

NON-CONFIDENTIAL VERSION



Malaysia Competition Commission

Case No. 700-1/2/1/2021

Competition Act 2010 [Act 712]

Decision of the Competition Commission

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

Competition Commission

v.

1. Dindings Poultry Development Centre Sdn. Bhd.
2. FFM Berhad
3. Gold Coin Feedmills (Malaysia) Sdn. Bhd.
4. Leong Hup Feedmill Malaysia Sdn. Bhd.
5. PK Agro-Industrial Products (M) Sdn. Bhd.

DATED: 11 DECEMBER 2023

INFRINGEMENT DECISION

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

- (i) Dato' Seri Mohd Hishamudin Md Yunus (Chairman);
- (ii) Dato' Ir. Hj. Mohd Jamal Sulaiman;
- (iii) Dr. Nor Mazny Abdul Majid;
- (iv) Tuan Arunan Tan Sri Kumaran;
- (v) Tuan Wan Mohd Rosdi Wan Dolah; and
- (vi) Tuan Ir. Rusman Abu Samah.

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INTRODUCTION

1. This Decision (“the Decision”) concludes that the enterprises named in paragraph 5 herein have infringed the prohibition under section 4 (“section 4 prohibition”) of the Competition Act 2010 [Act 712] (“the Act”). In this Decision, the named enterprises shall be individually referred to herein as “Party” and collectively referred to as “Parties”.
2. On 2.11.2021, the Malaysia Competition Commission (“the Commission”) commenced an investigation pursuant to section 14(1) of the Act based on reasonable suspicion of collusion between certain poultry feed millers regarding the pricing of poultry feed, primarily composed of soybean and maize as its main constituents (hereafter referred to as “poultry feed”). Such conduct is in contravention with section 4(1) read with sections 4(2)(a) and 4(3) of the Act.
3. The Commission, having considered the totality of the evidence, had made a provisional finding that the Parties had infringed the section 4 prohibition by participating in agreements and/or concerted practices in the following three periods of infringement spanning from 31.1.2020 until 30.6.2022, namely, —
 - (a) from 31.1.2020 until 31.3.2020;
 - (b) from 1.10.2020 until 31.1.2021; and
 - (c) from 1.2.2021 until 30.6.2022.

4. Accordingly, on 5.8.2022, the Commission issued the Proposed Decision.¹ Subsequently, on 11.10.2022, the Commission issued an Amended Proposed Decision and Supplementary Proposed Decision to the Parties.²
5. This Decision is addressed to the following Parties:
- (a) Dindings Poultry Development Centre Sdn. Bhd.;
 - (b) FFM Berhad;
 - (c) Gold Coin Feedmills (Malaysia) Sdn. Bhd.;
 - (d) Leong Hup Feedmill Malaysia Sdn. Bhd.; and
 - (e) PK Agro-Industrial Products (M) Sdn. Bhd.
6. By this Decision, the Commission hereby, pursuant to section 40 of the Act, issues directions to the Parties as elaborated in **PART 3** of this Decision. In addition, the Commission imposes a financial penalty on each of the Parties for the infringements mentioned in this Decision, as specified in **Table 43**.
7. In this Decision, the following terms as set out in the left column in the **Table 1** below, wherever they appear in this Decision they shall carry the corresponding definitions as set out in the right column of the **Table 1**.

¹ Section 36 notice dated 5.8.2022.

² Section 36 notice dated 7.10.2022.

Table 1: Glossary

TERM	DEFINITION
Broiler	A type of chicken that is raised for meat production
Contract farmer	Farmers that are contracted to integrators or non-integrators to rear chickens on their behalf. ³
Day-old-chick	Chick raised to produce broiler chicken.
Grandparent stock	Pedigree stock (pure line) of all the types of commercial broiler in Malaysia. Their offspring would produce parent stock. ⁴ Grand-parent stock is known as breeder. ⁵
Independent farmer	Farmers that engage in purchasing feeds, rearing chickens and sell these chickens to the open market. ⁶
Independent Feed Mill Operator	Company that actively sells poultry feed only and not involved within other segments of the supply chain. ⁷
Integrator	Company that is engage in contract farming, produces day-old-chicks, has its own feed mill and are present across the supply chain. ⁸
Layer	A type of chicken that is raised for the production of eggs.
Non-integrator	Company that is engage in contract farming and procures day-old-chick and poultry feed from integrators or independent feed mill operators ⁹ .

³ Paragraph 27 of the Statement of *DVS Official* recorded on 18.5.2022.

⁴ Malaysian Livestock Breeding Policy 2013, pages 14 and 23.

⁵ MyCC Review of Domestic Broiler Market: Final Report (2014), page 1.

⁶ Paragraph 27 of the Statement of *DVS Official* recorded on 18.5.2022.

⁷ Paragraph 8 of the Statement of *DVS Official* recorded on 18.5.2022.

⁸ Paragraph 9 of the Statement of *DVS Official* recorded on 18.5.2022; and information from <https://www.dvs.gov.my/index.php/pages/view/282> retrieved on 26.7.2022.

⁹ Paragraph 10 of the Statement of *DVS Official* recorded on 18.5.2022.

TERM	DEFINITION
Parent stock	Chicken breeding to produces day-old-chick for all commercially produced chickens in Malaysia excluding <i>ayam kampung</i> . ¹⁰ They are known also as breeders. ¹¹
Pullet farm	A farm raising chicks before the maturity layering stage. ¹²
Raw material importers	Sell and trade agriculture commodities in the domestic market. ¹³

¹⁰ Malaysian Livestock Breeding Policy 2013, pages 14 and 23.

¹¹ MyCC Review of Domestic Broiler Market: Final Report (2014), page 1.

¹² Garis Panduan Pelaksanaan Amalan Penternakan Baik Bagi Skim Amalan Ladang Ternakan (SALT) 2012, page 7.

¹³ Paragraph 8 of the Statement of *DVS Official* recorded on 18.5.2022.

PART 1: THE FACTS

A. BUSINESS AND INDUSTRY LANDSCAPE

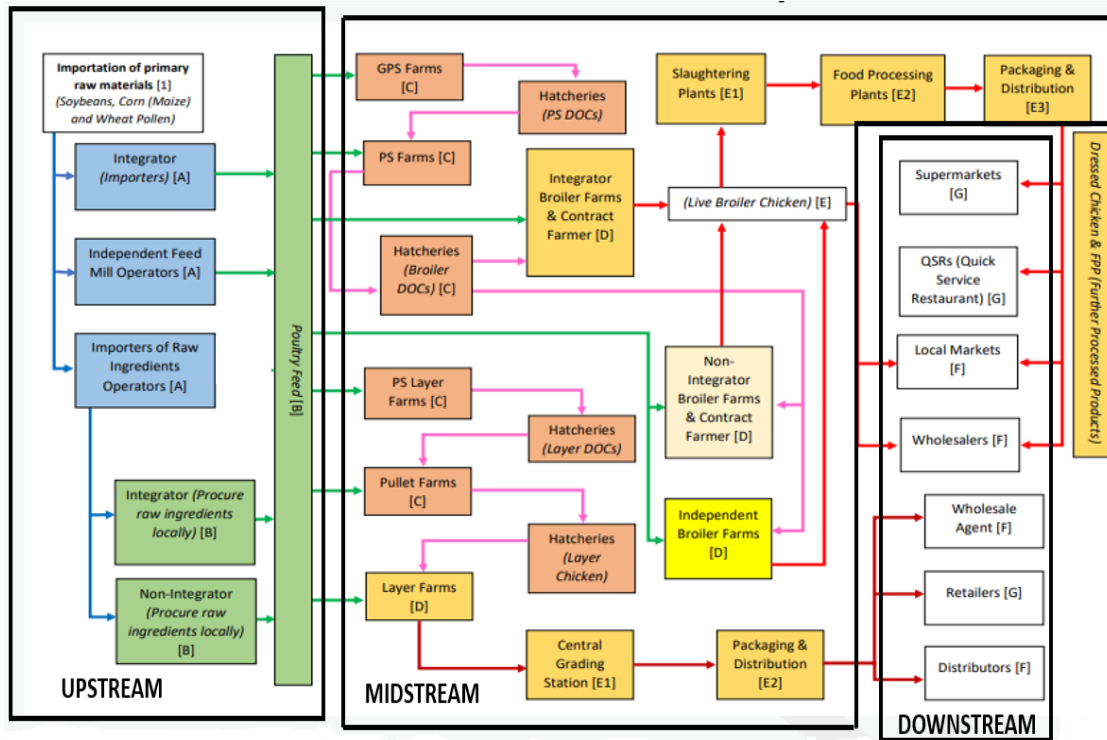
A1. DESCRIPTION OF THE SUPPLY CHAIN

6. The chicken industry's supply chain comprises three distinct tiers: upstream, midstream, and downstream. The upstream sector involves three key activities: the importation of raw materials for poultry feed, operation of poultry feed mills and poultry feed trading.
7. The upstream market plays a crucial role in supplying the essential inputs, specifically poultry feed, to the midstream market, which is responsible for broiler and egg production. Key stakeholders within the upstream sector include independent feed mill operators, importers of raw materials, and integrators. Integrators, who engage in both feed production and contract farming, actively participate across the entire supply chain.
8. The companies involved in the production and sale of poultry feed in Malaysia are referred to as 'feed millers'. These feed millers are categorised into two primary categories: feed millers engaged in the importation raw materials and feed millers who source domestically raw materials.
9. At the midstream, the primary economic activity involves rearing poultry to produce day-old chicks, eggs, or broilers. This includes various activities, including the operation of breeder farms, broiler farms, hatcheries, and layer farms. Breeder farms can be further

classified into two distinct types: grandparent stock and parent stock. Additionally, there are three classifications for broiler farms, namely, integrator, non-integrator, and independent farm.

- The downstream tier focuses on the processing of chicken, including slaughtering, packaging, distributing and the sale of chicken products. The consumer base for this market mainly consists of the general public. **Figure 1** below presents a schematic representation of the supply chain flow.

Figure 1: Supply Chain of the Chicken and Egg Industry in Malaysia



11. Poultry feed represents a significant item in the cost structure of chicken farming, accounting for approximately 72.8% of the total expenses.¹⁴ As a result, any increase in the price of poultry feed has the potential to impact poultry farmers. Typically, maize and soybean meal are the primary ingredients used in the production of poultry feed.¹⁵
12. In terms of poultry feed composition, maize serves as the primary source of energy, while soybean meal acts as the primary protein source for poultry. It is essential to include a specific percentage of soybean meal and maize in the formulation to ensure the provision of essential nutrients. This precaution aims to mitigate the potential risk of compromising the nutritional integrity of the poultry feed, which could result in a diminished feed quality. Therefore, any adjustments to the composition percentages of these ingredients must not fall below a specified threshold to guarantee an adequate nutrient supply for poultry growth.
13. For the avoidance of doubt, the term 'poultry' refers to domesticated birds such as chicken, duck, quail or ostrich. However, for the context of the current case, 'poultry' is limited to chicken only.

¹⁴ MyCC Review of Domestic Broiler Market: Final Report (2014), page 20.

¹⁵ Velmurugu Ravindran, Poultry Development Review: Main ingredients used in poultry feed formulations (Food and Agriculture Organization of the United Nations, 2013), pages 67 and 68.

B. THE PARTIES AND THEIR PRESENCE IN THE SUPPLY CHAIN

14. Based on the evidence gathered, the Commission determined that the following Parties, as described in paragraphs 15 to 30, have engaged in agreements and/or concerted practices that infringed the section 4 prohibition of the Act:

- (i) Dindings Poultry Development Centre Sdn. Bhd.;
- (ii) FFM Berhad;
- (iii) Gold Coin Feedmills (Malaysia) Sdn. Bhd.;
- (iv) Leong Hup Feedmill Malaysia Sdn. Bhd; and
- (v) PK Agro-Industrial Products (M) Sdn. Bhd.

B.1 Dindings Poultry Development Centre Sdn. Bhd.

15. Dindings Poultry Development Centre Sdn. Bhd. (“Dindings”) (180044-A)¹⁶ is a private limited company established on 21.3.1989. It operates in various business activities, including breeding and selling day-old chicks, operating poultry grow-out farm, conducting contract farming, manufacturing and selling animal feed and distributing related raw materials. Dindings’s official registered business address is at Suite 28.01, Level 28, Menara Citibank, 165 Jalan Ampang, 50450, Kuala Lumpur, Malaysia.

16. Dindings operates at multiple levels in the chicken industry market, except for breeding grandparent stock and pullet farms.

¹⁶ Companies Commission of Malaysia search on Dindings dated 17.6.2022.

17. In relation to their corporate structure, Dindings is a subsidiary company of Malayan Flour Mills Berhad (“MFMB”) (4260-M).¹⁷
18. Dindings Tyson Sdn. Bhd. (previously known as Dindings Supreme Sdn. Bhd.) is the majority shareholder of Dindings.¹⁸
19. Dindings also shares a group corporate relationship with Premier Grain Sdn. Bhd. (“Premier Grain”) (754079-T)¹⁹, a partially owned subsidiary of MFMB.

B.2 FFM Berhad

20. FFM Berhad (“FFM”) (4878-K)²⁰ is a locally incorporated public limited company founded on 3.12.1962. FFM is actively engaged in investment, operates flour milling, manufactures animal feed, trades grain and engages in the trade of rice products. FFM’s official registered address is at PT 45125, Batu 15 1/2, Sg Pelong, Sungai Buloh, 47000, Selangor, Malaysia.
21. FFM is involved in all market levels of the chicken industry, excluding the breeding of grandparent stock and pullet farms.

¹⁷ Companies Commission of Malaysia search on Malayan Flour Mills Berhad dated 22.7.2022.

¹⁸ MFM Annual Report 2021, pages 6,18,22,24,30, 74, 85, and 140.

¹⁹ Companies Commission of Malaysia search on Premier Grain dated 22.7.2022.

²⁰ Companies Commission of Malaysia search on FFM dated 17.6.2022.

B.3 Gold Coin Feedmills (Malaysia) Sdn. Bhd.

22. Gold Coin Feedmills (Malaysia) Sdn. Bhd. (“Gold Coin”) (42808-V)²¹ is a private limited company incorporated on 28.10.1978. Gold Coin engages in the business of the manufacturing and sale of animal feed; as well as the trading of raw materials. Gold Coin’s registered business address is at Jalan Parang, Pelabuhan Utara, Pelabuhan Klang 42000 Selangor, Malaysia.
23. Gold Coin is a wholly owned subsidiary of Gold Coin Malaysia Group Sdn. Bhd.²²
24. Gold Coin operates as an independent feed mill operator in the upstream market, actively importing raw materials, manufacturing poultry feed, and selling poultry feed.

B.4 Leong Hup Feedmill Malaysia Sdn. Bhd.

25. Leong Hup Feedmill Malaysia Sdn. Bhd. (“Leong Hup”) (174309-P)²³ is a private limited company established on 27.9.1988. Leong Hup engages in the manufacture and marketing of animal feed, in addition to providing transportation services. Leong Hup’s registered business address is on the 2nd Floor of Wisma Westcourt 126, Jalan Kelang Lama, 58000, Kuala Lumpur, Malaysia.

²¹ Companies Commission of Malaysia search on Gold Coin dated 17.6.2022.

²² Companies Commission of Malaysia search on Gold Coin dated 17.6.2022.

²³ Companies Commission of Malaysia search on Leong Hup dated 17.6.2022.

26. Leong Hup (Malaysia) Sdn. Bhd. (1096819-M)²⁴ owns 100% ordinary shares of Leong Hup.²⁵
27. Leong Hup actively participates across all market levels of the chicken industry, including the upstream, midstream, and downstream tiers. Leong Hup is involved in importing raw materials, manufacturing and selling poultry feed, as well as breeding grandparent and parent stocks. Leong Hup also operates contract farms, pullet farms, and participates in the retail market.

B.5 PK Agro-Industrial Products (M) Sdn. Bhd.

28. PK Agro-Industrial Products (M) Sdn. Bhd. (“PK Agro”) (559453-H)²⁶ is a private limited company established on 20.9.2001. PK Agro is primarily involved in the business of manufacturing animal feed and food processing. PK Agro’s registered business address is at Unit No 206, 2nd Floor Wisma Methodist, Lorong Hang Jebat, 50150, Kuala Lumpur, Malaysia.
29. PK Agro is wholly owned by Charoen Pokphand Holdings (Malaysia) Sdn. Bhd. (169077-M) (“CP”).²⁷
30. PK Agro operates as an integrator and actively participates in all market levels of the chicken industry, including the upstream,

²⁴ Companies Commission of Malaysia search on Leong Hup dated 17.6.2022.

²⁵ Companies Commission of Malaysia search on Leong Hup dated 17.6.2022.

²⁶ Companies Commission of Malaysia search on PK Agro dated 17.6.2022.

²⁷ Companies Commission of Malaysia search on PK Agro dated 17.6.2022.

midstream, and downstream segments. PK Agro engages in various facets of the chicken industry, including importing raw materials, manufacturing and selling poultry feed, and breeding both grandparent and parent stock. Additionally, PK Agro owns contract farms and pullet farms and participates in the retail market.

C. INVESTIGATION PROCEDURES AND PROCESS

31. On 2.11.2020, the Commission initiated its assessment of the poultry market. A letter addressing concerns regarding the increasing poultry feed prices in Malaysia was published by MalaysiaKini on the same date.²⁸ This issue gained substantial attention and sparked widespread discussions on social media during that period. A statement from the then Agriculture and Food Industries Minister, Datuk Seri Ronald Kiandee, provided additional support to this sentiment.²⁹

32. On 4.1.2021, the Department of Veterinary Services (“DVS”) sent a letter to the Commission on behalf of [X]. In this letter, [X] expressed its intention to review and revise the contract price of poultry feed for all of the contract farmers. This move is in line with the practices of other integrators.³⁰ DVS also provided the Commission with a sample that illustrates the poultry feed price

²⁸ Malaysiakini, 2.11.2020, “SURAT | Kenaikan harga dedak akhirnya akan rugikan pengguna”, retrieved from <https://www.malaysiakini.com/letters/549124> (accessed 10.2.2021). Author: Mohd Anas Asmawi.

²⁹ Malay Mail, 17.11.2020, “Ministry: MCO saw Malaysia’s egg prices drop by 38pc amid increased chicken feed price”, retrieved from <https://www.malaymail.com/news/malaysia/2020/11/17/ministry-mco-saw-malaysias-egg-prices-drop-by-38pc-amid-increased-chicken-f/1923345> at 10.2.2021.

³⁰ Letter correspondence from [X] to DVS dated 4.1.2021.

increases implemented by four different integrators,³¹ as shown in **Figure 2** below:

Figure 2: Sample of Price Increase of Poultry Feed and Poultry Ex-Farm Price

Lampiran (A)

Contoh Kenaikan Dedak dan Harga Ladang yang tidak Selari.

Senario

Feed : 67.5 bag (50kg/b)
 Average Live Weight : 2.25 KG
 Mortality : <5%

Integrator	Harga Sebelum 2020	Harga Baru 2021	Rugi*
F	Dedak : RM 88/86 DOC : RM1.60 EXFARM: RM 4.25 Gross/ekor = RM1.74	Dedak : RM 98/96 (11% Naik) DOC : RM1.66 (4% Naik) EXFARM: RM 4.50 (6% Naik) Gross/ekor = RM1.44	- 30 sen
C	Dedak : RM 89/86 DOC : RM1.55 EXFARM: RM 4.25 Gross/ekor = RM1.89	Dedak : RM 99/96 (11% Naik) DOC : RM1.56 (<1% Naik) EXFARM: RM 4.56 (6% Naik) Gross/ekor = RM1.63	- 26 sen
D	Dedak : RM 86/84 DOC : RM1.60 EXFARM: RM 4.25 Gross/ekor = RM1.88	Dedak : RM 96/94 (12% Naik) DOC : RM1.60 EXFARM: RM 4.45 (5% Naik) Gross/ekor = RM1.54	- 35 sen
P	Dedak : RM 87/85 DOC : RM1.60 EXFARM: RM 4.25 Gross/ekor = RM1.81	Dedak : RM 97/95 (11% Naik) DOC : RM1.60 EXFARM: RM 4.50 (6% Naik) Gross/ekor = RM1.58	- 23 sen

33. **Figure 2** illustrates that integrators F, C, D, and P experienced a poultry feed price increase of 11% and 12% in 2021 compared to pre-2020 prices. During this period, the Commission diligently monitored the relevant market conditions, including tracking news articles to gain insights into market dynamics.

34. As a result, on 2.11.2021, the Commission initiated a formal investigation pursuant to section 14(1) of the Act. This action was prompted by reasonable suspicious that the Parties may have

³¹ WhatsApp Image 2021-01-22 dated 11.42.47 provided by DVS to the Commission on 22.1.2021.

infringed section 4(1) read together sections 4(2)(a) and 4(3) of the Act. The infringement relates to the Parties' involvement in agreements and/or concerted practices regarding the quantum of poultry feed price in Malaysia.

35. The Commission obtained search and seizure warrants from the Magistrate Courts for purpose of investigating the individuals and Parties listed in **Table 2** below:

Table 2: List of Exercised Search and Seizure with Warrant

NO.	MAGISTRATE'S COURT	NAME OF INDIVIDUAL AND ENTERPRISE	WARRANT NUMBER	SEARCH AND SEIZURE DATE
1.	Seremban	Yong Kim Loon	182609	8.3.2022
2.	Sepang	Liew Kai Wah	168735	8.3.2022
3.	Shah Alam	FFM	A177088	8.3.2022
4.	Shah Alam	Dr Ong Choo Teik	A177089	8.3.2022
5.	Klang	PK Agro	168111	8.3.2022
6.	Melaka Tengah	Lim Yong Ping	A007426	8.3.2022
7.	Melaka Tengah	Leong Hup	A007427	8.3.2022

36. In its investigation, the Commission issued a total of 48 notices under sections 18(1)(a) and (b) of the Act. These notices required anyone who the Commission believes to be acquainted with the facts and circumstances of the case to do one of the following:
- (a) Provide the Commission with relevant information or documents within the specified period and manner.
 - (b) Give a statement to the Commission explaining the information or documents mentioned in (a) within the specified period and manner.

37. In addition, the Commission had issued a total of 14 notices in accordance with the provisions of sections 16(h) and 17(2)(h) of the Competition Commission Act 2010 [Act 713]. These notices were issued to request information and an additional six notices were issued under section 20 of the Act to get access to the Commission's documents.
38. In accordance with sections 18(1)(a) and (b) of the Act, the Commission conducted interviews involving key representatives from the Parties, as well as relevant industry stakeholders and a government official. Further details regarding the interviews conducted with the key representatives of the Parties and relevant industry players are provided in **Table 3** below:

Table 3: List of Key Representatives Interviewed by the Commission

NAME	ENTERPRISE	DESIGNATION	DATE OF INTERVIEW
Loo Choo Gee	CAB Cakaran Sdn. Bhd.	Director	8.6.2022
Russell Jeremiah Chin Cher Sing	Cargill Feed	Country Director	9.6.2022
Ng Choon Ngee (Jeffry)	Chop Cheong Bee Sdn. Bhd.	General Manager	7.6.2022
Hideki Oya	Dindings	General Manager	26.5.2022
<i>Employee 1</i>	<i>Industry Player 1</i>	General Manager	7.6.2022
<i>Employee 2</i>		Farm Coordinator	1.6.2022
Liew Kai Wah	FFM	General Manager Feed and Livestock	8.3.2022 18.4.2022 13.6.2022
Ong Shu Kai	FFM	Strategic Planning Manager	26.5.2022

NAME	ENTERPRISE	DESIGNATION	DATE OF INTERVIEW
James Jimmy Kueh Swee Chai	Gold Coin Feedmill	First Vice President & Country Director	18.4.2022 15.6.2022
<i>Employee 1</i>	<i>Industry Player 2</i>	Chairman	30.5.2022
Joyce Ng	Leong Hup	Purchasing Manager	27.4.2022
Lim Yong Ping	Leong Hup	Sales Manager	8.3.2022 27.4.2022 14.6.2022
Azhari Arshad	Malayan Flour Mills Berhad	Director of Business Development & Corporate Affairs	14.3.2022
Ong Choo Teik	Malaysian Feedmillers Association	Advisor	8.3.2022 11.4.2022
Baharudin bin Ahmad	NB Farming Sdn. Bhd.	Director	16.6.2022
Yong Kim Loon	PK Agro	Vice President	8.3.2022 20.4.2022 16.6.2022
Chee Choon Shean	Premier Grain Sdn. Bhd. (also acting as official MFA representative for Dindings)	Deputy General Manager	20.4.2022 13.6.2022

39. On 18.5.2022, the Commission interviewed a DVS official.³²
40. During one of the search and seizure operations conducted with a warrant, the Commission acquired audio files from a mobile phone. These audio files are in the Mandarin and Hokkien dialects. It is important to note that the Commission has preserved these audio files in their original, unaltered form.

³² Statement of *DVS Official* recorded on 18.5.2022.

41. In order to ascertain the contents of the audio files, the Commission has undertaken the following steps:

- (i) during the statement taking session conducted in accordance with section 18 of the Act, the Commission introduced the audio files, upon which it relied, to the owner of the mobile device from which the files were extracted;
- (ii) the audio files were audibly presented to the owner in the presence of Leong Hup's legal counsel;³³
- (iii) the translation of the audio files was a collaborative effort involving three parties: the owner of the mobile device, legal counsel representing Leong Hup, and a Commission officer;³⁴ and
- (iv) the translation of the audio files was documented in the witness statement, followed by agreement among all three parties involved on its content.³⁵

42. On 4.8.2022, the Commission served the Proposed Decision to all five Parties. Subsequently, on 11.10.2022, the Commission issued an Amended Proposed Decision and Supplementary Proposed Decision to all five Parties.

³³ Paragraphs 3 and 9 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

³⁴ Paragraphs 2, 6, 13,14, 15, 23, 30, 37, 48, and 55 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

³⁵ Paragraphs 2, 6, 13, 23, 30, 37, 48, and 55 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

Post Investigation Processes: Access to the Commission's Documents

43. Access to the Commission's documents is in line with the Commission's duty to act fairly and serves as one of the procedural guarantees to ensure a fair trial and protect the rights of the defence. The Parties are given access to the documents, with the exception of internal documents and confidential information.
44. From 16.8.2022 to 16.11.2022, the Commission made the non-confidential version of the documents in the Commission's documents available for inspection to the Parties. From 9.8.2022 to 26.8.2022, all Parties except PK Agro requested for an extension of time to submit their written representations.
45. Section 21(3) of the Act defines 'confidential information' as trade, business or industrial information that belongs to any person, that has economic value and is not generally available to or known by others. Additionally, in accordance with Act 713, section 43 of the Competition Commission Act imposes upon the Commission a general obligation of secrecy to safeguard confidential information. However, exceptions are provided under section 21(2) of the Act, granting the Commission the authority to disclose confidential information, when necessary, to establish an infringement.
46. In the current case, the Commission facilitated the agreement between the Parties and the information providers to establish a confidentiality ring. This process involved proposing carefully drafted terms and conditions that outlined the parameters of the

confidentiality ring. In accordance with the Commission's letter dated 13.12.2022³⁶, a case management was conducted to facilitate the proceedings of the confidentiality ring. It is crucial to emphasise that the proposed confidentiality ring included four Parties, namely, Dindings, FFM, Leong Hup, and Gold Coin. Notably, PK Agro explicitly communicated its lack of interest in participating in the proposed confidentiality ring to the Commission.³⁷

47. The proposed confidential ring could not be implemented because the four Parties could not reach a consensus on the conditions for disclosing confidential information. While some Parties did not consent to disclosing confidential information within the confidentiality ring, other Parties only agreed to disclose on the condition that disclosure is mutual. This raised an impossible balance of interests that resulted in the unsuccessful conclusion of the confidentiality ring proceedings.
48. When the proposed confidentiality ring could not be implemented, the Commission also granted the individual or enterprise in question to provide a non-confidential version of the documents. This version would include the relevant information and would carry the same evidential value as the original documents.³⁸

³⁶ Email from the Commission to FFM dated 13.12.2022; Email from the Commission to Leong Hup dated 13.12.2022; Email from the Commission to Pk Agro dated 13.12.2022; and Email from the Commission to Gold Coin dated 13.12.2022.

³⁷ Emails from PK Agro to the Commission dated 14.12.2022 and 13.1.2023.

³⁸ Email from FFM to the Commission dated 1.3.2023; Email from the Commission to Leong Hup dated 16.1.2023; Email from the Commission to Dindings dated 6.1.2023; and Email from the Commission to Gold Coin dated 13.1.2023.

49. At the request of the Parties, except for PK Agro, the Commission granted an extension for the submission of their written representation. By 31.1.2023, all four enterprises submitted their written representation to the Commission.
50. In accordance with section 37 of the Act, oral representations were held in the months of May, June and July 2023. The Parties' oral representations to the Commission are as described in **Table 4** below:

Table 4: Oral Representation Dates

PARTY	DATE
Dindings	29.5.2023
	31.5.2023
FFM and Gold Coin	16.6.2023
FFM	19.6.2023
Gold Coin	21.6.2023
Leong Hup	22.6.2023
PK Agro	14.7.2023
Gold Coin ³⁹	18.7.2023

C.1 PARTIES' ALLEGED PROCEDURAL IMPROPRIETY ON THE PART OF THE COMMISSION

FFM and Leong Hup

51. In their representation, FFM and Leong Hup argue the following:

³⁹ Note: Attended the session upon request by the Commission for clarification purposes.

- (a) the Commission failed to act judicially, reasonably, fairly, in good faith and without bias;
- (b) Liew Kai Wah of FFM was instructed to switch off his CCTV at his home;
- (c) a copy of the warrant was not provided to Liew Kai Wah of FFM;
- (d) the Commission had breached confidentiality and contravention of section 21(1) of the Act;
- (e) the Commission had disclosed two documents of FFM to Dindings, Leong Hup, Gold Coin, and PK Agro, containing confidential information without FFM's consent;
- (f) the Commission had failed to provide access to documents; and
- (g) FFM's proposal to give an undertaking was unreasonably and summarily dismissed.

The Commission's Findings

52. The Commission adhered to the necessary legal procedures preceding issuing of the proposed decision. As mentioned earlier, the Commission sent multiple requests for information notices in accordance with section 18 of the Act, gathered statements from various parties, and conducted search and seizure operations with court warrants. The Proposed Decision provided detailed grounds for the provisional findings, affording all Parties the opportunity to respond, to make written representations and to make oral representations.

53. It is important to emphasise that no enterprise was singled out or specifically targeted from the beginning. Instead, the enterprises named in this Decision were identified based on evidence gathered during the investigation. The Commission requested call logs related to specific individuals because the Commission identified them as the primary individuals responsible for the parallel quantum of poultry feed price increments. Based on the call logs, media reports, and statements by industry players, there were reasonable suspicions of anti-competitive agreements and/concerted practices. As a result, the Commission conducted search and seizure operations with warrants.
54. Regarding the issue raised in (b), it is important to note that during the search and seizure operation conducted with a warrant, the Commission officers made the decision to disable the CCTV cameras for two primary reasons. Firstly, this measure was taken to safeguard the well-being and security of the Commission's officers, thereby preventing any potential tracking of their movements after the operation.
55. Secondly, the deactivation of the CCTV was necessary to preserve the integrity of the ongoing investigation. Specifically, it aimed to prevent the dissemination of the CCTV footage to any third party, thus avoiding any potential disruption to the investigative process.
56. Regarding the warrant, which was read and shown to Liew Kai Wah, the Commission, in its correspondence dated 18.7.2022, provided FFM and Leong Hup with the specific and respective warrant numbers. Additionally, in the same communication, the Commission

promptly responded to the request by disclosing the name of the court that issued the warrants.

57. The Act does not impose an obligation on the Commission to provide the enterprise in question with a copy of the warrant. All that is sufficient is for the officer executing the warrant to show the warrant to the person in charge of the premises to be searched who was present at the premises at the time. It is important to note that there are two authorities involved in this matter: the Commission itself and the court that issues the warrant. The legal responsibility to provide a copy rests with the court, and it is contingent upon there being a request made by the person interested and upon the payment of a prescribed search fee.
58. FFM and Leong Hup stated to the Commission that they made an attempt to obtain a copy of the search warrants from the court. However, during the oral representation, counsel for both FFM and Leong Hup informed the Commission that the court that issued the warrant was unable to locate the file.⁴⁰ The Commission maintains the view that, in such circumstances, FFM and Leong Hup should have taken the appropriate action by lodging a complaint with the appropriate judicial authority to effectively address this issue.
59. Regarding issue (d), the Commission took immediate corrective measures to address the mishap. On 24.11.2022⁴¹, the Commission

⁴⁰ Transcript of Oral Representation of FFM session dated 19.6.2023, pages 6 – 8.

⁴¹ Letter from the Commission to Leong Hup dated 24.11.2022; Letter from the Commission to PK Agro dated 24.11.2022; Letter from the Commission to Dindings dated 24.11.2022; and Letter from the Commission to Gold Coin dated 24.11.2022.

issued a directive to all Parties, instructing them to expunge the confidential version of several documents. On 13.12.2022⁴², the Commission notified FFM that two documents containing FFM's confidential information had been inadvertently disclosed.

60. On 8.3.2023, the Commission requested confirmation from all Parties regarding their compliance with the expungement directive. Three Parties, namely, Gold Coin, Dindings and Leong Hup responded, confirming that they had indeed complied with the directive.⁴³ During the case management session on 11.4.2023, PK Agro confirmed its commitment to comply with the directive to expunge the confidential documents listed in the Commission's letter dated 24.11.2022.

61. Pertaining to issue (f), the Commission recognises the importance of providing access to documents as a fundamental right of defence for enterprises under investigation. It is essential to enable enterprises to effectively respond to allegations by ensuring they understand the case against them and have access to the relevant facts and evidence relied upon by the Commission. The protection of confidential information is also a crucial consideration in discussions about file access, as the Commission must strike a delicate balance between granting comprehensive file access while safeguarding confidential information.

⁴² Letter from the Commission to FFM dated 13.12.2022.

⁴³ Letter from Leong Hup to the Commission dated 10.3.2023; Letter from Dindings to the Commission dated 9.3.2023; and Email from counsel for Gold Coin to the Commission dated 8.3.2023.

62. In this case, the Commission did not intentionally withhold the disclosure of confidential information from the Parties. On 16.12.2022, the Commission held a case management session to discuss the proposed confidentiality ring.⁴⁴ A confidentiality ring proceeding is a mechanism used during investigations or legal proceedings where sensitive or confidential information is involved. It is a way to manage access to such information to ensure it remains confidential while allowing relevant parties limited access for legitimate reasons. External advisors involved in the case, such as legal counsel and economic experts may be granted access to confidential materials and they are required to sign agreements or abide by specific rules preventing the disclosure of this information to unauthorised parties. During the session, the Commission verbally informed Parties some of the rules of the confidentiality ring, which were later circulated in writing to all the four participating Parties on 23.12.2022.⁴⁵ On 14.12.2022, PK Agro declined to participate in the confidentiality ring on the basis that it did not agree to disclose all of its confidential information.⁴⁶

63. During the session, the Commission discussed the salient rules of the confidentiality ring with the Parties and later circulated in writing to all the four participating Parties on 23.12.2022 the complete proposed rules of the confidentiality ring. The key rules include that only the counsel and experts of the Parties would be allowed to participate in the confidentiality ring, that all confidential documents

⁴⁴ Email from the Commission dated 13.12.2022.

⁴⁵ Email from the Commission dated 23.12.2022.

⁴⁶ Email from counsel for PK Agro to the Commission dated 14.12.2022.

and information of the Parties would be disclosed, and that the representatives of the Parties would not be allowed to use their own devices but instead use the Commission's devices to access the confidential documents and information.

64. The Parties could not come to an agreement on the rules of the confidentiality ring proceedings proposed by the Commission.⁴⁷ Instead, all four Parties chose selective disclosure.⁴⁸ This situation arose when some Parties were willing to disclose selective documents while others preferred not to, leading to a disparity in the extent of disclosure. It is important to note that the absence of a confidentiality ring should not be interpreted as a deliberate denial of access to documents.
65. To resolve the deadlock in the confidentiality ring process, the Commission took the lead in distributing the confidential documents to the four Parties. Each Party was given the opportunity to redact their own information and documents. After this step, the redacted materials were shared among the four Parties involved, ultimately resulting in final access to the documents on 16.1.2023.⁴⁹
66. In *Groupe Eurotunnel S.A v Competition Commission*⁵⁰, the UK Competition Appeal Tribunal referred to *R v Monopolies and*

⁴⁷Email from the Commission to FFM 6.1.2023; Email from the Commission to Leong Hup; Email from the Commission to Dindings; and Email from the Commission to Gold Coin 6.1.2023.

⁴⁸ Letter from FFM to the Commission dated 8.11.2022; Letter from Leong Hup to the Commission dated 31.10.2022; Letter from Dindings to the Commission dated 10.11.2022; Letter from Gold Coin to the Commission dated 4.11.2022; and Transcript of Oral Representation session of FFM on 19.6.2023, pages 77 to 79.

⁴⁹ Email from the Commission dated 13.1.2023.

⁵⁰ *Groupe Eurotunnel S.A v Competition Commission* [2013] CAT 30.

*Mergers Commission*⁵¹, highlighting the need to investigate specific cases where it is claimed that the UK Monopolies and Mergers Commission acted impartially. The central question in each case revolves around whether the Commission provided the infringing parties with a fair chance to present their facts and arguments before making decisions that could have negative consequences for them.

67. Besides issuing the Proposed Decision and the Supplementary Proposed Decision, the Commission also provided electronic copies of all referenced documents and collected evidence on an external thumb drive. Paragraph 9 of the section 36 notice⁵² states:

9. In the event you are of the view that the Commission has not included any document that may be relevant to your case, kindly notify to the Commission in writing, before the date of your access to documents, for the Commission's consideration.

68. The Commission highlighted this paragraph to FFM and Leong Hup in our communication dated 2.9.2022. However, FFM and Leong Hup did not specify the document they intended to access in the confidential versions.⁵³ Despite the claims made by Leong Hup and FFM, the Commission has provided both enterprises with all documents in the files, except for the confidential portions of documents that do not belong to Leong Hup and FFM. The Commission later remedied this as per paragraph 65.

⁵¹ *R v Monopolies and Mergers Commission*, ex parte Elders IXL Ltd [1987] 1 WLR 1221.

⁵² Section 36 Notice issued to FFM and Leong Hup dated 5.8.2022.

⁵³ Letter from Leong Hup to the Commission dated 29.9.2022; and Letter from FFM to the Commission dated 29.9.2022.

69. In the present case, the Commission strives to impartially balance the confidentiality interests of the Parties and the necessity of disclosure. This balancing act was carried out through the facilitation of the confidentiality ring proceedings and the subsequent distribution of confidential information among four Parties, namely, Dindings, FFM, Leong Hup and Gold Coin, for a meaningful non-confidential version.
70. Moving on to the issue raised in (g), on 18.5.2022⁵⁴, FFM communicated to the Commission its intention to consider an undertaking under section 43 of the Act. Then, on 23.5.2022,⁵⁵ the Commission requested FFM to submit a proposal outlining the terms of the undertaking for the Commission's consideration. However, on 24.5.2022⁵⁶, FFM responded to the Commission without providing any proposal on the terms of the undertaking, as explicitly requested by the Commission in its email dated 23.5.2022. Despite the Commission's request, FFM failed to provide the necessary details. Instead, by its letter of 24.5.2022, FFM proposed for a meeting to be held with the Commission.
71. Consequently, on 15.6.2022⁵⁷, the Commission informed FFM that its proposal for a meeting regarding a potential undertaking was declined. This decision was made because FFM did not fulfil the Commission's request to provide the essential proposal outlining the

⁵⁴ Letter from FFM to the Commission dated 18.5.2022.

⁵⁵ Email correspondence from the Commission to FFM dated 23.5.2022.

⁵⁶ Letter from FFM to the Commission dated 24.5.2022.

⁵⁷ Letter from the Commission to FFM dated 15.6.2022.

terms of the undertaking pursuant to section 43 of the Act. In the same correspondence⁵⁸, the Commission notified FFM that it had the option to contact the officer responsible for further clarification regarding their undertaking application. Nevertheless, FFM chose not to pursue this option, as confirmed during its oral representation.⁵⁹

72. Based on the above, the arguments by FFM and Leong Hup on the alleged procedural improprieties are hereby dismissed.

Dindings

73. Dindings contends in their written representation that the Commission has redacted and concealed material which Dindings deems crucial for challenging the provisional findings of the Commission.

The Commission's Findings

74. Following the issuance of the Amended Proposed Decision and Supplementary Proposed Decision on 11.10.2022, the Commission requested consent for the disclosure of confidential information belonging to Dindings through a letter dated 26.10.2022. After some correspondences⁶⁰, Dindings replied to the Commission outlining

⁵⁸ Letter from the Commission to FFM dated 15.6.2022.

⁵⁹ Transcript of Oral Representation session of FFM on 19.6.2023, page 12 lines 23-37.

⁶⁰ Letter from the Commission to Dindings dated 1.11.2022; and Letter from Dindings to the Commission dated 10.11.2022.

five broad categories of redacted information that were provided by Dindings to the other four Parties.

