calculate the penalty to be imposed on the SEU. We do so because Dibuk Cargo is the operator in the Relevant Market.
242. In the course of the investigation, the Commission received three sets of financial data submitted by Dibuk Cargo pursuant to the section 18 Notices dated 12.3.2019 and 30.6.2020.
243. Based on the information provided, the Commission identifies two different periods which the Commission relied upon for the purpose of computing Dibuk Cargo's worldwide turnover throughout the Infringement Period.

¹⁶¹ Case T-541/08 *Sasol v Commission* at paragraph 182. See also page 98 of Richard Whish and David Bailey, *Competition Law Textbook* (9th Edition).

244. The first period is from 1.1.2018 until 31.10.2019 which was based on the data submitted by Dibuk Cargo on 23.4.2019¹⁶² and 15.7.2019.¹⁶³ The second period is from 1.11.2019 until 14.9.2020 which was gathered from the data submitted by Dibuk Cargo on 13.7.2020.¹⁶⁴

First Period: 1.1.2018 until 31.10.2019

245. The Commission takes note that the data on the total turnover provided by Dibuk Cargo on 15.7.2019 are inconsistent with the data submitted earlier by the same on 23.4.2019.

246. From the information provided by Dibuk Cargo on 23.4.2019, the total turnover is RM [x]. This is as indicated in **Table 16** below:

Table 16: Total Turnover based on information provided on 23.4.2019

TYPE	PERIOD	AMOUNT (RM)
Cargo	January 2018 to January 2019	[x]
Vehicle	January 2018 to January 2019	[x]
TOTAL		[x]

¹⁶² Revenue information provided by Dibuk Cargo dated 23.4.2019 pursuant to the section 18 Notice issued by the Commission dated 12.3.2019.

¹⁶³ Revenue information provided by Dibuk Cargo dated 15.7.2019 pursuant to the section 18 Notice issued by the Commission dated 12.3.2019.

¹⁶⁴ Daily sales information provided by Dibuk Cargo dated 13.7.2020 pursuant to the section 18 Notice issued by the Commission dated 30.6.2020.

247. The submitted total turnover from the information provided by Dibuk Cargo on 15.7.2019 was RM [X] is shown in **Table 17** below:

Table 17: Total Turnover based on information provided on 15.7.2019

ITEMS/YEAR	2018 (RM)	2019 AS AT 31.3.2019 (RM)
a. Passenger	[X]	[X]
b. Bicycle	[X]	[X]
c. Motorcycle	[X]	[X]
d. Car: Sedan	[X]	[X]
e. Car: SUV/MPV /Pick Up /Van/4x4/ Luxury Car	[X]	[X]
f. Bus / Coach	[X]	[X]
g. Lorry (Without Cargo)	[X]	[X]
TOTAL	[X]	[X]

248. Ezreen of LAE and Dibuk Cargo in his email claimed that “due to missing invoice books”, Dibuk Cargo was unable to provide accurate turnover information when submitting the same to the Commission on 15.7.2019.¹⁶⁵

249. For the purpose of computing the financial penalty for Dibuk Cargo, the Commission has segregated and summarized the turnover into 3 different markets, namely, the (1) Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market.

¹⁶⁵ Email from Dibuk Cargo to the Commission entitled “Dibuk Cargo Services Sdn. Bhd. Revenue Details” dated 26.7.2019.

250. In order for the Commission to calculate the turnover of the Relevant Market and Passengers Market, the Commission adopts a two-stage calculation. Firstly, we calculate the percentage of the relevant turnover from the total turnover based on the data submitted on 15.7.2019. Secondly, upon determining the percentage of relevant turnover from the total turnover, based on the data submitted on 15.7.2019, the Commission then computes the financial penalty based on the data submitted on 23.4.2019.

251. In determining the percentage of Dibuk Cargo's relevant turnover, the Commission considers the relevant turnover for the years 2018 and 2019 (from 1 January 2018 until 31 March 2019) based on data submitted on 15.7.2019. From these data, for the period from 1 January 2018 until 31 March 2019, we have determined that the percentage of the relevant turnover is 92.8% of the total turnover. The details are stated in **Table 18** as follows:

Table 18: Percentage Calculation for Relevant Turnover

MARKET	2018		2019 (1 JANUARY – 31 MARCH)	
	TURNOVER (RM)	PERCENTAGE (%)	TURNOVER (RM)	PERCENTAGE (%)
Relevant Market	[X]	92.8	[X]	92.8
Passengers Market	[X]	7.2	[X]	7.2
TOTAL	[X]	100.0	[X]	100.0