75. Except for personal information falling under the purview of Personal Data Protection Act 2010, Dindings adopted a selective disclosure approach for their confidential information.⁶¹ The selective disclosure was also subject to the condition that the four Parties namely, FFM, Leong Hup, Gold Coin and PK Agro and third parties would provide the information.
76. On 16.12.2022, the Commission convened a case management session regarding the proposed confidentiality ring. During this session, the Commission verbally informed the Parties of the certain specific rules of the confidentiality ring, which were shared to all four Parties on 23.12.2022.⁶²
77. The four Parties were unable to reach an agreement on the rules of the confidentiality ring proceedings proposed by the Commission. We find a situation where consensus was unattainable. Some Parties were open to disclosing specific documents while others were not, leading to differences in the extend of disclosure. It is crucial to note that the absence of a confidentiality ring should not be interpreted as a deliberate refusal to provide access to documents.

⁶¹ Letter from Dindings to the Commission dated 10.11.2022.; and Email from the Commission to Dindings dated 16.11.2022.

⁶² Letters from the Commission to Dindings, Leong Hup, FFM and Gold Coin dated 23.12.2022.

78. On 6.1.2023, the Commission formally notified Dindings and three other involved Parties that we could not proceed with the proposed confidentiality ring.⁶³ This decision was made due to the fact that all four Parties were unable to reach an agreement on the terms and conditions outlined in the confidentiality ring rules⁶⁴ as proposed by the Commission.
79. However, in the same correspondence, the Commission informed the involved Parties that it would organise an access to documents session. In this session, non-confidential versions of the documents would be distributed to all Parties. In order to facilitate this process, the Parties were asked to make only the strictly necessary and reasonable redactions. The Commission also provided guidelines for the redaction process.⁶⁵
80. On 16.1.2023, the representatives of all four Parties, namely, FFM, Leong Hup, Gold Coin and Dindings collected the non-confidential versions of documents. The above four Parties made redactions to their respective documents.
81. In light of the above, it is important to note that the Commission dutifully fulfilled its responsibility to ensure that Parties were granted fair access to the Commission's documents. This crucial step was taken in order to safeguard and uphold the principles of natural

⁶³ Email from the Commission to FFM dated 6.1.2023; Email from the Commission to Leong Hup dated 6.1.2023; and Email from the Commission to Dindings dated 6.1.2023.

⁶⁴ Email from Gold Coin to the Commission dated 29.12.2022; Letter from FFM to the Commission dated 29.12.2022; Letter from Leong Hup to the Commission dated 29.12.2022; and Letter from Dindings to the Commission dated 29.12.2022.

⁶⁵ Email from the Commission to FFM dated 6.1.2023; Email from the Commission to Leong Hup dated 6.1.2023; and Email from the Commission to Dindings dated 6.1.2023.

justice, ensuring that Parties were given a fair and impartial opportunity to present their case.

82. In addition, it should be highlighted that throughout this process, the Commission was mindful of the confidentiality interests of not only the Parties involved but also any relevant third parties. By carefully balancing the need for transparency and accountability with the necessity to protect sensitive information, the Commission demonstrated its commitment to ensuring a just and equitable resolution to the matter at hand.
83. It must be pointed out here that contrary to the claims put forth by Dindings, the Commission provided Dindings with all documents in the file, omitting only the confidential portions of the documents. During the service of the Proposed Decision, Amended Proposed Decision, and Supplementary Proposed Decision, the Commission provided electronic copies of all referenced documents and collected evidence on an external thumb drive.
84. Based on the above, the argument by Dindings on the alleged procedural impropriety is hereby dismissed.
85. On a separate issue, it has been revealed to the Commission in Dindings's written and oral representation that the counsel for Dindings had conducted interviews with three of the Commission's key witnesses without prior notification to the Commission. The three key witnesses are as follows:
 - (a) Chee Choon Shean of Dindings

- (b) Hideki Oya of Dindings; and
- (c) Baharudin of NB Farming⁶⁶.

86. The question that arises is whether there was any impropriety or breach of process in Dindings's evidence-gathering and statement-taking from these three individuals. This is considering the fact that the Commission had already taken statements from them. Dindings's counsel acknowledged that they were aware that the three witnesses had provided statements on behalf of the Commission, and the Commission had built its case based on these statements.⁶⁷

87. The Commission wants to emphasise that witnesses (a) and (b) are affiliated to Dindings, while Baharudin is not an employee of Dindings. The counsel has acknowledged this fact.⁶⁸ The Commission refers to Rule 34 of the Legal Profession Practice and Etiquette Rules 1978 which states:

“An advocate and solicitor may properly interview any witness or prospective witness for the opposing side in any civil or criminal matter without the consent, but subject to first giving notice to the opposing counsel or party. In doing so, he shall scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate the truth.”⁶⁹

⁶⁶ NB Farming is a farming company and regularly purchases their poultry feed from Dindings based on Paragraph 8 of the Statement of Baharudin bin Ahmad of NB Farming recorded on 16 June 2022.

⁶⁷ Transcript of Oral Representation session of Dindings on 31.5.20223, page 6 lines 25-35.

⁶⁸ Transcript of Oral Representation session of Dindings on 31.5.20223, page 7 lines 27-35.

⁶⁹ Legal Profession (Practice and Etiquette) Rules 1978, Rule 34.

88. According to Dindings’s counsel, Dindings had to request additional statements from Baharudin due to the redactions in his statement.⁷⁰ The Commission is of the view that the redactions were necessary to protect sensitive information in the statement. The Commission also takes notice that some of the questions asked by Dindings in their additional statements are similar to the ones asked by the Commission in its witness statements. Examples of these questions are provided in the **Table 5** below:

Table 5: Statement questions

QUESTIONS BY DINDINGS	QUESTIONS BY THE COMMISSION
[Q1] Adakah NB Farming membeli dedak ayam daripada pembekal-pembekal?	[Q8] Siapakah pembekal DOC, makanan ayam, vaksin untuk NB Farming? Nyatakan semua dan bila
[Q2] Adakah anda tawar menawar dengan DPDC? Bagaimana?	[Q22] Adakah NB Farming tawar menawar dengan pembekal dedak ayam
[Q3] Adakah DPDC memberi memorandum harga atau pengumuman harga kepada NB	[Q35] Adakah pembekal memaklumkan kepada NB Farming jika terdapat sebarang perubahan harga? Siapakah pembekal tersebut?
[Q4] Adakah anda tahu mengapa harga dedak ayam naik dalam tempoh 2020-2021?	[Q28] Menurut pengalaman anda, apakah pemerhatian anda terhadap harga makanan ayam dari tahun 2019 sehingga 2022 [Q29] Adakah anda bersetuju bahawa terdapat kenaikan harga makanan ayam dalam pasaran bermula tahun 2019 sehingga 2022.

89. Dindings’s counsel did not disclose the circumstances, procedures, and safeguard measures taken to protect the credibility of the statements they obtained. The Commission had no prior

⁷⁰ Transcript of Oral Representation session of Dindings on 29.5.2023, page 38 lines1-14.

knowledge of the statement-taking session, and it is important to note that Baharuddin of NB Poultry was not legally represented by legal counsel during the session.

90. By reason of Rule 34 of the Legal Profession Practice and Etiquette Rules 1978, the Commission wishes to say here with concern that it was ethically incumbent upon Dindings's counsel to notify the Commission. Witness interviews should always be conducted in a manner that minimise the risk of witness contamination and prejudice. It is pertinent to note that the Commission has an obligation under the law to protect the Commission's witnesses and the integrity of its investigations.

Gold Coin

91. Gold Coin argues that the Commission failed to ensure and enforce compliance with the confidentiality ring among the Parties, despite Gold Coin's cooperation in the proposed confidentiality ring.

The Commission's Findings

92. We have mentioned earlier that, in order to balance the rights of a Party to a fair opportunity in preparing their defence and the protection of personal data and sensitive commercial information of the information providers, the Commission had agreed to facilitate a confidentiality ring.
93. On 16.12.2022, the Commission conducted a case management session to discuss the proposed confidentiality ring. In this session, the Commission verbally informed the Parties certain rules of the

confidentiality ring. These rules were later circulated in writing to all the four participating Parties on 23.12.2022.⁷¹

94. Having sought consent for the confidential information from the respective information providers⁷², the Commission identified the following issues:

- (a) The disclosure of documents is subject to the condition that other Parties, as well as third parties referenced in the Proposed Decision, Amended Proposed Decision and Supplementary Proposed Decision, also make an undertaking to grant consent to disclose similar information;
- (b) The consent granted by the Parties is also conditional upon equal access to the documents and confidential information; and
- (c) All Parties must agree on the manner of disclosing the documents, including implementing protective measures to preserve the confidentiality of the documents and prevent unnecessary disclosure.

95. The Commission proposed the rules of the confidentiality ring proceedings, but the four Parties were unable to come to an agreement. Some Parties were willing to disclose specific

⁷¹ Email from the Commission to Gold Coin dated 23.12.2022; Email from the Commission to FFM dated 23.12.2022; Email from the Commission to Leong Hup dated 23.12.2022; and Email from the Commission to Dindings dated 23.12.2022.

⁷² Email from the Commission to Gold Coin dated 23.12.2022; Email from the Commission to FFM dated 23.12.2022; Email from the Commission to Leong Hup dated 23.12.2022; and Email from the Commission to Dindings dated 23.12.2022.

documents while others were not, resulting in variations in the extent of disclosure. It is important to note that the absence of a confidentiality ring should not be interpreted as a deliberate refusal to provide fair access to documents.

96. During the case management session, the Commission made it clear that the Parties must reach an agreement on the types and manner of disclosing confidential documents and/or information for any confidentiality ring proceeding to take place.
97. Gold Coin raised a concern during the session regarding the restrictive nature of the proposed rules for the confidentiality ring. Specifically, the concern was raised regarding the stipulation that “the external advisors shall not disclose any information and/or data they have obtained during the confidentiality ring to their respective clients and/or third parties.”⁷³
98. The restrictive term aims to protect against the sharing of commercial confidential information that could potentially benefit other enterprises. The proposed term intends to preserve the confidentiality of sensitive business data by stating that “external advisors shall not disclose any information and/or data obtained during the confidentiality ring to their respective clients and/or third parties.” This measure is necessary to prevent any unintended advantage to other entities resulting from exposure to such proprietary information.

⁷³ Email from the Commission to Gold Coin dated 23.12.2022.

99. Gold Coin confirmed their decision not to agree to the aforesaid term and opted out of participating in the proposed confidentiality ring. Further, since not all Parties consented to the disclosure of confidential information, Gold Coin took the position that their participation in the confidentiality ring would be prejudiced.⁷⁴
100. When the Commission realised it could not proceed with the proposed confidentiality ring, the Commission promptly informed the involved Parties of its intent to organize an access to documents session. Prior to the session, the Commission distributed non-confidential versions of the documents to all Parties. To facilitate this process, the Parties were requested to make necessary redactions. The Commission also provided guidelines to assist the Parties in effectively carry out the redaction process.
101. On 16.1.2023, the representatives of all four Parties collected the non-confidential versions of documents. Gold Coin and other relevant parties made redactions to their respective documents.
102. In light of the above, the Commission had made every effort to fulfil its duty of ensuring that the Parties had access to the documents whilst at the same time upholding the principles of natural justice. Throughout the process, the Commission carefully considered the confidentiality interests of the Parties and third parties.

⁷⁴ Email from Gold Coin to the Commission dated 29.12.2022.

PART 2: LEGAL AND ECONOMIC ASSESSMENT

103. This section begins by setting out the legal and economic framework upon which the Commission grounds its assessment of the evidence obtained in this case. Thereafter, it delineates the evidence pertaining to the horizontal agreements and/or concerted practices to fix quantum of poultry feed price, as relied upon by the Commission. Following that, the Commission undertakes an analysis of the evidence and articulates the inferences, findings, and conclusions made.

A. RELEVANT MARKET

104. In the Act, section 2 provides a definition of the term ‘market’. This definition serves to identify the enterprises that compete in the same product or geographical market, or to establish the boundaries of the product or geographical market in which all enterprises compete.⁷⁵

105. The process of defining the relevant market begins with the focal product or products that are the subject of the investigation. In the present case, the Commission identifies both the “product market” and the “geographical market”.

106. The Commission has identified that the Parties are the feed millers for the poultry feed that contains soybean meal and maize as the main ingredients. This is substantiated by the formulation used by the Parties in producing the poultry feed in **Table 6**:

⁷⁵ Paragraph 1.4 of the Commission’s Guidelines on Market Definition.

Table 6: Formulation of Poultry Feed Submitted by Respective Parties⁷⁶

Enterprise	Starter			Grower			Note
	Maize %	SBM %	Others %	Maize %	SBM %	Others %	
PK Agro	[X]	[X]	[X]	[X]	[X]	[X]	Average (January 2021-April 2022)
FFM	[X]	[X]	[X]	[X]	[X]	[X]	Average (January 2021-March 2022)
Dindings	[X]	[X]	[X]	[X]	[X]	[X]	Average (January 2021-April 2022)
Leong Hup	[X]	[X]	[X]	[X]	[X]	[X]	Average (January 2021-March 2022)
Gold Coin	[X]	[X]	[X]	[X]	[X]	[X]	Average (January 2021-April 2022)

*SBM: soybean meal

107. **Table 6** above shows that starter and grower poultry feed contain an average of 53% to 59% of maize and 22% to 29% of soybean meal.

108. The feed millers adjusted the percentage of soybean meal and maize in response to the increase in raw material prices, rather than substituting the raw materials. The formulator of the feed-miller will work together with a nutritionist in adjusting the feed formulation. **Table 7 below** reflects the comparison of the formulation of each Party in 2020 and 2021:

⁷⁶ Poultry feed formulation submitted by Leong Hup pursuant to Section 18 Notice dated 11.5.2022; Poultry feed formulation submitted by FFM pursuant to Section 18 Notice dated 11.5.2022; Poultry feed formulation submitted by PK Agro pursuant to Section 18 Notice dated 11.5.2022; Poultry feed formulation submitted by Gold Coin pursuant to Section 18 Notice dated 11.5.2022; and Poultry feed formulation submitted by Dindings pursuant to Section 18 Notice dated 11.5.2022.

Table 7: Comparison of Feed Formulation in the Year 2020 and 2021⁷⁷

Enterprise	2020 Formulation (Starter and Grower)			2021 Formulation (Starter and Grower)			Note
	Maize %	SBM %	Others %	Maize %	SBM %	Others %	
PK Agro	[X]	[X]	[X]	[X]	[X]	[X]	January 2020 and January 2021
FFM	[X]	[X]	[X]	[X]	[X]	[X]	January 2020 and January 2021
Dindings	[X]	[X]	[X]	[X]	[X]	[X]	2020 and 2021
Leong Hup	[X]	[X]	[X]	[X]	[X]	[X]	January 2020 and January 2021
Gold Coin	[X]	[X]	[X]	[X]	[X]	[X]	2020 and 2021

*SBM: soybean meal

109. **Table 7** clearly demonstrates that the Parties compete in the same product market which is poultry feed (with maize and SBM as the main ingredients).

110. There were no legal or regulatory barriers preventing the Parties from competing with each other across Malaysia. Certain Parties supplied customers outside of the location of their feed mills during the infringement period.⁷⁸

111. The Commission considers the operation of Parties' feed mills in multiple states across Malaysia⁷⁹ and their capacity to meet

⁷⁷ Poultry feed formulation submitted by Leong Hup pursuant to Section 18 Notice dated 11.5.2022; Poultry feed formulation submitted by FFM pursuant to Section 18 Notice dated 11.5.2022; Poultry feed formulation submitted by PK Agro pursuant to Section 18 Notice dated 11.5.2022; Poultry feed formulation submitted by Gold Coin pursuant to Section 18 Notice dated 11.5.2022; and Poultry feed formulation submitted by Dindings pursuant to Section 18 Notice dated 11.5.2022.

⁷⁸ Invoices provided by PK Agro; Invoices provided by FFM; Invoices provided by Dindings; Invoices provided by Leong Hup; and Invoices provided by Gold Coin.

⁷⁹ Leong Hup feed mill location retrieved from <https://www.leonghupinternational.com/corporate/subsidiaries/>; FFM feed mill location retrieved from <https://www.ffmb.com.my/location.php>. PK Agro feed mill location retrieved from <https://www.cpmalaysia.com/1/agro-industry-foods-business/feedmills/>. Gold Coin feed mill location

nationwide customer demand,⁸⁰ as evidence that the Parties operate the supply of poultry feed (that contains SBM and maize as the main ingredients) throughout Malaysia.

112. Accordingly, the relevant market in this case is the supply of poultry feed (that contains SBM and maize as the main ingredients) in Malaysia (“the relevant market”).

B. AGREEMENT AND/OR CONCERTED PRACTICE

113. Section 2 of the Act defines the term ‘agreement’. The section 4 prohibition applies to agreements that are legally enforceable or non-enforceable agreements, whether they are written or oral. An agreement can also be implied from the participants’ behaviours. Even if an enterprise does not adhere to the terms of the agreement, the purported anti-competitive agreement would still fall under the prohibition in section 4.

114. The section 4 prohibition also applies to concerted practices. According to Section 2 of the Act, a concerted practice includes “*any practice which involves direct or indirect contact or communication between enterprises...*”⁸¹. Conduct may be considered as a concerted practice even when parties had not reached an agreement in advance on a common plan but later adopt or adhere

retrieved from <https://www.goldcoin-group.com/location/>. Dindings feed mill location retrieved from <https://dindingspoultry.com.my/poultry-integration/feed-milling/>.

⁸⁰ Invoices provided by PK Agro; Invoices provided by FFM; Invoices provided by Dindings; Invoices provided by Leong Hup and invoices provided by Gold Coin.

⁸¹ Section 2 of Act 712; Case 48/69 *ICI v Commission* [1972] ECR 619, at paragraph 64; and *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206 (iii).

to the collusive device which facilitates the coordination of their behaviour in the market. Direct contact or communication may include the sharing of strategic information and commercial sensitive information. A concerted practice exists, even if enterprises do not enter into an agreement.

Information Sharing

115. The disclosure and/or exchange of commercial sensitive information, such as future prices can further facilitate price fixing collusion and indicate participation in a concerted practice. A single meeting or isolated exchange of information is sufficient to prove concerted practice.⁸²

116. In the *Apco*⁸³ case, the Australian court established a correlation between the telephone calls among petrol stations and the subsequent price increases. Additionally, all but one petrol station demonstrated a commitment to this behaviour.

Parallel Behaviour

117. The concept of informal contact may cover concerted practice through parallel behaviour.

⁸² Case C-8/08 *T-Mobile Netherlands BV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, at paragraphs 59, 60, 61 and 63.

⁸³ *Apco Service Stations v Australian Competition and Consumer Commission* [2005] FCAFC 16. See also Case T-799/17 *Scania and Others v Commission*.

118. Although parallel behaviour may not be identified as a concerted practice on its own, it may however amount to strong evidence of such a practice if it leads to competition conditions that deviates from the normal conditions of the market.⁸⁴

119. The possibility of identifying a concerted practice in an announcement cannot be disregarded, for instance, in a situation where such an announcement was followed by public announcements by other enterprises. This is because strategic responses by competitors to each other's public announcements may indicate a strategy to establish a mutual understanding regarding the coordination terms.⁸⁵

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

120. The Commission will begin by looking at section 4 of the Act. Section 4(1) of the Act prohibits agreements between enterprises insofar as the agreements have as their object or effect the prevention, restriction or distortion of competition.

121. Under section 4(2)(a) of the Act, without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to fix, directly or indirectly, a purchase or selling price or any other trading conditions is deemed to have the object of

⁸⁴ Case 48/69 *Imperial Chemical Industries Ltd v Commission of the European Communities*, at paragraph 66. See also *Ahlström Osakeyhtiö v Commission of the European Communities* (C 89, 104, 114, 116, 117 & 125–129/85) [1993] E.C.R. I-1307; [1993] 4 C.M.L.R. 407,

⁸⁵ Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2011/C11/01), at paragraph 63.

significantly preventing, restricting, or distorting competition in any market for goods or services. Under section 4(3) of the Act, any enterprise which is a party to an agreement that is prohibited under section 4(1) read with section 4(2) shall be liable for infringement of the prohibition.

122. Price fixing agreements may involve fixing either the price itself or an element or component of a price. It is irrelevant to a finding of infringement that the prices subsequently negotiated with individual customers differ from what was agreed.⁸⁶

C.1 APPLICATION TO THE PRESENT CASE

Infringements Periods

123. The Commission finds the relevant infringements periods as follows:

Table 8: Infringements Periods

	INFRINGEMENT PERIOD 1	INFRINGEMENT PERIOD 2	INFRINGEMENT PERIOD 3
DATE	31.1.2020 - 31.3.2020	1.10.2020 - 31.1.2021	1.2.2021 - 30.6.2022
PARTIES	PK Agro, Gold Coin, FFM and Leong Hup	PK Agro, Gold Coin, FFM and Leong Hup	PK Agro, Gold Coin, FFM, Leong Hup and Dindings

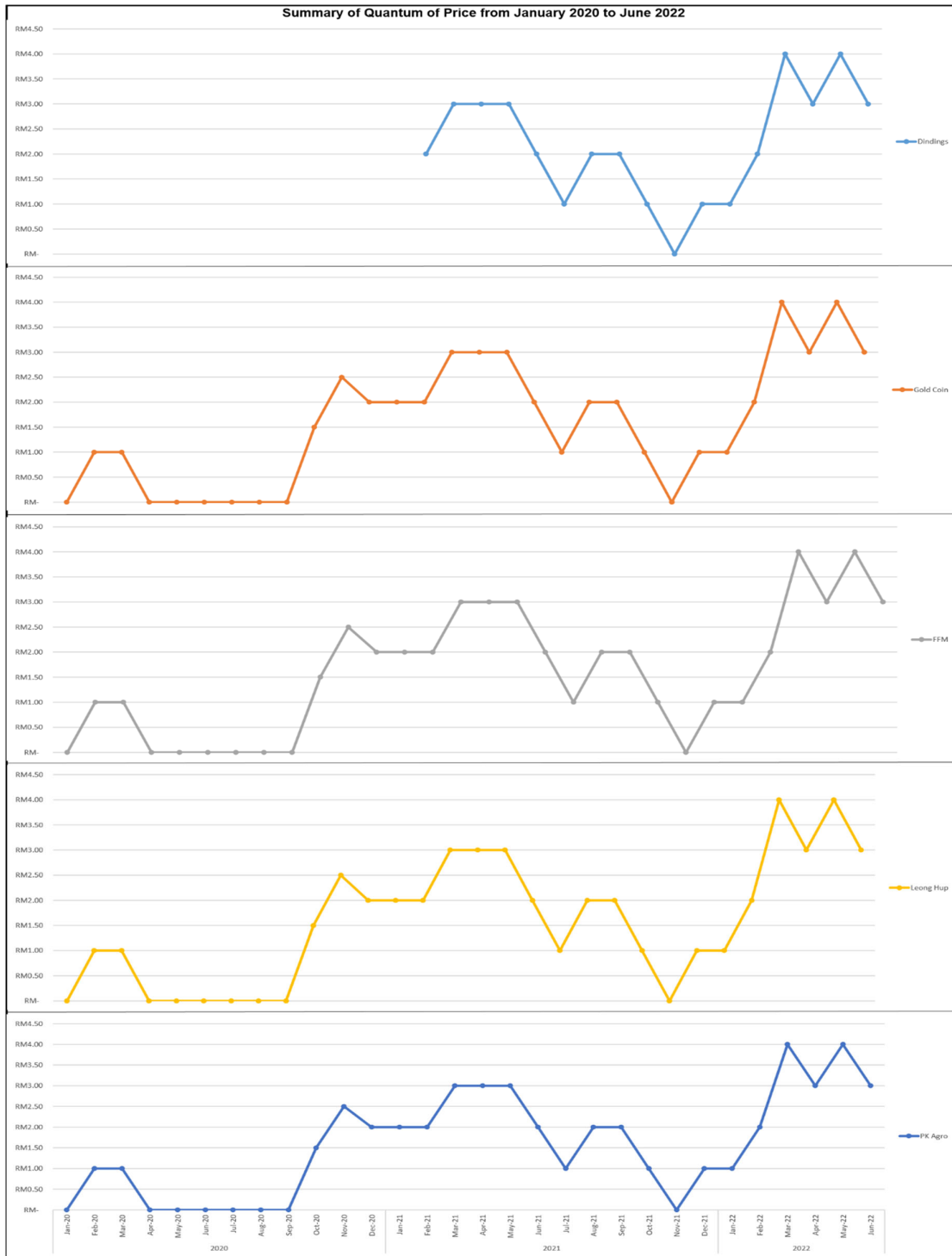
124. The application of section 4(2)(a) of the Act in the present case focussing on the similarity, if not identical, of the increments in the quantum of poultry feed (with maize and SBM as the main ingredients) prices between January 2020 and June 2022. This

⁸⁶ Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T 136/02 *Re Carbonless Paper Cartel: Bollore Sa and Others v Commission of the European Communities* [2007] 5 CMLR 2, paragraphs 451 to 453.

similarity of movements in the quantum of poultry feed is supported by the assessment of the entire body of evidence, including but not limited to the communication and price pattern of the Parties, as further detailed below.

[The remainder of this page is intentionally left blank]

Figure 3: Summary of Increment of Quantum of Price from January 2020 to June 2022



The Malaysian Feedmillers Association (“MFA”)

125. The Commission’s investigations revealed that the Parties are members of MFA, an association registered with the Registrar of Societies under the Societies Act 1966 [Act 335] since 28.4.1970. One of the primary objectives of MFA is to facilitate and maintain a forum for the exchange of ideas, general information, and technical insights related to the feed mill industry. In furtherance to this objective, MFA regularly organises monthly meetings where its members convene to exchange ideas, discuss industry trends, and address pertinent issues in the industry.

Increase of Quantum of Poultry Feed Price

126. In its analysis, the Commission examined the increase in the quantum of poultry feed (with maize and SBM as the main ingredients) prices by the four Parties, as detailed in **Table 9** and **Figure 4** below. The Commission observed that PK Agro, Gold Coin, FFM, and Leong Hup all raised their prices at a similar rate of quantum.

127. Concurrently, the Commission finds that the announcement dates of the price increase in relation to each of the four Parties’ respective customers, namely, PK Agro, Gold Coin, FFM and Leong Hup were made in very close proximity to each other. This will be discussed in greater detail in the succeeding paragraphs.

128. The Commission also examined the invoices submitted by Dindings to the Commission⁸⁷ and observed that 13 out of 14 customers had the identical quantum price increase reflected in their respective invoices. We determine that Dindings's increase in the quantum of poultry feed (with maize and SBM as the main ingredients) prices aligns with the quantum observed in respect of the other Parties from February 2021 to May 2022 within the specified timeframe. **Table 9** presents the comparison of the poultry feed (with maize and SBM as the main ingredients) price quantum among the Parties from February 2021 to May 2022.

[The remainder of this page is intentionally left blank]

⁸⁷ Price listing of Dindings from February 2021 to October 2021, December 2021 and January 2022 to May 2022.

Table 9: Increments of the Quantum of Poultry Feed Price⁸⁸

2020										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	Based on the earliest Invoices in each month
Jan	-	None	None	None	None	None	None	None	None	N/A
Feb	RM1.00	1.2.2020 ⁸⁹	1.2.2020	31.1.2020	1.2.2020	6.2.2020	8.2.2020	31.1.2020	1.2.2020	N/A
Mar	RM1.00	1.3.2020	1.3.2020	28.2.2020	1.3.2020	6.3.2020	9.3.2020	28.2.2020	1.3.2020	N/A
Apr	-	None	None	None	None	None	None	None	None	N/A
May	-	None	None	None	None	None	None	None	None	N/A
Jun	-	None	None	None	None	None	None	None	None	N/A
Jul	-	None	None	None	None	None	None	None	None	N/A
Aug	-	None	None	None	None	None	None	None	None	N/A
Sep	-	None	None	None	None	None	None	None	None	N/A
Oct	RM1.50	1.10.2020	1.10.2020	30.9.2020	1.10.2020	7.10.2020	9.10.2020	30.9.2020	1.10.2020	N/A

⁸⁸ Price Memorandum of PK Agro from February 2020 to March 2020, October 2020 to October 2021, December 2021 to June 2022; Price Memorandum of Gold Coin from January 2020 to February 2020, September 2020 to October 2021, December 2021 to June 2022; Price Memorandum of FFM from February 2020 to March 2020, October 2020 to October 2021, December 2021 to June 2022; Price Memorandum of Leong Hup from January 2020 to February 2020, September 2020 to September 2021, December 2021 to June 2022; and Invoices provided by Dindings from February 2021 to October 2021, December 2021 to May 2022.

⁸⁹ Digital Forensic Report by MyCC for PK Agro-Industrial Products (M) Sdn Bhd (MyCC(IED)700-2/7(5)) dated 22.7.22, page 27.

2020										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	Based on the earliest Invoices in each month
Nov	RM2.50	1.11.2020	1.11.2020	31.10.2020	1.11.2020	6.11.2020	9.11.2020	30.10.2020	1.11.2020	N/A
Dec	RM2.00	1.12.2020	1.12.2020	30.11.2020	1.12.2020	7.12.2020	8.12.2020	30.11.2020	1.12.2020	N/A

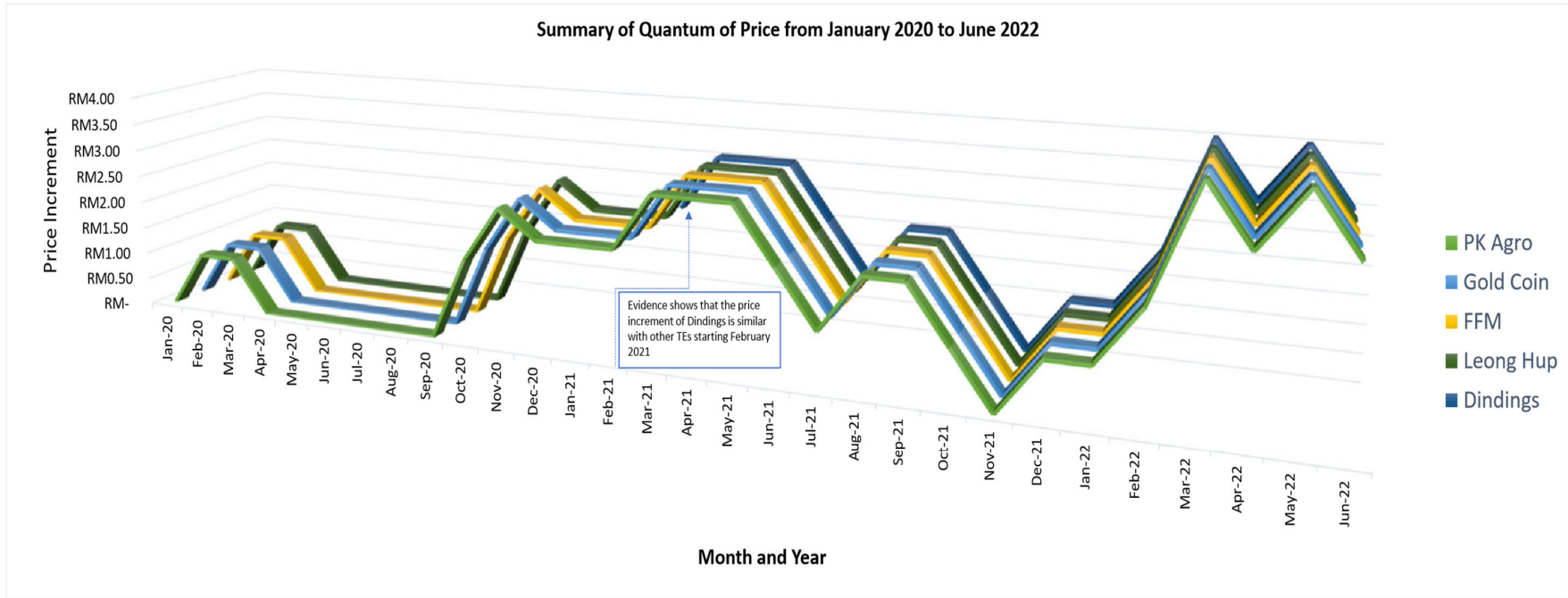
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2021										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	Based on the earliest Invoices in each month
Jan	RM2.00	31.12.2020	1.1.2021	31.12.2020	1.1.2021	7.1.2021	8.1.2021	31.12.2020	1.1.2021	N/A
Feb	RM2.00	31.1.2021	1.2.2021	31.1.2021	1.2.2021	5.2.2021	8.2.2021	29.1.2021	1.2.2021	2.2.2021
Mar	RM3.00	28.2.2021	1.3.2021	1.3.2021	1.3.2021	5.3.2021	8.3.2021	27.2.2021	1.3.2021	2.3.2021
Apr	RM1.50	1.4.2021	1.4.2021	1.4.2021	1.4.2021	7.4.2021	8.4.2021	31.3.2021	1.4.2021	1.4.2021
Apr	RM1.50	15.4.2021	15.4.2021	15.4.2021	15.4.2021	20.4.2021	21.4.2021	26.4.2022	26.4.2022	29.4.2021
May	RM3.00	30.4.2021	2.5.2021	1.5.2021	1.5.2021	7.5.2021	8.5.2021	30.4.2021	1.5.2021	3.5.2021
Jun	RM2.00	31.5.2021	1.6.2021	1.6.2021	1.6.2021	4.6.2021	8.6.2021	31.5.2021	1.6.2021	1.6.2021
Jul	RM1.00	28.6.2021	1.7.2021	1.7.2021	1.7.2021	7.7.2021	8.7.2021	30.6.2021	1.7.2021	2.7.2021
Aug	RM2.00	30.7.2021	1.8.2021	1.8.2021	1.8.2021	6.8.2021	8.8.2021	30.7.2021	1.8.2021	5.8.2021
Sep	RM2.00	30.8.2021	1.9.2021	1.9.2021	1.9.2021	7.9.2021	8.9.2021	30.8.2021	1.9.2021	1.9.2021
Oct	RM1.00	30.9.2021	1.10.2021	1.10.2021	1.10.2021	7.10.2021	8.10.2021	30.9.2021	1.10.2021	2.10.2021
Nov	-	None	None	None	None	None	None	None	None	None
Dec	RM1.00	n/a	1.12.2021	1.12.2021	1.12.2021	7.12.2021	8.12.2021	30.11.2021	1.12.2021	2.12.2021

2022										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Month	Increase Quantum	(Announcem ent Date) Internal Memo	Effective date & discount notice	(Announce ment Date) Internal Memo	Effective date & discount notice	(Announce ment Date) Internal Memo	Effective date & discount notice	(Announce ment Date) Internal Memo	Effective date & discount notice	Based on the earliest Invoices in each month
Jan	RM1.00	30.12.2021	1.1.2022	1.1.2022	1.1.2022	7.1.2022	8.1.2022	31.12.2021	1.1.2022	5.1.2022
Feb	RM2.00	26.1.2022	1.2.2022	1.2.2022	1.2.2022	5.2.2022	8.2.2022	31.1.2022	1.2.2022	5.2.2022
Mar	RM4.00	28.2.2022	1.3.2022	1.3.2022	1.3.2022	5.3.2022	8.3.2022	28.3.2022	1.3.2022	2.3.2022
Apr	RM3.00	31.3.2022	1.4.2022	31.3.2022	1.4.2022	7.4.2022	8.4.2022	31.3.2022	1.4.2022	1.4.2022
May	RM4.00	29.4.2022	1.5.2022	1.5.2022	1.5.2022	6.5.2022	8.5.2022	30.4.2022	1.5.2022	2.5.2022
Jun	RM3.00	30.5.2022	1.6.2022	1.6.2022	1.6.2022	7.6.2022	8.6.2022	31.5.2022	1.6.2022	N/A

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Figure 4: Increases in Quantum of Poultry Feed Price from January 2020 to June 2022



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The first infringement period: 31 January 2020 – 31 March 2020

(a) The Commission finds that there were agreements and/or concerted practices between four Parties, namely, PK Agro, Gold Coin, FFM, and Leong Hup to increase the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM1 in February and March 2020. This is based on the cumulative assessment of the following circumstantial evidence: the similarity in the increase of the quantum of poultry feed prices between 31.1.2020 to 28.2.2020 as indicated by the price announcements issued by the four Parties⁹⁰

129. The following samples of price announcements reflect the identical quantum of increase in poultry feed prices.

[The remainder of this page is intentionally left blank]

⁹⁰ Price Memorandum of PK Agro from February 2020 to March 2020; Price Memorandum of Gold Coin from January 2020 to February 2020; Price Memorandum of FFM from February 2020 to March 2020; and Price Memorandum of Leong Hup from January 2020 to February 2020.

Image 1: FFM's Price Announcement for February 2020⁹¹



FFM BERHAD (4878-K)

PT. 45125, Batu 15 1/2, Sungai Pelong, P. O. Box 78, 47000 Sungai Buloh, Selangor Darul Ehsan, Malaysia.
Tel: 603-6145 7888 Fax: 603-6145 7800, 603-6145 7801 Website: www.ffmb.com.my

Ref.: SALES/FEED/C-1/20

7 February 2020

Fax & Mail

No. 67 Jalan Jagong
Pandamaran
42000 Port Klang
Selangor

Tel. No.: 03-3168 6214
Fax No.: 03-3167 8099

Dear Sirs

Re: Animal Feed Price Increase w.e.f. 8 February 2020

We wish to announce that the price of ALL types of animal feed for West Malaysia will be increased by RM1.00/50-kg bag with effect from 8 February 2020.

At the same time, the price of Ruminant feeds such as Cattle, Sheep/Goat and Deer feed as well as PKC Plus will also be increased by RM1.00/50-kg bag.

Please refer to the latest price list below:-

Code	Product	Packing (Bags)	Ex-Factory Price (RM)
4120	Poultry Grower Mash	50-kg	
4130	Poultry Layer Mash	50-kg	
4543	Cattle Mash	50-kg	
5201	Broiler Starter Crumble	25-kg	
5201	Broiler Starter Crumble	50-kg	
5203	Broiler Finisher Pellet	25-kg	
5203	Broiler Finisher Pellet	50-kg	
5542	Dairy Cattle Pellet	50-kg	
5555	PKC Plus	50-kg	
5811	Goat Pellet	50-kg	
5820	Deer Pellet	50-kg	
5910	Rabbit Grower Pellet	25-kg	

All other terms and conditions remain unchanged. We would like to take this opportunity to thank you for your continued support.

Yours faithfully
FFM BERHAD

DR ONG CHOO TEIK
Director/General Manager
- Group Feed and Livestock

c.c.: STT/RK/HCK/Hazli/ENB

OCT/jj

⁹¹ Price Memorandum of FFM for February 2020.

Image 2: Leong Hup's Price Announcement for February 2020⁹²

MEMO	
LEONG HUP FEEDMILL MALAYSIA SDN BHD LOT 13A, JLN PBR 1, FASA 1, KAWASAN PERINDUSTRIAN BUKIT RAMBAI 75250 MELAKA	
OUR REFERENCE : [REDACTED]/02/2020	NAME DEPARTMENT / FARM : Sales Department
YOUR REFERENCE :	
TO : [REDACTED]	
	DATE 31 st January 2020
<u>RE: REVISION OF FEEDS' PRICES</u>	
Please be informed that the feed price will be increased RM 1.00/50kg bag or RM 20.00/mt with effect from 1 st February 2020.	
Thank you.	
Yours truly, Leong Hup Feedmill Malaysia Sdn Bhd	
_____ Lim Yong Ping Sales Manager	

⁹² Price Memorandum of Leong Hup for February 2020.

Image 3: PK Agro's Price Announcement for March 2020⁹³

PK AGRO-INDUSTRIAL PRODUCTS (M) SDN. BHD.

INTERNAL MEMO

To : Account Dept.

From : Feed Sales Dept. Date : 01 MAR, 2020



RE : FEED PROMOTION

Kindly to inform that as the feed price increased RM1.00/bag on 01st MAR 2019, the below mentioned Central feed regular customer are entitled for a special discount, in which the first delivery of the month follow the price on FEB 2020. The discount is applicable to all purchased feed in this MAR,2020 only.

This promotion is to fight the competitors offer and to maintain our sales in MAR'2020:

Thanks and regards,


Prepared by: Approved by:


CHIA KEE LIONG 
MR. YONG KIM LOON

⁹³ Price Memorandum of PK Agro for March 2020.

Image 4: Gold Coin's Price Announcement for March 2020⁹⁴

GOLD COIN
FEEDMILLS (MALAYSIA) SDN BHD 197801005770 (42808-V)



Circular No.: 02/20
28 Feb 2020

KENAIKAN HARGA

Disebabkan kenaikan harga kos bahan-bahan mentah, kami terpaksa meninggikan harga jualan makanan haiwan kami mulai dari **01 Mac 2020** dinaikkan sebanyak RM1.00/50kg.

Disini, kami lampirkan salinan harga jualan baru untuk perhatian tuan. Terima kasih.

調整飼料價格


敬啟者：

由于近来原料上漲，本廠被迫由二零二零年三月一日(星期日)起，將混合飼料價格每包(五十公斤)一律起價一零吉。

隨函附上新價格表一份，敬請留意。

順祝
商安

金錢飼料廠(馬)有限公司
謹啟

Yang benar

Tan Kde Ling
Timbalan Pengurus Besar

⁹⁴ Price Memorandum of Gold Coin for March 2020.

MFA Meetings held on 31.1.2020; and 28.2.2020

130. **Image 5** and **Image 6** contain the notices of the 190th and 191st meetings of the MFA, respectively. These meetings were documented in the minutes of meeting in **Image 7** and **8**. The minutes confirm that the meetings were held, and all four Parties were present at these meetings.

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Image 5: Notice of MFA 190th Meeting⁹⁵

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料
廠
商
公
會

**PERSATUAN PENGISAR-PENGISAR MAKANAN-MAKANAN BINATANG
MALAYSIA**
MALAYSIAN FEEDMILLERS ASSOCIATION
c/o GOLD COIN FEEDMILLS (M) SDN BHD
Jalan Parang, Pelabuhan Utara, 42000 Pelabuhan Klang,
Selangor Darul Ehsan, Malaysia.
Tel: 03-3176 6180 Fax: 03-3176 6842

29TH JANUARY 2020

TO: ALL MALAYSIAN FEEDMILLERS ASSOCIATION MEMBERS

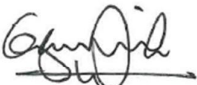
NOTICE OF MONTHLY MEETING & CNY LUNCH

NOTICE IS HEREBY GIVEN THAT THE 190TH MEETING AND CNY LUNCH WILL BE HELD AT THE SOCIAL, EMPIRE SHOPPING GALLERY, GK08 & GK08A, GROUND FLOOR, JALAN SS 16/1, 47500 SUBANG JAYA, SELANGOR ON FRIDAY, 31 JANUARY 2020 AT 12.30 P.M.

GPS Coordinates : 3.082033, 101.583200

AGENDA

- 1 To confirm the Minutes of the 189th Meeting held on 30th December 2019
- 2 To report Income/Expenses Account of the Association
- 3 Any Other Matters



Dr ONG CHOO TEIK
SECRETARY
MALAYSIAN FEEDMILLERS ASSOCIATION

⁹⁵ Notice of MFA 190th Meeting dated 29.1.2020.

Image 6: Notice of MFA 191st Meeting⁹⁶

馬來西
西亞
飼料
廠商
公會

**PERSATUAN PENGISAR-PENGISAR MAKANAN-MAKANAN BINATANG
MALAYSIA**
MALAYSIAN FEEDMILLERS ASSOCIATION
c/o GOLD COIN FEEDMILLS (M) SDN BHD
Jalan Parang, Pelabuhan Utara, 42000 Pelabuhan Klang,
Selangor Darul Ehsan, Malaysia.
Tel: 03-3176 6180 Fax: 03-3176 6842

20TH FEBRUARY 2020

TO: ALL MALAYSIAN FEEDMILLERS ASSOCIATION MEMBERS

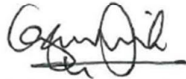
NOTICE OF MONTHLY MEETING

NOTICE IS HEREBY GIVEN THAT **THE 191ST MEETING WILL BE HELD AT**
LA BODEGA, EMPIRE SHOPPING GALLERY, LG25, LOWER GROUND FLOOR,
JALAN SS 16/1, 47500 SUBANG JAYA, SELANGOR ON FRIDAY,
28 FEBRUARY 2020 AT 2.00 P.M.

GPS Coordinates : 3.082033, 101.583200

AGENDA


- 1 To confirm the Minutes of the 190th Meeting held on 31st January 2020
- 2 To report Income/Expenses Account of the Association
- 3 Any Other Matters



Dr ONG CHOO TEIK
SECRETARY
MALAYSIAN FEEDMILLERS ASSOCIATION

⁹⁶ Notice of MFA 191st Meeting dated 20.2.2020.

Image 7: Minutes of the 190th Meeting⁹⁷

馬 來 西 亞 飼 料 廠 商 公 會	PERSATUAN PENGISAR-PENGISAR MAKANAN-MAKANAN BINATANG MALAYSIA	
		MALYSIAN FEEDMILLERS ASSOCIATION
	c/o GOLD COIN FEEDMILLS (M) SDN BHD	
	Jalan Parang, Pelabuhan Utara, 42000 Pelabuhan Klang, Selangor Darul Ehsan, Malaysia.	
	Tel: 03-3176 6180 Fax: 03-3176 6842	
	MINUTES OF THE 190TH MEETING	
	VENUE: EMPIRE SHOPPING GALLERY THE SOCIAL, GK08 & GK08A, GROUND FLOOR, JALAN SS16/1, 47500 SUBANG JAYA, SELANGOR.	
	DATE: 31ST JANUARY 2020	
	TIME: 12:30 P.M.	
	Present:	

1	Dindings Poultry Development Centre Sdn. Bhd	- President	- Mr Kong Pak Cheong
2	FFM Bhd.	- Secretary	- Dr Ong Choo Teik
			- Dr Brian Ong
3	Gold Coin Feedmills (M) Sdn. Bhd.	- Treasurer	- Mr James Kueh
4	PK Agro-Industrial Products (M) Sdn. Bhd.	- Auditor	- Mr Yong Kim Loon
5	Ayamas Integrated Poultry Industry Sdn Bhd	- Committee Member	- Ms Michelle Goh
6	Ni-On Marketing System Sdn Bhd	- Committee Member	- Mr Kingsley Teow Kah Seng
7	PTS Goldkist Industries Sdn Bhd	- Committee Member	- Dr Khaw Eng Sun

⁹⁷ Minutes of the 190th Meeting dated 31.1.2020.

Image 8: Minutes of 191st Meeting⁹⁸

馬來西亞飼料廠商公會

PERSATUAN PENGISAR-PENGISAR MAKANAN-MAKANAN BINATANG
MALAYSIA
MALAYSIAN FEEDMILLERS ASSOCIATION
 c/o GOLD COIN FEEDMILLS (M) SDN BHD
 Jalan Parang, Pelabuhan Utara, 42000 Pelabuhan Klang,
 Selangor Darul Ehsan, Malaysia.
 Tel: 03-3176 6180 Fax: 03-3176 6842

25/3/2021

MINUTES OF THE 191ST MEETING (192nd).

VENUE: EMPIRE SHOPPING GALLERY
 LA BODEGA,
 LG25, LOWER GROUND FLOOR,
 JALAN SS16/1,
 47500 SUBANG JAYA,
 SELANGOR.

DATE: 28TH FEBRUARY 2020

TIME: 2:00 P.M.

Mandolin. Restaurant & Bar.

AGM: 28th & 30th April. 2021
or

Present:

1 Dindings Poultry Development Centre Sdn. Bhd - President	76%	Mr Kong Pak Cheong
2 FFM Bhd. - Secretary		Dr Ong Choo Teik
3 Gold Coin Feedmills (M) Sdn. Bhd. - Treasurer		Mr James Kueh
4 PK Agro-Industrial Products (M) Sdn. Bhd. - Auditor		Mr Yong Kim Loon
5 Ayamas Integrated Poultry Industry Sdn Bhd - Committee Member		Ms Michelle Goh
6 Leong Hup Feedmill Sdn Bhd - Committee Member		Mr Lim Yong Ping

76% ^{from Ipoh} Mr Kong Pak Cheong →
 Dr Ong Choo Teik →
 Mr James Kueh →
 Mr Yong Kim Loon →
 Ms Michelle Goh →
 Mr Lim Yong Ping →
 Chee

(b) Price announcements issued by the four Parties with the earliest announcements dated 31.1.2020 and 28.2.2020 during the First Infringement Period.

2020									
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP	
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice
Jan	-	None	None	None	None	None	None	None	None
Feb	RM1.00	1.2.2020 ⁹⁹	1.2.2020	31.1.2020	1.2.2020	6.2.2020	8.2.2020	31.1.2020	1.2.2020

⁹⁸ Minutes of 191st Meeting dated 28.2.2020 (annotated by Liew Kai Wah on 25.3.2021).

⁹⁹ Digital Forensic Report by MyCC for PK Agro-Industrial Products (M) Sdn Bhd (MyCC(IED)700-2/7(5)) dated 22.7.22, page 27.

2020									
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP	
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice
Mar	RM1.00	1.3.2020	1.3.2020	28.2.2020	1.3.2020	6.3.2020	9.3.2020	28.2.2020	1.3.2020

131. The Commission considers the attendance at the MFA 190th and 191st meetings by all five Parties, as well as the perfect parallel market behaviour exhibited by the four Parties through the issued price announcements, as evidence of agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price in Malaysia. Although there is no direct evidence of communication between the four Parties, these meetings and the observed market behaviour signify their involvement in such anti-competitive practices.

(c) *PK Agro's Acknowledgement*

132. In addition, PK Agro's acknowledgment during their oral representation session before the Commission supports this finding. On 14.7.2023 during their oral representation, PK Agro admitted to the exchange of pricing information of raw materials with other representatives of enterprises that attended MFA meetings. This acknowledgement aligns with PK Agro's written representation, which states that the MFA actively plays a role in matters concerning raw materials, including determining the price adjustment for poultry feed (with maize and SBM as the main ingredients).¹⁰⁰

¹⁰⁰ Transcript of Oral Representation session of PK Agro on 14.7.2023, Pages 19 – 20; and Paragraph 91 of PK Agro Written Representation.

The second infringement period: 1 October 2020 – 31 January 2021

133. In the following discussion, the Commission assesses the evidence attributed to the second infringement period, which spans from 1.10.2020 to 31.1.2021.

134. The Commission finds that there are agreements and/or concerted practices among four Parties, namely, PK Agro, Gold Coin, FFM and Leong Hup, to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price increase. Specifically, these four Parties agreed to increase the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM1.50 in October 2020, by RM2.50 in November 2020, and by RM2.00 in December 2020 until January 2021. These findings are based on the detailed assessment of the following evidence:

- (a) Liew Kai Wah (“LKW”) Personal Note A and LKW Personal Note B;
- (b) The four Parties issued price announcements on the following dates for the months of October 2020, November 2020, December 2020, and January 2021, namely, 30.9.2020, 30.10.2020, 30.11.2020, and 31.12.2020; and
- (c) Similar increases of quantum of poultry feed (with maize and SBM as the main ingredients) prices between the four Parties.

(a) *LKW Personal Note A and LKW Personal Note B*

135. On 25.2.2021, there was a meeting held which was attended by the following Parties’ key personnels:

- (a) Liew Kai Wah of FFM;
- (b) Yong Kim Loon of PK Agro;
- (c) James Jimmy Kueh Swee Chai of Gold Coin; and
- (d) Chee Choon Shean of Dindings.

136. Chee Choo Shean attended the meeting on 25.2.2021, shortly after being appointed as the new representative of Dindings.¹⁰¹ He informed the Commission that the meeting served as an introduction for both himself and Liew Kai Wah of FFM.¹⁰²

137. The meeting was arranged outside the usual venue designated for MFA gatherings due to the uncertainty regarding the scheduling of the next MFA meeting. Since the participants had no knowledge as to when the next MFA meeting would be held, they decided to organise the introductory meeting in a social setting.¹⁰³

138. During the introductory meeting, when Chee Choon Shean of Dindings introduced himself, the other members referred to him as the "raw material guy," while Chee Choon Shean considered the other members as the "feed guys."¹⁰⁴ Recognising the clear division

¹⁰¹ Question 31 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 20.4.2022.

¹⁰² Questions 31, 35 and 37 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 20.4.2022.

¹⁰³ Question 38 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 20.4.2022.

¹⁰⁴ Question 38 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 20.4.2022; and Question 12 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 13.6.2022.

of roles, the Commission notes that Chee Choon Shean served as the focal point for discussing raw materials.¹⁰⁵

139. The Commission notes that Chee Choon Shean, as the representative of Dindings, formally participated in the MFA meetings on behalf of Dindings.

140. Without prior knowledge of raw material costs, it became challenging for the Parties to accurately predict their quantum adjustments. It is crucial to emphasise that, from a legal standpoint, there is no wrongdoing committed if the determination of quantum adjustment is made through a Party's independent assessment.

141. The Commission discovered two documents titled "Unofficial Meeting MFA_25 Feb 2021" (referred to as "LKW Personal Note A") and "Updates Feb 2021" (referred to as "LKW Personal Note B"),¹⁰⁶ herein collectively referred to as "LKW Notes". These notes were authored by Liew Kai Wah of FFM.¹⁰⁷ LKW Personal Note A recorded the details of the meeting, while LKW Personal Note B served as the fundamental talking points for Liew Kai Wah to update his superior.¹⁰⁸

¹⁰⁵ Paragraphs 25 to 27 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 13.6.2022.

¹⁰⁶ Unofficial Meeting MFA_25 Feb 2021 (LKW Personal Note A) and Updates Feb 2021 (LKW Personal Notes B).

¹⁰⁷ Questions 13 and 23 of the Statement of Liew Kai Wah of FFM recorded on 18.4.2022; and Question 2 of the Statement of Liew Kai Wah of FFM recorded on 13.6.2022.

¹⁰⁸ Question 24 of the Statement of Liew Kai Wah of FFM recorded on 18.4.2022.

142. Although the LKW Notes are dated February 2021, which is after the second infringement period, they provide evidence of an increase in the quantum of poultry feed (with maize and SBM as the main ingredients) prices since October 2020. As a result, these notes serve as evidence of discussions that took place during the second infringement period.

143. Among other things, LKW Personal Note A included the following information:

“Formulation (may be bullshit):

- a. *Maize: 55% - CP joked no wonder feed so good lo, use so much maize*
 - i. *RM 900- RM 1,200 (RM 300 x 0.55 = RM 165/MT = RM8.25 per bag)*
- b. *CPO: 7%*
 - i. *RM 3000 – RM 4,000 (RM 1,000 x 0.07 = RM70/MT = RM 3.5 per bag)*
- c. *SBM 25%*
 - i. *RM 1700 – RM 2,400 (RM 700 x 0.25 = RM 175/MT = RM 8.75 per bag)”¹⁰⁹*

144. LKW Personal Note A mentioned that the typical formula for poultry feed consists of 55% maize, 7% crude palm oil (referred to as “CPO” in the above notes), and 25% SBM. These three components, maize, SBM, and crude palm oil are the three primary components of the feed. Collectively, they make up the largest proportion of ingredients in terms of both volume and cost. These components are the primary cost factors considered by the Parties in their cost calculations.

¹⁰⁹ Unofficial Meeting MFA_25 Feb 2021 (LKW Personal Note A).

145. In light of this, the Commission, in the Proposed Decision, presents our findings after comparing the formulation used by the Parties with the formulation used by another poultry feed producer, Cargill Feed. In its initial conclusions, the Commission stated that the Parties had similar poultry feed formulation. However, upon reviewing the submission from one of the Parties' economists, the Commission concurred that there could be variations in the raw material formulation within the poultry feed sector.¹¹⁰
146. For example, in the case of FFM, raw materials accounted for approximately 70-75% of the total raw material costs, with maize and SBM making up 65-68% of this total. Similarly, for Gold Coin, the three components collectively represented approximately 80-85% of the total costs, with maize and SBM together constituting 70-75% of that cost.
147. Nevertheless, this does not negate the presence of agreements and/or concerted practice between the four Parties to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price in Malaysia.
148. In addition to the above, the Commission also came across the following sentence in LKW Personal Note A:

¹¹⁰ Paragraph 89, FFM and Gold Coin Independent Economist Assessment.

“c) Just the above 3 main components rise since Oct 2020 resulted to about RM 20.5 increase per bag (excluding CGM, MBM, Lysine, etc)

d) Cost increase = RM 400 per MT

a. Till Feb, we increased up to RM 200 per MT only.”¹¹¹

149. With reference to LKW Personal Note A, the Commission makes the following findings:

- (a) RM8.25 per bag + RM3.50 per bag + RM8.75 per bag = RM20.50 - reflecting the increase of poultry feed price since October 2020;
- (b) RM 20.50 reflects the total increase of poultry feed price that took place from October 2020 to February 2021; and
- (c) The actual total increase of raw material cost amounts to RM410/MT.

150. In LKW Personal Note A, there was a sentence written: "*Till Feb we increased up to RM200 per MT only,*" which was a statement reflected in the price announcements issued by three Parties (namely, PK Agro, Gold Coin and FFM) that attended the meeting held on 25.2.2021. **Table 10** below presents the price comparison:

Table 10: Quantum of Price Increase from October 2020 to February 2021¹¹²

		PK AGRO	GOLD COIN	FFM
Year	Month	Quantum of Price Increase (RM/50KG Bag)	Quantum of Price Increase (RM/50KG Bag)	Quantum of Price Increase (RM/50KG Bag)
2020	October	RM 1.50	RM 1.50	RM 1.50

¹¹¹ Unofficial Meeting MFA_25 Feb 2021 (LKW Personal Note A), Paragraph C.

¹¹² Price Memorandum of PK Agro from October 2020 to October 2021 and December 2021; Price Memorandum for Gold Coin for February 2020 to March 2020 and October 2020 to December 2020;

		PK AGRO	GOLD COIN	FFM
Year	Month	Quantum of Price Increase (RM/50KG Bag)	Quantum of Price Increase (RM/50KG Bag)	Quantum of Price Increase (RM/50KG Bag)
	November	RM 2.50	RM 2.50	RM 2.50
	December	RM 2.00	RM 2.00	RM 2.00
2021	January	RM 2.00	RM 2.00	RM 2.00
	February	RM 2.00	RM 2.00	RM 2.00
TOTAL		RM10	RM10	RM10

151. From October 2020 to February 2021, PK Agro, Gold Coin, and FFM raised the price quantum by RM10 per 50 KG bag, which was equivalent to RM200 per metric ton (RM10 per 50 KG bag x 20 bags). This increase occurred despite a cost escalation of RM400 per metric ton.

152. The similarities in the price patterns observed among the three Parties, along with the contents of LKW Personal Note A, suggests that there were communications among the three Parties regarding the quantum of price increase during the second infringement period.

153. This finding is supported by LKW Personal Note A, which stated –

"e) Unspoken understanding of RM3/bag increase in March 2021. RM60 per MT."

Price Memorandum of Gold Coin for January 2021 to October 2021 and December 2021; Price Memorandum of FFM for February 2020, March 2020, October 2020 to December 2020; and Price Memorandum of FFM for January 2021 to October 2021, December 2021 and January 2022 to March 2022.

The phrase "*unspoken understanding*" raises concerns of the presence of an agreement and/or concerted practices in relation to the quantum of poultry feed (with maize and SBM as the main ingredients) price in Malaysia among the three Parties.

154. In LKW Personal Note B, Liew Kai Wah made a statement, saying, "*Ruminant up to us.*" The Commission evaluated whether FFM independently determined the quantum of price adjustment for ruminant feed by comparing it to the increase in the quantum of poultry feed (with maize and SBM as the main ingredients) prices. The analysis results for the second infringement period are provided in **Table 11** below.

Table 11: Price Change Comparison¹¹³

ANNOUNCEMENT DATE	EFFECTIVE DATE	NON-RUMINANT PRICE CHANGE (RM)	RUMINANT FEED PRICE CHANGE (RM)
7.10.2020	8.10.2020	+1.50	No Change
6.11.2020	9.11.2020	+2.50	No Change
7.12.2020	8.12.2020	+2.00	+1.00
7.1.2021	8.1.2021	+2.00	+1.00
15.1.2021	18.1.2021	No Change	+2.00

155. **Table 11** supports the finding that the magnitude of quantum of price adjustments in ruminant feed by FFM does not correspond to similar adjustments in poultry feed (with maize and SBM as the main ingredients), in a way that is consistent with the observed price movements among the other three Parties.

¹¹³ Price Memorandum of FFM from October 2020 to January 2021.

(b) The price announcements issued by the four Parties

156. In the course of investigation, the Commission gathered price announcements issued by the four Parties for the second infringement period, namely, FFM, Leong Hup, Gold Coin, and PK Agro. These price announcements show that there were identical increases in the quantum of poultry feed (with maize and SBM as the main ingredients) prices: RM1.50 in October 2020, RM2.50 in November 2020, and RM2.00 from December 2020 until January 2021.

[The remainder of this page is intentionally left blank]

Image 9: Sample of FFM Price Announcement¹¹⁴



FFM BERHAD (4878-K)

PT. 45125, Batu 15½, Sungai Pelong, P. O. Box 78, 47000 Sungai Buloh, Selangor Darul Ehsan, Malaysia.
Tel: 603-6145 7888 Fax: 603-6145 7800, 603-6145 7801 Website: www.ffmb.com.my

Off Ref.: SALES/FEED/C-23/20

6 November 2020

Fax & Mail

██████████
No. 67 Jalan Jagong
Pandamaran
42000 Port Klang
Selangor

Tel. No.: 03-3168 6214
Fax No.: 03-3167 8099

Attn: ██████████

Dear Sirs

Re: Animal Feed Price Increase w.e.f. 9 November 2020

We wish to announce that the price of ALL types of animal feed EXCEPT Ruminant feed for West Malaysia will be increased by RM2.50/50-kg bag with effect from 9 November 2020.

Therefore, kindly note that the price of Ruminant feeds such as Cattle, Sheep/Goat and Deer feed as well as PKC Plus will remain unchanged.

Please refer to the latest price list below:-

Code	Product	Packing (Bags)	Ex-Factory Price (RM)
4120	Poultry Grower Mash	50-kg	██████████
4130	Poultry Layer Mash	50-kg	
4543	Cattle Mash	50-kg	
5201	Broiler Starter Crumble	25-kg	
5201	Broiler Starter Crumble	50-kg	
5203	Broiler Finisher Pellet	25-kg	
5203	Broiler Finisher Pellet	50-kg	
5542	Dairy Cattle Pellet	50-kg	
5555	PKC Plus	50-kg	
5811	Goat Pellet	50-kg	
5820	Deer Pellet	50-kg	
5910	Rabbit Grower Pellet	25-kg	

All other terms and conditions remain unchanged. We would like to take this opportunity to thank you for your continued support.

Yours faithfully
FFM BERHAD

DR ONG CHOO TEIK
Director/General Manager
- Group Feed and Livestock


c.c.: STT/RK/HCK/Hazli/ENB

OCT/jj

¹¹⁴ Price announcement of FFM for November 2020.

Image 10: Sample of Gold Coin's Price Announcement¹¹⁵

GOLD COIN
FEEDMILLS (MALAYSIA) SDN BHD 197801005770 (42808-V)



Circular No.: 04/20
31 Oct 2020

KENAIKAN HARGA

Disebabkan kenaikan harga kos bahan-bahan mentah, kami terpaksa meninggikan harga jualan makanan haiwan kami mulai dari **01 Nov 2020** untuk semua jenis makanan haiwan dengan **RM2.50/50kg**, manakala untuk makanan arnab, ia dinaikan sebanyak [REDACTED]

Disini, kami lampirkan salinan harga jualan baru untuk perhatian tuan. Terima kasih.

調整飼料價格

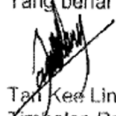
敬啟者：

由于近来原料上漲，本廠被逼由二零二零年十一月一日(星期日)起，將混合飼料價格每包(五十公斤)一律起價二零吉五十仙，而兔子飼料價格每包(五十公斤)一 [REDACTED]


隨函附上新價格表一份，敬請留意。

願祝
商安

**金錢飼料廠(馬)有限公司
謹啟**

Yang benar

Tan Kee Ling
Timbalan Pengurus Besar

GROW WITH GOLD COIN



With Subsidiaries in: China, Hong Kong,
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Sri Lanka and Thailand.

JAI ANJ PARANG
PELABUHAN UTARA,
42000 PELABUHAN
KELANG, SELANGOR

PO BOX 68
42007 PELABUHAN
KELANG, SELANGOR
MALAYSIA.

TEL : 03-3176 7311
FAX : 03-3176 2295
E-MAIL : general-pi@goldcoin-my.com
WEB : http://www.goldcoin-group.com

¹¹⁵ Price announcement of Gold Coin for November 2020.

Image 11: Sample of Leong Hup's Price Announcement¹¹⁶

MEMO	
LEONG HUP FEEDMILL MALAYSIA SDN BHD LOT 13A, JLN PBR 1, FASA 1, KAWASAN PERINDUSTRIAN BUKIT RAMBAI 75250 MELAKA	
OUR REFERENCE : <u>LHFMSB/SD/01/11/2020</u>	NAME DEPARTMENT / FARM : <u>Sales Department</u>
YOUR REFERENCE : _____	_____
TO : [REDACTED]	_____
_____	_____
_____	DATE <u>30th October 2020</u>
RE: REVISION OF FEEDS' PRICES	
Please be informed that feed price will be increased RM2.50/50kg bag or RM50.00/mt with effect from 1 st November 2020.	
Thank you.	
Yours truly, Leong Hup Feedmill Malaysia Sdn Bhd	
_____ Lim Yong Ping Sales Manager	

¹¹⁶ Price announcement of Leong Hup for November 2020.

Image 12: Sample of PK Agro's Announcement¹¹⁷

PK AGRO-INDUSTRIAL PRODUCTS (M) SDN. BHD.

INTERNAL MEMO

To : Account Dept.

From : Feed Sales Dept.

Date : 01 NOV, 2020

RE : FEED PROMOTION

Kindly to inform that as the feed price increased **RM2.50/bag** on **01st NOV 2020**, the below mentioned Central feed regular customer are entitled for a special discount, in which the **first delivery of the month** follow the price on **OCT 2020**. The discount is applicable to all purchased feed in this **NOV 2020** only.

This promotion is to fight the competitors offer and to maintain our sales in **NOV 2020**:



Thanks and regards,

Prepared by:


CHIA KEE LIONG

Approved by:


MR. YONG KIM LOON

¹¹⁷ Price announcement of PK Agro for November 2020.

(c) *Similar increase of quantum of poultry feed price between the four Parties*

157. Based on the price announcements issued by the four Parties, the Commission compares the quantum of poultry feed (with maize and SBM as the main ingredients) price among the Parties from October 2020 to January 2021. The comparison is set out in **Table 12**.

Table 12: Comparison of the Poultry Feed Price Quantum Increase¹¹⁸

2020									
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP	
Oct	RM1.50	1.10.2020	1.10.2020	30.9.2020	1.10.2020	6.10.2020	9.10.2020	30.9.2020	1.10.2020
Nov	RM2.50	1.11.2020	1.11.2020	31.10.2020	1.11.2020	6.11.2020	9.11.2020	30.10.2020	1.11.2020
Dec	RM2.00	1.12.2020	1.12.2020	30.11.2020	1.12.2020	7.12.2020	8.12.2020	30.11.2020	1.12.2020
2021									
Jan	RM2.00	31.12.2020	1.1.2021	31.12.2020	1.1.2021	7.1.2021	8.1.2021	31.12.2020	1.1.2021

158. Based on the comparison presented in **Table 12**, the increase in the quantum of poultry feed (with maize and SBM as the main ingredients) price corresponds to the same amount/quantum of increase which are RM1.50 in October 2020, RM2.50 in November 2020, by RM2.00 in December 2020 until January 2021.

159. On the basis of the evidence mentioned above, the Commission makes a finding that there are agreements and/or concerted practices among the four Parties, namely, PK Agro, Gold Coin, FFM and Leong Hup, to fix quantum of poultry feed (with maize and SBM

¹¹⁸ Price Memorandum of PK Agro from October 2020 to January 2021; Price Memorandum of Gold Coin from September 2020 to January 2021; Price Memorandum of FFM from October 2020 to January 2021; and Price Memorandum of Leong Hup from September 2020 to January 2021.

as the main ingredients) prices by RM1.50 in October 2020, by RM2.50 in November 2020, and by RM2.00 in December 2020 until January 2021.

The third infringement period: 1 February 2021 until 30 June 2022

160. During the third infringement period, five Parties, namely, PK Agro, Gold Coin, FFM, Leong Hup and Dindings were involved on similar increments in quantum of poultry feed (with maize and SBM as the main ingredients) prices from January 2021 to June 2022. This assessment is based on cumulative evaluation of the following pieces of evidence.

(a) *Similar price increase of poultry feed between all five Parties from February 2021 until June 2022*

161. Over the span 16 months from February 2021 and June 2021, there were agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price in Malaysia. The prices of poultry feed (with maize and SBM as the main ingredients) were fixed at similar quantum.

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Table 13: Movement of Quantum of Poultry Feed Price for Third Infringement Period¹¹⁹

2021										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	Based on the earliest Invoices in each month
Feb	RM2.00	31.1.2021	1.2.2021	31.1.2021	1.2.2021	5.2.2021	8.2.2021	29.1.2021	1.2.2021	2.2.2021
Mar	RM3.00	28.2.2021	1.3.2021	1.3.2021	1.3.2021	5.3.2021	8.3.2021	27.2.2021	1.3.2021	2.3.2021
Apr	RM1.50	1.4.2021	1.4.2021	1.4.2021	1.4.2021	7.4.2021	8.4.2021	31.3.2021	1.4.2021	1.4.2021
Apr	RM1.50	15.4.2021	15.4.2021	15.4.2021	15.4.2021	20.4.2021	21.4.2021	26.4.2022	26.4.2022	29.4.2021
May	RM3.00	30.4.2021	2.5.2021	1.5.2021	1.5.2021	7.5.2021	8.5.2021	30.4.2021	1.5.2021	3.5.2021
Jun	RM2.00	31.5.2021	1.6.2021	1.6.2021	1.6.2021	4.6.2021	8.6.2021	31.5.2021	1.6.2021	1.6.2021
Jul	RM1.00	28.6.2021	1.7.2021	1.7.2021	1.7.2021	7.7.2021	8.7.2021	30.6.2021	1.7.2021	2.7.2021
Aug	RM2.00	30.7.2021	1.8.2021	1.8.2021	1.8.2021	6.8.2021	8.8.2021	30.7.2021	1.8.2021	5.8.2021
Sep	RM2.00	30.8.2021	1.9.2021	1.9.2021	1.9.2021	7.9.2021	8.9.2021	30.8.2021	1.9.2021	1.9.2021
Oct	RM1.00	30.9.2021	1.10.2021	1.10.2021	1.10.2021	7.10.2021	8.10.2021	30.9.2021	1.10.2021	2.10.2021
Nov	-	None	None	None	None	None	None	None	None	None

¹¹⁹ Price Memorandum of PK Agro from February 2021 to October 2021; Price Memorandum of PK Agro from December 2021 to June 2022; Price Memorandum of Gold Coin from February 2021 to October 2021, Price Memorandum of Gold Coin from December 2021 to June 2022; Price Memorandum of FFM from February 2021 to October 2021; Price Memorandum of FFM from December 2021 to June 2022; Price Memorandum of Leong Hup from February 2021 to October 2021; Price Memorandum of Leong Hup from December 2021 to June 2022; Invoices from Dindings from February 2021 to October 2021; and Invoices from Dindings from December 2021 to June 2022.

2021										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Month	Increase Quantum	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	(Announcement Date) Internal Memo	Effective date & discount notice	Based on the earliest Invoices in each month
Dec	RM1.00	n/a	1.12.2021	1.12.2021	1.12.2021	7.12.2021	8.12.2021	30.11.2021	1.12.2021	2.12.2021
2022										
PARTY		PK AGRO		GOLD COIN		FFM		LEONG HUP		DINDINGS
Jan	RM1.00	30.12.2021	1.1.2022	1.1.2022	1.1.2022	7.1.2022	8.1.2022	31.12.2021	1.1.2022	5.1.2022
Feb	RM2.00	26.1.2022	1.2.2022	1.2.2022	1.2.2022	5.2.2022	8.2.2022	31.1.2022	1.2.2022	5.2.2022
Mar	RM4.00	28.2.2022	1.3.2022	1.3.2022	1.3.2022	5.3.2022	8.3.2022	28.3.2022	1.3.2022	2.3.2022
Apr	RM3.00	31.3.2022	1.4.2022	31.3.2022	1.4.2022	7.4.2022	8.4.2022	31.3.2022	1.4.2022	1.4.2022
May	RM4.00	29.4.2022	1.5.2022	1.5.2022	1.5.2022	6.5.2022	8.5.2022	30.4.2022	1.5.2022	2.5.2022
Jun	RM3.00	30.5.2022	1.6.2022	1.6.2022	1.6.2022	7.6.2022	8.6.2022	31.5.2022	1.6.2022	N/A

(b) *Price announcements by the four Parties and invoices issued by Dindings*

162. The similarities in quantum of poultry feed (with maize and SBM as the main ingredients) prices shown in **Table 13** above are based on price information and invoices provided by the Parties during the investigation. Examples of price announcements and invoices are provided below:

[The remainder of this page is intentionally left blank]

Image 13: FFM's Price Announcement for February 2021¹²⁰



FFM BERHAD (4878-K)

PT. 45125, Batu 15½, Sungai Pelong, P. O. Box 78, 47000 Sungai Buloh, Selangor Darul Ehsan, Malaysia.
Tel: 603-6145 7888 Fax: 603-6145 7800, 603-6145 7801 Website: www.ffmb.com.my

NOTICE

WE WISH TO ANNOUNCE THAT THE PRICE OF ALL TYPES OF ANIMAL FEED FOR WEST MALAYSIA WILL BE INCREASED BY RM2.00/50-KG BAG AND RM1.00/25-KG BAG WITH EFFECT FROM 8/2/2021.

AT THE SAME TIME, THE PRICE OF RUMINANT FEEDS SUCH AS CATTLE, SHEEP/GOAT AND DEER FEED AS WELL AS PKC PLUS WILL BE INCREASED BY [REDACTED]

PLEASE FIND OVERLEAF OUR NEW PRICE LIST WITH EFFECT FROM 8/2/2021 FOR YOUR EASY REFERENCE.

THANK YOU FOR YOUR CONTINUED SUPPORT.

5/2/2021

通告

本公司謹訂于二〇二一年二月八日起調高飼料價格，每包五十公斤庄調高馬幣二零吉，每包二十五公斤庄調高馬幣一零吉。

羊料，牛料與 PKC Plus 價格每包五十公斤庄也調高馬幣 [REDACTED]

隨函寄奉最新價格表以供參閱。


謝謝。

二〇二一年二月五日

¹²⁰ Price announcement of FFM for February 2021.

Image 14: Gold Coin's Price Announcement for February 2021¹²¹

GOLD COIN
FEEDMILLS (MALAYSIA) SDN BHD 197801005770 (42808-V)



Circular No.: 02/21
31 Jan 2021

KENAIKAN HARGA

Disebabkan kenaikan harga kos bahan-bahan mentah, kami terpaksa meninggikan harga jualan makanan haiwan kami mulai 01 Feb 2021 dinaikkan sebanyak **RM2.00/50kg**.

Disini, kami lampirkan salinan harga jualan baru untuk perhatian tuan. Terima kasih.

調整飼料价格


敬啟者：

由于近来原料上涨，本廠被迫由二零二一年二月一日(星期一)起，將混合飼料价格每包(五十公斤)一律起价二零吉。


隨函附上新价格表一份，敬請留意。

順祝
商安

金錢飼料廠(馬)有限公司
謹啟

Yang benar

Tan Hee Ling
Timbalan Pengurus Besar

GROW WITH GOLD COIN

	<p><i>With Subsidiaries in China, Hong Kong, India, Indonesia, Malaysia, Singapore, Sri Lanka and Thailand.</i></p>	<p>JALAN TARANG, PETABUHAN UTARA, 42000 PELABUHAN KELANG, SELANGOR.</p>	<p>P.O. BOX 68, 42007 PELABUHAN KELANG, SELANGOR, MALAYSIA.</p>	<p>TEL : 03-3176 7311 FAX : 03-3176 7295 E-MAIL : general-plr@goldcoin-my.com WEB : http://www.goldcoin-group.com</p>
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¹²¹ Price announcement of Gold Coin for February 2021.

Image 15: Leong Hup's Price Announcement for February 2021¹²²

MEMO	
LEONG HUP FEEDMILL MALAYSIA SDN BHD LOT 13A, JLN PBR 1, FASA 1, KAWASAN PERINDUSTRIAN BUKIT RAMBAI 75250 MELAKA	
OUR REFERENCE	: <u>LHFMSB/SD/01/02/2021</u>
YOUR REFERENCE	: _____
TO :	_____

	DATE <u>29th January 2021</u>
<u>RE: REVISION OF FEEDS' PRICES</u>	
Please be informed that feed price will be increased <u>RM2.00/50kg bag</u> or RM40.00/mt with effect from <u>1st February 2021</u> .	
Thank you.	
Yours truly, Leong Hup Feedmill Malaysia Sdn Bhd	
_____ Lim Yong Ping Sales Manager	

¹²² Price announcement for Leong Hup for February 2021.

Image 16: PK Agro's Internal Price Memorandum for February 2021¹²³

PK AGRO-INDUSTRIAL PRODUCTS (M) SDN. BHD.

INTERNAL MEMO

To : Account Department

From: Feed Sales Department

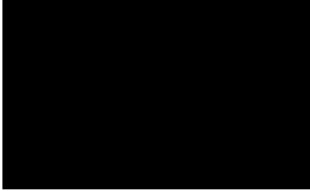
Date: 1st February'21

RE : FEED PROMOTION

Kindly to inform that as the feed price increased RM2.00/bag/50kg on 01st FEB'2021.

Therefore, the below mentioned Southern feed regular customers are entitled for promotion follow JAN'2021 price, for all type of feed that they purchase on FEB'2021 (bags and bulk) as mentioned below percentage. This promotion is to fight the competitors offer and to maintain our sales in FEB'2021 :

CUSTOMERS



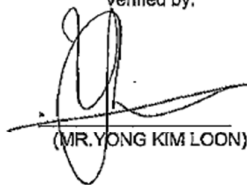
40% VOLUME ON JAN 2021 PRICE
40% VOLUME ON JAN 2021 PRICE
40% VOLUME ON JAN 2021 PRICE
30% VOLUME ON JAN 2021 PRICE
25% VOLUME ON JAN 2021 PRICE
25% VOLUME ON JAN 2021 PRICE
20% VOLUME ON JAN 2021 PRICE

Please issue credit note for above mentioned promotion.
Thanks and regards,

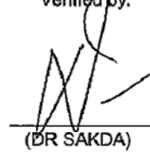
Prepared by:


(CHIA KEE LIONG)

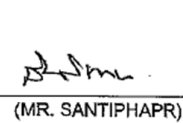
Verified by:


(MR. YONG KIM LOON)

Verified by:


(DR SAKDA)

Approved by:


(MR. SANTIPHAPR)

¹²³ Price memorandum of PK Agro for February 2021.

(c) *Close proximity of MFA meeting dates and price announcement dates*

163. For the third infringement period the Commission obtained price announcements in respect of that period issued by the Parties. Following that, the Commission examined the dates of MFA meetings and the dates of each price announcement issued by the four Parties as set out in **Table 14** below:

Table 14: MFA Meeting Dates¹²⁵ and the Price Announcement Dates¹²⁶

NO.	DATE OF MEETING	EARLIEST ANNOUNCEMENT DATE	PARTY
1.	26.1.2022	26.1.2022	PK Agro
2.	29.12.2021	30.12.2021	PK Agro
3.	30.11.2021	30.11.2021	Leong Hup
4.	27.10.2021	Not available	Not available
5.	30.9.2021	30.9.2021	(i) PK Agro (ii) Leong Hup
6.	28.4.2021	30.4.2021	PK Agro Leong Hup
7.	25.3.2021	31.3.2021	Leong Hup

164. Based on the information presented in **Table 14**, the Commission notes that price increases were communicated through price announcements, either on the day of the MFA meeting itself or on

¹²⁵ Minutes of 198th MFA Meeting on 26.1.2022; Minutes of 197th MFA Meeting on 29.12.2021; Minutes of 196th MFA Meeting on 30.11.2021; Minutes of 195th MFA Meeting on 27.10.2021; Minutes of 194th MFA Meeting on 30.9.2021; Minutes of 193rd MFA Meeting on 28.4.2021; and Minutes of 192nd MFA Meeting on 25.3.2021.

¹²⁶ Price Memorandum of PK Agro for April 2021, September 2021, December 2021 and January 2022; and Price Memorandum of Leong Hup for March 2021, April 2021, September 2021 and November 2021.

the following day, or within a few days after MFA meetings. This indicates that the Parties have shared commercially sensitive information, specifically related to the poultry feed (with maize and SBM as the main ingredients) price quantum. This suggests the presence of agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) prices either before or after MFA meetings, during the third infringement period.

(d) *WhatsApp audio recordings between Lim Yong Ping and Jenny of Leong Hup*

165. During the investigation, the Commission obtained various audio recordings of conversations between Lim Yong Ping of Leong Hup and an employee of Leong Hup identified as “Jenny”.¹²⁷ These recordings were dated 30.8.2021, and the conversations were conducted in Mandarin.

166. The conversations, which were conducted in Mandarin, were translated into English in verbatim by two Commission officers well versed in Mandarin. This translation process took place in the presence of Lim Yong Ping of Leong Hup and Leong Hup’s legal counsel during the statement-taking session, as required by section 18 of the Act. The agreed-upon translation of the audio conversations¹²⁸ is provided in **Table 15** below:

¹²⁷ Paragraph 38 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹²⁸ Questions 2, 5 and 31 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

Table 15: Translation of Audio Conversation

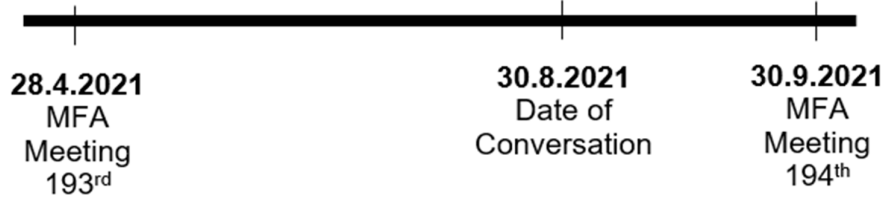
INDIVIDUALS	CONTENT OF THE AUDIO	FILE
Jenny to Lim Yong Ping	<i>"Mr Lim, the meeting for this month said that there will be price increase for feed?"</i>	PTT-20210830-WA0045.opus
Lim Yong Ping's reply to Jenny	<i>"Yes yes, there may be a price increase."</i>	PTT-20210830-WA0046.opus
Jenny's reply to Lim Yong Ping	<i>"There's no meeting for this month?"</i>	PTT-20210830-WA0047.opus
Lim Yong Ping's reply to Jenny	<i>"What meeting are you talking about?"</i>	PTT-20210830-WA0048.opus
Jenny's reply to Lim Yong Ping	<i>"Your feed miller one no meeting this time?"</i>	PTT-20210830-WA0050.opus
Lim Yong Ping's reply to Jenny	<i>"The feed millers haven't met for a long time already."</i>	PTT-20210830-WA0051.opus
Jenny's reply to Lim Yong Ping	<i>"Oh, so looking at the situation means there is no price increase? The last day they/he/she will announce a price increase, correct? It's already the 30th August now."</i>	PTT-20210830-WA0052.opus
Lim Yong Ping's reply to Jenny	<i>"Yeah, there's an increase. Yeah, I'm telling you there is an increase. I'm just waiting for Mr Sim to inform/announce."</i>	PTT-20210830-WA0053.opus

167. From the aforementioned conversations, the Commission notes that Jenny anticipated a price increase announcement for poultry feed after the MFA meeting. This determination is supported by Lim Yong Ping's response to Jenny, where he did not deny that prices were discussed during MFA meetings, despite mentioning the prolonged absence of feed millers' gatherings.¹²⁹

¹²⁹ Question 31 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

168. **Figure 5** illustrates the timeline leading up to the MFA meetings and the dates of conversation between Jenny and Lim Yong Ping.