252. Based on the percentage figure of 92.8%, the Commission uses this figure to derive the relevant turnover from the data submitted by Dibuk Cargo on 23.4.2019,¹⁶⁶ for the purpose of computing the financial penalty.
253. Based on the revenue information submitted on 23.4.2019, the total revenue for Vehicle Market for the period from January 2018 until January 2019 is RM [X]. We then calculate what is 7.2% of this sum of RM [X] to derive the revenue figure for Passengers Market, which is, RM [X]. The revenue for Passengers Market of RM [X] will then be deducted from the total revenue for Vehicle Market (RM [X] - RM [X] = RM [X]). By this arithmetical calculation, we generate the figure for the relevant market, and that is, RM [X]. The revenue for the Cargo Shipment Market was RM [X] for the same period between January 2018 and January 2019. This is shown in **Table 19** below.

Table 19: Turnovers in 3 Different Markets

MARKET	TURNOVER FROM 1.1.2018 TO 31.1.2019 (RM)
Relevant Market (Exclude passengers)	[X]
Passengers Market	[X]
Cargo Shipment Market	[X]

¹⁶⁶ Revenue information provided by Dibuk Cargo dated 23.4.2019 pursuant to the section 18 Notice issued by the Commission dated 12.3.2019.

254. The Commission notes that the turnover for the Relevant Market for the period from 1.1.2018 until 31.1.2019 is RM [x]. The turnover for Passengers Market for the same period is RM [x]. Meanwhile, the turnover of Dibuk Cargo for the Others Market for the period from 1.1.2018 until 31.1.2019 is RM [x].¹⁶⁷
255. In order to determine the value of the proxy figures for (1) the Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market, in order to cover the gap for the period from 1.2.2019 to 31.10.2019, the Commission divides the total turnover values of each market in **Table 19** with the number of days from 1.1.2018 to 31.1.2019 (a period of 396 days) to arrive at a daily turnover figure of RM [x] for the Relevant Market (RM [x] ÷ 396 days); a daily turnover figure of RM [x] for the Passengers Market (RM [x] ÷ 396 days); and a daily turnover figure of RM [x] (RM [x] ÷ 396 days) for the Cargo Shipment Market.
256. The daily turnover figures for each market are summarized in **Table 20** below:

¹⁶⁷ Revenue information provided by Dibuk Cargo dated 23.4.2019 pursuant to the section 18 Notice issued by the Commission dated 12.3.2019.

Table 20: Daily Turnover Figures on the Different Markets

MARKET	TURNOVER FROM 1.1.2018 TO 31.1.2019 (RM)	DAILY TURNOVER FIGURE (RM)
Relevant Market (Exclude passengers)	[x]	[x]
Passengers Market	[x]	[x]
Cargo Shipment Market	[x]	[x]
TOTAL		[x]

257. Next, each of the daily turnover figures for (1) the Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market is multiplied by the number of days from 1.2.2019 to 31.10.2019 (273 days) to derive the proxy turnover figure of RM [x] (RM [x] x 273 days) for the Relevant Market; the proxy turnover figure of RM [x] (RM [x] x 273 days) for the Passengers Market; and the proxy turnover figure of RM [x] (RM [x] x 273 days) for the Cargo Shipment Market; for the said period of 273 days.

258. The total turnover calculation (turnover figure + proxy turnover figure) for Dibuk Cargo for the period from 1.2.2019 to 31.10.2019 for the (1) Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market as reflected in **Table 21**.

Table 21: Total Turnover Calculation

MARKET	TURNOVER FROM 1.1.2018 TO 31.1.2019 (RM)	PROXY TURNOVER FIGURE FROM 1.2.2019 TO 31.10.2019 (RM)	TOTAL TURNOVER 1.1.2018 TO 31.10.2019 (RM)
Relevant Market (Exclude passengers)	[REDACTED]	[REDACTED]	[REDACTED]
Passengers Market	[REDACTED]	[REDACTED]	[REDACTED]
Cargo Shipment Market	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL			[REDACTED]

Second Period: 1.11.2019 to 14.9.2020

259. Pursuant to section 18 of the Act, Dibuk Cargo submitted to the Commission its daily sales report for the period from November 2019 until June 2020.¹⁶⁸

260. The daily sales report shows Dibuk Cargo's daily sales relating to the transportation of cargoes and vehicles. This report also shows the number of passengers that used its ro-ro vessel. The Commission notes that the turnover for the transportation of vehicles for the period from 1.11.2019 to 30.6.2020 is RM [REDACTED]; and the turnover for the transportation of cargoes for the same period is RM [REDACTED]. However, in the daily sales report there is no separation of daily

¹⁶⁸ Daily sales information provided by Dibuk Cargo dated 13.7.2020 pursuant to the section 18 Notice issued by the Commission dated 30.6.2020.

sales figures for transportation of vehicles and daily sales figures for passengers, which information is essential in order for the Commission to determine the relevant turnover.