Figure 5: Timeline Between MFA Meeting and Conversation Between Jenny and Lim Yong Ping



169. The MFA meeting before 30.8.2021 (date of conversation) took place on 24.8.2021, that is to say, more than four months earlier. This aligns with Lim Yong Ping’s statement, “haven’t met for a long time,” indicating a significant gap between meetings.¹³⁰ The Commission is of the view that there is a correlation between the meeting date and the price announcement date by the Parties.

170. The Commission acknowledges that the Movement Control Order was in effect from 10.5.2021 to 7.6.2021.¹³¹ This period likely explains the four-month gap between the 193rd and 194th meetings.

Key representatives of the Parties in MFA Meetings

171. The Commission has identified and listed in **Table 16** the key representatives of the Parties that are considered relevant to its investigation of this case.

¹³⁰ Question 31 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹³¹ PU(A) 293_2021; and PU(A) 225_2021.

Table 16: Key Representatives of Parties

PARTY	KEY REPRESENTATIVE
FFM	Liew Kai Wah
	Ong Shu Kai ¹³²
PK Agro	Yong Kim Loon
	Dr Sakda Aunsiam
Gold Coin	James Jimmy Kueh Swee Chai (“James”)
Dindings	Chee Choon Shean
Leong Hup	Lim Yong Ping

172. The Commission finds that the key representatives mentioned above were often the same individuals who attend MFA meetings on behalf of their respective Parties in an official capacity.

Role of Chee Choon Shean of Dindings

173. The Commission’s investigation revealed that Chee Choon Shean had been appointed as the new representative of Dindings and officially attended the MFA meetings, representing Dindings’s General Manager.¹³³

174. Chee Choon Shean played a significant role as the primary point of reference for the Parties to gain insights into the trading of relevant raw materials, specifically SBM and maize.

175. In early 2021, Hideki Oya, the General Manager of Dindings, appointed Chee Choon Shean as the official representative of

¹³² Question 67 of the Statement of Ong Shu Kai of FFM recorded on 26.5.2022.

¹³³ Questions 20 and 21 of the Statement of Hideki Oya of Dindings recorded on 26.5.2022.

Dindings.¹³⁴ Chee Choon Shean participated in the MFA meetings on behalf of Dindings.

176. The Commission identifies two primary roles fulfilled by Chee Choon Shean in his relationship with the Parties, as follows:

- (a) He served as the main point of reference for raw material trading in the Relevant Market, and was commonly known as the "raw material expert."
- (b) In addition to his current role as the MFMB group representative for the MFA meetings, Chee Choon Shean has also been formally appointed by Hideki Oya, the General Manager of Dindings, to represent Dindings at the MFA meetings. Both Hideki Oya and Chee Choon Shean have provided evidence that Chee Choon Shean is responsible for reporting to his superior Hideki Oya during the MFA meetings. The Commission considers Chee Choon Shean as the primary recipient of information on behalf of Dindings.

(e) *Handwritten Notes by Liew Kai Wah of FFM dated 25.3.2021*

177. During its investigations, the Commission discovered a document titled "Minutes of the 191st Meeting,". This document was endorsed during the 192nd Meeting on 25.3.2021 and contains annotations, as shown in **Figure 6**. The Commission also identified important handwritten notes made by Liew Kai Wah of FFM on the document, which are described in **Figure 6** and **Figure 7** below.

¹³⁴ Question 1 of the Statement Chee Choon Shean of Premier Grain recorded on 13.6.2022.

Figure 6A: Document titled “Minutes of the 191st Meeting” endorsed during the 192nd Meeting with Added Annotations¹³⁵

(Page 1)

馬來西亞飼料廠商公會

PERSATUAN PENGISAR-PENGISAR MAKANAN-MAKANAN BINATANG
MALAYSIA
MALYSIAN FEEDMILLERS ASSOCIATION
c/o GOLD COIN FEEDMILLS (M) SDN BHD
Jalan Parang, Pelabuhan Utara, 42000 Pelabuhan Klang,
Selangor Darul Ehsan, Malaysia.
Tel: 03-3176 6180 Fax: 03-3176 6842

25/3/2021

MINUTES OF THE 191ST MEETING (192nd).

VENUE: EMPIRE SHOPPING GALLERY *Mandarin Restaurant Iqbal.*
 LA BODEGA,
 LG25, LOWER GROUND FLOOR,
 JALAN SS16/1,
 47500 SUBANG JAYA,
 SELANGOR.

DATE: 28TH FEBRUARY 2020 *AGM: 28th & 30th April 2021*
TIME: 2:00 P.M. *or*

Present:

1 Dindings Poultry Development Centre Sdn. Bhd - President	76% <i>from Ipoh</i> Mr Kong Pak Cheong <i>replying in the Chee</i>
2 FFM Bhd. - Secretary	- Dr Ong Choo Teik
3 Gold Coin Feedmills (M) Sdn. Bhd. - Treasurer	- Mr James Kueh
4 PK Agro-Industrial Products (M) Sdn. Bhd. - Auditor	- Mr Yong Kim Loon
5 Ayamas Integrated Poultry Industry Sdn Bhd - Committee Member	- Ms Michelle Goh
6 Leong Hup Feedmill Sdn Bhd - Committee Member	- Mr Lim Yong Ping

Absent :

1 D.B.E. Poultry Sdn. Bhd. _	<i>care: new root</i>
2 KL Supreme Feedmill Sdn. Bhd.	
3 Liang Teik Trading Co Sdn. Bhd. _	
4 Ni-On Marketing System Sdn Bhd	
5 PTS Goldkist Industries Sdn Bhd	
6 PW Nutrifeed Sdn. Bhd.	
7 Soon Soon Feedmills Sdn Bhd <i>(new)</i>	<i>commodities</i>
8 Syarikat Ang Hock Stockfeeds Manufacturing Sdn.Bhd.	<i>com! \$280-1.30</i>
9 Dr Chew Tee Tee	<i>pickup when Dan Jones die.</i>

*March. have contract prices good for industry
 [room for us]*

Agenda for 191st Meeting

- 1 To confirm the Minutes of the 190th Meeting held on 31st January 2020
- 2 To report Income/Expenses Account of the Association
- 3 Any Other Matters

*FFM paid annual fees.
 KPC: notice termination of MFA => continue to work till AGM*

*cp: free market smaller & smaller
 \rightarrow adjust contract price.*

¹³⁵ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting.

[Redacted]

Antidumping control. → Ban 6 types. ^{effective} (support cheap & good).
 ↳ we must follow laws.

[Redacted]

PTW → ex port ^{but} small food ^{but} use (Central bank doi) Cpc non-ASP just is (10 years) → exp. Singapore.

[Redacted]

Long

[Redacted]

Lotus CP by Tesco (want Thailand Tesco but don't want ^{US} ^{bundle})
 ↳ 7-11, Lotus, makers (control whole supply chain)

[Redacted]

Anthony Goh → [Redacted]

[Redacted]

looks at this as average US-
 China: reliant on corn & bean → unless intensify own growing.
 - genetics gap btw. → genetics (- average productivity / ave) food security

[Redacted]

¹³⁶ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting.

Figure 6B: Document titled “Minutes of the 191st Meeting” endorsed during the 192nd Meeting with Added Annotations¹³⁷

(Page 3)

Item	Details	Deadline	Action
1	Confirmation of Minutes of the Previous Meeting		
1.1	The 191st Meeting was chaired by President Kong Pak Cheong.		
1.2	The Minutes of the 190th Meeting held on Monday, 31/1/20 were reviewed and adopted.		
1.3	Mr Yong Kim Loon proposed to accept the Minutes, seconded by Ms Michelle Goh.		
2	Income & Expenditure Account		
2.1	Treasurer James Kueh presented the Accounts as at 31/1/20. The current account balance as at 31/1/20 was RM30,005.76. The fixed deposit balance as at 31/1/20 was RM368,090.34.		
2.2	Mr Lim Yong Ping proposed to accept the accounts, seconded by Mr Kong Pak Cheong.		
3	Other Matters		
3.1	Meeting with MAQIS President Kong Pak Cheong informed that he attended the Meeting with MAQIS on 26 June 2019 to hear objections raised by Grain Importers against the exorbitant and outrageous inspection charges (RM0.50-1.00/MT) imposed by MAQIS for corn imports w.e.f 15 June 2019. However, MAQIS responded that it was merely carrying out instructions to enforce the Malaysian Quarantine & Inspection Services (Fees & Charges) Regulations 2013, which was gazetted on 29 March 2013. MAQIS stated that it had no power to overrule or reverse the decision, and if the Grain Importers were still dissatisfied, they could appeal against the decision to the Minister of Agriculture & Agro-based Industry. However, Mr Kong informed that he had continued to receive many enquiries from Grain Importers about the progress of negotiations with MAQIS on the inspection charges. Dr Ong Choo Teik urged MFA members & Grain supporters to attend a meeting with MAQIS on 4 March 2020 to voice their dissatisfaction over the excessive inspection charges.		
3.2	UPM & Institut Kajian Dasar Pertanian & Makanan (IKDPM) Forum President Kong Pak Cheong informed that he attended the above forum entitled Malaysian Poultry Industry: New Paradigm & Frontiers of Change in UPM on 24 February 2020. Dr Shanlique Fahmi presented his analysis of the poultry industry & market while Dr John Tey presented his study of the broiler value chain.		
4	192nd Meeting		
4.1	No date has been fixed for the 192nd Meeting. The date will be announced later as soon as it is established.		


Head of Poultry G: Chya (Chengam) dual role → purchasing MFA

DR ONG CHOO TEIK
SECRETARY

Brain to follow up of DNS (winter) → call for meeting
 Feed Act: → fixed supplier & country to register. → 1 country diff supplier diff country need sep. permit)
 June 2019 - Importation inspection fee MAQIS RM1/MT
 Brain → share email to MFA members.
 - memento for KPC & OCT accepted.
 - MFA achievement: stop vigorous competition
 - missed payments 2020 → BPDC, DBE, Ling Teik
 - elect new office members in MFA
 - Anti-profiteering, last year show that margin is same (not M)
 - AGM: → KPC & OCT. advisers.
 - [tag line] Feb & March Red
 (expect same in March)
 GC: keca 3 times CP: submit every month feed price & cost (2020 & 2021) w/ support → proof of different sides. go for detail.
 trace left invoice per month
 egg: HL → easily 7 million new house + 1 million
 AA plus → performance same like BBS big birds out → jam.
 CRJ fela a lot
 - egg air will

¹³⁷ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting.

Figure 7: Handwritten Notes by Liew Kai Wah on Minutes of the 191st Meeting, Referred to as the 192nd Meeting¹³⁸

馬 來 西 亞 飼 料 廠 商 公 會	PERSATUAN PENGISAR-PENGISAR MAKANAN-MAKANAN BINATANG MALAYSIA  MALAYSIAN FEEDMILLERS ASSOCIATION c/o GOLD COIN FEEDMILLS (M) SDN BHD Jalan Parang, Pelabuhan Utara, 42000 Pelabuhan Klang, Selangor Darul Ehsan, Malaysia. Tel: 03-3176 6180 Fax: 03-3176 6842	25/3/2021
	MINUTES OF THE 191ST MEETING (192 nd).	
	VENUE: EMPIRE SHOPPING GALLERY <i>Mandarin. Restaurant iBarr.</i> LA BODEGA, LG25, LOWER GROUND FLOOR, JALAN SS16/1, 47500 SUBANG JAYA, SELANGOR.	
	DATE: 28TH FEBRUARY 2020 <i>AGM: or 28th & 30th April. 2021</i>	
	TIME: 2:00 P.M.	
Present:		
1 Dindings Poultry Development Centre Sdn. Bhd - President 2 FFM Bhd. - Secretary 3 Gold Coin Feedmills (M) Sdn. Bhd. - Treasurer 4 PK Agro-Industrial Products (M) Sdn. Bhd. - Auditor 5 Ayamas Integrated Poultry Industry Sdn Bhd - Committee Member 6 Leong Hup Feedmill Sdn Bhd - Committee Member	<i>76%</i> <i>from Ipoh</i> Mr Kong Pak Cheong - Dr Ong Choo Teik - Mr James Kueh - Mr Yong Kim Loon - Ms Michelle Goh - Mr Lim Yong Ping	<i>replying in the Chee</i>

178. In **Table 17**, the primary attendees for each Party at the 192nd, meeting where the endorsement of the minutes of the 191st meeting occurred, are listed as follows:

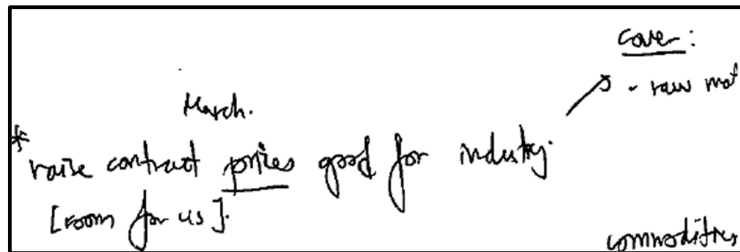
¹³⁸ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting.

Table 17: Attendees at the 192nd Meeting

PARTY	PARTY'S REPRESENTATIVE
FFM	Liew Kai Wah
	Ong Shu Kai ¹³⁹
PK Agro	Yong Kim Loon
Gold Coin	James Jimmy Kueh Swee Chai ("James")
Dindings	Chee Choon Shean
Leong Hup	Lim Yong Ping

179. A handwritten note is present on **Figure 6A, Page 1** of the document, and it reads "*March: raise contract prices good for industry [room for us]*" as follows:

Figure 6A: Handwritten Notes on Bottom of Page 1¹⁴⁰



180. Although this document is informal and consists of handwritten notes by Liew Kai Wah of FFM for his personal reference, the Commission takes the view that these notes reflect Liew Kai Wah's cognitive process in capturing the essence of the discussion held during the 192nd MFA meeting.

181. Liew Kai Wah explained the importance of his notes to the Commission in the following way:

¹³⁹ Question 67 of the Statement of Ong Shu Kai of FFM recorded on 26.5.2022.

¹⁴⁰ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting).

“Q30: What did you mean by “March: raise contract prices good for industry [room for us]?”

52. *The contract prices refer to the pricing package contained in the contract offered to the farmers by the integrators. The package includes the broiler buy back prices from the farmers, DOC prices and feed prices. During the said meeting, there were industry concern with regards to revised contract prices between the integrators and the contract farmers.*

53. *In general, the integrators do not revise the contract price frequently with their farmers and when new revision of contract prices takes place, the new contract price will be sustained for a period of time. FFM Berhad is not involve with contract farming and has no say in the contract package being offered to contract farmers. I noted this down because this may be an indicator for me that the farmers and integrators may be anticipating a bullish market for the commodities market which is also evident in my own observation of the commodities market trend.*

Q31: What do you mean by “cover:raw mat”?

54. *I do not fully recall the reason I noted "cover: raw mat". However, based on the best of my knowledge, I may be referring to whether FFM Berhad should purchase more raw materials or not because of the rising of the commodities prices.”¹⁴¹*

182. The Commission analysed the price announcements and emails circulated to the customers of the four Parties. Based on this analysis, the Parties attributed the increase in poultry feed (with maize and SBM as the main ingredients) prices to an escalation in raw material prices.

¹⁴¹ Questions 30 and 31 of the Statement of Liew Kai Wah of FFM recorded on 18.4.2022.

Table 18: Justification Given by Parties for Price Increase¹⁴²

NO.	MONTH	FFM	GOLD COIN	LEONG HUP	PK AGRO
1	March 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
2	April 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
3	April 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
4	May 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
5	June 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
6	July 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
7	August 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
8	September 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
9	October 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason
10	November 2021	No reason	Not stated	No reason	No reason
11	December 2021	No reason	<i>Kenaikan harga kos bahan-bahan mentah</i>	No reason	No reason

¹⁴² Price Memorandum of PK Agro from October 2020 to October 2021 and December 2021; Price Memorandum of Gold Coin for January 2021 to October 2021 and December 2021; Price Memorandum of FFM for January 2021 to October 2021, December 2021; and Price Memorandum of Leong Hup for October 2020 to November 2021, December 2021 and January 2021.

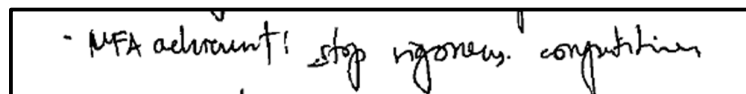
183. Upon reading **Table 18**, the Commission observes that the phrase “*Kenaikan harga kos bahan-bahan mentah*”¹⁴³ used by Gold Coin aligns with the notes “*cover: - raw mat*” as seen in **Figure 6A**¹⁴⁴.

184. The Commission has identified a connection between the following facts:

- (i) Attendance of Dindings, FFM, Leong Hup, Gold Coin and PK Agro at the 192nd Meeting;
- (ii) Liew Kai Wah’s notes of “*raise contract prices...*”, and “*cover: raw mat*”; and
- (iii) what subsequently transpired in the memorandum and email to customers by Gold Coin.

185. Further, alongside **Figure 6A**, the Commission takes cognisance of an additional handwritten note as shown in **Figure 6B** below:

Figure 6B: Handwritten note¹⁴⁵



186. Although Liew Kai Wah could not recall the intention behind the "MFA achievement: stop rigorous competition" note,¹⁴⁶ the

¹⁴³ Price Memorandum of Gold Coin for January 2021 to October 2021 and December 2021.

¹⁴⁴ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting).

¹⁴⁵ Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting).

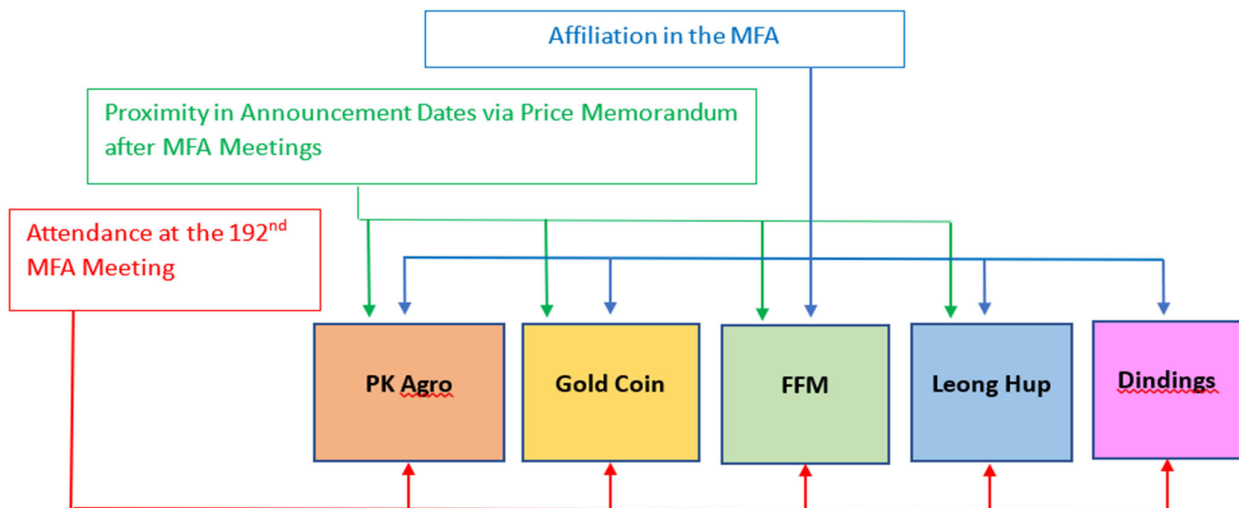
¹⁴⁶ Question 45 of the Statement of Liew Kai Wah of FFM recorded on 18.4.2022; Question 59 of the Statement of Liew Kai Wah of FFM recorded on 13.6.2022.; and Minutes of the 191st MFA Meeting (Annotated by Liew Kai Wah of FFM during the 192nd MFA meeting).

Commission considers this note in conjunction with another piece of evidence and evaluates them comprehensively.

187. Ong Choo Teik of FFM informed the Commission that it is normal for representatives of the Parties to form smaller groups during the MFA meetings.¹⁴⁷ As a result, discussions and exchanges of information regarding the quantum of poultry feed (with maize and SBM as the main ingredients) prices among the Parties can take place either before or after the official MFA meetings.

188. The analysis of the evidence discussed thus far regarding the implicated Parties is depicted in **Figure 8**:

Figure 8: The Affiliation of the Parties Based on MFA meetings and the Handwritten Notes¹⁴⁸



¹⁴⁷ Question 7 of the Statement of Ong Choo Teik of MFA recorded on 11.4.2022.

¹⁴⁸ Price Memorandum of PK Agro for February 2020 and March 2020; Price Memorandum of PK Agro from October 2020 to October 2021 and December 2021; Price Memorandum of PK Agro for January 2022 to June 2022; Price Memorandum for Gold Coin for February 2020 to March 2020 and October 2020 to December 2020; Price Memorandum of Gold Coin for January 2021 to October 2021 and December 2021; Price Memorandum for Gold Coin for January 2022 to March 2022; Price Memorandum for Gold Coin for March 2022 to June 2022; Price Memorandum of FFM for February 2020, March 2020, October 2020 to December 2020; Price Memorandum of FFM for January 2021 to October 2021, December 2021 and January 2022 to March 2022; Price Memorandum of FFM for

(f) LKW Personal A and LKW Personal Note B

189. In LKW Personal Note A¹⁴⁹, there was a sentence written: "Till Feb we increased up to RM200 per MT only," a statement that was confirmed by the price announcements issued by three Parties that attended the meeting held on 25.2.2021. **Table 19** below presents the price comparison:

Table 19: Quantum of Price Increment in February 2021¹⁵⁰

		PK AGRO	GOLD COIN	FFM
Year	Month	Quantum of Price Increase (RM/50KG Bag)	Quantum of Price Increase (RM/50KG Bag)	Quantum of Price Increase (RM/50KG Bag)
2021	February	RM 2.00	RM 2.00	RM 2.00

190. From October 2020 to February 2021, PK Agro, Gold Coin and FFM raised the quantum of price increments by RM10 per 50 KG bag which is equivalent to RM200 per metric ton, despite a cost escalation of RM400 per metric ton.

191. The similarities in pricing patterns practised among the three Parties, and the information in LKW Personal Note A, suggest that there were communications among the three Parties, namely, PK

January 2022 to June 2022; Price Memorandum of Leong Hup for October 2020 to November 2021, December 2021 and January 2021; Price Memorandum of Leong Hup for February 2022 to June 2022; Price listing of Dindings from February 2021 to October 2021, December 2021 and January 2022 to May 2022; and Price Memorandum of Cargill Feed for February 2020 to March 2020, October 2020 to December 2020, January 2021 to October 2021, December 2021, January 2022 and February 2022; and Attendance List of 192nd MFA Meeting dated 25.3.2021.

¹⁴⁹ Unofficial Meeting MFA_25 Feb 2021 (LKW Personal Note A)

¹⁵⁰ Price Memorandum of PK Agro from October 2020 to October 2021 and December 2021; Price Memorandum for Gold Coin for February 2020 to March 2020 and October 2020 to December 2020; Price Memorandum of Gold Coin for January 2021 to October 2021 and December 2021; Price Memorandum of FFM for February 2020, March 2020, October 2020 to December 2020; and Price Memorandum of FFM for January 2021 to October 2021, December 2021 and January 2022 to March 2022.

Agro, Gold Coin and FFM regarding the quantum of price increments during the third infringement period.

192. This finding is further supported by LKW Personal Note A, where there is the notation "*e) Unspoken understanding of RM3/bag increase in March 2021. RM60 per MT*". The use of the phrase "*unspoken understanding*" raises concerns regarding the existence of an agreement and/or concerted practices among the three Parties.

193. In LKW Personal Note B, the following notes were made:

*c. Unspoken understanding price increase of RM 3 per bag (60) next month. Ruminant up to us. I will calculate and increase accordingly.*¹⁵¹

194. These notes were made in conjunction with the announcement issued via price announcements in March 2021 by the three Parties, as outlined below:

Table 20: Price Announcements and Quantum of Increments¹⁵²

MEMORANDUM (MARCH 2021)	FFM	GOLD COIN	PK AGRO
ANNOUNCEMENT DATE	5.3.2021	1.3.2021	28.2.2021
QUANTUM OF INCREMENT	RM3	RM3	RM3

¹⁵¹ Digital Forensics Report by MyCC, MyCC(IED)700-2/7(3), at page 28; and Updates Feb 2021 (LKW Personal Note B).

¹⁵² Price Announcement of FFM dated 5.3.2021; Price Announcement of Gold Coin dated 1.3.2021; and Price Announcement of PK Agro dated 28.2.2021.

195. FFM, Gold Coin, and PK Agro increased their prices by RM3.00 in March 2021. These price increments were announced shortly after the meeting held on 25.2.2021.

196. In LKW Personal Note B, Liew Kai Wah stated, "*Ruminant up to us.*"¹⁵³ Following this, The Commission conducted an assessment to determine whether the adjustment in the price of ruminant feed by FFM was independent of the increase in the quantum of poultry feed (with maize and SBM as the main ingredients) price. The analysis results are outlined below:

Table 21: Price Change Comparison during Third Infringement Period

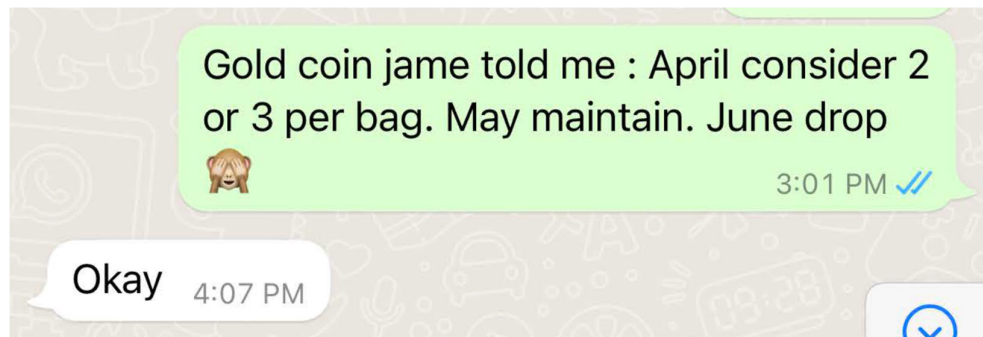
ANNOUNCEMENT DATE	EFFECTIVE DATE	POULTRY FEED PRICE CHANGE (RM)	RUMINANT FEED PRICE CHANGE (RM)
5.3.2021	8.3.2021	+3.00	+2.50
7.4.2021	8.4.2021	+1.50	+1.00
20.4.2021	21.4.2021	+1.50	No Change
7.5.2021	8.3.2021	+3.00	+1.50
4.6.2021	8.6.2021	+2.00	+1.50
7.7.2021	8.7.2021	+1.00	+1.00
6.8.2021	8.8.2021	+2.00	+1.50
7.9.2021	8.9.2021	+2.00	+1.00
7.10.2021	8.10.2021	+1.00	No Change
5.11.2021	8.11.2021	No Change	-2.00
30.11.2021	1.12.2021	No Change	-1.50 (Only Goat Pellet 5811)
7.12.2021	8.12.2021	+1.00	No Change
7.1.2022	8.1.2022	+1.00	No Change
7.2.2022	8.2.2022	+2.00	No Change
7.3.2022	8.3.2022	+4.00	+2.00

¹⁵³ Paragraph 2, subparagraph c, Updates Feb 2021 (LKW Personal Note B).

197. **Table 21** shows that in respect of FFM the quantum of increments for ruminant feed prices were not the same as the quantum of increments for poultry feed (with maize and SBM as the main ingredients) prices. The price increments for ruminant feed do not follow the consistent price increments observed among the other Parties.

(g) *WhatsApp conversation between Yong Kim Loon and Dr Sakda of PK Agro*

198. In a WhatsApp conversation, Yong Kim Loon informed Dr. Sakda, that, "*Gold coin jame told me: April consider 2 or 3 per bag. May maintain. June drop.*"



199. According to Yong Kim Loon, "jame" refers to James Jimmy Kueh Swee Chai of Gold Coin.¹⁵⁴ The WhatsApp conversation indicates that there was indeed communication between PK Agro and Gold Coin regarding price, although it may not be explicitly clear that the price discussed pertained to poultry feed (with maize and SBM as the main ingredients).

¹⁵⁴ Paragraph 24 of the Statement of Yong Kim Loon of PK Agro recorded on 20.4.2022.

200. Yong Kim Loon of PK Agro explained that the communication with Dr. Sakda (also of PK Agro) pertained to James Jimmy Kueh Swee Chai's perspective on the range of raw material cost increases.¹⁵⁵ This is corroborated by the price announcements issued by PK Agro and Gold Coin, where both Parties increased the price of poultry feed (with maize and SBM as the main ingredients) by the same quantum.

Table 22: Quantum of Price Increments for PK Agro and Gold Coin

MONTH	GOLD COIN	PK AGRO
March 2021	RM3.00	RM3.00
April 2021	RM1.50	RM1.50
April 2021	RM1.50	RM1.50
May 2021	RM3.00	RM3.00
June 2021	RM2.00	RM2.00

201. It is the finding of the Commission that Yong Kim Loon of PK Agro and James Jimmy Kueh Swee Chai of Gold Coin had exchanged sensitive information, despite their bare denial of such exchange regarding the price increments and revisions for April till June 2021¹⁵⁶. The anticipation for price increments was of great importance to the Parties in ascertaining the extent to which they should adjust the quantum of their price increments in the upcoming months.

202. James Jimmy Kueh Swee Chai informed his General Manager that Gold Coin had to consider market pressures and competitiveness,

¹⁵⁵ Paragraph 25 of the Statement of Yong Kim Loon of PK Agro recorded on 20.4.2022.

¹⁵⁶ Transcript of Oral Representation session of PK Agro dated 14.7.2023, pages 16 – 17.

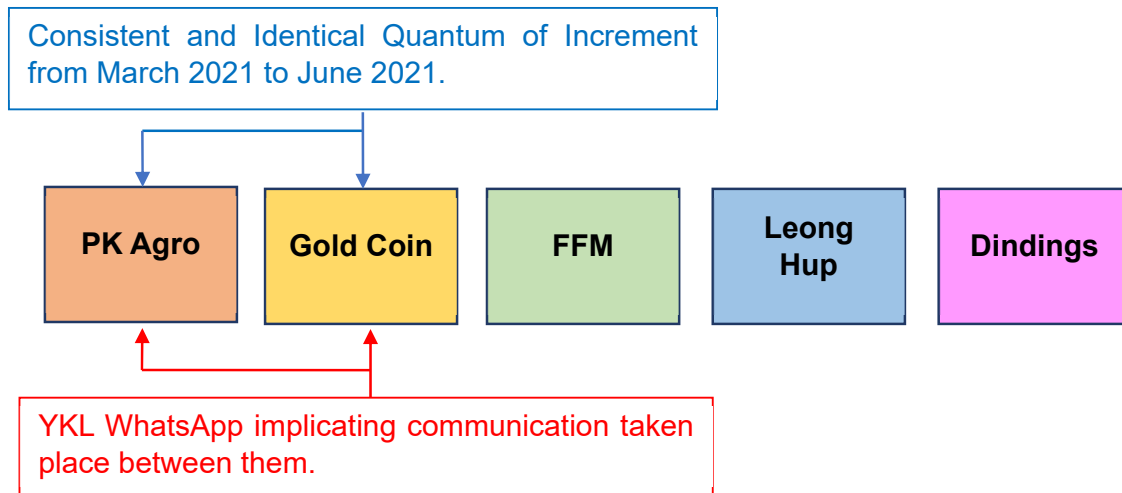
which compelled them to reluctantly "*follow the competitors.*"¹⁵⁷ As a result, they initially increased prices, and on 14.4.2021, an additional increment of RM1.50 was implemented. These increments amount to a total of RM3, as mentioned in the WhatsApp conversation.

203. The increase in the quantum of poultry feed (with maize and SBM as the main ingredients) price led to a twofold increase (RM1.50 + RM1.50 = RM3.00), in accordance with the previous communication suggesting "*April considers 2 or 3 per bag.*" In May 2021, the quantum of increase of poultry feed (with maize and SBM as the main ingredients) price remained at RM3.00 per bag, as indicated by the communication stating "*May maintain.*" However, in June 2021, the quantum of price increase was reduced to RM2, reflecting the communication "*June drop.*" This represents a decrease in the quantum of increment, transitioning from RM3 in May to RM2 in June 2021.

204. The analysis of the evidence discussed so far regarding the implicated Parties is as follows:

¹⁵⁷ Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Kee Ling Tan, Marshal Mathews Chuat, Sengleong Teo and Sie Gain Ting on 14.4.2021.

Figure 9: The Affiliation of Gold Coin and PK Agro



(h) *WhatsApp audio recordings between Alex and Lim Yong Ping of Leong Hup*

205. The Commission acquired a WhatsApp audio conversation recording dated 30.4.2021 between Lim Yong Ping of Leong Hup and Alex of Leong Hup in Mandarin. The conversation was transcribed verbatim and translated by two Commission officers conversant in Mandarin. This translation process occurred in the presence of Lim Yong Ping of Leong Hup and Leong Hup's legal counsel during the statement-taking session, as stipulated under section 18 of the Act. The Commission relied on the translated audio recording, which is provided below:

Alex to Lim Yong Ping: "Mr Lim just now Ah Kai called me and said he (Ah Kai) asked Vincent whether Gold Coin is increasing. Vincent told him (Ah Kai) there will be an increase it's just that they (Gold Coin) haven't announced it yet." (PTT-20210430-WA0048.opus)¹⁵⁸

¹⁵⁸ Question 2 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

206. Lim Yong Ping acknowledged that he had this conversation with his salesperson, Alex. He also confirmed that the individual referred to as "Ah Kai" in the conversation was an employee of Alphareno, a customer of both Leong Hup and Gold Coin.¹⁵⁹ Lim Yong Ping informed the Commission that "Vincent" as referred to in the conversation was a sales representative of Gold Coin.¹⁶⁰

207. The Commission considers it imperative to determine whether the WhatsApp audio conversation took place before, during, or after the issuance of the price announcements by Gold Coin and Leong Hup, bearing in mind that the conversation took place on 30.4.2021. The announcement dates of the two parties are as follows:

Table 23: Announcement Dates of Leong Hup and Gold Coin¹⁶¹

PARTY	GOLD COIN	LEONG HUP
ANNOUNCEMENT DATE	1.5.2021	30.4.2021

208. **Table 23** indicates that Leong Hup issued the price revision announcement on the same day as the WhatsApp audio conversation took place.

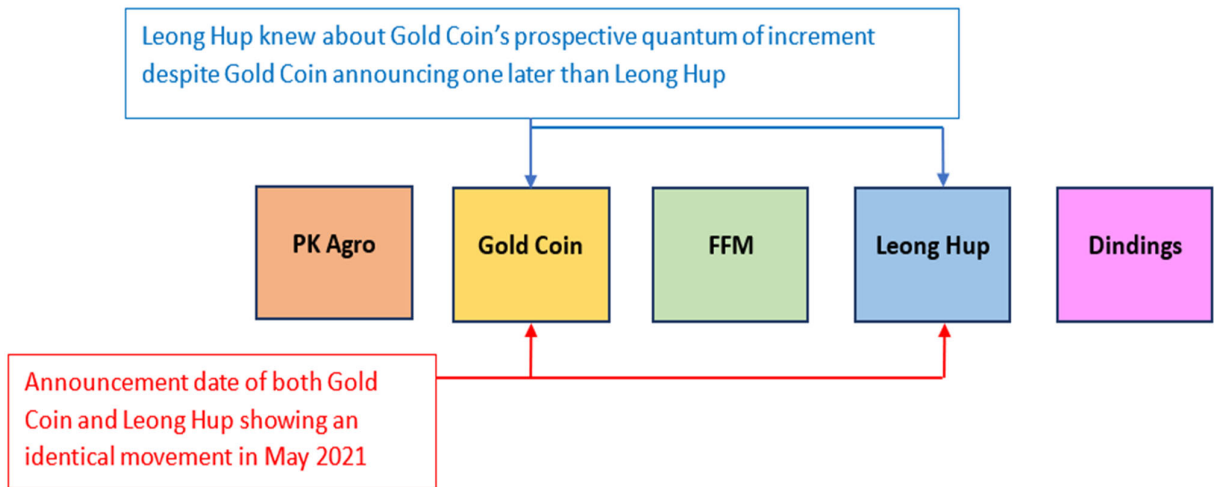
209. The analysis of the aforementioned evidence regarding Gold Coin and Leong Hup is depicted in **Figure 10**:

¹⁵⁹ Question 3 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹⁶⁰ Question 3 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹⁶¹ Price Announcement of Gold Coin dated 1.5.2021; and Price Announcement of Leong Hup dated 30.4.2021.

Figure 10: The affiliation of Gold Coin and Leong Hup¹⁶²



(i) *WhatsApp audio recording of conversation between Lim Yong Ping of Leong Hup and "Mr Sim"*

210. As part of its investigation, the Commission obtained a WhatsApp audio conversation recording in Mandarin dated 30.6.2021, between Lim Yong Ping of Leong Hup and his superior, "Mr. Sim."¹⁶³

211. The conversation was translated in verbatim by two Commission officers conversant in Mandarin, in the presence of Lim Yong Ping from Leong Hup and Leong Hup's legal counsel during the statement-taking session, in accordance with section 18 of the Act, as follows:

"Lim Yong Ping to Mr Sim: "Mr Sim just now Cargill and Dindings announced a RM 1 increase and before that CP announced a RM 1

¹⁶² Price Announcement of Gold Coin dated 1.5.2021; and Price Announcement of Leong Hup dated 30.4.2021.

¹⁶³ Question 18 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

increase. Now left Gold Coin and FFM haven't announce their prices. Just to let you know." (MyCC File: PTT20210630-WA00109.opus)

Mr Sim to Lim Yong Ping: "Then you tomorrow only announce RM 1. See if Gold Coin announced or not." (MyCC File: PTT-20210630-WA0110.opus)

Mr Sim to Lim Yong Ping: "If you think you can announce today, then you announce today." (MyCC File: PTT20210630-WA0111.opus)¹⁶⁴

212. Referring to the aforementioned conversation, Lim Yong Ping informed the Commission that he referred to the prices set by Cargill Feed, Dindings, PK Agro, Gold Coin, and FFM because they were competitors of Leong Hup. The Commission discovered multiple call logs between the four Parties, namely FFM, PK Agro, Dindings, and Leong Hup, as shown in **Table 24**:

Table 24: Call logs between the Four Parties on 28.6.2021¹⁶⁵

NO.	CALLER (ENTERPRISE)	RECIPIENT (ENTERPRISE)	DATE	TIME	DURATION
1	Liew Kai Wah (FFM)	Yong Kim Loon (PK Agro)	28.6.2021	4:31:10 PM	2 mins 14 secs
2	Yong Kim Loon (PK Agro)	Chee Choon Shean (Dindings)	28.6.2021	3:23:03 PM	18 mins 23 secs
3	Lim Yong Ping (Leong Hup)	Yong Kim Loon (PK Agro)	28.6.2021	3:02:45 PM	9 mins 42 secs

213. After reviewing the call logs, the Commission establishes that the respective address associated with each caller's phone number corresponds to the address specified in the notice issued by the

¹⁶⁴ Question 18 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹⁶⁵ Phone Bill Statement of Liew Siak Yip, Phone Subscriber ID Number for Chee Choon Shean, Call logs of Yong Kim Loon and Leong Hup Feedmill Sdn Bhd.

Commission under section 20 of the Act.¹⁶⁶ This address also matches the one documented in the search and seizure list.¹⁶⁷ Although the caller's phone number is not registered under the name of Liew Kai Wah, the prevailing circumstances suggest that Liew Kai Wah is the actual user of the mobile phone number.

214. The evidence indicates that the four Parties communicated before issuing the poultry feed price announcement below. Therefore, based on these communications, three Parties have issued price memorandums, as shown in **Table 25** below:

Table 25: The Issuance Date of Price Announcements

ANNOUCEMENT (JULY 2021)	LEONG HUP	PK AGRO	FFM
ISSUANCE DATE	30.6.2021	28.6.2021	7.7.2021

215. Whilst the Commission is unable to determine the announcement date of Dindings, it has established that PK Agro made their announcement on the same date as the call between the four Parties, namely, on 28.6.2021. Despite Dindings's claim that it does not issue price memorandums to their customers, the statement "*Dindings announced a RM1 increase*" contradicts their claim.

216. Based on the timely nature of the price announcements shortly after the phone calls outlined in **Table 25**, and considering the WhatsApp audio recording between Lim Yong Ping and Mr. Sim, the Commission finds that the four Parties exchanged sensitive

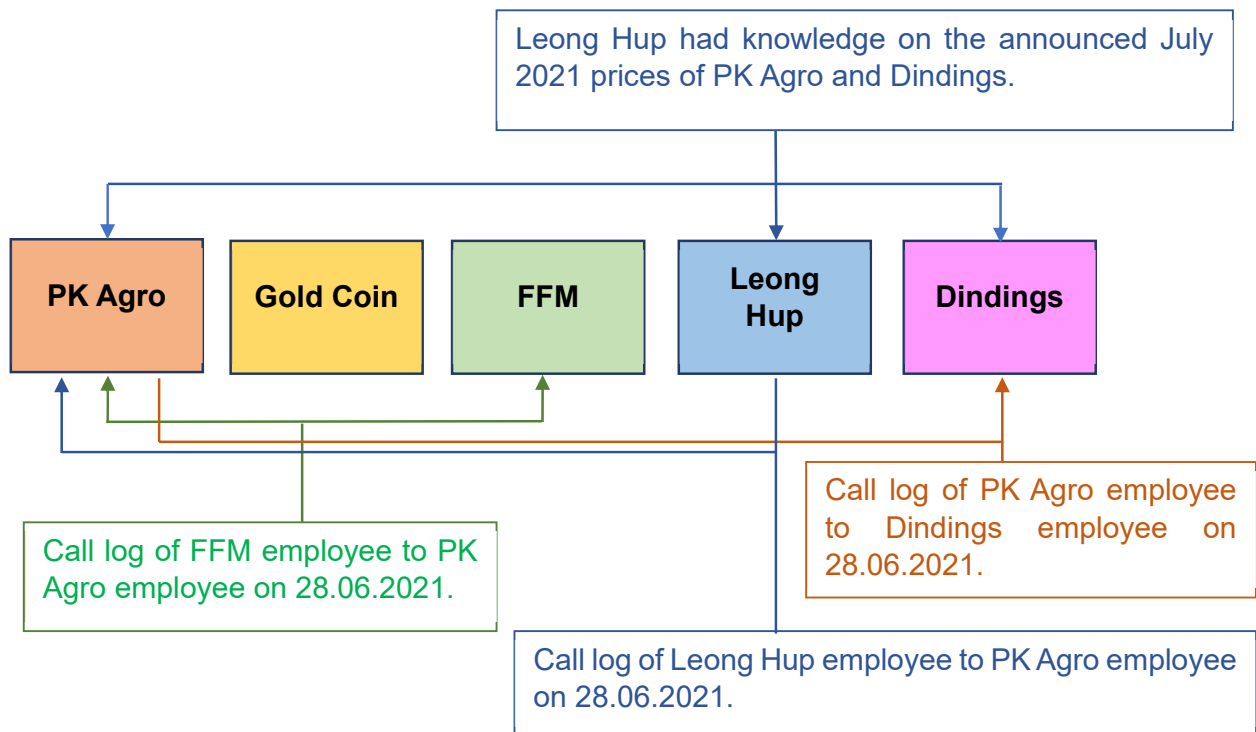
¹⁶⁶ Information provided by Maxis Broadband Sdn. Bhd. pursuant to section 16(h) and section 17(2)(i) of the Competition Commission Act 2010.

¹⁶⁷ Search and Seizure list for Liew Kai Wah recorded on 8.3.2022.

information. As a result, it is evident that they engaged in anti-competitive agreements and/or concerted practices regarding the quantum of poultry feed (with maize and SBM as the main ingredients) price increments.

217. The analysis of this evidence concerning the implicated Parties is depicted in **Figure 11**:

Figure 11: The Affiliation of the Parties Based on the Call Logs



(j) *WhatsApp audio recordings of conversations between Lim Yong Ping and the sales team of Leong Hup*

218. The Commission had obtained WhatsApp audio recordings of conversations in Mandarin between Lim Yong Ping and Leong Hup's sales team, dated 31.7.2021, and 1.8.2021. During a statement-taking session, two Commission officers conversant in Mandarin

conducted the translation of the audio transcript in the presence of Lim Yong Ping of Leong Hup and Leong Hup's legal counsel. The agreed-upon translation is as follows:

Conversation dated 31.7.2021:

"Lim Yong Ping to Sales Team: "Yes, feed will increase RM2. You guys pay attention and see whether they (competitors) announced. Please inform me if they (competitors) announced, we will inform, we will announce after their (competitors') announcement." (MyCC File: PTT-20210731-WA0075.opus)

Conversation dated 1.8.2021:

Lim Yong Ping to Sales Team: "I will announce the poultry price increment in our group later. Then you guys should wait until tomorrow only you inform your clients. Now I will send it to the group first." (MyCC File: PTT-20210801-WA0044.opus)¹⁶⁸

219. The recordings relate to the appropriate timing for Leong Hup to announce a price increase of RM2 to the customers. The Commission has compiled the timing of this announcement in **Table 26**, which is outlined as follows:

Table 26: The Announcement Dates¹⁶⁹

AUGUST 2021	GOLD COIN	LEONG HUP	PK AGRO	FFM
ANNOUNCEMENT DATE	1.8.2021	30.7.2021	30.7.2021	6.8.2021

220. The Commission takes the view that if the Parties were indeed engaging in genuine price competition, the conversation between

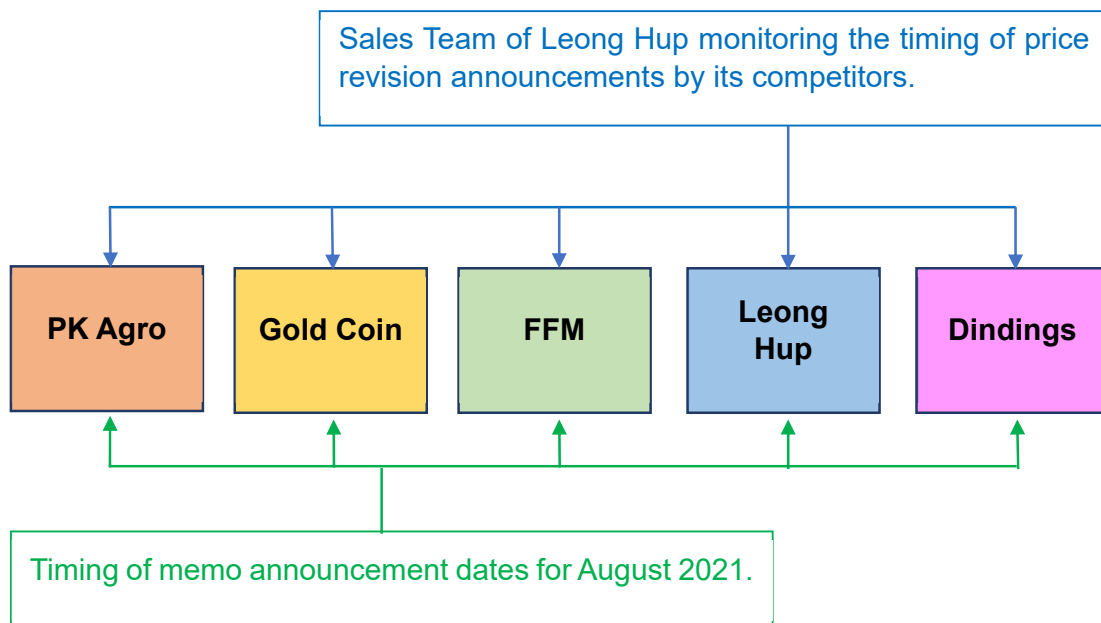
¹⁶⁸ Question 25 of the Statement of Lim Yong Ping of Leong Hup recorded 14.6.2022.

¹⁶⁹ Price Memorandum of Gold Coin dated 1.8.2021; Price Memorandum of Leong Hup dated 30.7.2021; Price Memorandum of PK Agro dated 30.7.2021; and Price Memorandum of FFM dated 6.8.2021.

Lim Yong Ping and the sales team would have primarily focused on the monitoring price fluctuations among rival competitors, instead of tracking the timing of competitors' announcements.

221. The WhatsApp audio recordings featuring Lim Yong Ping and Leong Hup's sales team indicate that Gold Coin, Leong Hup, PK Agro, and FFM were involved in agreements and/or concerted practices to fix the quantum of poultry feed (that contain soybean meal and maize as the main ingredients) price in Malaysia. The analysis of the above evidence in relation to the Parties is outlined in **Figure 12**:

Figure 12: The Affiliation of the Parties based on Price Monitoring by Leong Hup



(k) *WhatsApp audio recordings of Lim Yong Ping with Mr Sim on 26.8.2021*

222. The WhatsApp audio recording of conversation of 26.8.2021 in Mandarin between Lim Yong Ping and his superior, Mr. Sim, has been translated and transcribed verbatim by two Commission officers conversant in Mandarin as follows:

Mr Sim: (不清楚) (华语) 料 ...料有要起价吗? CP 有讲什么吗?

(MyCC File Name: PTT-20210826-WA0012.opus)

[English Translation]

Mr Sim: "Ping ah, any price increase on feed? Did CP say anything?"

Lim Yong Ping: Mr Sim 啊, 那个价钱哦, 下个月哦, 他们还没有讨论啊, 他们讲等星期一、 星期一的时候再讨论啊, 下个礼拜的星期一再讨论啊。

(MyCC File Name: PTT-20210826-WA0014.opus)

[English Translation]

Lim Yong Ping: "Mr Sim ah, the price for next month, they haven't discussed yet. They said wait for Monday, they will discuss Monday. Discussion will take place on the Monday in the coming week."

223. Lim Yong Ping informed Mr. Sim that he had prior knowledge of when CP (Charoen Pokphand Holdings (Malaysia) Sdn. Bhd.), the parent company of PK Agro, planned to discuss the quantum of the price revision for feed products (referred to as “料” in the transcription above) for the upcoming month, specifically September 2021.

224. The evidence of an internal WhatsApp conversation between Mr. Sim and Lim Yong Ping of Leong Hup on 26.8.2021 is supported by an internal email exchanged among Gold Coin employees on the same date.¹⁷⁰ Both internal communications, originating from different Parties, mentioned the same feed millers and expressed an intention to increase the price by the same amount.

225. The following is an excerpt of the internal email correspondence of Gold Coin:

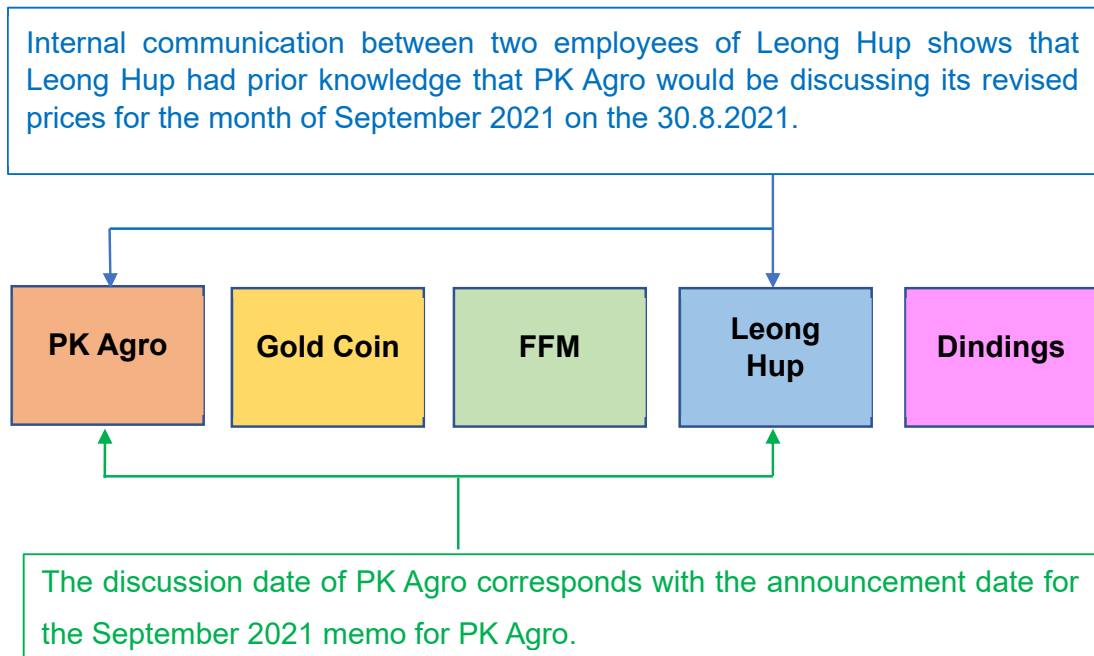
“... but I am hearing the reports from the Sales TMs that Cargill, Leong Hup, CP and FFM have announced that they will increase the selling price by RM2.00/bag or RM40.00/MT.... we will be left no choice but to follow suit and increase the selling price at the similar quantum of RM2.00/bag or RM40.00/MT”¹⁷¹

226. Based on the evidence mentioned above, it is clear that there was communication between Leong Hup and PK Agro. The Commission finds that the Parties had engaged in agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price increment. This was done through the exchange of sensitive information relating to poultry feed (with maize and SBM as the main ingredients) price in Malaysia. The analysis of the above evidence on implicated the Parties is detailed in **Figure 13** below:

¹⁷⁰ Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Jimmy Tan, Kee Ling Tan, and Sengleong Teo on 31.8.2021.

¹⁷¹ Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Jimmy Tan, Kee Ling Tan, and Sengleong Teo on 31.8.2021.

Figure 13: The Affiliation of Leong Hup and PK Agro



- (i) *WhatsApp audio recordings of conversation of Lim Yong Ping and Leong Hup's employee*

227. The Commission obtained a WhatsApp audio recording of a conversation in Mandarin between Lim Yong Ping and an employee from Leong Hup's Purchasing Department, specifically, Ng Siau Chen (Joyce). This conversation took place on 30.8.2021. The extract of the conversation was translated by two Commission officers conversant in Mandarin, in the presence of Lim Yong Ping of Leong Hup and Leong Hup's legal counsel during the statement-taking session, pursuant to section 18 of the Act. The agreed-upon translation of the audio recording is as follows:

"Ng Siau Chen (Joyce) to Lim Yong Ping: "Mr Lim, if price increases again, aiyo(!). Actually, in July, we had problems doing our calculations. We tried looking for the bill that has the highest price. If not, it will be very difficult to

meet the price. Aiyo, if there is another RM 2 increase in September, very headache. Don't know how to insert/put(?)." (MyCC File: PTT-20210830-WA0054.opus)

Lim Yong Ping reply to Ng Siau Chen (Joyce): "Correct, correct. Ms. Tan (Accounts) called me just now and told me the same thing you just told me, that she is facing the same problem. But on Mr Sim's side, he is of the view that an increase is necessary so we announced for the increment." (MyCC File: PTT-20210830- WA0056.opus)¹⁷²

228. Lim Yong Ping confirmed to the Commission that 'Ng Siau Chen (Joyce)' was an employee in the Purchasing Department of Leong Hup. And, the 'Ms. Tan (Accounts),' mentioned in the conversation, was revealed to be a team member of the Accounts Department of Leong Hup.¹⁷³

229. The Commission notes that despite an internal accounting issue within Leong Hup, Lim Yong Ping persisted in raising the price. This provides compelling evidence of the fact that the agreed-upon rates by the Parties would override Leong Hup's authority to independently determine their pricing.

230. Conversely, the Commission is of the view that if Leong Hup had encountered an internal record-keeping issue, the appropriate action for the company would be to autonomously adjust their pricing in accordance with their own constraints, such as prevailing costs and internal accounting protocols.

¹⁷² Question 42 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹⁷³ Question 43 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

231. The WhatsApp audio conversation recording between Lim Yong Ping and 'Ng Siau Chen (Joyce)' is undeniable evidence of the existence of a practice of sharing information among the Parties, deviating from independent determination of poultry feed (with maize and SBM as the main ingredients) prices.

(m) *WhatsApp audio recordings of conversations between Leong Hup and Gold Coin*

232. The Commission also obtained a recording of a WhatsApp audio conversation involving Lim Yong Ping of Leong Hup and one 'Vincent', a sales employee at Gold Coin. This conversation took place on 30.8.2021. The verbatim transcription of this conversation was translated by two Commission officers. This translation was conducted in the presence of Lim Yong Ping of Leong Hup and Leong Hup's legal counsel during the statement-taking session, as per the provisions of section 18 of the Act. The agreed translation of the audio recording is as follows:

"Vincent: "Brother, Vincent here. Are you raising the price for next month? For our (Gold Coin) side, we are not sure. CP confirm will raise RM 2; FFM and Tian Ding (Dindings) is the same, will also raise RM 2." (MyCC File: PTT-20210830-WA0030.opus)

Vincent: "I believe that my company (Gold Coin) will follow, but I am not sure about Cargill." (MyCC File: PTT20210830-WA0031.opus)

Lim Yong Ping: "I had called your boss James. He told me that he is currently in a meeting and will reply to me later." (MyCC File: PTT-20210830-WA0033.opus)¹⁷⁴

¹⁷⁴ Question 49 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

233. Lim Yong Ping confirmed the contents of the conversation and clarified that “James” refers to James Jimmy Kueh Swee Chai of Gold Coin.¹⁷⁵

234. Based on the communication between ‘Vincent’ of Gold Coin and Lim Yong Ping of Leong Hup on 30.8.2021¹⁷⁶, it appears that both Parties (Gold Coin and Leong Hup) shared information that influenced their commercial behaviour in the relevant market.

235. The audio conversation on WhatsApp was shared with the senior management of Gold Coin, as evidenced by the internal email correspondence. An excerpt from the email between James Jimmy Kueh Swee Chai of Gold Coin and Jimmy Tan, Kee Ling Tan, and Sengleong Teo all three of Gold Coin dated 31.8.2021 is presented herewith:

“... but I am hearing the reports from the Sales TMs that Cargill, Leong Hup, CP and MFM have announced that they will increase the selling price by RM2.00/bag or RM40.00/MT.... we will be left no choice but to follow suit and increase the selling price at the similar quantum of RM2.00/bag or RM40.00/MT”¹⁷⁷

236. Further, it was conveyed by Vincent of Gold Coin that “*FFM and Tian Ding [Dindings] are identical, and RM2 will also be raised,*”¹⁷⁸

¹⁷⁵ Question 45 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹⁷⁶ Question 49 of the Statement of Lim Yong Ping of Leong Hup recorded on 14.6.2022.

¹⁷⁷ Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin and Jimmy Tan, Kee Ling Tan, and Sengleong Teo on 31.8.2021.

¹⁷⁸ Digital Forensic Report by MyCC on Leong Hup Feedmill Malaysia Sdn Bhd (MyCC(IED)700-2/7(4)) dated 25.7.22, at page 60.

thereby reinforcing the finding that communication took place between the Parties as follows:

- (i) Dindings claimed that it did not issue any price announcement and prices were determined based on requests for quotation. However, the evidence contradicts this claim, as Dindings's competitors were aware of their future price, indicating otherwise; and
- (ii) the audio recording between Leong Hup and Gold Coin took place on 30.8.2021. Later, FFM announced a price increase of RM2 on 7.9.2021. The Commission takes the position that if FFM were simply a price follower, it would have waited for others to announce prices and then adjusted their own accordingly. However, the simultaneous price increase strongly goes to show that FFM is not just a price follower, but also equally responsible for adhering to the "agreed price" throughout the relevant period.

237. Contrary to Gold Coin's assertion, the price increase from July 2021 to August 2021 did not correspond to a decreased cost of raw materials. Our investigation revealed that while the price of maize significantly dropped during this period, the cost of Soybean Meal (SBM) remained stable, as reflected in **Table 27**.¹⁷⁹

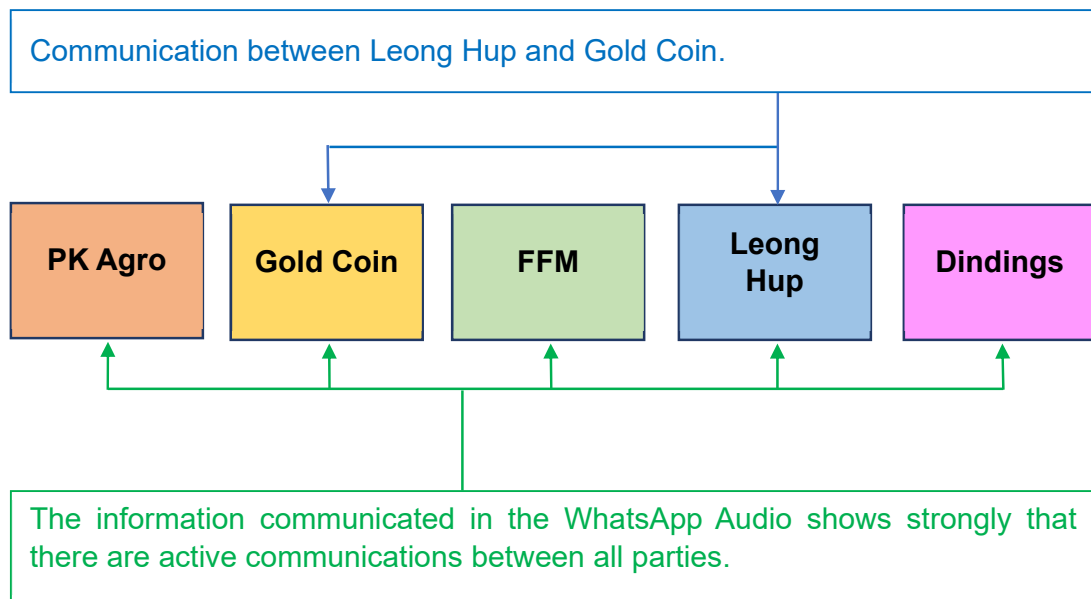
¹⁷⁹ APE_6 pursuant to Section 20 notice dated 9.3.2021; information in relation to the price of soybean (for the period of July to August 2021), and corn (for the period of July to August 2021) based on <https://www.indexmundi.com/commodities/?commodity=soybean-meal&months=60¤cy=myr>; and <https://www.indexmundi.com/commodities/?commodity=corn&months=60¤cy=myr>.

Table 27: The Change in Maize and SBM Price

MONTH	MAIZE (RM)	CHANGE	SBM (RM)	CHANGE
JULY 2021	1169.02	-7.35%	1,973.44	+0.58%
AUGUST 2021	1,083.16		1,984.98	

238. Based on the aforementioned analysis, the Commission concludes that the Parties engaged in communications and information exchanges with one another regarding business secrets, which includes, but is not limited to, specific details about poultry feed (with maize and SBM as the main ingredients) pricing. The examination of the evidence in connection with the implicated Parties is outlined in **Figure 14** as follows:

Figure 14: The Affiliation of the Parties



(n) *LKW Personal Note C*

239. Throughout the course of the investigation, the Commission discovered a document titled "Discussion of Various Feed Issues with Mr. Goon_6 Oct 2021" ("LKW Personal Note C").¹⁸⁰ The personal note, labelled "LKW Personal Note C" contains the following information:

"- Rumours in Sept 2021 according to GC (someone)

- How the market works

- o Unprofessional*
- o No secret*
- o Use to press each other*
- o Gold coin boss approached us thinking we undercut them"*

240. In order to provide context to the contents of LKW Personal Note C, the Commission interviewed Liew Kai Wah during a statement-taking session held on 13.6.2022. During the session, Liew Kai Wah explained that the terms "*Unprofessional*," "*no secret*," and "*use to press each other*" written in LKW Personal Note C were expressions he used informally to describe the market conditions at FFM.

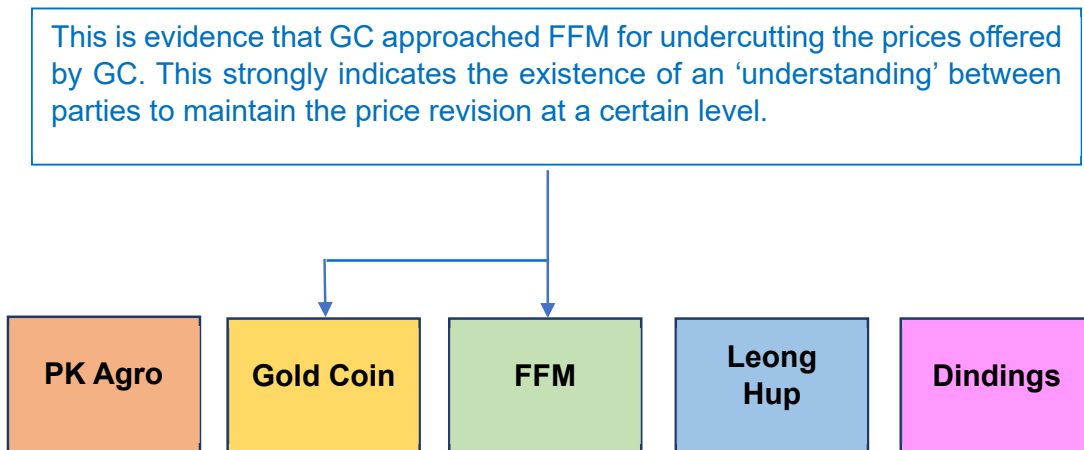
241. In the same statement, Liew Kai Wah clarified that the sentence "*Gold coin boss approached us thinking we undercut them*" in LKW Personal Note C reflects his suspicion about the actions of Gold Coin. He suspected that Gold Coin might have been monitoring or scrutinizing FFM. This implies that Gold Coin believed that FFM was

¹⁸⁰ Digital Forensic Report by MyCC of FFM Berhad (MyCC (IED)700-2/7(3)) dated 17.7.2022 pages 17 to 22.

selling poultry feed (with maize and SBM as the main ingredients) at a lower price than Gold Coin, leading to this impression.¹⁸¹

242. The Commission is of the view that the practice of price undercutting is legal in situations where Parties work together to protect their shared interests, but one or more parties deviate from established practices. However, it is also possible for Parties to reprimand each other when there are deviations from anti-competitive agreements and/or concerted practices. The analysis of the evidence is shown in **Figure 15**:

Figure 15: The Affiliation of Gold Coin and FFM



(o) *Call log between Dindings and Gold Coin and Gold Coin's Internal Email*

243. The Commission obtained a call log between Chee Choon Shean and James Jimmy Kueh Swee Chai, dated 29.9.2021:

¹⁸¹ Question 45 of the Statement of Liew Kai Wah of FFM recorded on 13.6.2022.

Table 28: Call Logs Record

CALLER (ENTERPRISE)	RECIPIENT (ENTERPRISE)	DATE	TIME	DURATION
Chee Choon Shean (Dindings)	James Kueh (Gold Coin)	29.9.2021	10:53:32 PM	5 mins 26 secs

244. The call took place before the price announcement of Gold Coin. This is evident that there were agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price in Malaysia.

Table 29: Comparison Table of Communication and Announcement Date

OCTOBER 2021	COMMUNICATION DATE	ANNOUNCEMENT DATE
ANNOUNCEMENT DATE	29.9.2021	1.10.2021

245. On 30.9.2021, James Jimmy Kueh Swee Chai of Gold Coin informed the General Manager that Gold Coin's competitors were increasing their prices by more than RM1.00 per bag. In response to market conditions, Gold Coin decided to raise their price by RM1.00 per bag, taking into account unavoidable cost factors. The following excerpt is from the email¹⁸²:

Feed Price for October 2021

James J. Kueh <[redacted]> Thu, Sep 30, 2021 at 8:58 PM

To: Jimmy Tan <[redacted]>, Kee Ling Tan <[redacted]>, Marshal Mathews Chua!

<[redacted]>, Melvan Eng Hwa Law <[redacted]>, Sengleong Teo

<[redacted]>, Jonathan Siew Keong Chung <[redacted]>

Cc: Chai Hock Gan <[redacted]>, Edwin Lau Ghee Kiong <[redacted]>, Pei Pei Tay

¹⁸² Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Jimmy Tan, Kee Ling Tan, Marshal Mathews Chuat, Melvan Eng Hwa Law, Sengleong Teo and Jonathan Siew Keong Chung on 30.9.2021.

<[<]>, Sue Ling Wong <[<]>, Wen Han Chew <[<]>

Dear All,

The feed price in October will be increased by RM1.00/bag or RM20.00/MT. This is due to the following reasons:

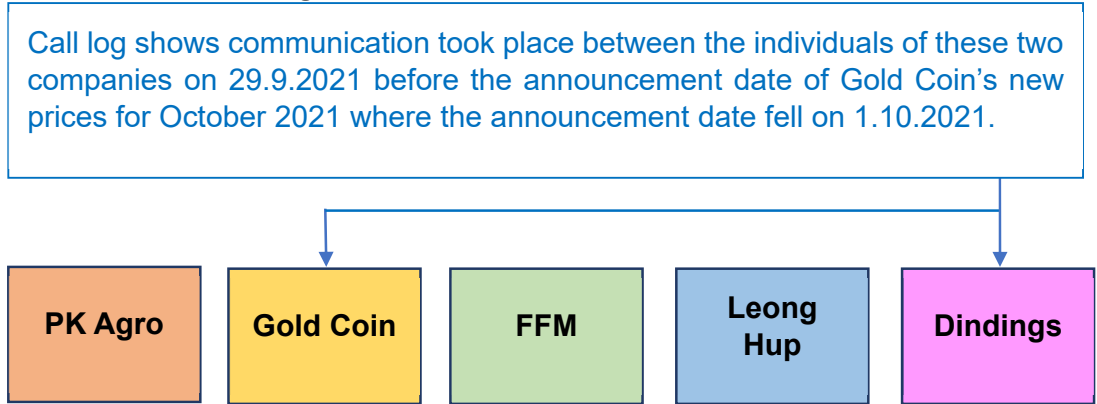
- Higher basis for the next few months.
- Softening of the MYR vs. USD.
- Increase in CPO pricing due to the situation in CN whereby the government is forcing producers to shut production due to the over-utilisation of electricity, oil crushers and many others have had to stop their production.

I am also hearing that some competitors are reporting an increase of more than RM1.00/bag; as this is a free market, they can do what they want but based on our cost, we will remain with the increase of RM1.00/bag or RM20.00/MT. Pls proceed to inform the rest of the team accordingly. Thanks.

246. Gold Coin argued that there would be a sustained increase in the base cost for the coming months, mainly due to the rising cost of crude palm oil. However, the Commission's analysis shows that the prices of maize and SBM actually decreased in both August and September 2021. In the subsequent paragraphs, the Commission will thoroughly examine global raw material prices, as this is one of the main arguments raised by the Parties in response to the Commission's provisional findings.

247. The analysis of the above evidence in relation to the Parties is outlined in **Figure 16**:

Figure 16: The Affiliation of the Parties



(p) *WhatsApp conversation between Liew Kai Wah and Jeremy Goon of FFM*

248. In April 2021, the Parties implemented two successive increases in the price quantum of poultry feed (with maize and SBM as the main ingredients), that took place in early and mid-April 2021, as indicated in **Table 30** below (RM1.50 + RM1.50 = RM3.00). This departure from the Parties' usual practice, wherein price adjustments were typically made once per month, was notably distinct. The incremental changes in price quantum, are detailed in **Table 30** below:

Table 30: The Dates of Movements of the Price Quantum of Poultry Feed in April 2021¹⁸³

	PK AGRO	GOLD COIN	FFM	LEONG HUP	DINDINGS
	<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Based on the earliest Invoices in each month</i>
First Price Quantum Increase in April 2021	1.4.2021	1.4.2021	8.4.2021	1.4.2021	1.4.2021
Second Price Quantum Increase in April 2021	15.4.2021	15.4.2021	21.4.2021	26.4.2022	29.4.2021

249. In paragraph 198 above, the Commission referred to a WhatsApp conversation between Yong Kim Loon and Dr Sakda of PK Agro stating, "*Gold coin jame told me: April consider 2 or 3 per bag. May maintain. June drop*".¹⁸⁴ Following this conversation, both PK Agro and Gold Coin set the same price quantum increase for May and June 2021.¹⁸⁵

¹⁸³ Price Memorandum of PK Agro from October 2020 to October 2021 and December 2021; Price Memorandum of Gold Coin for January 2021 to October 2021 and December 2021; Price Memorandum of FFM for January 2021 to October 2021, December 2021 and January 2022 to March 2022; Price Memorandum of Leong Hup for October 2020 to November 2021, December 2021 and January 2021; Price listing of Dindings from February 2021 to October 2021, December 2021 and January 2022 to May 2022.

¹⁸⁴ Digital Forensics Report by MyCC on PK Agro Industrial Products (M) Sdn Bhd (MyCC (IED)700-2/7(5)) dated 22.7.2022, page 20.

¹⁸⁵ Price Memorandum of PK Agro for April 2021 and May 2021; Price Memorandum of Gold Coin for May 2021 and June 2021.

250. This is corroborated by additional evidence that supports the existence of discussions pertaining to the poultry feed (with maize and SBM as the main ingredients) price quantum increment for April 2021, not only between PK Agro and Gold Coin but also between PK Agro and FFM, as shown in **Table 31** below:

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Table 31: WhatsApp Conversation between Liew Kai Wah and Jeremy Goon on the Increment of Price Quantum for April 2021

DATE	WHATSAPP CONVERSATION
<p>Whatsapp conversation between Liew Kai Wah of FFM and Jeremy Goon of FFM dated 16.4.2021¹⁸⁶</p>	<p>IMG_5146</p> <p>Liew Kai Wah: As for feed, would like to update you also. All other feed millers are crying foul where they had increased feed prices in the middle of month 15 April 2021 by 1.50 per bag or RM30 per MT. Cargill followed suit on 16 April. All feed millers except Leong Hup and ourselves</p> <p><u>If LH went along, it would be a simple decision to follow suit</u> [emphasis added] but because of LH, all others have reservations whether this is will eventually be permanent...</p> <p>IMG_5147</p> <p>Liew Kai Wah: <u>One issue would be we start to deviate from MFA and they may say we stray off.</u> [emphasis added] Will try to reason that perhaps we adjust on the 1st May together with any quantum</p> <p>IMG_5148</p> <p>Jeremy Goon: We should follow LH. <u>I may have a discussion with Tan Sri Francis on this</u> [emphasis added] where we align ourselves with them. What do you think?</p>
<p>Whatsapp conversation between Liew Kai Wah of FFM and Jeremy Goon</p>	<p>IMG_5138</p> <p>Liew Kai Wah: On the feed price increase, I think the industry is rather desperate, <u>today CP's feed boss also called me to meet up tomorrow</u> [emphasis added] with the other independent feed millers, I think we are in their way for a successful price adjustment. I will meet them and gauge their intentions and report to you for approval</p>

¹⁸⁶ IMG_5146, IMG_5147, and IMG_5148 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

DATE	WHATSAPP CONVERSATION
of FFM dated 19.4.2021. ¹⁸⁷	<p>Liew Kai Wah: Likely we will follow suit but announce on 21 April because our price changed in 8 April instead of 1st as per the others</p> <p>Liew Kai Wah: Soong also caught wind from the market that we and LH remain the ones not increased yet. He gently reminded that subsequent raw mat prices will be crazy high.</p> <p>IMG_5139</p> <p>Jeremy Goon: I think that would be a prudent course of action</p> <p>Liew Kai Wah: <u>As all others, I will jive with the others to understand that we increased in 8</u> [emphasis added]</p> <p>Liew Kai Wah: Cannot increase 1 week later</p> <p>Liew Kai Wah: -smiley-</p> <p>Liew Kai Wah: Very true that all raw materials have gone sky high</p> <p>Jeremy Goon: Agree</p> <p>IMG_5140</p> <p>Liew Kai Wah: <u>Also this will bode well with our fitting in with MFA</u> [emphasis added]</p> <p>Liew Kai Wah: Else we also rogue</p> <p>Liew Kai Wah: The only impact would be a few customers in the northern Johor that use both ours and LH feed</p>

251. Based on the WhatsApp conversations above, the Parties, except for FFM and Leong Hup, had decided to increase the poultry feed (with maize and SBM as the main ingredients) price by RM1.50 in the middle of April 2021.¹⁸⁸

¹⁸⁷ IMG_5138; IMG_5139, and IMG_5140 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

¹⁸⁸ IMG_5146 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

252. Based on the WhatsApp conversations, the Commission finds that FFM monitored the price strategy of Leong Hup before deciding to emulate the price quantum increment undertaken by other feed millers.¹⁸⁹ Concurrently, Liew Kai Wah also voiced his concerns regarding the potential deviation by FFM from the poultry price quantum increment pursued by other feed millers.¹⁹⁰

253. In the WhatsApp conversation that took place on 19.4.2021, the Commission observes that PK Agro initiated contact with FFM through a telephone call, suggesting the convening of a meeting involving the other Parties for the purpose of discussing adjustments to the poultry feed (with maize and SBM as the main ingredients) prices.¹⁹¹

254. In the same WhatsApp conversation, Liew Kai Wah informed Jeremy Goon of FFM that he intended to convene a meeting with PK Agro and other independent feed millers. This meeting was prompted by a summon from PK Agro's authoritative figure, commonly referred to as the "feed boss" (Yong Kim Loon). Liew Kai Wah suggested to Jeremy Goon that FFM should adopt the same price quantum increment proposed by other feed millers, including PK Agro. It is significant to note that the planned price quantum

¹⁸⁹ IMG_5146 and IMG_5138 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

¹⁹⁰ IMG_5147 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

¹⁹¹ IMG_5138 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

increment was scheduled to be announced on 21.4.2021.¹⁹² These findings are corroborated by call logs showing that Liew Kai Wah contacted Yong Kim Loon of PK Agro on the same date, 19.4.2021.¹⁹³ The details of these interactions are presented in **Table 32** below:

Table 32: Call logs between Liew Kai Wah and Yong Kim Loon on 19.4.2021

NO.	CALLER (ENTERPRISE)	RECIPIENT (ENTERPRISE)	DATE	TIME	DURATION
1	Liew Kai Wah (FFM)	Yong Kim Loon (PK Agro)	19.4.2021	1.01pm	0 minute 56 seconds
2	Yong Kim Loon (PK Agro)	Liew Kai Wah (FFM)	19.4.2021	1.31pm	0 minute 29 seconds

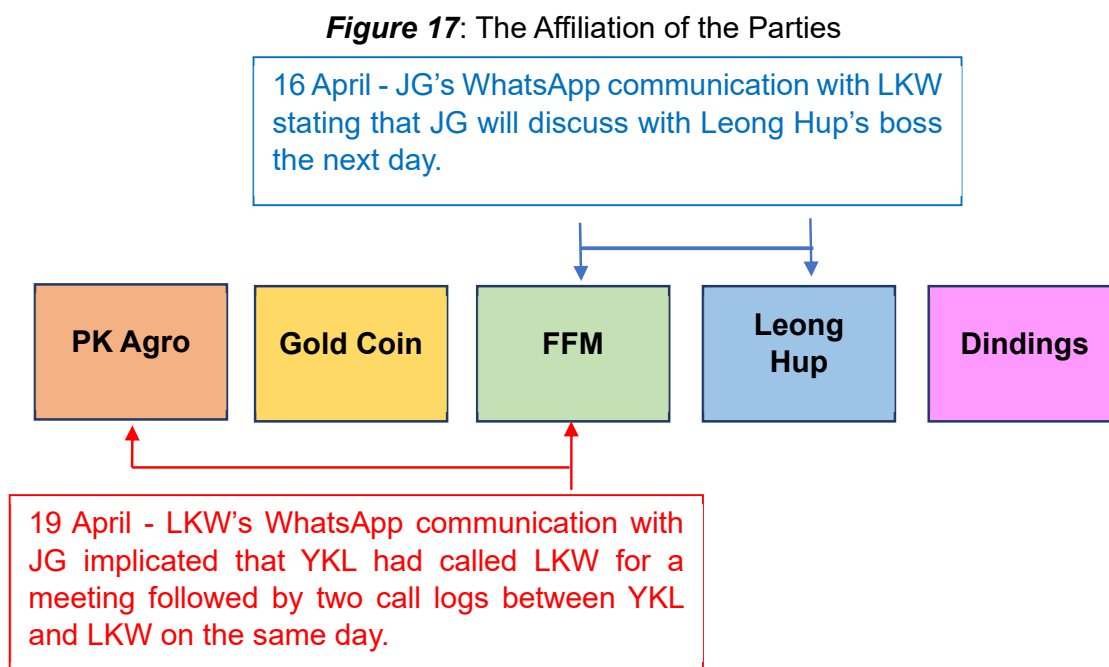
255. After analysing the WhatsApp conversations and call logs, the Commission finds that FFM increased the quantum of poultry feed (with maize and SBM as the main ingredients) price to RM1.50 on 21.4.2021.

256. The additional evidence shows direct communication between the Parties. Specifically, there were exchanges of sensitive commercial information between PK Agro and Gold Coin, as well as between FFM and PK Agro. These interactions culminated in agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) price in Malaysia for April 2021.

¹⁹² IMG_5139 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

¹⁹³ Information provided by Maxis Broadband Sdn. Bhd. pursuant to section 16(h) and section 17(2)(i) of the Competition Commission Act 2010; and Information provided by Celcom Axiata Berhad pursuant to section 16(h) and section 17(2)(i) of the Competition Commission Act 2010.