261. In order to determine Dibuk Cargo’s relevant turnover, the Commission adds the number of passengers that boarded the ro-ro vessel for the period from 1.11.2019 until 30.6.2020 to arrive at a total figure of 2134 passengers. This total number of 2134 passengers are then multiplied by RM [x], which is the rate charged for one adult passenger, which amount to RM [x] (RM [x] x 2134). This turnover of RM [x] for transportation of passengers is then subtracted from the turnover figure for carriage of vehicles via Dibuk Cargo’s ro-ro vessel, to get the figure for only the carriage of vehicles for the period from 1.11.2019 to 30.6.2020, which is, RM [x] (RM [x] – RM [x]).
262. The Commission classifies and summarises the turnover into three different markets, namely, (1) the Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market; as shown in **Table 22** below:

Table 22: Turnovers for period from November 2019 to June 2020

MARKET	NOVEMBER 2019 TO JUNE 2020 (RM)
Relevant Market (Exclude passengers)	[x]
Passengers Market	[x]
Cargo Shipment Market	[x]

263. In order to determine the value of the proxy figures for (1) the Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market, as a step to cover the gap for the period from 1.7.2020 to 14.9.2020, the Commission first adds the turnover values for the (1) Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market, respectively, for the period from January 2020 to June 2020. The Commission thereafter divides the figure with 182 days (182 days are the number of days from 1.1.2020 to 30.6.2020). The respective turnover values for (1) the Relevant Market, (2) the Passengers Market and (3) the Cargo Shipment Market for the period from January 2020 to June 2020 are summarized in **Table 23** below:

Table 23: Turnovers for period from January 2020 to June 2020

MARKET	JANUARY 2020 TO JUNE 2020 (RM)
Relevant Market (Exclude passengers)	[X]
Passengers Market	[X]
Cargo Shipment Market	[X]

264. The Commission divides the total turnover values of each market in **Table 23** with the number of days from 1.1.2020 until 30.6.2020 (a period of 182 days) to arrive at a daily figure of RM [X] for the Relevant Market (RM [X] ÷ 182 days); a daily figure of RM [X] for the Passengers Market (RM [X] ÷ 182 days); and a daily figure of RM [X] (RM [X] ÷ 182 days) for the Cargo Shipment Market.

265. The daily turnover figures for each market are summarized in **Table 24** below:

Table 24: Daily Turnover Figures on the Different Markets

MARKET	TURNOVER FROM 1.1.2020 TO 30.6.2020 (RM)	DAILY TURNOVER FIGURE (RM)
Relevant Market (Exclude passengers)	[x]	[x]
Passengers Market	[x]	[x]
Cargo Shipment Market	[x]	[x]
TOTAL		[x]

266. Next, each of the daily turnover figures from the Relevant Market, the Passenger Market and the Cargo Shipment Market, respectively, is multiplied by the number of days for the period from 1.7.2019 to 14.9.2020 (76 days) to derive the proxy turnover figure of RM [x] (RM [x] x 76 days) for the Relevant Market; the proxy turnover figure of RM [x] (RM [x] x 76 days) for the Passengers Market; and the proxy turnover figure of RM [x] (RM [x] x 76 days) for the Cargo Shipment Market for the said period of 76 days.
267. The total turnover calculation (turnover figure + proxy turnover figure) for Dibuk Cargo for the period from 1.11.2019 to 14.9.2020 for the Relevant Market, the Passengers Market and the Cargo Shipment Market is as reflected in **Table 25**.

Table 25: Total Turnovers Calculation

MARKET	TURNOVER FROM 1.11.2019 TO 30.6.2020 (RM)	PROXY TURNOVER FIGURE FROM 1.7.2020 TO 14.9.2020 (RM)	TOTAL TURNOVER 1.11.2019 TO 14.9.2020 (RM)
Relevant Market (Exclude passengers)	[X]	[X]	[X]
Passengers Market	[X]	[X]	[X]
Cargo Shipment Market	[X]	[X]	[X]
TOTAL			[X]

268. The total turnover calculation (turnover figure + proxy turnover figure) for Dibuk Cargo throughout the Infringement Period for the Relevant Market, the Passengers Market and the Cargo Shipment Market is illustrated in **Table 26**.