257. The analysis of the above evidence in relation to the Parties is outlined in **Figure 17**:



258. In June 2021, the Parties collectively raised the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM2.00. This information is detailed in **Table 33** below:

Table 33: The Date of Movements of the Price Quantum of Poultry Feed in June 2021

PK AGRO	GOLD COIN	FFM	LEONG HUP	DINDINGS
<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Based on the earliest Invoices in each month</i>
1.6.2021	1.6.2021	8.6.2021	1.6.2021	1.6.2021

259. The Commission previously discussed a conversation between Yong Kim Loon and Dr Sakda, during which Yong Kim Loon stated, "Gold Coin jame [James] told me: April consider 2 or 3 per bag. May maintain. June drop". This communication suggests that the

quantum of poultry feed (with maize and SBM as the main ingredients) price increase remained at RM3.00 per bag in May 2021, as indicated by the statement "*May maintain*". Later, in June 2021, the price increase fell to RM2.00 per bag, in line with the statement "*June drop*".¹⁹⁴

260. This finding is supported by the evidence presented in **Table 34** below.

Table 34: WhatsApp Conversation between Liew Kai Wah of FFM and Jeremy Goon of FFM on the Increment of Price Quantum for June 2021

DATE	WHATSAPP CONVERSATION
27.5.2021 ¹⁹⁵	<p>IMG_5133</p> <p>Liew Kai Wah: Just few hours ago representative from <u>MFM</u> called, <u>hoping to achieve understanding in price increase of RM3 per bag (RM60/mt) for June.</u> [emphasis added] These had been aligned with all CP, Gold Coin, so they were hoping that we do not pull back. In fact they said had not for the correction, they wanted to go higher than RM3 in June because all are barely breaking even or seeing red (so they claimed). This coming increase serves as a little buffer only because if there are further corrections in July onwards, we would have carried high cost stock and customers would expect immediate revision downwards then.</p> <p>IMG_5134</p> <p>Liew Kai Wah: <u>bosses from CP and GC will convince LH</u> [emphasis added] to be onboard with this. I heard that smaller</p>

¹⁹⁴ Digital Forensics Report by MyCC on PK Agro Industrial Products (M) Sdn Bhd (MyCC (IED)700-2/7(5)) dated 22.7.2022, page 20; Price Memorandum of PK Agro from April 2021 to May 2021; Price Memorandum of Gold Coin from April 2021 to June 2021.

¹⁹⁵ IMG_5133; IMG_5134; IMG_5135 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

DATE	WHATSAPP CONVERSATION
	<p>feed millers especially in the north NEED this price increase to stay in the business. GC said that those small farmers expected us big boys to increase even more so that they could follow suit</p> <p>Liew Kai Wah: Anyway, we will not be the first to announce price revision and we can still observe the market reaction and offtake in the first week. These are the latest sentiments gathered today and presented as such.</p> <p>Liew Kai Wah: Due to MCO, we didn't have chance to meet up with the feed millers so that they just dropped me a line to seek alignment</p> <p>Jeremy Goon: Ok KW. All well noted and agreed also that we certainly won't be first to move on this. This is one of the few industries where we are not the number 1 so we see what the big guys do first and then we can discuss and decide. Thanks</p> <p>IMG_5135</p> <p>Liew Kai Wah: We are one of the largest. Last time we didn't jump onboard immediately had given them much headache</p> <p>Liew Kai Wah: <u>They need our vote to pull such stunts.</u> [emphasis added] But we match and see first if there is faster corrections.</p> <p>Liew Kai Wah: Noted boss. Will let you know before announcing increase on the 8th</p> <p>Liew Kai Wah: Until told otherwise, it's a go-ahead.</p>

261. According to the WhatsApp conversation documented in **Table 34**, there was an initial discussion to raise the quantum of poultry feed (with maize and SBM as the main ingredients) price to RM3.00 in June 2021. Liew Kai Wah, in his communication, mentioned that this

proposal originated from MFM (Dindings).¹⁹⁶ He stated, "*Just a few hours ago, a representative from MFM called, seeking to establish an understanding regarding the price increase of RM3 per bag (RM60/mt) for June.*" Liew Kai Wah further stated that both PK Agro and Gold Coin had agreed to the proposed price quantum increase and were working on convincing Leong Hup to join.¹⁹⁷

262. In the WhatsApp conversation mentioned earlier, Liew Kai Wah emphasised that FFM had a significant position as one of the largest entities in the poultry feed (with maize and SBM as the main ingredients) market. He asserted that without FFM's agreement, the Parties might face challenges in fully implementing the agreement to increase the quantum of poultry feed (with maize and SBM as the main ingredients) price.

*"We are one of the largest. Last time we didn't jump onboard immediately had given them much headache ... They need our votes to pull such stunt"*¹⁹⁸

263. The Parties ultimately opted not to proceed with the initial plan to increase the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM3.00 in June 2021. Instead, all Parties

¹⁹⁶ Questions 5, 6, and 7 of the Statement of Chee Choon Shean of Premier Grain Sdn. Bhd. recorded on 20.4.2022; and Paragraph 95 of the Proposed Decision (amended as of 7.10.2022).

¹⁹⁷ IMG_5133 and IMG_5134 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

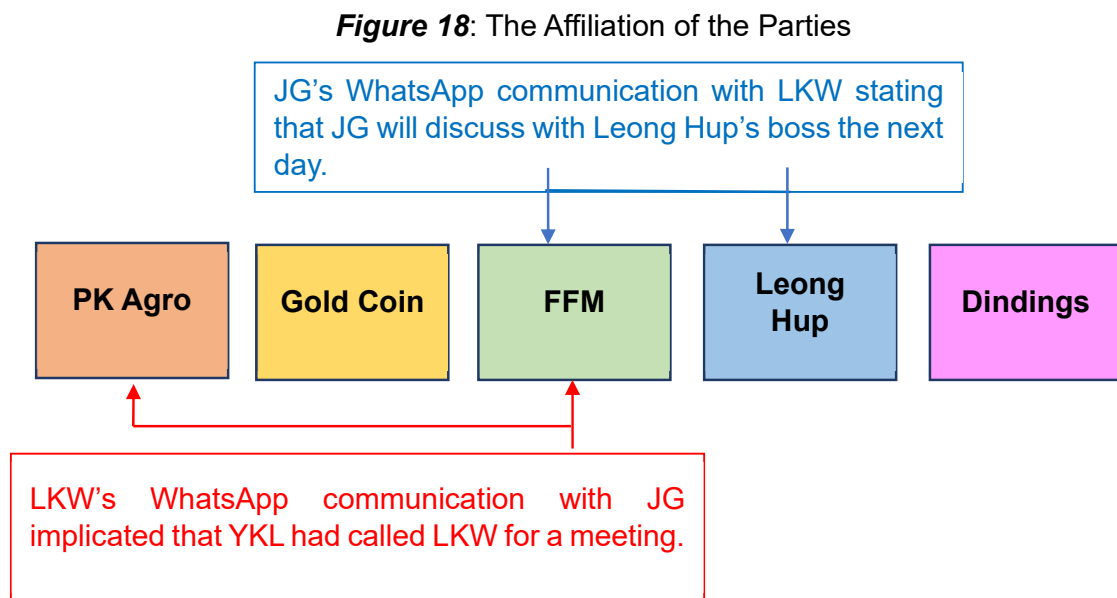
¹⁹⁸ IMG_5135 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

collectively raised the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM2.00 in June 2021.¹⁹⁹

264. Based on this analysis, the Commission makes a finding that the Parties engaged in communication and exchanged sensitive commercial information with the explicit intent of establishing the quantum of increase for poultry feed (with maize and SBM as the main ingredients) price for June 2021.

265. The analysis of the above evidence in relation to the Parties is outlined in **Figure 18**.

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(q) *Call logs between Liew Kai Wah of FFM and Yong Kim Loon of PK Agro*

¹⁹⁹ Price Memorandum of PK Agro for May 2021; Price Memorandum of Gold Coin for June 2021; Price Memorandum of FFM for June 2021; Price Memorandum of Leong Hup for June 2021.

266. As previously discussed in the preceding paragraphs, it is evident that in August 2021, the Parties raised the price quantum of poultry feed (with maize and SBM as the main ingredients) by RM2.00. The details are presented in **Table 35** below:

Table 35: The Dates of Movements of the Price Quantum of Poultry Feed in August 2021

PK AGRO	GOLD COIN	FFM	LEONG HUP	DINDINGS
<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Based on the earliest Invoices in each month</i>
1.8.2021	1.8.2021	8.8.2021	1.8.2021	5.8.2021

267. Evidence of the existence of an anti-competitive agreement and/or concerted practices to increase the quantum of poultry feed (with maize and SBM as the main ingredients) price for August 2021 is further reinforced by the WhatsApp conversation between Liew Kai Wah and Jeremy Goon of FFM that took place on 21.7.2021. Evidence of this conversation is presented in **Table 36** below.

Table 36: WhatsApp Conversation of Liew Kai Wah and Jeremy Goon

DATE	WHATSAPP CONVERSATION
21.7.2021 ²⁰⁰	IMG_5128 Today <u>CP fella called saying next month increase price for feed.</u> [emphasis added] I did not object but as usual, we watch their movements and decide. Will keep you posted

268. Referring to **Table 36**, PK Agro (referred to as “CP fella”) apprised Liew Kai Wah of an impending increase in the pricing of poultry feed (with maize and SBM as the main ingredients) slated for the “next

²⁰⁰ IMG_5128 from documents seized during a search and seizure with warrant at the house of Liew Kai Wah dated 8.3.2022, Warrant No.168735.

month” (August 2021). This information aligns with the call log, featuring a conversation between Liew Kai Wah and Yong Kim Loon on 21.7.2021, as set out in **Table 37** below:

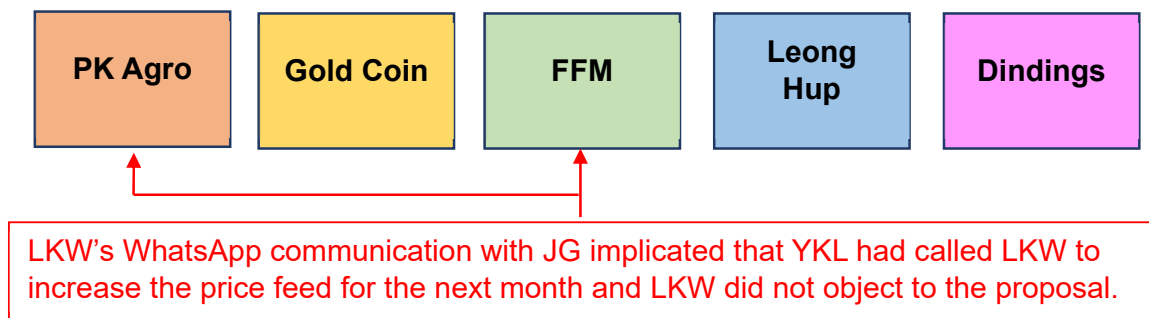
Table 37: Call Logs between Liew Kai Wah and Yong Kim Loon on 21.7.2021²⁰¹

CALLER (ENTERPRISE)	RECIPIENT (ENTERPRISE)	DATE	TIME	DURATION
Liew Kai Wah (FFM)	Yong Kim Loon (PK Agro)	21.7.2021	1.04pm	2 minutes 17 seconds

269. Based on the aforementioned evidence, the Commission finds that the Parties engaged in the exchange of sensitive commercial information, specifically between PK Agro and FFM, for the purpose of establishing the increase in the quantum of poultry feed (with maize and SBM as the main ingredients) price for August 2021.

270. The analysis of the above evidence in relation to the Parties is outlined in **Figure 19**:

Figure 19: The Affiliation of the Parties



²⁰¹ Information provided by Maxis Broadband Sdn. Bhd. pursuant to section 16(h) and section 17(2)(i) of the Competition Commission Act 2010; and Information provided by Celcom Axiata Berhad pursuant to section 16(h) and section 17(2)(i) of the Competition Commission Act 2010.

271. In February 2022, the Parties raised the price quantum of poultry feed (with maize and SBM as the main ingredients) by RM2.00²⁰², as outlined in **Table 38** below:

Table 38: The Dates of Increments of The Price Quantum of Poultry Feed

PK AGRO	GOLD COIN	FFM	LEONG HUP	DINDINGS
<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Effective date</i>	<i>Based on the earliest Invoices in each month</i>
1.2.2022	1.2.2022	8.2.2022	1.2.2022	5.2.2022

272. The Commission holds the opinion that the price quantum increments in February 2022 were a consequence of information sharing between the Parties, as depicted in the conversation outlined in **Table 39** below:

Table 39: WhatsApp Conversation between Liew Kai Wah and Jeremy Goon

DATE	WHATSAPP CONVERSATION
WhatsApp conversation between Liew Kai Wah and Jeremy Goon dated 4.2.2022.	<p>IMG_5124</p> <p>Hi Mr Goon, per our discussion earlier, other feed millers already announced price increase RM2 /bag for Feb. This round LH was the one asking for it too. My proposed are:</p> <ol style="list-style-type: none"> 1) poultry to follow 2) all ruminant and rabbit no increase (and we adjust only to volume buyers)

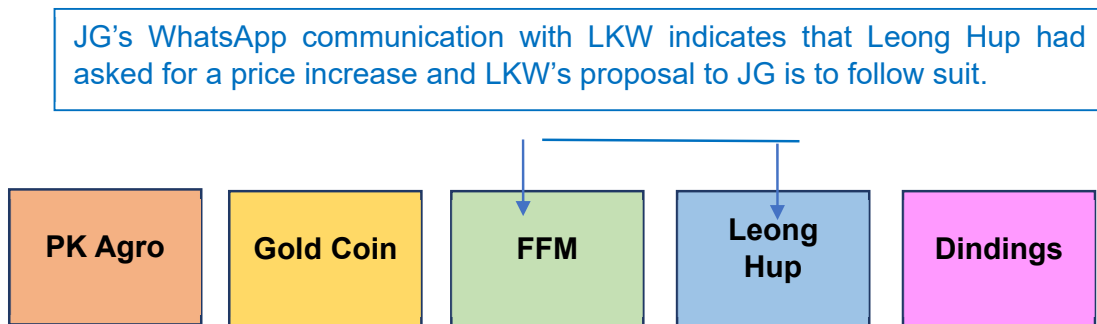
273. Based on the information provided, it is clear that Leong Hup requested a price quantum increment for poultry feed (with maize and SBM as the main ingredients) at RM2.00 in February 2022. This

²⁰² Price Memorandum of PK Agro for January 2022; Price Memorandum of Gold Coin for February 2022; Price Memorandum of FFM for February 2022; Price Memorandum of Leong Hup for January 2022; Invoice provided by Dindings for 5.2.2022.

request was implemented, as evidenced by the fact that Parties simultaneously raised the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM2.00 in February 2022.²⁰³

274. The analysis of the above evidence in relation to the Parties is illustrated in **Figure 20**:

Figure 20: The Affiliation of the Parties



(r) *PK Agro's acknowledgement of information sharing on raw materials during MFA meetings.*

275. During the oral representation session on 14.7.2023, PK Agro's counsel admitted to engaging in the exchange of pricing information for raw materials during MFA meetings. Also, during the oral representation, PK Agro's counsel confirmed that the Parties shared raw material information, including sensitive pricing information. PK Agro asserted that the sharing of information on raw material prices does not contravene the law, a position strongly disagreed upon by the Commission.

²⁰³ Price Memorandum of PK Agro for January 2022; Price Memorandum of Gold Coin for February 2022; Price Memorandum of FFM for February 2022; and Price Memorandum of Leong Hup for January 2022; Invoice provided by Dindings for 5.2.2022.

276. The statements of Mr. Ong, Mr. Chee, Liew Kai Wah Handwritten Notes, and Liew Kai Wah Notes A and B are consistent with PK Agro's acknowledgment. The admissions by PK Agro's counsel (as referred to in paragraph 275 above) reveal two crucial aspects. First, they confirm that discussions took place between the Parties during MFA meetings, specifically focusing on raw material prices. This is consistent with the statement made by former MFA secretary, Ong Choo Teik, who stated that representatives from the Parties would gather in smaller groups for discussions.²⁰⁴
277. The admissions are also consistent with Chee Choon Shean's statement. Chee Choon Shean, Deputy General Manager at Premier Grain and representative of Dindings at the MFA meetings, informed the Commission that representatives from the Parties would contact him regarding the price of raw materials. This was because of his extensive experience working with the raw materials.
278. The handwritten notes of Liew Kai Wah further reinforce PK Agro's admissions and support the existence of information exchange among the Parties. These notes mention "*MFA achievement: stop rigorous competition*," indicating communication between the Parties. LKW Note B explicitly states that there was an "*unspoken understanding*" regarding a forthcoming price increase of RM3 per bag.

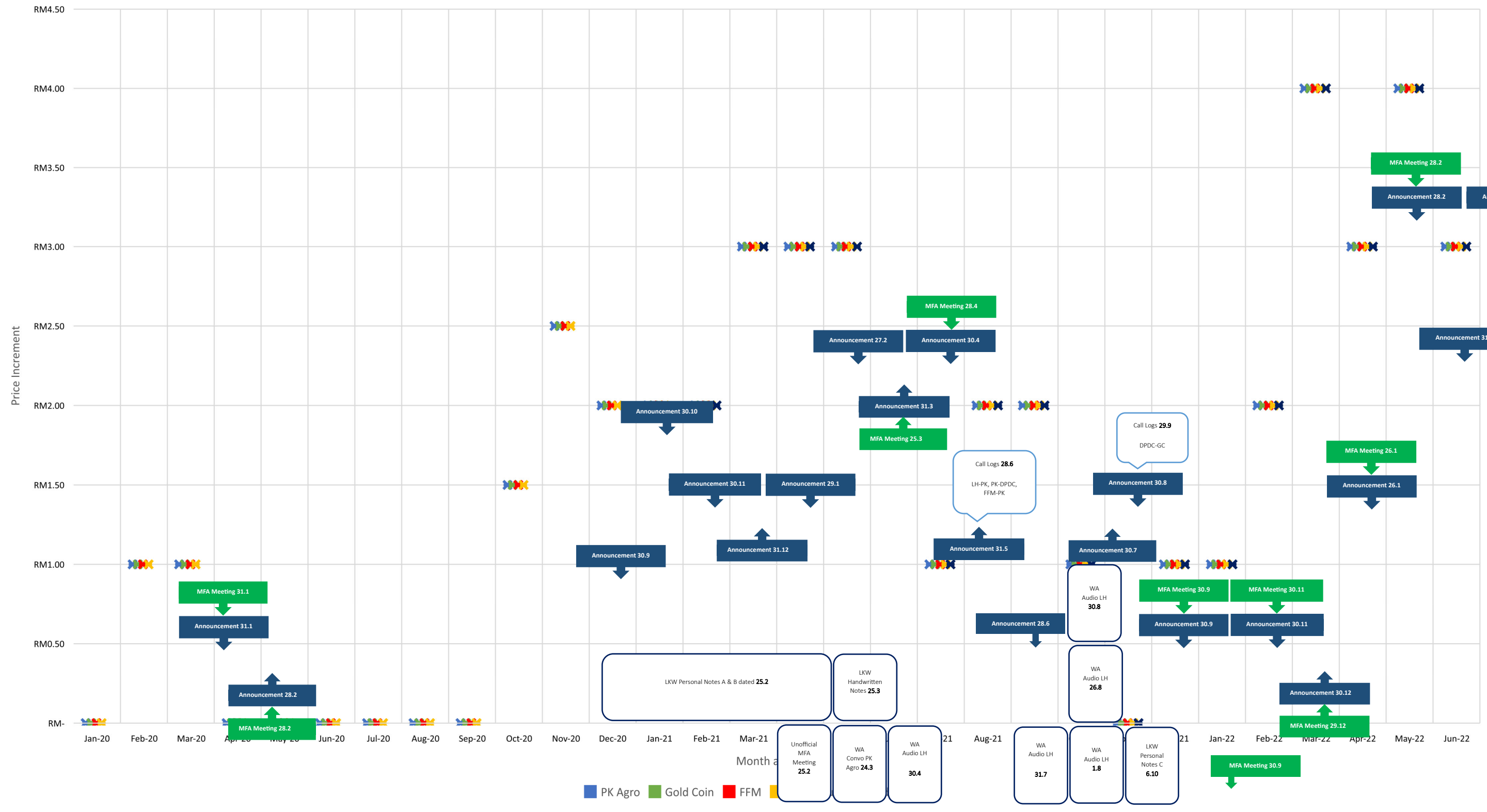
²⁰⁴ Question 7 of the Statement of Ong Choo Teik of MFA recorded on 11.4.2022.

Conclusion

279. Drawing from the analysis above, the Commission concludes that there were agreements and/or concerted practices through, among other things, exchanges of information between the Parties with the purpose of fixing the increase in the quantum of poultry feed (with maize and SBM as the main ingredients) price for February 2022.

280. For the purpose of clarity and convenience, the Commission presents the relevant findings in **Figure 21** below.

The Price Adjustment of the Parties from January 2020 to June 2022



281. Referring to **Figure 21** above, the Commission establishes that the Parties engaged in agreements and/or concerted practices to fix the quantum of increments of poultry feed (with maize and SBM as the main ingredients) prices during three distinct infringement periods. These infringement periods are categorised into three separate segments, based on the Parties involved and the nature of the evidence relied upon by the Commission, as outlined below:

The first period of infringement: 31 January 2020 – 31 March 2020

282. The Commission has conclusively established the existence of agreements and/or concerted practices involving four Parties (excluding Dindings): PK Agro, Gold Coin, FFM, and Leong Hup. These agreements and/or concerted practices were for the purpose of increasing the poultry feed (with maize and SBM as the main ingredients) price by RM1 in February and March 2020. This determination is based on the comprehensive evaluation of the following evidence:

- (a) The uniformity in the increment of poultry feed (with maize and SBM as the main ingredients) price quantum observed among the four Parties from 31.1.2020, until 28.2.2020;
- (b) The MFA Meetings held on 31.1.2020, and 28.2.2020;
- (c) The issuance of price announcements by the four Parties, with the earliest announcements dated 31.1.2020, and 28.2.2020; and
- (d) PK Agro's admission of information sharing on raw materials during MFA meetings.

The second period of infringement: 1 October 2020 – 31 January 2021

283. The Commission has established that there were agreements and/or concerted practices among four Parties (excluding Dindings), namely, PK Agro, Gold Coin, FFM, and Leong Hup, to increase the quantum of poultry feed (with maize and SBM as the main ingredients) prices by RM1.50 in October 2020, by RM2.50 in November 2020, and by RM2.00 in December 2020 until January 2021. This conclusion is based on a comprehensive evaluation of the following evidence:

- (a) The uniform increments in the poultry feed (with maize and SBM as the main ingredients) prices quantum observed among the four Parties;
- (b) LKW Personal Note A and LKW Personal Note B;
- (c) The issuance of price announcements by the four Parties, with the earliest announcements for the months of October 2020, November 2020, December 2020, and January 2021 dated on 30.9.2020, 30.10.2020, 30.11.2020, and 31.12.2020 respectively; and
- (d) PK Agro's admissions of information sharing on raw materials during MFA meetings.

The third period of infringement: 1 February 2021 until 30 June 2022

284. The Commission makes the finding that all five Parties have engaged in agreements and/or concerted to increase the quantum of poultry feed (with maize and SBM as the main ingredients) price by RM2.00 in February 2021, by RM3.00 in March 2021 until May

2021, by RM3.00 in April 2022, by RM4.00 in May 2022, and by RM3.00 in June 2022. This determination is based on a comprehensive evaluation of the totality of the following evidence:

- (a) Similar price increments in poultry feed (with maize and SBM as the main ingredients) observed across all five Parties from February 2021 to June 2022;
- (b) Price announcements, with the earliest announcements issued by the Parties on the following dates 29.1.2021, 27.2.2021, 31.3.2021, 30.4.2021, 31.5.2021, 28.6.2021, 30.7.2021, 30.8.2021, 30.9.2021, 30.11.2021, 30.12.2021, 26.1.2022, 28.2.2022, 31.3.2022, 29.4.2022, and 30.5.2022, as well as price invoices issued by Dindings;
- (c) Close proximity of MFA meeting dates and price announcement dates;
- (d) Unofficial MFA Meeting attended by Dindings, FFM, Gold Coin, and PK Agro on 25.2.2021;
- (e) WhatsApp conversation between Lim Yong Ping and Jenny of Leong Hup;
- (f) Handwritten Notes by Liew Kai Wah dated 25.3.2021;
- (g) LKW Personal Note A and LKW Personal Note B;
- (h) WhatsApp conversation between Yong Kim Loon and Dr. Sakda of PK Agro on 24.3.2021;
- (i) WhatsApp audio recordings of conversation between Alex and Lim Yong Ping of Leong Hup on 30.4.2021;
- (j) WhatsApp audio recording of conversation between Lim Yong Ping and his superior on 26.8.2021;
- (k) Call logs dated 28.6.2021 and 29.9.2021 and internal email correspondence of Gold Coin;

- (l) WhatsApp audio recordings of conversation between Lim Yong Ping of Leong Hup and Mr. Sim on 30.6.2021;
- (m) WhatsApp audio recordings of conversations between Lim Yong Ping of Leong Hup and the Sales Team of Leong Hup on 31.7.2021 and 1.8.2021;
- (n) WhatsApp audio recording of conversation between Leong Hup and Gold Coin on 30.8.2021;
- (o) WhatsApp conversations between Liew Kai Wah and Jeremy Goon of FFM;
- (p) Call logs between Liew Kai Wah of FFM and Yong Kim Loon of PK Agro;
- (q) LKW Personal Note C; and
- (r) PK Agro's acknowledgement of information sharing on raw materials during MFA meetings.

Arguments by the Parties and the Commission's Findings

(a) No evidence to show concurrence of wills

285. Based on the principle from *Bayer*,²⁰⁵ Gold Coin argues that the Commission has not clearly identified any expression by the Parties that demonstrates a concurrence of wills.

286. The Commission takes the view that in cases where there is no direct evidence of an agreement (such as contracts, formal contracts, or confirmation of meeting attendance), establishing a

²⁰⁵ Case T- 41/96 *Bayer v Commission*.

case and, more importantly, proving an actual “concurrency of wills” becomes challenging for any competition authority.

287. To address such situations, the concept of a ‘concerted practice’ has been developed to capture forms of coordination in which enterprises, without reaching an agreement or establishing a concrete plan of action, knowingly and based on a mutual understanding, replace ‘competition risks’ with ‘practical cooperation’. This concept was discussed in the judgement of *Dyestuffs*²⁰⁶ and subsequently expanded upon in *Suiker Unie*.²⁰⁷

288. In the present case, the Commission relies on the entirety of the evidence to establish the concerted practices between the Parties to fix the quantum of poultry feed prices in Malaysia. The Commission finds that the Parties knowingly substituted coordination for the risks of competition. Rightly, in the decision-making process, each enterprise should adopt independent conduct as the norm. As highlighted in *AC-Treuhand AG*,²⁰⁸ every economic operator must independently determine the policies they intend to adopt in the market. This means that competitors should not allow themselves to be influenced by other competitors when making decisions about future behaviour in the market, including future prices and strategies.²⁰⁹

²⁰⁶ Case 48/69 *ICI Ltd v Commission*, at paragraph 64.

²⁰⁷ Joined Cases 40-48, 50, 54-56, 111, 113-114/73 *Suiker Unie and Others v Commission*, at paragraphs 173-174.

²⁰⁸ Case C- 194/14 *AC-Treuhand v Commission*.

²⁰⁹ Case C-8/08 *T-Mobile Netherlands and Others v Commission*.

(b) Information sharing should be dealt with “by-effect” analysis

289. Dindings and Gold Coin argue that information sharing should be addressed through an effect-based analysis.
290. The Commission, however, does not consider information sharing by itself as an independent infringement. Instead, the Commission takes the position that disclosing and/or exchanging commercial information facilitates collusion in price fixing and signifies participation in concerted practices.
291. Taking into consideration the available evidence, the Commission acknowledges the fact that none of the recorded official minutes from the MFA meetings reflect any discussions pertaining to the prices of poultry feed. Nevertheless, the Commission maintains the position that these discussions and the exchange of information took place in an informal manner, either before, during or subsequent to the MFA meetings.
292. The Commission finds that the informal exchanges of information between the Parties through various means such as WhatsApp conversations, WhatsApp audio recordings, as well as communications via calls and email, pose a significant threat to competition. This threat is particularly noticeable when these exchanges involve the regular sharing of information regarding future pricing intentions among competitors.
293. Evidence of information-sharing involving Parties reveal insights into the future market conduct of the Parties. This includes call logs with

PK Agro on 28.6.2021, call logs with Gold Coin on 29.9.2021, and implied information-sharing through communications between Gold Coin and Leong Hup dated 31.8.2021. When this evidence is examined in conjunction with the proximity to the dates of price announcements and invoices, the Commission observes that there were perfectly parallel increases in the quantum of poultry feed (with maize and SBM as the main ingredients) prices. In this regard, Dindings's and Gold Coin's participations in this information-sharing constitute a crucial aspect of their overall agreements and/or concerted practices.

294. It is crucial to stress here that when a recipient receives information regarding a competitor's future conduct, it is presumed that the recipient will take that information into account when shaping their future market policies. Therefore, the Commission interprets the identified series of behaviours, especially those involving the exchange of sensitive information between competitors, as profoundly detrimental to competition.

295. In the present case, the use of 'information exchanges' is central to the informal collusion. These exchanges can have harmful effects. Such exchanges led to collusion between the Parties, who would otherwise be competitors.

(c) *There was no horizontal agreement and/or concerted practice entered into by the Parties during the infringement periods.*

296. Gold Coin relies on the principle in *Suiker Unie*²¹⁰ and *Polypropylene*²¹¹ to argue that the conduct of Gold Coin in comparison with the behaviour and conduct of other four Parties was mere “parallel behaviour with no element of concertation”.

297. Gold Coin adds that the price announcements made by the Parties were typical responses to price increases caused by inflated raw material costs. The Commission takes a different view. To the Commission, identical price increases are only legitimate in a perfectly competitive market where the products are completely identical. In such a market, it would be possible to have identical price increases but this would only happen if the product is manufactured using the same processes and there is perfect information symmetry.

298. The case of *Suiker*²¹² also emphasised that each enterprise should independently decide their conduct in the market. The European General Court in *ICAP*²¹³ recently upheld this principle and further clarified that it prohibits any direct or indirect contact between competitors that may influence their competitors’ conduct in the

²¹⁰ Joined Cases 40-48, 50, 54-56, 111, 113-114/73 *Suiker Unie and Others v Commission*, at paragraphs 173-174.

²¹¹ Case No L 230/1 *Polypropylene* (1986) 86/398/EEC.

²¹² Joined Cases 40-48, 50, 54-56, 111, 113-114/73 *Suiker Unie and Others v Commission*, at paragraphs 173-174.

²¹³ Case T-180/15 *ICAP and Others v Commission*, ECLI:EU: T:2017:795.

market where the object or effect is to create conditions of competition that do not correspond to the normal conditions of the market.²¹⁴

299. In the present case, the Commission establishes the existence of anti-competitive exchanges of information that led to the agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) prices. These exchanges took place through the use of customer price memorandums, announcements, and informal communications. For that reason, it cannot be claimed that the market behaviour is independently determined. The *Anic*²¹⁵ presumption, which states that "subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the enterprises participating in concerted arrangements and remaining active on the market take into account the information exchanged with their competitors when determining their conduct on the market,"²¹⁶ supports this finding.

300. It is appropriate to invoke the *Anic* presumption in the present case when considering that the resulting market conduct involved identical price adjustments between the Parties. The scenario of the present case, when viewed in its totality, is not consistent with typical competitive conditions. Arriving at a conclusion of independent pricing would be precarious.

²¹⁴ Case T-180/15 *ICAP and Others v Commission*, ECLI:EU: T:2017:795, at paragraphs 49 and 50.

²¹⁵ Case C-49/92 P *European Commission v Anic*.

²¹⁶ Case C-49/92 P *European Commission v Anic*, at paragraph 121.

301. In the current case, the Commission fortifies its findings by referring to Gold Coin's invoices²¹⁷ to show the fluctuations in quantum of prices. Additionally, the Commission relies on evidence such as the attendance of James Jimmy Kueh Swee Chai at the unofficial MFA Meeting held on 25.2.2021, WhatsApp audio recordings of conversation between Lim Yong Ping of Leong Hup and "Vincent," a sales employee at Gold Coin, and handwritten Notes by Liew Kai Wah dated 25.3.2021. Collectively, these pieces of evidence demonstrate the shift from competitive risks to practical cooperation in relation to the increments of quantum of poultry feed (with maize and SBM as the main ingredients) prices.
302. Competitors have different formulations of chicken feed and have diverse organizational structures. However, this observation is in contrast to the observed evidence of identical and parallel price quantum increments during the infringement periods. The uniform rise in costs alone cannot explain the parallel conduct, considering the variations in feed formulations and economies of scale enjoyed by more integrated enterprises.
303. It is important to differentiate coordinated price adjustments aimed at protecting market share during difficult business conditions from legitimate competitive strategies. Unlawful collusion, which necessitates anti-competitive agreements that involve the sharing of sensitive information among competitors, is the focal point in establishing infringement in the present case.

²¹⁷ Transcript of Oral Representation Session of Gold Coin on 21.6.2023, page 16 lines 1-11.

304. The claim of independent price determination lacks supporting evidence by the Parties. Mere assertion that a company sets its prices independently does not rule out the possibility of engaging in anti-competitive behaviour. The Parties failed to provide calculations, resulting in a lack of evidence regarding independent price determination.

305. It is of utmost importance for the Commission to thoroughly evaluate and analyse the level of transparency in price-setting and the manner in which enterprises communicate with their competitors. Whilst it is true that a Party has the autonomy to make its own pricing decisions, it is essential to recognise that the sharing of sensitive information, market trends, or even intentions can give rise to competition concerns.

306. Therefore, it is crucial to consider the broader context and take into account additional pieces of evidence that can shed light on the matter at hand. For instance, the existence of WhatsApp communications or unofficial meetings, as demonstrated in the current case, significantly weakens the argument put forth by the Parties involved. It is important to note that the totality of the evidence available strongly indicates a different perspective than what is being claimed.

(d) Parallel behaviour naturally occurs in the market

307. Dindings's contention that the parallel conduct serves the purpose of preventing a decline in volume supports the overall perspective that the Parties intentionally chose to replace the risks associated

with healthy competitive market dynamics with a higher level of certainty.

308. The facts of the present case highlight a strategy where the Parties, instead of independently navigating the competitive landscape, aimed to reduce uncertainties by aligning their actions. By focusing on maintaining volume through coordinated pricing adjustments, the Parties demonstrate an effort to minimise the fluctuations inherent in market-driven competition and establish a more predictable environment that benefits their collective interests. Whilst this approach may seem logical from an individual company's standpoint, it raises concerns from a competition law and policy perspective as it could distort the competitive equilibrium and hinder genuine market rivalry.

309. In *Dyestuffs*²¹⁸ it was held that a concerted practice exists, even if it does not meet the requirements of an agreement, when parties “knowingly substitute practical cooperation between them for the risks of competition.”²¹⁹

310. In the current case, parallel behaviour does not stand alone as the sole basis for the finding of infringements. Firstly, the Commission has observed that the quantum of price increase listed in the announcements were remarkably similar and, in fact, identical for the four Parties involved. These similarities raise concerns and support the notion of concerted practices among the Parties.

²¹⁸ Case 48/69 *ICI v Commission* [1972] ECR 619.

²¹⁹ Case 48/69 *ICI v Commission* [1972] ECR 619, at paragraph 64.

Further, the Commission has uncovered handwritten notes made by Liew Kai Wah on 25.3.2021, on the minutes of MFA meetings. These notes provide additional evidence of collusion among the Parties, further strengthening the case against them.

311. In addition, the Commission possesses crucial CCTV footage that records meetings held on 30.11.2021, 29.12.2021, and 28.2.2022. These recordings serve as tangible proof of the Parties' interactions, reinforcing the evidence of concerted practices. Moreover, the Commission obtained multiple forms of communications exchanged by the Parties, including but not limited to WhatsApp conversations and emails. These records of communications provide explicit documentation of the Parties' concerted practices, thus presenting a compelling case for their commission of the infringements.

312. In light of these findings, it is evident that the Parties' parallel behaviour, supported by substantial supporting evidence, strongly indicates the infringements in question.

313. PK Agro argues that the simultaneous quantum of price increases is a result of oligopolistic behaviour in the poultry feed market. PK Agro asserts that this market structure is characterised by an oligopoly, which enables the involved Parties to easily observe and understand each other's actions and behaviour in the market.

314. In the *Decision Against 7 Warehouse Operators*,²²⁰ the Commission affirmed its authority to use all forms of evidence, including indirect

²²⁰ The Competition Appeal Tribunal's Decision dated 24.2.23 in the Matter of Appeal No: TRP 2 – 2021

and circumstantial evidence, as long as they are relevant for establishing and substantiating the elements of the infringement. In the present case, our grounds for identifying agreements and/or concerted practices extend beyond mere parallel price increases. We fortify our findings with evidence of indirect communications among competitors, which coincide with the observed price increments.

315. Upon examining the specific circumstances of this case, as uncovered by the Commission's investigation, a discernible pattern became evident. Apart from Dindings, the other four Parties involved consistent announced price increases through price memorandum or announcements, either on the same day as, or after, MFA meetings.

316. The majority of the Parties also submit that the price announcements were normal responses to price increases resulting from inflated costs of raw materials. The Commission, however, takes the position that identical price increases are only possible in a perfectly competitive market for exactly homogenous products; one where the relevant product is produced using identical processes, and there is information symmetry in the market.

317. The Commission is of the view that a perfectly competitive market for exactly homogenous products does not exist in the present case. This is because the formulation of the chicken feed varies and competitors are structured differently. The parallel behavior cannot be explained by the rising costs caused by different feed formulations, and varying economies of scale enjoyed by the

enterprises. Matching the quantum of price increase with other Parties in an effort to maintain volume during a tough business period is unlawful concertation as it necessitates the exchange of sensitive information between competitors.

318. In the case of *ICI v Commission*,²²¹ the European Commission imposed fines on multiple producers of dyestuffs. The Commission found them guilty of price fixing through concerted practices. The decision was based on several evidence, including the similarity in the timing and rate of price increases, instructions sent by parent companies to their subsidiaries, and the existence of informal contact between the firms involved.

319. In the instant case, we do not solely rely on parallel increases in price to establish concertation. Instead, we fortify our findings with evidence of direct and indirect communications between competitors. This evidence demonstrates a clear pattern of coordination. Consequently, the Commission reaches the conclusion that there are agreements and/or concerted practices in place to determine the quantum in the increase of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia. It is important to note that this finding highlights the existence of a coordinated effort among competitors to manipulate poultry feed (with maize and SBM as the main ingredients) prices.

²²¹ Case 48/69 *ICI v Commission* [1972] ECR 619.

320. During PK Agro's oral representation²²², a pivotal acknowledgment was made. PK Agro openly confirmed that the Parties' exchanged information about raw materials, both within the context of MFA Meetings and through conversations on WhatsApp. This admission is significant as it confirms the sharing of proprietary business information, thereby providing substantial support for the disclosure of confidential insights. This revelation further strengthens the case for concerted practices among the Parties involved.

321. Therefore, based on this explicit acknowledgment, it is reasonable to deduce that concerted practices existed among the Parties. These practices appear to be focused on collectively establishing and manipulating prices for poultry feed (with maize and SBM as the main ingredients). The sharing of sensitive business data, particularly concerning raw materials, adds weight to the contention that the Parties were actively engaged in a coordinated effort to influence and set prices in the relevant market. This finding emphasises the extent of their collaborative actions and their impact on the market dynamics.

(e) *Increasing costs of raw materials*

322. During the period spanning from August 2021 to September 2021, the price of crude palm oil remained stable. Additionally, it is important to highlight that the Malaysian Ringgit showed an appreciative trend against the US Dollar, as shown in **Table 40**.

²²² Transcript of Oral Representation Session of Gold Coin on 14.7.2023, page 24 lines 23-32.

Table 40: Change in Maize, Soybean Meal and Crude Palm Oil Prices

MONTH	MAIZE	CHANGE	SOYBEAN	CHANGE	CPO	CHANGE	EX	CHANGE
Aug-21	1,083.16	-9.29%	1,984.98	-1.72%	4,555.00	0.02%	4.222	-1.34%
Sep-21	982.56		1,950.90		4,556.00		4.16	

*CPO: Crude Palm Oil

323. This particular observation suggests that the rise in prices did not accurately reflect the actual cost of raw materials for Gold Coin, as mentioned in the email sent by James Jimmy Kueh Swee Chai to Gold Coin employees.²²³

324. According to the Parties involved, the price increases can be attributed to the surge in global raw material prices. In his internal emails discussing the increments in poultry feed (with maize and SBM as the main ingredients) prices, James Jimmy Kueh Swee Chai of Gold Coin justified these adjustments by citing the same underlying factor. One excerpt from the emails states the following:

After going through the cost of the raw materials with our Country Purchasing Manager and also Nutritionist and seeing its effect on the FGCOS, the selling price of feed will have to be increased by RM4.00/bag or RM80.00/MT.

This increase is still insufficient to cover the true increase in the cost of the raw materials seeing the huge spike for corn, SBM and also CPO but we

²²³ Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Jimmy Tan, Kee Ling Tan, Marshal Mathews Chuat, Melvan Eng Hwa Law, Sengleong Teo and Jonathan Sie Gain Ting on 31.8.2021; and Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Jimmy Tan, Kee Ling Tan, Marshal Mathews Chuat, Melvan Eng Hwa Law, Sengleong Teo and Jonathan Siew Keong Chung on 30.9.2021.

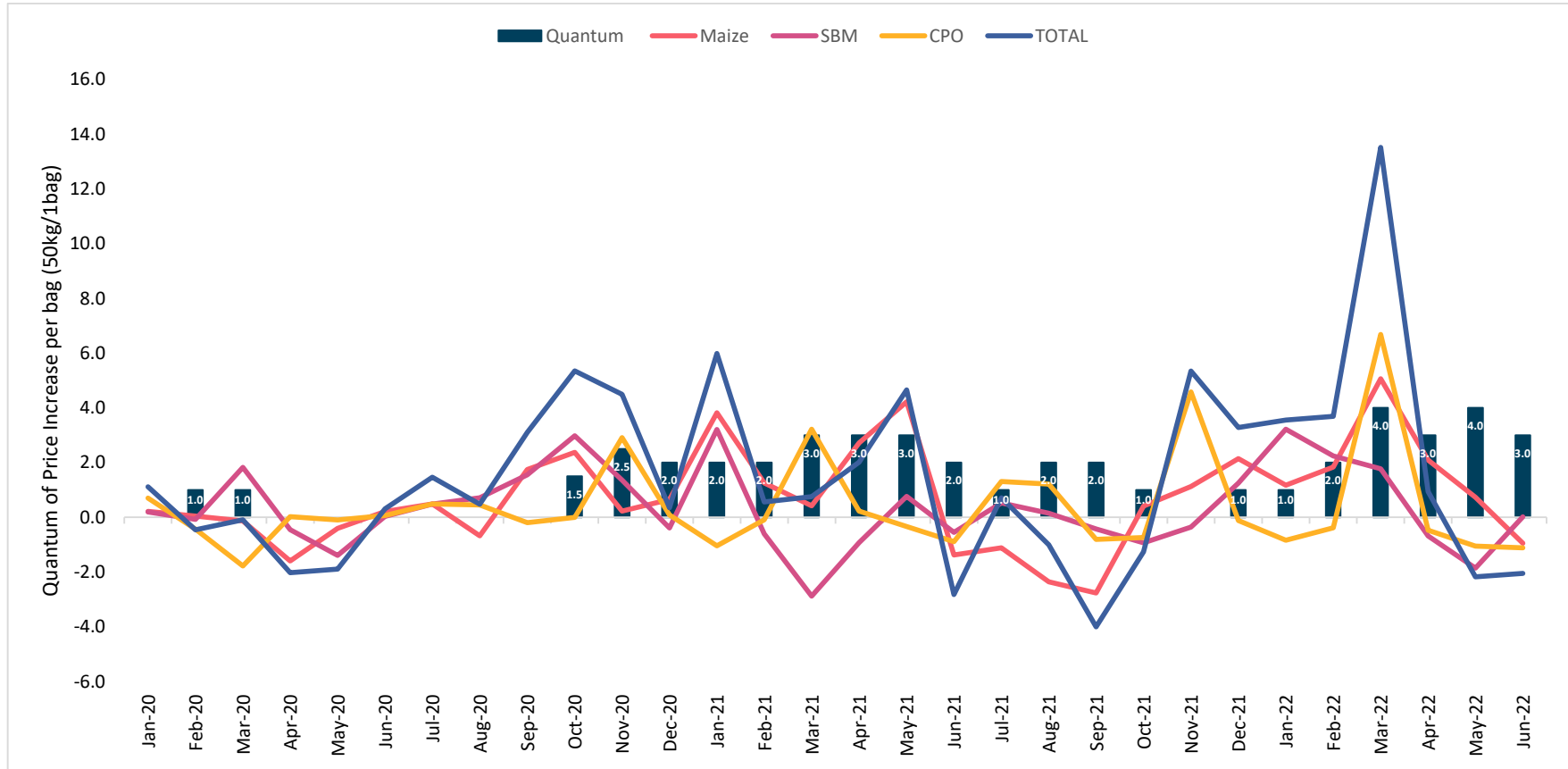
*will need to ensure that we support and stand in solidarity with our customers and also the broiler industry*²²⁴

325. To verify the accuracy of the claims regarding the correlation between fluctuations in global raw material prices and following price increases, the Commission conducted a thorough analysis. This analysis involved a meticulous examination of the extent of price increments, juxtaposing them with the corresponding global price fluctuations for key commodities such as maize, SBM, and crude palm oil. The examination spanned from January 2020 to June 2022, and the results of this analysis are presented in **Figure 22**. By juxtaposing the price movements with the global price fluctuations, the Commission was able to assess the validity of the claims and establish a clear correlation between the two factors.

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²²⁴ Email correspondence between James Jimmy Kueh Swee Chai of Gold Coin with Jimmy Tan, Kee Ling Tan, Marshal Mathews Chuat, Melvan Eng Hwa Law, Sengleong Teo and Jonathan Sie Gain Ting on 1.3.2022.

Figure 22: Analysis of Cost of Raw Materials and Quantum of Price from January 2020 to June 2022



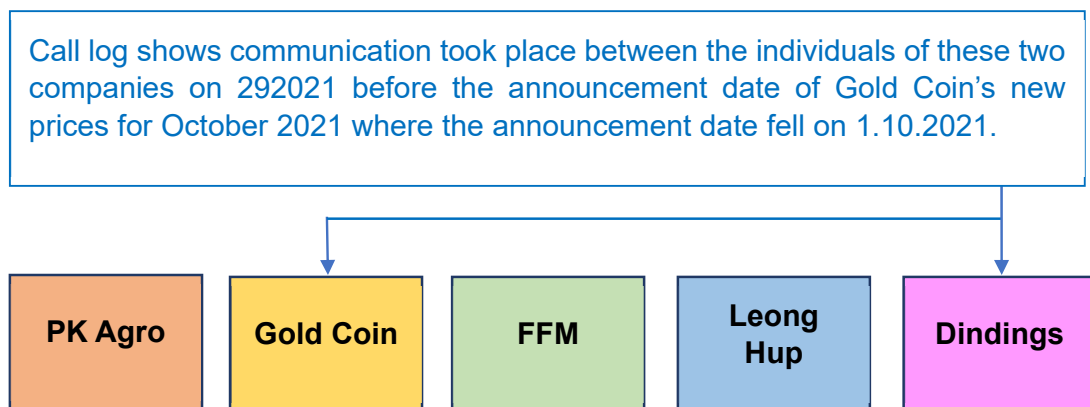
326. The Commission's analysis focuses on three primary constituents of poultry feed (with maize and SBM as the main ingredients) formulation, namely maize, soybean meal, and crude palm oil. These components are not only crucial ingredients in poultry feed (with maize and SBM as the main ingredients) but also serve as the primary reference points for the Parties when calculating their production costs. During the meticulous examination of the data, the Commission aggregates the prices of these raw materials, and subsequently compares them to the overall poultry feed (with maize and SBM as the main ingredients) price. By doing so, the Commission aims to gain a comprehensive understanding of the relationship between the prices of these key raw materials and the resulting poultry feed (with maize and SBM as the main ingredients) price.

327. Referring to **Figure 22**, the Commission notes that the overall rise in the quantum of poultry feed (with maize and SBM as the main ingredients) price, amounting to RM47.00, surpasses the total increase in the cost of raw materials, which amounts to RM43.86. This observation is significant as it highlights a discrepancy between the cost of raw materials and the corresponding increase in the final poultry feed (with maize and SBM as the main ingredients) price. Such a disparity raises questions regarding the factors influencing the pricing decisions made by the Parties, and suggests the existence of additional factors beyond the mere cost of raw materials that contribute to the determination of poultry feed (with maize and SBM as the main ingredients) prices.

328. Further, it is pertinent to observe that despite the decrease in the cost of raw materials in the months of June, August, September, and October 2021, there was still a noticeable escalation in poultry feed (with maize and SBM as the main ingredients) prices. This pattern persisted into May and June 2022, wherein the Parties increased the price to RM7.00, despite the decline in raw material costs to RM4.23. This phenomenon implies that the Parties' pricing decisions were not solely driven by the changes in the cost of raw materials, but rather influenced by other factors that led to an upward adjustment in poultry feed (with maize and SBM as the main ingredients) prices. The Commission's analysis brings attention to these instances where the Parties' pricing behaviours deviate from what would be expected based solely on the cost of raw materials, further substantiating the existence of coordinated practices among the Parties.

329. The analysis of the aforementioned evidence related to the Parties is presented in **Figure 23**.

Figure 23: The Affiliation of Dindings and Gold Coin



330. Upon careful examination, the Commission concludes that the exchanges of information concerning the quantum of increase of poultry feed (with maize and SBM as the main ingredients) prices do not constitute a standalone infringement. It is important to note that these exchanges are not evaluated in isolation but rather in conjunction with other anti-competitive practices or behaviours. The Commission recognizes that these exchanges alone do not have the inherent object of substantially preventing, restricting, or distorting competition.
331. By considering these exchanges collectively, the Commission gains a comprehensive understanding of the broader context in which they occur.
332. The Commission maintains the stance that the mere disclosure and/or exchange of future pricing intentions can be anti-competitive and can contribute to the reinforcement of existing agreements and/or concerted practices pertaining to the increase of the quantum of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia.
333. The Parties assert the defence of increasing costs of raw materials as an alternative explanation for the parallel conduct. Leong Hup contends that the Commission's Proposed Decision lacks a thorough analysis of the rise in raw material costs and its impact on the poultry feed (with maize and SBM as the main ingredients) price increase.

334. FFM argues that the Commission fails to adequately assess the rise in raw material costs and highlights concerns about significant price hikes driven by higher variable costs. Moreover, PK Agro asserts that the Commission neglects to consider the growing expenses of raw materials, which has led PK Agro to raise its prices.
335. Similarly, Gold Coin highlights the importance of evaluating the trend in raw material costs during the infringement periods. It also notes that competitors using the same commodities face similar increases in production costs. Lastly, Dindings raises the issue that industry players, experiencing comparable spikes in raw material costs, adjust prices in parallel.
336. In the preceding paragraphs, the Commission presents its assessment of the relevant market and historical trends regarding the cost of raw materials. The Parties primarily rely on maize and SBM as key commodities for poultry feed (with maize and SBM as the main ingredients) formulation. The findings explicitly outline the individual formulations for each Party, showing comparable proportions of the main commodities with only minor differences.
337. The Commission affirms that it adequately highlighted the market context regarding the cost of raw materials. It is important to note that any fluctuations or increases in the cost of raw materials cannot and should not be considered as a valid or acceptable justification for engaging in collusion or unlawful practices when it comes to determining the quantum of price increases for poultry feed. Instead, parties are expected to adhere to independent pricing strategies.

338. Regarding the issue of identical market behaviour resulting from identical increases in raw material costs, the Commission would like to emphasise several contradictory points. It is worth noting that economists representing Dindings, FFM, and Gold Coin have thoroughly examined the commodities listed in **Table 40**, which account for a significant portion, ranging from 87% to 94%, of production costs. This observation implies that there exists a considerable degree of flexibility and potential for variation in costs.
339. While the percentage of variable costs is constrained, it still allows for slight variations in the final price. Therefore, the quantum of price increase for poultry feed (with maize and SBM as the main ingredients) need not necessarily be identical, as observed among the Parties during the infringement periods.
340. The Commission is of the opinion that neither the counsel nor the economists of the Parties were able to adequately explain the complexities of the different formulations of poultry feed (with maize and SBM as the main ingredients), which resulted in the same quantum of increase in prices of poultry feed. Therefore, if the formulations are indeed different, a uniform increase in raw material costs should logically result in a slight deviation from the observed uniform increase in prices across the Parties.
341. James Kueh of Gold Coin substantiated this point by stating, in his expert opinion and based on his calculation of the costs involved, the increment should be higher.²²⁵

²²⁵ Paragraph 32 of the Statement of James Jimmy Kueh Swee Chai of Gold Coin recorded on 18.4.2022.

342. James acknowledged that Gold Coin faced different costs compared to the other Parties, yet they continued to implement an identical quantum of price increases, similar to the other Parties.²²⁶ Despite the Parties' awareness of the variation in their costs, they deliberately chose to abandon the uncertainties of competition in favour of practical coordination of price levels.

343. Enterprises must respond to the escalation in raw material costs by implementing individual pricing strategies instead of engaging in collusion. The perfectly parallel price movements observed do not align with the Parties' assertions regarding their cost structures. While the escalating costs of raw materials undeniably play a significant role in determining the quantum of price increase, they should not consistently result in identical pricing across the Parties. The Commission finds the Parties' submissions on this issue unsatisfactory and, as a result, rejects their arguments.

(f) Reliance on Woodpulp case by the Parties

344. Gold Coin, Leong Hup, FFM, and Dindings cited the *Wood Pulp*²²⁷ case to support their argument that the Commission should have considered alternative explanations for the parallel behaviour.

345. Dindings argues that similar pricing among competitors does not automatically indicate a horizontal agreement. They emphasise that

²²⁶ Paragraph 32 of the Statement of James Jimmy Kueh Swee Chai of Gold Coin recorded on 18.4.2022.

²²⁷ Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*.

the Commission needs to demonstrate that parallel conduct is a result of the agreements and/or concerted practices to restrict competition, with no other plausible explanation. Similarly, FFM maintains that parallel conduct alone is not sufficient evidence of collusion if there are other valid reasons. They highlight that price announcements do not reduce uncertainty about competitors' future actions.

346. Leong Hup defends their position by asserting that their monthly price announcements, often interpreted as price signalling, are essential in their regular business operations. Gold Coin differentiates their case from *Container Shipping*²²⁸, emphasizing the immediacy of their price announcements. They refer to the *Wood Pulp* ruling by the European Court of Justice, stating that public announcements of future price changes do not automatically constitute an infringement.

347. In the *Wood Pulp*²²⁹ case, the European Court of Justice (ECJ) examined whether relying solely on evidence of parallel conduct is sufficient to establish the existence of concerted practice. The ECJ concluded that if parallel conduct is the only basis to establish concerted practice, a finding of infringement can only be upheld if it is the sole plausible explanation for the behaviour.

348. The ECJ determined that price announcements, even if closely timed and parallel in nature, do not amount to anti-competitive

²²⁸ Case AT.39850 *Container Shipping*, Decision of the European Commission dated 7 July 2016.

²²⁹ Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*.

sharing of information about future market conduct. The court attributed the proximity and parallelism of these announcements to unique circumstances in the EU pulp market, in the absence of other material evidence.

349. In the *CISAC*²³⁰ case, the General Court expanded on the ECJ's analysis and made a distinction regarding parallel conduct as evidence of concerted practice. If parallel conduct is the only evidence for concerted practice, a finding of infringement may only be valid if there is no other explanation for the conduct. In *CISAC*²³¹, the Court found an alternative explanation, which was to ensure the effectiveness of combating the unauthorised use of musical works.²³² However, if there is additional evidence, such as communication, along with the parallel conduct, a finding of infringement is likely to be upheld.²³³

350. After a thorough examination of the relevant facts, the Commission finds it necessary to clearly differentiate the current case from the *Wood Pulp* case. In the present case, the Commission relies on the evidence of communications between the involved Parties, which supplements the evidence of parallel conduct. This supplementary evidence includes records of WhatsApp communication, call logs,

²³⁰ Case T -442/08 *International Confederation of Societies of Authors and Composers (CISAC) v European Commission*.

²³¹ Case T-442/08 *International Confederation of Societies of Authors and Composers (CISAC) v European Commission*.

²³² Case T -442/08 *International Confederation of Societies of Authors and Composers (CISAC) v European Commission*, at paragraph 126.

²³³ Case T -442/08 *International Confederation of Societies of Authors and Composers (CISAC) v European Commission*, at paragraphs 132 and 133.

and records of physical meetings conducted under the purview of MFA.

351. It is important to highlight that the Commission, supported by substantial evidence of communications between the Parties, does not make a finding of the existence of agreements and/or concerted practices solely based on observed parallel conduct. Therefore, the Commission is not required to explore all possible alternative explanations for the closely parallel increase in the price of poultry feed (with maize and SBM as the main ingredients). This position is firmly based on the extensive evidence gathered throughout our investigation.
352. Evidence of agreements and/or concerted practices is evident in the price announcements and invoices issued by the Parties during specific periods: from 31.1.2020 to 28.2.2020, from 30.9.2020 to 31.12.2020, and from 1.2.2021 to 30.5.2022. Notably, the Parties have consistently made identical price changes during each of these rounds of price announcements.
353. Moreover, evidence of communications has been substantiated through internal emails, external WhatsApp conversations, call logs, and meetings between the Parties, including those held within the framework of the MFA. Each instance of communication has undergone detailed analysis, as described above. The Commission confirms that the content of these communications consistently aligns with the observed parallel conduct. Moreover, the close timing between the communication events and the parallel conduct in the

market strengthens the undeniable conclusion drawn from this body of evidence.

354. Based on the precedents set by the ECJ in the *Wood Pulp*²³⁴ case and the General Court in *CISAC*²³⁵, the Commission's case relies on a comprehensive body of evidence. This evidence is sufficiently extensive to distinguish it from the *Wood Pulp* case. It is important to note that while parallel conduct is part of the Commission's evidence, it is not the sole basis for establishing concerted practices among the Parties.

355. Moreover, the Commission relies on evidence of communications to support the existence of concerted practices. This sets it apart from the circumstances in the *Wood Pulp* case. Therefore, the Commission is not required to disprove every possible alternative explanation for the Parties' parallel conduct. The submissions made by the Parties are hereby rejected.

356. As firmly articulated in the United States Court of Appeals case of *High Fructose Corn Syrup*²³⁶, it is imperative to consider the available evidence as a whole. The evaluation must determine whether all the evidence, when taken together, unequivocally meets the applicable standards of proof.

²³⁴ Joined cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *A. Ahlström Osakeyhtiö and others v Commission of the European Communities*.

²³⁵ Case T -442/08 *International Confederation of Societies of Authors and Composers (CISAC) v European Commission*.

²³⁶ Case 295 F.3d 651 (7th Cir. 2002) *In re High Fructose Corn Syrup Antitrust Litigation*.

357. The *Brazilian Newspaper Cartel*²³⁷ case provides another example of price parallelism. In this case, the four largest newspapers in Rio de Janeiro simultaneously increased their prices by the same percentage. In addition to the price parallelism, the fact that the newspapers published editorial notes informing readers of the price increase on the same day, with similar content, served as indirect evidence. During the investigation, executives from the companies provided testimonies to the authorities, and inconsistencies were identified in their statements, particularly regarding the explanation for the price increase. The newspaper involved in the case failed to explain why the price increase coincided exactly with its competitor, despite the other newspapers publishing their modified prices on the same day.

358. As a result, the Brazilian Competition Authority found the firms guilty of cartel behaviour. The association of price parallelism with the publication of the editorial note, along with the absence of a plausible explanation for the simultaneous and identical price increase, led to this conclusion.

(g) *Dindings cannot be held liable for being implicated by third Parties in their communications to which Dindings was not privy*

359. Dindings submits that the Commission relies on –

(a) the conversation between Vincent of Gold Coin and Lim Yong Ping of Leong Hup, and

²³⁷ Decision by the Administrative Council for Economic Defence (CADE), Administrative Procedure n° 08012.002097/99-81. See also, Prosecuting Cartels without Direct Evidence 2006 by The Organization for Economic Cooperation and Development (OECD), page 86.

- (b) the conversation between Liew Kai Wah and Jeremy Goon of FFM

to make a finding of liability for agreements and/or concerted practices on the part of Dindings. On our part, we wish to say that this evidence of conversations is not the only piece of evidence that the Commission relies upon in coming to a finding of liability on the part of Dindings. We wish to add that the Commission being an administrative tribunal is not bound by the strict rules of the law of evidence and is entitled to rely on hearsay evidence if it is of the view that such evidence is credible and relevant.

(h) *Price information shared by customers*

360. Gold Coin, Leong Hup, Dindings and FFM contend that customers often inform feed millers about their competitors' price increases, which serves as the source of their pricing information. Hence, it is their submission that there were no concerted practices.

361. With respect, the Commission rejects this contention. From the Commission's standpoint, this is not a mere case of customers sharing information with Parties. It goes beyond that. As we have deliberated in the preceding paragraphs, we are relying on evidence of inter and intra party communications plus parallel conduct of the Parties.

(i) *There are significant gaps between announcements*

362. Dindings argues that there were significant gaps between announcements, MFA meetings and purported communications between Parties.²³⁸ The Commission, however, fails to see in what way these gaps negate the finding of agreements and/or concerted practice by the Parties.

363. There is no requirement for cartels to have uniform patterns of collusion. It is common for cartels to adapt to changing circumstances and to accommodate new market dynamics. In order to do this, they vary the frequency of their communications and/or conduct on the market.

(j) *Unilateral price announcements of the four Parties and Dindings's invoices do not amount to a horizontal agreement*

364. All Parties contend that there exists insufficient evidence to establish the existence of an agreement. As previously discussed in the preceding paragraphs, section 2 of the Act specifies that agreements are to be broadly interpreted, covering informal arrangements and coordination between enterprises, which also includes concerted practices. Section 2 of the Act explicitly includes concerted practices within the definition of 'agreement'.

365. We are unable to accept the argument. The evidence unequivocally demonstrates the presence of anti-competitive concerted practices,

²³⁸ Transcript of Oral Representation Session of Dindings on 31.5.23, pages 23 to 25.

despite the absence of a formal agreement. The Commission notes that neither the legal counsel nor the economists could provide a satisfactory explanation as to why the price increments among the parties occurred in perfect alignment, particularly considering the differences in their feed formulations.

366. In our judgment, the mere absence of formal price announcements does not absolve Dindings from its involvement in anti-competitive agreements and/or concerted practices to fix the quantum of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia. In fact, the invoices serve as compelling evidence of the unwarranted and precisely parallel increments in pricing implemented by Dindings, mirroring those of the other involved Parties.

(k) Internal stability consideration by Dindings

367. Dindings argues that it does not have an incentive to be a part of the agreements and/or concerted practices due to its business model as an integrator. In light of the peculiar circumstances on the part of Dindings, to collude with the other Parties to fix the quantum of price increments would have been difficult. The Commission rejects this argument. Based on the totality of the evidence that has been evaluated, the Commission finds that this argument is untenable.

(l) Low profit margin during some parts of the infringement periods

368. PK Agro claims that if it had been involved in agreements and/or concerted practices to determine the poultry feed (with maize and

SBM as the main ingredients) prices, the company would have achieved a higher profit margin. In support of their submission, PK Agro demonstrates to the Commission that it only made minimal profits during some parts of the infringement periods.

369. The Commission maintains that a low profit margin is not a valid justification for engaging in anti-competitive behaviour. An enterprise's profitability can be influenced by external factors and circumstances beyond their control.

370. In this context, PK Agro has failed to provide sufficient reasoning or justifications for its decreased profit margins during the periods of alleged infringement. The mere presentation of diminished profit margins, devoid of comprehensive justifications, cannot serve as a valid argument to negate PK Agro's participation in the agreements and/or concerted practices to fix quantum of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia during the infringement periods.

(m) Internal monitoring of competitors' pricing is necessary

371. Three of the Parties, namely, Gold Coin, Leong Hup, and FFM submitted that internal monitoring of competitors' pricing is necessary to gather valuable insights and information regarding how competitors priced their products. Hence, they argued that there was no collusion. In this regard, the Commission is of the view that the internal monitoring of the competitors pricing can also be used to monitor the rival prices and price changes to ensure the success of the collusion. Therefore, this argument holds no water.

D. PARTY TO AN AGREEMENT OR A CONCERTED PRACTICE

372. Liability can be attributed to an enterprise even if it is only a recipient of the information, unless the enterprise distances itself from the unlawful initiative.²³⁹
373. The mere fact that an enterprise may not be wholly devoted to the execution of the agreements and/or concerted practices does not absolve it from being considered a party to such agreements and/or concerted practices. Failure to publicly distance themselves from the content of an unlawful initiative or to report it to the Commission effectively undermines the detection of the cartel and fosters its perpetuation. In the case of *Treuhand AG*²⁴⁰, the Court held that an undertaking must clearly oppose an invitation to participate in a concerted practice if it does not wish to be involved. Failure to do so will result in an inference of tacit acceptance being made against the undertaking.
374. A competitor should refrain from disclosing information, either directly or indirectly, to another competitor that has the potential to impact its future behaviour in the market. Such disclosure, and the receipt of such information, substantially diminish and may even completely eradicate the uncertainty surrounding competitors' future actions in the market. This, in turn, enables an enterprise to adjust its behaviour in response.

²³⁹ Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491; and Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035 (upheld by the ECJ in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission* [2004] ECR I-4933).

²⁴⁰ Cases C-194/14 *AC-Treuhand AG*.

Arguments by the Parties and the Commission's Findings

Rebates and discounts

375. Gold Coin argues that 96% of their poultry feed (with maize and SBM as the main ingredients) customers receive discounts or rebates on an individual basis. The amount of discount depends on the size of the customer, volume of purchase, payment or credit terms etc. The point of these discretionary discounts is that competitors do not know Gold Coin's actual or final prices of poultry feed (with maize and SBM as the main ingredients) being sold to customers.
376. Leong Hup argues that the Commission acknowledges their practice of offering discounts, rebates, and credit notes to customers.²⁴¹ Leong Hup further argues that they consistently set different list prices (headline prices) for each customer, taking into account the monthly fixed discount granted to them. This discount is factored into the customer-specific list price.
377. Similarly, FFM contends that the base price could not have significantly affected competition. This is because over 80% of FFM's customers do not purchase FFM's poultry feed (with maize and SBM as the main ingredients) at the base price. Instead, these customers receive different types of discounts or rebates from FFM's list prices. FFM further asserts that the provision of diverse

²⁴¹ The Written Representation of Leong Hup Feedmills Sdn Bhd on 31.1.23 at Paragraph 40 (b) on page 49; and Table 29 of the Amended Proposed Decision on 6.10.22.

rebates and discounts demonstrates their deviation from and non-adherence to a uniform increase in price.

378. PK Agro, on the other hand, argues their position as the market leader in the poultry feed (with maize and SBM as the main ingredients) market and highlights its proactive approach in promptly communicating price adjustments to its customers. Despite periodic increases in the poultry feed (with maize and SBM as the main ingredients) rates, PK Agro submits that they remain committed to offering discounts and rebates to their loyal customers.

379. Upon reviewing the credit notes, debit notes, and invoices submitted by the Parties, the Commission observes that the four Parties provided discounts to certain customers. However, the Parties utilised the fixed quantum of poultry feed (with maize and SBM as the main ingredients) price as the base price of poultry feed (with maize and SBM as the main ingredients). This information is evident as set out in **Table 41**.

Table 41: Discounts Analysis

PARTY	PERIOD OF DATA AND CUSTOMERS ANALYSED	FINDING ON DISCOUNTS
FFM	2019 – 2021 Random customers selected	FFM has 2 types of discounts/rebates namely: [§<]
Leong Hup	2019 – 2021 All customers	Leong Hup has 3 types of discounts: [§<]
PK Agro	2019 – 2021	PK Agro has 2 types of discounts:

PARTY	PERIOD OF DATA AND CUSTOMERS ANALYSED	FINDING ON DISCOUNTS
	All customers	[REDACTED]
Gold Coin	2019 – 2021 All customers	Gold Coin has 3 types of discounts: [REDACTED]

380. The situations described above, where four Parties offer personalised discounts or rebates to their customers, does not nullify the fact that these Parties have shared sensitive information with each other. Despite the different discounts offered to customers, the sharing of sensitive information among competitors can still result in a fixed increase in the price of poultry feed (with maize and SBM as the main ingredients). This is due to the fact that even though customers receive varying discounts based on their individual circumstances, the pricing information shared among competitors can impact the overall market price.

381. Essentially, exchanging sensitive information allows the Parties to coordinate their pricing strategies. This coordination between the Parties leads to a situation where the apparent diversity in discounts does not prevent them from collectively setting a fixed quantum of price increase for poultry feed (with maize and SBM as the main ingredients). The shared information can – and does – create a tacit understanding among the competitors, influencing their pricing decisions in a way that undermines healthy competition in the market.

382. The competitive conduct of the Parties in the current case, such as the act of providing discounts to customers, does not alleviate the concerns raised by the agreements and/or concerted practices in the present case. The recent decision in the case of *Langkawi Ro-Ro Ferry Services Sdn Bhd & Ors v Competition Commission*²⁴² exemplifies this perspective. In this case, the Competition Appeal Tribunal affirmed that providing discounts on agreed, standardised fares contained in the Memorandums of Understanding between the parties does not absolve an enterprise of its contravention of competition law. It is an established principle that as long as an enterprise participates in a collusion, the enterprise remains subject to liability. The enterprise can only distance itself from the common scheme by taking proactive steps to publicly distance itself from it.

383. In *Bolloré v Commission*,²⁴³ the European Court of First Instance held 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 then negotiated with individual customers differs from what was agreed.

384. In the present case, a discernible pattern emerges, reflecting the existence of agreements and/or concerted practices to fix quantum of poultry feed (with maize and SBM as the main ingredients) prices. A thorough analysis of the evidence, which includes sources such as WhatsApp conversations, call logs, email correspondence,

²⁴² *Langkawi Ro-Ro Ferry Services Sdn Bhd & Ors v Competition Commission* [2022] MLJU 2900, at paragraph 52.

²⁴³ 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, at paragraph 452.

handwritten notes, and the personal notes of Liew Kai Wah, unequivocally demonstrates that the Parties entered into agreements and/or engaged in concerted practices to fix the increments in poultry feed (with maize and SBM as the main ingredients) prices in Malaysia during the infringement periods.

385. When considering the use of discounts by the Parties involved, it is also evident that these discounts were not uniformly extended across all customer segments. Rather, they were selectively offered to well-established clients, with special discounts and enhanced rebates primarily tailored for bulk purchases. For instance, PK Agro offers discounts and rebates to their regular customers, while Gold Coin, FFM and Leong Hup offer discounts or rebates by negotiating with their respective customers and varies depending on different factors, such as volume of purchase made, size of the customers, and credit terms offered to the customers.

386. As can be seen from the presented evidence, the notion of these Parties employing discounts and rebates as part of a comprehensive and genuine competitive strategy is unsubstantiated. Instead, the evidence points to a more focused application of these incentives, rather than a broad strategy aimed at fostering healthy market competition.

387. In addition, during the oral representation session held on 16.6.2023 with the economist of FFM and Gold Coin, the Chairman raised a query. Specifically, the Chairman sought to ascertain if there was any legal authority or established precedent confirming that discounts inherently represent a mode of competition. The response

provided by the economist during this session was negative, affirming that such an established notion did not exist.²⁴⁴ Moreover, the economist acknowledged the similarity in the price increases observed among the Parties.²⁴⁵

388. This thorough analysis underscores the Commission's stance that the Parties' reliance on discounts and rebates does not exonerate them from liability in respect of the agreements and/or concerted practices they have been involved in. The Commission is of the opinion that it is crucial for the Parties to maintain their independence in determining the quantum of price increments. This independence should not be compromised by engaging in collusive activities with competitors, even if competition exists through alternative methods such as offering rebates or discounts for bulk orders.

389. The Commission maintains its finding of agreements and/or concerted practices to fix the quantum of increments of poultry feed prices that have undermined the principles of fair and open competition in the relevant market. The mere fact that a party does not fully comply with an agreement or concerted practices, which are clearly anti-competitive, does not absolve that party of liability.²⁴⁶

²⁴⁴ Transcript of the Oral Representation Session of FFM and Gold Coin on 16.6.23 at pages 43 to 44.

²⁴⁵ Transcript of the Oral Representation Session of FFM and Gold Coin on 16.6.23 at page 45.

²⁴⁶ *Argos Limited & Littlewoods Limited v OFT and JJB v OFT* [2006] EWCA Civ. 1318.

E. OBJECT OR EFFECT OF PREVENTING, RESTRICTING OR DISTORTING COMPETITION

390. Although by reason of section 4(2) of the Act, the harm is “deemed” to have occurred, nevertheless, the Commission takes the position that the agreements and/or concerted practices entered into by the Parties concerning the quantum of increments of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia are by their very nature injurious to the proper functioning of normal competition.

391. There are three elements of the price which the Parties are competing in the relevant market:

- (a) Price;
- (b) Quantum of price increment; and
- (c) Discount.

392. The Parties’ agreements and/or concerted practices in fixing the quantum of the price increment impeded the competition process in the relevant market because they reduce the uncertainty in determining the increment of quantum of poultry feed (with maize and SBM as the main ingredients) prices. The Commission is of the view that independent determination of price increment quantum is fundamental in the competition process. The Commission finds that the conduct of the Parties sharing information and collectively increasing poultry feed (with maize and SBM as the main ingredients) prices at the same quantum significantly prevents, restricts or distorts competition in the relevant market.

393. Without the agreements and/or concerted practices, the price increments of poultry feed (with maize and SBM as the main ingredients) would have been liberalised in the market. As a result, the increase of the prices by the players would have been based on the cost of the Parties. The Parties would have taken more time to adjust their prices to match with other competitors. Consequently, it would have created room for the customers to enjoy better choices in terms of price and different quantum of increments in purchasing poultry feed (with maize and SBM as the main ingredients).

394. It is a common understanding among other feed millers and downstream customers that the Parties are among the biggest producers in the relevant market.²⁴⁷ As such any conduct of the Parties would have a significant impact on the relevant market. Thereupon, the anti-competitive agreements and/or concerted practices entered into by the Parties would have the object of significantly preventing, restricting or distorting competition in the relevant market.

Arguments by the Parties and the Commission's Findings

(a) Deeming provision is wrongly invoked by the Commission

395. The Commission reiterates that price-fixing under the Act is deemed to have the object of significantly preventing, restricting, or distorting competition in the market. The Commission maintains that it does

²⁴⁷ Question 7 of the Statement of Lim Yong Ping of Leong Hup recorded on 27.4.2022; Question 8 of the Statement of Ong Shu Kai of FFM recorded on 26.5.2022; Paragraph 16 of the Statement of Jeffrey Ng Choon Ngee of CCB recorded on 7.6.2022.; and Question 5 of the Statement of Russell Jeremiah Chin Cher Sing of Cargill Feed recorded on 9.6.2022.

not require conducting an effect analysis in order to trigger the deeming provision of section 4(2) of the Act. It is important to emphasise that market definition and market analysis constitute distinct analytical processes. It is the Commission's intention to focus on the distinction between the object and effect of an agreement and the significance of the harm caused by the anti-competition conduct.

396. The wording of section 4(2) simplifies the requirements for establishing an infringement. Specifically, section 4(2) of the Act focuses on the object of an agreement and its direct or indirect impact on purchase or selling prices. Section 4(2) of the Act necessitates the establishment of the agreement's object to fix prices; and once that object is established, it triggers the provision that deems the agreement as anti-competitive. Essentially, under section 4(2) the establishment of the agreement's object suffices and there is no requirement for a separate assessment of the anti-competitive effect.

397. Considering the harshness of the "deeming" provision, strict compliance with the specified conditions is imperative prior to its application. In the present case, these conditions encompass: (i) the existence of a horizontal agreement; (ii) the horizontal agreement being established between enterprises; and (iii) the agreement being intended to directly or indirectly set a purchase or selling price, or any other trading conditions.²⁴⁸

²⁴⁸ *SAL Agencies Sdn Bhd & 4 Ors v Competition Commission*, Appeal No: TRP 2-2021.

398. The Competition Appeal Tribunal in upholding the Commission's 2021 *Decision against Langkawi Roro Operators*²⁴⁹ stressed that where it is deemed by law that an agreement has the object of significantly preventing, restricting or distorting competition, it is unnecessary for the Commission to prove the anti-competitive effect nor to conduct any effect analysis.²⁵⁰
399. Dindings referred to *Sainsbury's Supermarkets Ltd and Mastercard Inc, Mastercard International Inc and Mastercard Europe SA*²⁵¹ in its argument regarding the need to prove anti-competitive effect. In *Sainsbury's Supermarket*²⁵² the UK CAT elaborates on the discernible features of a by-object restriction. It must by its very nature reveal "a sufficient degree of harm of competition, so as to obviate any need for an effects-based examination."
400. This reference to the *Sainsbury's Supermarkets Ltd and Mastercard Inc* is misconceived. In this United Kingdom case cited, the scheme of the legislation is different, be it Chapter I of the UK Competition Act of 1998 or Article 101 of the Treaty on the Functioning of the European Union (TFEU). Under the legal regime of Chapter I of the UK Act of 1998 and Article 101 of TFEU it is incumbent on the claimant to establish by evidence before the CAT that the agreements between the undertakings or the concerted practices

²⁴⁹ The Competition Appeal Tribunal's Decision dated 17.11.22 in the Matter of Appeal Nos: TRP 1 – 2022, TRP 2 – 2022, and TRP 3 – 2022.

²⁵⁰ The Competition Appeal Tribunal's Decision dated 17.11.22 in the Matter of Appeal Nos: TRP 1 – 2022, TRP 2 – 2022, and TRP 3 – 2022, at paragraph 131.

²⁵¹ *Sainsbury's Supermarkets Ltd and Mastercard Inc, Mastercard International Inc and Mastercard Europe SA* [2016 CAT 11], at paragraph 101.

²⁵² *Sainsbury's Supermarkets Ltd and Mastercard Inc, Mastercard International Inc and Mastercard Europe SA* [2016 CAT 11], at paragraph 101.

“have as their object or effect the prevention, restriction or distortion of competition”. The claimant in this case, Sainsbury’s Supermarkets Ltd, under the legal regime applicable therein, unlike the legal regime of our Competition Act of 2010, was not aided by any deeming provision. In other words, the claimant has to prove that the agreements or concerted practices “have as their object or effect the prevention, restriction or distortion of competition”. Under our Act, the law is different: once the requirement that the agreements or concerted practices having the object to fix prices of goods is established, the deeming provision under subsection (2) of section 4 is automatically triggered. Section 2 deems the agreements or concerted practices to fix prices to have as their object to significantly prevent, restrict or distort competition. In any event, in the present case, if harm needs to be shown, the anti-competitive effect can be inferred from the concurrent and synchronized escalation in the quantum of poultry feed (with maize and SBM as the main ingredients) prices.

401. The ability to deem the anti-competitive effect demonstrates the existence of sufficient degree of harm thereby obviating the need for any effects analysis. Identical and parallel quantum of price increases by the feed millers contradict the Parties’ allegation of independent market behaviour. Increases in quantum of prices exceeding the costs of production inflates the final prices of poultry feed (with maize and SBM as the main ingredients), and as a result also inflates the cost for chickens, and eggs. The evident harm to consumers aligns with the consumer welfare objective as outlined in the preamble of the Act. Therefore, the conduct by the Parties is deemed to have the object of significantly preventing, restricting or

distorting competition. Consequently, no further analysis of their effects is necessary.

402. Majority of Parties also refers to *Groupement des Cartes Bancaires*²⁵³ case. It is important to note that this case involves the payment card industry, which typically operates as a multi-sided market with issuers, acquirers, and cardholders all playing important roles. Therefore, assessing the effect in this case is relevant to the market. However, this is not the case in the current situation.

F. RELIEF OF LIABILITY

403. While it is the responsibility of the Parties to prove that the conditions for exemption have been met concerning the relevant infringements, the Commission finds that these conditions to be fulfilled in the present case. This is particularly true considering the inherent nature of the infringement in question.

404. Gold Coin argues that the agreements and concerted practices did not result in the complete elimination of competition concerning a substantial part of the goods or services, as there is no evidence indicating a weakening of non-price competition.

405. Competition does not require total elimination; a reduction in uncertainty suffices. Gold Coin's economic report establishes that competition was not entirely eradicated. However, the report failed to substantiate the enhancements in technology, efficiency, and

²⁵³ Case C-67/13 P *Groupement des Cartes Bancaires v European Commission*.

social benefits resulting from the agreements and/or concerted practices.

406. In the case of the *Pre-Insulated Pipe Cartel*²⁵⁴, it was held that formal agreements might not be reached on all matters. Agreements in one area can coexist with conflicts in another, and competition may not be entirely eliminated. During the infringement periods, despite the existence of indications of competition in the market, the conduct Parties, in our judgement, still constitutes as infringing concertation under section 4 of the Act.

G. BURDEN AND STANDARD OF PROOF

407. It is trite law that the Commission bears the burden of proving an infringement under section 4 of the Act has been committed. The standard of proof applicable in this context is the civil standard, requiring the Commission to demonstrate the infringement on the balance of probabilities.

408. This aligns with the framework outlined in the Act, wherein the Commission's decision adheres to an administrative procedure. Directions and financial penalties are enforceable through civil proceedings before the High Court.

Discretion to rely on any available evidence

²⁵⁴ COMP IV/35.691/E.4 *Pre-Insulated Pipe Cartel* [1999] OJ L24/50, at paragraph 134.

409. The Commission is authorised to rely on both direct and indirect evidence to establish the presence of an infringement. Indirect evidence may include circumstantial evidence and presumptions Indirect evidence. This principle is underscored by legal precedents such as the case of *Gold Chic Poultry Supply Pte. Ltd. and Anor & Ors v CCCS and Other Appeals*,²⁵⁵ where it was held that the Competition and Consumer Commission of Singapore had the entitlement to draw inferences or presumptions from specific circumstances. The Singapore Competition Appeal Board emphasised the supplementation of available evidence through inferences, allowing the relevant circumstances to be reconstructed effectively.

410. A similar stance was decided in *Pilkington Group Ltd v European Commission*.²⁵⁶ This case recognised that, given the secretive and clandestine nature of anti-competitive behaviour, competition authorities must use evidence to infer and draw conclusions about certain facts in order to definitively establish the infringing conduct.

411. The investigation is to ascertain whether there is a firm, precise and consistent body of evidence pointing to the infringement.²⁵⁷ It is not necessary for each and every piece of evidence to satisfy the criteria (of being firm, precise and consistent) in relation to every aspect of

²⁵⁵ *Gold Chic Poultry Supply Pte. Ltd. and Anor & Ors v CCCS and Other Appeals* [2020] SG CAB 1, at paragraphs 67-73.

²⁵⁶ Case T-72/09 *Pilkington Group Ltd v European Commission*.