Table 26: Total Turnovers Calculation for Period of Infringement

MARKET	TURNOVER 1.1.2018 TO 31.10.2019 (RM)	TURNOVER 1.11.2019 TO 14.9.2020 (RM)	TOTAL TURNOVER 1.1.2018 TO 14.9.2020 (RM)
Relevant Market (Exclude passengers)	[X]	[X]	[X]

MARKET	TURNOVER 1.1.2018 TO 31.10.2019 (RM)	TURNOVER 1.11.2019 TO 14.9.2020 (RM)	TOTAL TURNOVER 1.1.2018 TO 14.9.2020 (RM)
Passengers Market	[X]	[X]	[X]
Cargo Shipment Market	[X]	[X]	[X]
TOTAL WORLDWIDE TURNOVER			[X]

269. Dibuk Cargo's worldwide turnover throughout the Infringement Period is RM [X] whereas its relevant turnover for the same period is RM [X].

270. The base figure in calculating the financial penalty for Dibuk Cargo is fixed at 10% of the relevant turnover which amounts to RM [X] (10% x RM [X]).

271. The Commission takes note that Dibuk Cargo, in its representations, admits to only "partial liability" in the sense that it only participated in the 2019 MOU. The Commission is of the view that this is not a ground for a downward adjustment to a financial penalty.

272. Additionally, Dibuk Cargo submits the following should be considered as mitigating factors:

- (i) Dibuk Cargo is still at the early stage of development and maturity;
- (ii) Dibuk Cargo did not play a “dominant” role in the Infringing Agreements;
- (iii) The services provided by Dibuk Cargo are considered as an “essential service” and in line with common law doctrine of prime necessity;
- (iv) Dibuk Cargo would be unable to sustain its business if the Commission were to impose a financial penalty; and
- (v) Dibuk Cargo did not participate in the meetings prior to the finalisation of the Infringing Agreements.

273. The Commission is of the view that the factors submitted by Dibuk Cargo in **paragraph 272 (i) to (v)** are not mitigating factors. The submission is devoid of merit.

274. As there are no aggravating and mitigating factors to be considered, the Commission therefore determines that the financial penalty to be imposed on Dibuk Sdn. Bhd. and Dibuk Cargo, as an SEU, shall be RM500,344.50

275. This financial penalty of RM500,344.50 does not exceed the maximum financial penalty of RM [∞] that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, not exceeding 10% of the worldwide turnover of Dibuk Cargo.

276. In the premises, the Commission concludes that a financial penalty of RM500,344.50 is imposed jointly and severally on Dibuk Sdn. Bhd. and Dibuk Cargo.

PART 4: CONCLUSION ON THE FINANCIAL PENALTY

A. EXCEPTIONAL AND SPECIAL CIRCUMSTANCES

277. Under ordinary circumstances, the Commission is unlikely to consider external factors other than those mentioned in the Commission's Guidelines on Financial Penalties in computing the financial penalty.
278. Nevertheless, the Commission takes the position that the COVID-19 pandemic constitutes an unprecedented challenge with very severe socioeconomic consequences that may impair the sustainability of businesses. The Commission has taken the COVID-19 pandemic into consideration in the computation of financial penalty to be imposed on the Parties. Such consideration is applied at the Commission's discretion on a case-to-case basis.
279. Taking into account the impact of the economic situation arising due to the outbreak of global COVID-19 pandemic, the Commission grants a reduction of 50% of the financial penalty imposed on the Parties. The financial penalties after the 50% discount are as set out in **Table 27** below.


Table 27: Financial Penalties

PARTY	FINANCIAL PENALTY (RM)
Dibuk Sdn. Bhd., Langkawi Ferry Services and LAE (Jointly and severally)	1,130,876.87
LRFS	810,531.29
Dibuk Sdn. Bhd. and Dibuk Cargo (Jointly and severally)	250,172.25

280. In addition, the Commission grants the Parties:

- (i) a moratorium period for the payment of the financial penalty up to 6-months, to be calculated from the service date of this Decision; and
- (ii) at the end of the moratorium period, the Parties are allowed to make the payment of the financial penalty by equal monthly instalment for up to 6-months.

DATED: 17 DECEMBER 2021



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CHAIRMAN
DATO' SERI MOHD HISHAMUDIN BIN
MD YUNUS