²⁵⁷ Cases C-89/85 etc) *Ahlstrom Osakeyhtio and others v European Commission* [1993] ECR I-1307, at paragraphs 70 and 127; Case 48/69 *Imperial Chemical Industries Ltd v European Commission* [1972] ECR 619, at paragraph 68; and In Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, *JFE Engineering*, at paragraphs 179 and 180.

the infringement. It is sufficient if the body of evidence relied on, viewed as a whole, meets that requirement.²⁵⁸

Arguments by the Parties and the Commission's Findings

412. PK Agro and Dindings contend that the Commission is precluded from relying on hearsay evidence to establish infringement.

414. The Commission maintains the position that hearsay evidence is applicable solely in the context of judicial proceedings, as established in the case of *Teper v R*.²⁵⁹ It is imperative to highlight that oral representation in a competition law proceeding differs from a judicial proceeding. Unlike in judicial proceedings, competition proceedings lack the provision for cross-examination of witnesses. Judicial proceedings encompass a wide array of legal disputes and involve courts that deliver legally binding decisions.

415. In contrast, oral representation sessions in competition law serve as administrative proceedings. These sessions provide Parties with an opportunity to present their viewpoints before a competition authority, thereby contributing to the authority's decision-making process. Consequently, it is vital to differentiate between judicial proceedings and competition proceedings based on their distinctive characteristics and functions.

²⁵⁸ In Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, *JFE Engineering*, at paragraph 180.

²⁵⁹ *Teper v R* [1952] UKPC 15.

416. PK Agro references *Competition Commission v Nutanix Hong Kong Limited*²⁶⁰ to argue that the Commission should adhere to the criminal standard of proof, which requires establishing guilt beyond a reasonable doubt.
417. In the case of *Competition Commission v Nutanix Hong Kong Limited*,²⁶¹ the court was tasked with determining a criminal charge and applying Hong Kong Article 11 of the Bill of Rights, which carries a criminal effect. In consequence, the Hong Kong court applied the criminal standard of proof in this matter. However, it is crucial to note that the situation involving the Commission in the present case does not entail a pursuit of any criminal effect.
418. *Nutanix case*²⁶² also emphasises that various jurisdictions have opted for the civil standard of proof in competition proceedings. Hence, considering the absence of a criminal effect sought by the Commission and the precedents in other jurisdictions, it is appropriate for the Commission to apply the civil standard of proof in the present context.
419. The Commission must establish an infringement of section 4 of the Act based on a balance of probabilities. This requirement stems from the administrative nature of the Commission's decision, with all proceedings and penalties enforceable through civil procedures, such as judicial review. Based on the reasoning above, the

²⁶⁰ *Competition Commission v Nutanix Hong Kong Limited & Ors* 2019 [HKCT] 2.

²⁶¹ *Competition Commission v Nutanix Hong Kong Limited & Ors* 2019 [HKCT] 2.

²⁶² *Competition Commission v Nutanix Hong Kong Limited & Ors* 2019 [HKCT] 2, at paragraph 70.

Commission argument raised by PK Agro and Dindings is without basis and, therefore, dismissed.

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PART 3: THE COMMISSION'S DECISION

A. DIRECTIONS UPON A FINDING OF AN INFRINGEMENT

420. In view of the nature of the infringement under the Act, and taking into consideration all of the evidence obtained throughout the investigations described above, the Commission hereby issues a Decision of Infringement pursuant to section 40 of the Act against the Parties for entering into agreements and/or concerted practices in breach of section 4(1) read with section 4(2)(a) and section 4(3) of the Act.

421. Accordingly, the Commission hereby directs the Parties to undertake the following:

Cease and desist order

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

Submission of a monthly report on increase and decrease of poultry feed prices

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

- (iii) To submit a report on poultry feed price increase and decrease (if any) for each month for the months of January to June 2024 (due by 30.6.2024) and the months of July to December 2024 (due by 31.12.2024), and along with furnishing a sample of price notice/announcements or invoices as proof of the price change.

Review and Enhance Existing Competition Compliance Training Programme

- (iv) For FFM, Gold Coin, and Dindings to review and enhance their competition law compliance training program within 6 months from the date of this Decision.
 - (a) The review of the competition law compliance training program should include updating the content, improving the delivery methods, and incorporating new techniques to make the training more effective and efficient;
 - (b) All employees and board members involved directly in pricing determination of poultry feed price shall be enrolled in the new compliance program at the Parties' own expense;
 - (c) A report on the enrolment in the reviewed compliance training program shall be submitted to the Commission within six months from the date of this Decision.

Implementation of Competition Law Compliance Programme

- (v) PK Agro and Leong Hup to enrol all employees and board members who are responsible for poultry feed pricing determination into a competition law compliance programme and training at the Parties' own expense;
- (vi) The Parties shall submit a report on the enrolment in the compliance training programme to the Commission within six months from the date of this Decision.

Recognition of Involvement in Competition Law Infringements as a Misconduct under the Party's Code of Conduct

- (vii) To include a provision in the Party's Code of Conduct, acknowledging that the involvement of any employee or board member in any infringements against Competition Law shall amount to a misconduct under the Party's Code of Conduct;
- (viii) The Parties shall submit the original and revised Code of Conduct to the Commission within six months from the date of this Decision.

B. GENERAL POINTS OF FINANCIAL PENALTY

422. Section 40(1)(c) of the Act, provides that where the Commission determines that there is an agreement infringing the section 4 prohibition, the Commission may impose on any party to that infringement a financial penalty.

423. 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.

424. In calculating financial penalties 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 and is explained herein below.

425. The base figure is then adjusted after taking into account various factors, including aggravating and mitigating factors, to arrive at the value of the financial penalty.

426. 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 11.5.2022 and 28.6.2022 issued by the Commission.

B.1 RELEVANT TURNOVER AND THE BASE FIGURE

427. The relevant turnover used to determine the base figure is based on the Party's turnover in the relevant product and geographic market affected by the infringement.
428. The Commission identifies the relevant product market affected by the infringing conduct as defined in **PART 2**.
429. This base figure is then determined after taking into account the relevant turnover of the Parties within the period of infringement as well as the seriousness of the infringement.
430. 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 the respective Parties.

B.2 PERIODS OF THE INFRINGEMENT

431. The Commission finds that the periods of infringement are as follows:

Table 42: Summary of Infringement Periods and the Infringing Parties

INFRINGEMENT PERIODS	INFRINGING PARTIES
31.1.2020 – 31.3.2020	FFM, Gold Coin, Leong Hup, and PK Agro
1.10.2020 – 31.1.2021	FFM, Gold Coin, Leong Hup, and PK Agro
1.2.2021 – 30.6.2022	Dindings, FFM, Gold Coin, Leong Hup, and PK Agro

B.3 AGGRAVATING FACTOR

432. The Commission will consider the presence of aggravating factors and make upward adjustments to the base figure in determining the ultimate financial penalty for each Party.

433. In the present case, the Commission considers any attempt by an enterprise to obstruct the investigation as an aggravating factor, and will make a 10% upward adjustment of the base figure.

B.4 MITIGATING FACTOR

434. The Commission will consider the presence of mitigating factors and will make downward adjustment to the base figure where the mitigating factors are applicable. However, in the present case, we find none.

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

435. The Commission is mindful of the statutory limit that the final amount of the financial penalty shall not exceed 10% of the worldwide turnover of each of the Parties throughout the infringement periods. Thus, the Commission will adjust the financial penalty where necessary if the financial penalty value exceeds the maximum percentage permitted under section 40(4) of the Act.

C. PENALTY FOR DINDINGS

436. Dindings was involved in agreements and/or concerted practices with the object of significantly preventing, distorting, and restricting competition by fixing the quantum of poultry feed (with maize and SBM as the main ingredients) price increments in Malaysia during the third infringement period (1.2.2021 to 30.6.2022).
437. For the purpose of computing the financial penalty, the Commission relies on financial information submitted by Dindings pursuant to the section 18 notices dated 11.5.2022 and 28.6.2022.²⁶³
438. Dindings submitted worldwide turnover data covering the period from January 2020 until March 2022 and relevant turnover data covering the period from January 2020 until May 2022.
439. According to the data submitted by Dindings (data available for the period from 1.2.2021 to 31.5.2022), the Commission finds that the relevant turnover based on the available data for the period of infringement from 1.2.2021 to 31.5.2022 is RM[<].
440. Due to the unavailability of data for the relevant turnover for the period of infringement from 1.6.2022 to 30.6.2022, the Commission uses a proxy relevant turnover figure for this period of infringement.

²⁶³ Financial information was provided by Dindings dated 20.5.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Financial information was provided by Dindings dated 4.7.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 28.6.2022.

441. To determine the value of the proxy relevant turnover figure for the above-mentioned period, the Commission first divides the relevant turnover values from 1.1.2022 to 31.5.2022, which amounts to RM[\times], by 5 (since the period spans five months), and arrives at a proxy monthly relevant turnover figure of RM[\times] (RM[\times] \div 5). Based on this calculation, the Commission finds that the proxy relevant turnover figure for the period from 1.6.2022 to 30.6.2022 is RM[\times].
442. The total relevant turnover figure for the third period of infringement (from 1.2.2021 to 30.6.2022) is RM[\times] (RM[\times] + RM[\times]).
443. Based on the above calculation, the base figure in computing the financial penalty for Dindings is fixed at 10% of the relevant turnover for the period of infringement which amounts to RM[\times] (10% \times RM[\times]).
444. According to the data submitted by Dindings (data available for the period from 1.2.2021 to 31.5.2022), the Commission finds that the worldwide turnover for Dindings for the period of infringement (1.2.2021 to 31.3.2022) is RM[\times].
445. Due to the unavailability of data for the worldwide turnover for the period from 1.4.2022 to 30.6.2022, the Commission uses a proxy worldwide turnover figure for this period of infringement.
446. In order to determine the proxy worldwide turnover figure for the period of infringement from 1.4.2022 to 30.6.2022, the Commission first divides the worldwide turnover values from 1.1.2022 to 31.3.2022, which amounts to RM[\times], by 3 (since the period spans

three months) and arrives at a proxy monthly worldwide turnover figure of RM[~~xxx~~] ($\text{RM}[\text{~~xxx~~}] \div 3$).

447. Based on this monthly proxy worldwide turnover of RM[~~xxx~~], the Commission arrives at the total worldwide turnover figure, which amounts to RM[~~xxx~~] ($\text{RM}[\text{~~xxx~~}] \times 3$), for the period of 1.4.2022 to 30.6.2022 (a period spanning 3 months).

448. The total worldwide turnover figure for Dindings for the third period of infringement (1.2.2021 to 30.6.2022) shall be RM[~~xxx~~] ($\text{RM}[\text{~~xxx~~}] + \text{RM}[\text{~~xxx~~}]$).

449. The Commission determines that 10% of Dindings' worldwide turnover is fixed at RM[~~xxx~~] ($10\% \times \text{RM}[\text{~~xxx~~}]$).

450. As there are no aggravating or mitigating factors to be considered, therefore the financial penalty imposed on Dindings shall be RM70,023,622.35.

451. This financial penalty of **RM70,023,622.35** does not exceed the maximum financial penalty of RM[~~xxx~~] 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 Dindings' worldwide turnover.

Arguments by Dindings in relation to Financial Penalty

452. Dindings argues that in determining the relevant turnover figure for Dindings, only open market sales should be considered. Dindings submits that open market sales are one of the three types of arrangements offered by Dindings in its sale of chicken feed. The other two arrangements, namely, contract farming agreements and open market buy back schemes, as well as Dindings' own broiler farms, should not be included in the relevant turnover figure.
453. The Commission rejects the above argument, taking the position that all transactions, including but not limited to open market sales, are to be included in the relevant turnover. The definition of "turnover" encompasses not just open market sales. It encompasses all sales, both internal and external sales, that are recorded as transactions constituting an enterprise's turnover.
454. Dindings also submits that their involvement was minimal compared to the other four Parties because the Commission only holds Dindings liable for the third infringement period, therefore arguing that the financial penalty imposed on Dindings was too excessive when compared with other Parties. However, the Commission finds this argument to be unfounded as the Commission, in determining the financial penalty for Dindings, has applied the same methodology of calculation of financial penalty as it has adopted for the other four Parties. Having regard to Dindings's involvement for only the third infringement period, accordingly, the Commission only took into account Dindings's financial information relating to the third period of infringement.

455. Dindings further argues that it bears a minimal degree of fault because it did not issue any price announcements, which suggests its limited involvement in the agreements and/or concerted practices to fix quantum of poultry feed price (with maize and SBM as the main ingredients) in Malaysia. As discussed in **PART 2**, the Parties' involvement in agreements or concerted practices in the form of sharing sensitive information, resulting in the fixing of the quantum of poultry feed prices, constitutes infringements under the Act. Therefore, the non-issuance price announcements by Dindings is irrelevant and cannot be considered as a mitigating factor.
456. Dindings submits that it has in place a training programme and Standard Operating Procedure in relation to competition law which should be considered as a mitigating factor. The Commission is of the view that the mere existence of a compliance program is insufficient to be treated as a mitigating factor. In any case, there is no evidence to support the effectiveness of the compliance training. It is crucial for compliance programs to be effective and not merely empty policies.
457. According to the CMA's 2019 (United Kingdom) decision in *Design, Construction and Fit-out Services*²⁶⁴, taking adequate steps to ensure future compliance with competition law can serve as a mitigating factor, potentially resulting in a penalty discount of up to 10%. However, the existence of compliance activities alone will not be considered a mitigating factor. Such measures are more likely to be considered as a mitigating factor if an enterprise demonstrates

²⁶⁴ Case 50481 *Design, Construction and Fit-out Services*, at paragraph 6.37.

that appropriate steps, tailored to the size of the business, have been taken to establish a clear and unambiguous commitment to competition law compliance throughout the organization, starting from the top-level management. Based on the aforesaid, the Commission hereby dismisses the arguments by Dindings on mitigating factors.

D. PENALTY FOR FFM

458. FFM was involved in agreements and/or concerted practices with the object of significantly preventing, distorting or restricting competition by fixing the quantum of poultry feed (with maize and SBM as the main ingredients) price increments in Malaysia during the three periods of infringements.

459. For the purpose of computing the financial penalty, the Commission relies on the financial information submitted by FFM pursuant to the section 18 notices dated 11.5.2022 and 28.6.2022.²⁶⁵

460. FFM submitted worldwide turnover data covering the period from January 2020 until March 2022 and relevant turnover data covering the period from January 2020 until June 2022.

461. The Commission finds that the relevant turnover for the first period of infringement (31.1.2020 – 31.3.2020) is RM[~~¥~~]. The relevant turnover for the second infringement period (1.10.2020 – 31.1.2021) is RM[~~¥~~]. The relevant turnover for the third infringement period

²⁶⁵ Financial information provided by FFM dated 20.5.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Financial information provided by FFM dated 4.7.2022 via email pursuant to the Section 18 notice issued by the Commission dated 28.6.2022.

(1.2.2021 – 30.6.2022) is RM[REDACTED]. Therefore, the total relevant turnover for the first, second, and third periods of infringements was RM[REDACTED] (RM[REDACTED] + RM[REDACTED] + RM[REDACTED]).

462. The Commission accepts that sales rebates shall be excluded from the relevant turnover figure. In coming to this, the Commission is bound by the precedent set by the Competition Appeal Tribunal in the *Langkawi Ro-Ro*²⁶⁶ case, that states that “turnover” refers to an organisation’s total sales figure excluding any discounts or rebates.

[82] The word "turnover" simply means "the total sales figure of an organization for a stated period" (see Oxford Dictionary of Business and Management, sixth Ed, Oxford University Press, 2016). Basically "turnover" refers to the total revenue of an organisation derived from sales of goods or services before deduction of the expenses. In other words the "gross income" or "gross revenue". Any discounts (or rebates), refunds or taxes have to be excluded as part of the gross income / gross revenue.²⁶⁷

463. Based on the information submitted by FFM on 26.6.2023, the Commission determines that the total sales rebate for the first period of infringements (31.1.2020 – 31.3.2020) is RM[REDACTED]. The total sales rebate for the second infringement period (1.10.2020 – 31.1.2021) is RM[REDACTED]. The total sales rebate for the third period of infringement (1.2.2021 – 30.6.2022) is RM[REDACTED].

²⁶⁶ The Competition Appeal Tribunal’s Decision dated 17.11.22 in the Matter of Appeal Nos: TRP 1 – 2022, TRP 2 – 2022, and TRP 3 – 2022.

²⁶⁷ The Competition Appeal Tribunal’s Decision dated 17.11.22 in the Matter of Appeal Nos: TRP 1 – 2022, TRP 2 – 2022, and TRP 3 – 2022, at paragraph 82.

464. The total sales rebate for the first, second, and third periods of infringement is RM[X] (RM[X] + RM[X] + RM[X]).
465. As stated in paragraph 461, the total relevant turnovers for the first, second, and third infringement periods is RM[X]. After subtracting the sales rebates, the turnover is RM[X] (RM[X] - RM[X]).
466. Based on the above calculation, the base figure in computing the financial penalty for FFM is fixed at 10% of the total relevant turnover after deducting sales rebates for the periods of infringement which amounts to RM[X] (10% x RM[X]).
467. FFM argues that the Commission had incorrectly considered its intra-group sales revenue in computation of financial penalty. The Commission maintains the position that the relevant turnover is not determined solely by "external sales". The Commission maintains that the relevant turnover ought to be based on the total sales figure as a whole. The Commission is of the view that, in financial reporting, all sales, both internal and external sales, are recorded as transactions constituting an enterprise's turnovers. This means that the relevant turnover is the entire turnover which is inclusive of intra-group sales.
468. The worldwide turnover for the first period of infringement (31.1.2020 – 31.3.2020) is RM[X]. The worldwide turnover for the second infringement period (1.10.2020 – 31.1.2021) is RM[X]. According to the data submitted by FFM (available from 1.2.2021 until 31.3.2022), the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) is RM[X].

469. Due to the unavailability of data for the worldwide turnover for the period from 1.4.2022 to 30.6.2022, the Commission uses a proxy worldwide turnover figure for the third period of infringement.
470. In order to determine the value of the proxy worldwide turnover figure for the third period of infringement, the Commission first divides the worldwide turnover values from 1.1.2022 to 31.3.2022, which amounts to RM[×], by 3 (since the period spans three months) and arrives at a proxy monthly worldwide turnover figure of RM[×] (RM[×]÷3).
471. Based on this monthly proxy worldwide turnover of RM[×], the Commission arrives at the total worldwide turnover figure for the period from 1.4.2022 to 30.6.2022 (spanning a period of 3 months), which is RM[×] (RM[×]×3). The total worldwide turnover figure for the third period of infringement (from 1.2.2021 to 30.6.2022) is RM[×] (RM[×]+ RM[×]).
472. Therefore, the total worldwide turnovers for FFM for the first, second and third periods of infringement shall be RM[×] (RM[×]+ RM[×]+ RM[×]).
473. The Commission determines that 10% of FFM's worldwide turnover is fixed at RM[×] (10% × RM[×]).
474. As there are no aggravating or mitigating factors to be considered, therefore the financial penalty imposed on FFM is RM42,689,583.64.

475. The financial penalty of **RM42,689,583.64** does not exceed the maximum financial penalty of RM[~~3~~] 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 FFM's worldwide turnover.

Arguments by FFM in relation to Financial Penalty

476. FFM argues that it has cooperated during the investigation, which should be considered as a mitigating factor. The Commission takes the position that the threshold is high when it comes to considering cooperation it as a mitigating factor. To meet this requirement, the Party must have provided information that could not have been obtained through a simple request for information. This approach aligns with the stance taken in the case of *Design, Construction, and Fit-out Services*.²⁶⁸ Based on the aforesaid, the Commission concludes that FFM did not provide information that is beyond what was requested via legal notices. The Commission hereby dismisses the argument by FFM.

477. FFM further submits that the Commission should have considered FFM's policy and training on competition law compliance as a mitigating factor. However, the Commission is of the view that the mere existence of a compliance program is insufficient. There is no evidence to support the effectiveness of the compliance training. It is crucial for compliance programs to be effective and not merely empty policies.

²⁶⁸ *Case 50481 Design, Construction and Fit-out Services*, at paragraph 6.34.

E. PENALTY FOR GOLD COIN

478. Gold Coin was involved in agreements and/or concerted practices with the object of significantly preventing, distorting or restricting competition by fixing the quantum of poultry feed (with maize and SBM as the main ingredients) price increments in Malaysia during the three periods of infringements.
479. For the purpose of computing the financial penalty, the Commission relies on the financial information submitted by Gold Coin pursuant to the section 18 notices dated 11.5.2022 and 28.6.2022.²⁶⁹
480. Gold Coin submitted worldwide turnover data covering the period from January 2020 until March 2022, as well as relevant turnover data for the period from January 2020 until May 2022.
481. The Commission finds that the relevant turnover for the first period of infringement (31.1.2020 – 31.3.2020) is RM[~~¥~~]. The relevant turnover for the second period of infringement (1.10.2020 – 31.1.2021) is RM[~~¥~~]. Based on the data submitted by Gold Coin (available from 1.2.2021 until 31.5.2022), the relevant turnover for the third period of infringement (1.2.2021 – 30.6.2022) amounts to RM[~~¥~~].
482. Due to the unavailability of data for the relevant turnover for the period from 1.6.2022 to 30.6.2022, the Commission uses a proxy relevant turnover figure for the third period of infringement.

²⁶⁹ Financial information provided by Gold Coin dated 20.5.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Financial information provided by Gold Coin dated 4.7.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 28.6.2022.

483. In order to determine the value of the proxy relevant turnover figure for the third period of infringement, the Commission first divides the relevant turnover values from 1.1.2022 to 31.5.2022, which amounts to RM[~~xxx~~] , by 5 (as the period spans five months) and arrives at a proxy monthly relevant turnover figure of RM[~~xxx~~] (RM[~~xxx~~] ÷ 5). Based on this calculation, the Commission finds that the proxy relevant turnover figure for the period from 1.6.2022 to 30.6.2022 is RM[~~xxx~~].
484. Hence, the total relevant turnover figure for the third period of infringement (from 1.2.2021 to 30.6.2022) is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~]). Accordingly, the total relevant turnover for the first, second, and third periods of infringements is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~]).
485. Based on the above calculation, the base figure in computing the financial penalty for Gold Coin is fixed at 10% of the relevant turnovers for the three periods of infringement which amounts to RM[~~xxx~~] (10% x RM[~~xxx~~]).
486. The worldwide turnover for Gold Coin for the first period of infringement (31.1.2020 – 31.3.2020) is RM[~~xxx~~]. The worldwide turnover for the second period of infringement (1.10.2020 – 31.1.2021) is RM[~~xxx~~].
487. In the Proposed Decision, the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) was calculated by using data submitted by Gold Coin (available from 1.2.2021 until 31.3.2022),

where the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) amounted to RM[~~xxx~~].

488. Subsequently, the Commission discovered that Gold Coin had *actually* provided a figure for the worldwide turnover for the period of 1.4.2022 to 30.4.2022. Somehow, due to oversight on the part of the Commission, this figure, as provided, was not taken into account in the calculation of the third period of infringement in the Proposed Decision. Instead, for the calculation of the worldwide turnover for the third period of infringement in the Proposed Decision, erroneously, a proxy worldwide turnover figure was used for the period of 1.4.2022 to 30.6.2022. Having realised the oversight and the resultant error, the Commission, now, on its own initiative, has re-calculated the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) to take into account the figure provided by Gold Coin for the period of 1.4.2022 to 30.4.2022. The worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) after taking into consideration the figure provided by Gold Coin (for the period of 1.4.2022 until 30.4.2022) amounts to RM[~~xxx~~] instead of the worldwide turnover RM[~~xxx~~] for the third period of infringement as erroneously arrived at in the Proposed Decision.

489. In the Proposed Decision, in light of the oversight on the part of the Commission and the erroneous reliance on a proxy figure for the period 1.4.2022 to 30.6.2022 (when actual figure was in fact provided by Gold Coin for the period 1.4.2022 to 30.4.2022), the total worldwide turnover for Gold Coin for the first, second and third periods of infringements was erroneously calculated to be RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~])

490. In light of the actual figure provided by Gold Coin for the period of 1.4.2022 to 30.4.2022, the Commission now uses a proxy worldwide turnover figure only for the remaining period of 1.5.2022 to 30.6.2022.
491. In the Proposed Decision, the proxy monthly worldwide turnover figure amounted to RM[~~xxx~~]. In light of the figure provided by Gold Coin for the period of 1.4.2022 to 30.4.2022, the Commission will now have to determine the proxy worldwide turnover figure only for the remaining period from 1.5.2022 to 30.6.2022. In determining the proxy worldwide turnover figure for this period of 1.5.2022 to 30.6.2022, the Commission first divides the worldwide turnover values from 1.1.2022 to 30.4.2022, which amounts to RM[~~xxx~~], by 4 (as the period spans four months) and arrives at a new proxy monthly worldwide turnover figure of RM[~~xxx~~] (RM[~~xxx~~] \div 4).
492. Applying this new proxy monthly worldwide turnover figure to the calculation of the total worldwide turnover, the *revised* total worldwide turnovers for Gold Coin for the first, second and third periods of infringements is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~]+ RM[~~xxx~~]).
493. The Commission finds that 10% of Gold Coin's *revised* worldwide turnover is RM[~~xxx~~] (10% \times RM[~~xxx~~]).
494. As there are no aggravating or mitigating factors to be considered, the financial penalty to be imposed on Gold Coin, which is 10% of Gold Coin's relevant turnover, shall be RM[~~xxx~~] (this is the same as the base figure of RM[~~xxx~~] used for calculating the financial penalty).

495. This financial penalty of **RM97,511,670.48** does not exceed the maximum financial penalty of RM[~~xxx~~] 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 Gold Coin's worldwide turnover.

496. The *revised* 10% worldwide turnover arrived at here (RM[~~xxx~~]) is a higher amount than the 10% worldwide turnover amount arrived at in the Proposed Decision, which is RM[~~xxx~~]. In the interest of justice, the Commission in this Decision adopts the 10% worldwide turnover as stipulated in the Proposed Decision, which is RM[~~xxx~~] as the maximum amount of financial penalty that can be imposed on Gold Coin; as this is a lower amount as compared to the revised figure of RM[~~xxx~~]. Be that as it may, the financial penalty of **RM97,511,670.48** still does not exceed the legal limit of RM[~~xxx~~].

Arguments by Gold Coin in relation to Financial Penalty

497. Gold Coin submits that, besides the lack of direct evidence against it, its involvement in the agreements and/or concerted practices in the present case is relatively low. Therefore, this low-level involvement should be considered as a mitigating factor. The Commission finds this argument as lacking in merit. In establishing its case the Commission is entitled to rely either on direct evidence or on circumstantial evidence. The Commission is of the view that the agreements and/or concerted practices to fix the quantum of increments of poultry feed (with maize and SBM as the main ingredients) prices in this case constitute a serious violation of the

Act whereby the financial penalty imposed is an appropriate remedial action taken by the Commission.

498. Gold Coin contends that it has cooperated during the investigation, and this should be considered as a mitigating factor. The Commission states here that there is a threshold to be satisfied before full cooperation can be considered to be a mitigating factor. To meet this requirement, the Party must have provided information that could not have been obtained through a simple request for information. This approach aligns with the stance taken in the case of *Design, Construction, and Fit-out services*.²⁷⁰ The Commission hereby dismisses the argument by Gold Coin.

499. Gold Coin also argues that it has implemented a competition compliance programme, which should be considered as a mitigating factor for the financial penalty. The Commission is of the view that the mere existence of a compliance program is insufficient to be treated as a mitigating factor. Further, there is no evidence to demonstrate the effectiveness of the compliance training. It is crucial for compliance programs to be effective and not merely empty policies.

500. According to the CMA's 2019 (United Kingdom) decision in *Design, Construction and Fit-out Services*,²⁷¹ taking adequate steps to ensure future compliance with competition law can serve as a mitigating factor, potentially resulting in a penalty discount of up to

²⁷⁰ Case 50481 *Design, Construction and Fit-out Services*, at paragraph 6.34.

²⁷¹ Case 50481 *Design, Construction and Fit-out Services*.

10%. However, the existence of compliance activities alone will not be considered a mitigating factor. Such activities are more likely to be deemed mitigating if an undertaking demonstrates that appropriate steps, tailored to the size of the business, have been taken to establish a clear and unambiguous commitment to competition law compliance throughout the organisation, starting from the top-level management. Based on the aforesaid, the Commission hereby rejects the arguments by Gold Coin on mitigating factors.

501. Gold Coin submits that the exposure of Malaysian companies to competition law is still in its early stages. Gold Coin draws a comparison between the current state of Malaysian companies in relation to competition law and that of European companies in the 1960s and 1970s. Therefore, it is argued that the same principles and policy considerations for imposing fines should be applied.

502. The Commission is of the opinion that when examining the origins of competition law in the European Union, it is crucial to recognize the disparities in economic and business environments when compared to Malaysia. In terms of regulatory compliance, Malaysia's business culture necessitates a stringent approach to effectively convey to enterprises that anti-competitive behaviour is not acceptable under the Act. This is why substantial fines are imposed as a deterrent and to align with the government's position against anti-competitive practices.

F. PENALTY FOR LEONG HUP

503. Leong Hup was involved in agreements and/or concerted practices of significantly preventing, distorting or restricting competition by fixing the quantum of increments of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia during the three periods of infringements.
504. For the purpose of computing the financial penalty, the Commission relies on the financial information submitted by Leong Hup pursuant to the section 18 notices dated 11.5.2022 and 28.6.2022.²⁷²
505. Leong Hup submitted worldwide turnover data covering the period from January 2020 until March 2022, as well as relevant turnover data for the period from January 2020 until May 2022.
506. The Commission finds that the relevant turnover for the first period of infringement (31.1.2020 – 31.3.2020) is RM[~~§~~]. For the second period of infringement (1.10.2020 – 31.1.2021), the relevant turnover is RM[~~§~~]. Based on the submitted data (available from 1.2.2021 until 31.5.2022), the relevant turnover for the third period of infringement is RM[~~§~~].
507. Due to the unavailability of data for the relevant turnover for the period from 1.6.2022 to 30.6.2022, the Commission uses a proxy relevant turnover figure for the third period of infringement.

²⁷² Financial information was provided by Leong Hup dated 20.5.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Financial information was provided by Leong Hup dated 4.7.2022 via email pursuant to the Section 18 Notice issued by the Commission dated 28.6.2022.

508. In order to determine the value of the proxy relevant turnover figure for the third period of infringement, the Commission first divides the relevant turnover values from 1.1.2022 to 31.5.2022, which amounts to RM[~~xxx~~], by 5 (as the period spans five months) and arrives at a proxy monthly relevant turnover figure of RM[~~xxx~~] ($RM[~~xxx~~] \div 5$).
509. Based on this monthly proxy relevant turnover of RM[~~xxx~~], the Commission arrives at the relevant turnover figure for the period from 1.6.2022 to 30.6.2022 (a month) which is RM[~~xxx~~] ($RM[~~xxx~~] \times 1$). The total relevant turnover figure for the third period of infringement (1.2.2021 to 30.6.2022) is RM[~~xxx~~] ($RM[~~xxx~~] + RM[~~xxx~~]$). The total relevant turnover for the first, second, and third periods of infringement is RM[~~xxx~~] ($RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~]$).
510. Based on the above calculation, the base figure in computing the financial penalty for Leong Hup is fixed at 10% of the relevant turnovers for the periods of infringements which amounts to RM[~~xxx~~] ($10\% \times RM[~~xxx~~]$).
511. The worldwide turnover for the first period (31.1.2020 – 31.3.2020) is RM[~~xxx~~]. The worldwide turnover for the second period (1.10.2020 – 31.1.2021) is RM[~~xxx~~]. According to the data submitted (available from 1.2.2021 until 31.3.2022), the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) is RM[~~xxx~~].
512. Due to the unavailability of data for the worldwide turnover for the period from 1.4.2022 to 30.6.2022, the Commission uses a proxy worldwide turnover figure for the third period of infringement.

513. In order to determine the proxy worldwide turnover figure for the third period of infringement, the Commission first divides the worldwide turnover values from 1.1.2022 to 31.3.2022, which amounts to RM[×], by 3 (since the period spans three months) and arrives at a proxy monthly worldwide turnover figure of RM[×] (RM[×]÷3).
514. Based on this monthly proxy worldwide turnover of RM[×], the Commission arrives at the worldwide turnover figure for the period from 1.4.2022 to 30.6.2022 (a period of 3 months), which is RM[×] (RM[×]×3). The total worldwide turnover figure for the third period of infringement (from 1.2.2021 to 30.6.2022) is RM[×] (RM[×]+RM[×]).
515. The total worldwide turnover figure for Leong Hup for the first, second and third periods of infringement shall be RM[×] (RM[×]+RM[×]+RM[×]).
516. The Commission finds that 10% of Leong Hup's worldwide turnover is fixed at RM[×] (10% × RM[×]).
517. The Commission further finds that Lim Yong Ping of Leong Hup had disrupted the extraction process of digital evidence during the execution of the search and seizure warrant at Lot 13A, Jalan PBR 1, Fasa 1, Kawasan Perindustrian Bukit Rambai, 75250 Melaka. What had happened was that Lim Yong Ping, acting against his counsel's advice, had disrupted the extraction process by abruptly detaching his mobile phone from the cable that was connected to the Commission's laptop. As a consequence, this has caused a delay in the digital evidence extraction process.

518. The Commission considers this conduct of Lim Yong Ping of Leong Hup as an aggravating factor and accordingly adjusts the penalty upwards by 10% from the base figure of RM[<]; which is equal to RM[<] (10% x RM[<]). Factoring in this aggravating factor, the total financial penalty computed at this stage is RM157,470,027.02 (RM[<] + RM[<]).
519. The Commission finds that there is no mitigating factor available for Leong Hup that warrants a downward adjustment to the financial penalty.
520. Accordingly, the final amount of financial penalty to be imposed on Leong Hup is RM157,470,027.02.
521. This financial penalty of **RM157,470,027.02** 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 Leong Hup's worldwide turnover.

Arguments by Leong Hup in relation to Financial Penalty

522. According to Leong Hup, the Commission should have considered Leong Hup's policy and training on competition law compliance as a mitigating factor. The Commission is of the view that the mere existence of a compliance program is insufficient to be treated as a mitigating factor. There is no evidence to support the effectiveness of the compliance training, as no member of Leong Hup flagged the agreements and/or concerted practices. It is crucial for compliance

programs to be effective and not merely empty policies overlooked by employees.

523. According to the CMA's 2019 (United Kingdom) decision in *Design, Construction and Fit-out Services*, taking adequate steps to ensure future compliance with competition law can serve as a mitigating factor, potentially resulting in a penalty discount of up to 10%.²⁷³ However, the existence of compliance activities alone will not be considered a mitigating factor. Such activities are more likely to be deemed mitigating if an undertaking demonstrates that appropriate steps, tailored to the size of the business, have been taken to establish a clear and unambiguous commitment to competition law compliance throughout the organization, starting from the top-level management. Based on the aforesaid, the Commission hereby rejects the arguments by Leong Hup on mitigating factors.

G. PENALTY FOR PK AGRO

524. PK Agro was involved in agreements and/or concerted practices with the object of significantly preventing, distorting or restricting competition by fixing the increments of the quantum of poultry feed (with maize and SBM as the main ingredients) prices in Malaysia during the three periods of infringements.

²⁷³ Case 50481 *Design, Construction and Fit-out Services*, at paragraph 6.37.

525. For the purpose of computing the financial penalty, the Commission relies on financial information submitted by PK Agro pursuant to section 18 notices dated 11.5. 2022 and 28.6.2022.²⁷⁴
526. PK Agro submitted worldwide turnover data for the period from January 2020 to March 2022, as well as relevant turnover data covering the period from January 2020 until May 2022.
527. The Commission finds that the relevant turnover for the first period of infringement (31.1.2020 – 31.3.2020) is RM[~~xxx~~]. The relevant turnover for the second period of infringement (1.10.2020 – 31.1.2021) amounts to RM[~~xxx~~]. According to the submitted data (available from 1.2.2021 until 31.5.2022), the relevant turnover for the third period of infringement (1.2.2021 – 30.6.2022) is RM[~~xxx~~].
528. Due to the unavailability of data for the relevant turnover for the period of infringement from 1.6.2022 to 30.6.2022, the Commission uses a proxy relevant turnover figure for the third period of infringement.
529. To determine the value of the proxy relevant turnover figure for the third period of infringement, the Commission first divides the relevant turnover values from 1.1.2022 to 31.5.2022, which amounts to RM[~~xxx~~], by 5 (as the period spans five months) and arrives at a proxy monthly relevant turnover figure of RM[~~xxx~~] (RM[~~xxx~~] \div 5). Based on this calculation, the Commission determines that the proxy

²⁷⁴ Financial information provided by PK Agro dated 19 May 2022 via email pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Financial information provided by PK Agro dated 1.7. 2022 via email pursuant to the Section 18 notice issued by the Commission dated 28.6.2022.

relevant turnover figure for the period from 1.6.2022 to 30.6.2022 is RM[~~xxx~~].

530. The total relevant turnover figure for the third period of infringement (from 1.2.2021 to 30.6.2022) is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~]). Hence, the total relevant turnover for the first, second, and third periods of infringements is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~]).

531. Based on the above calculation, the base figure in computing the financial penalty for PK Agro is fixed at 10% of the relevant turnover for the three periods of infringements, which amounts to RM[~~xxx~~] (10% x RM[~~xxx~~]).

532. The worldwide turnover for PK Agro for the first period of infringement (31.1.2020 – 31.3.2020) is RM[~~xxx~~]. The worldwide turnover for the second period of infringement (1.10.2020 – 31.1.2021) is RM[~~xxx~~].

533. In the Proposed Decision, the worldwide turnover for the third period of infringement (1.2.2021 to 30.6.2022) was calculated by using data submitted by PK Agro (available from 1.2.2021 to 31.3.2022), where the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) amounted to RM[~~xxx~~].

534. Subsequently, the Commission discovered that PK Agro had *actually* provided a figure for the period of 1.4.2022 to 30.4.2022 which, due to oversight, inadvertently was not taken into account in the calculation of the third period of infringement in the Proposed Decision. Instead, for the calculation of the worldwide turnover for

the third period of infringement in the Proposed Decision, a proxy worldwide turnover figure was erroneously used for the entire period of 1.4.2022 to 30.6.2022. Upon realising this oversight and error, the Commission, in this Decision, on its own initiative, has re-calculated the worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) to take into account the figure provided by PK Agro for the period of 1.4.2022 to 30.4.2022. The *revised* worldwide turnover for the third period of infringement (1.2.2021 – 30.6.2022) after taking into consideration the figure provided by PK Agro (for the period of 1.4.2022 until 30.4.2022) amounts to RM[<] instead of the *original* worldwide turnover figure of RM[<] for the third period of infringement as computed in the Proposed Decision.

535. Due to the oversight in the Proposed Decision as mentioned aforesaid, for the calculation of the worldwide turnover for the third period of infringement in the Proposed Decision, a proxy worldwide turnover figure was used for the period of 1.4.2022 to 30.6.2022; instead of the actual figure provided by PK Agro. In light of the figure provided by PK Agro for the period of 1.4.2022 to 30.4.2022, the Commission now only uses a proxy worldwide turnover figure for the period of 1.5.2022 to 30.6.2022.

536. Earlier, in the Proposed Decision, the proxy monthly worldwide turnover figure was RM[<]. In light of the figure provided by PK Agro for the period of 1.4.2022 to 30.4.2022, the Commission in determining the proxy worldwide turnover figure for the period of 1.5.2022 to 30.6.2022, first divides the worldwide turnover values from 1.1.2022 to 30.4.2022, which amounts to RM[<], by 4 (as the

period spans four months) and arrives at a new proxy monthly worldwide turnover figure of RM[~~xxx~~] (RM[~~xxx~~] \div 4).

537. Applying this new proxy monthly worldwide turnover figure for the calculation of the total worldwide turnovers, the *revised* total worldwide turnovers for PK Agro for the first, second and third periods of infringements is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~]). (The *original* worldwide turnovers for the 3 periods of infringements as in the Proposed Decision was RM[~~xxx~~].)

538. The Commission finds that 10% of PK Agro's *revised* worldwide turnover is RM[~~xxx~~] (10% \times RM[~~xxx~~]). (10% of the *original* worldwide turnovers as in the Proposed Decision is RM[~~xxx~~] (10% \times RM[~~xxx~~]). This was the original legal limit for financial penalty as arrived at in the Proposed Decision.).

539. As there are no aggravating or mitigating factors to be considered, therefore the financial penalty to be imposed on PK Agro, which is 10% of PK Agro's relevant turnover, shall be RM[~~xxx~~] (it is to be recalled that this is the base figure for the purpose of computing PK Agro's financial penalty).

540. The Commission finds that the financial penalty of RM47,931,394.22 does not exceed the maximum 10% of worldwide *revised* turnover amounting to RM[~~xxx~~].

541. This financial penalty of RM47,931,394.22 does not exceed the maximum financial penalty of RM[~~xxx~~] 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 Gold Coin's worldwide turnover.

542. However, the financial penalty of RM47,931,394.22 imposed in this Decision is a higher amount than the financial penalty amount in the Proposed Decision of **RM47,800,793.00**. It is also higher than the original legal limit for financial penalty of RM[~~8~~] as arrived at in the Proposed Decision. In the interest of justice, and to ensure that the enterprise is not prejudiced, the Commission adopts the financial penalty imposed in the Proposed Decision amounting to **RM47,800,793.00** as the final amount of financial penalty to be imposed on PK Agro; as this is of a lower amount as compared to the financial penalty of RM47,931,394.22.

PART 4: CONCLUSION ON THE FINANCIAL PENALTY

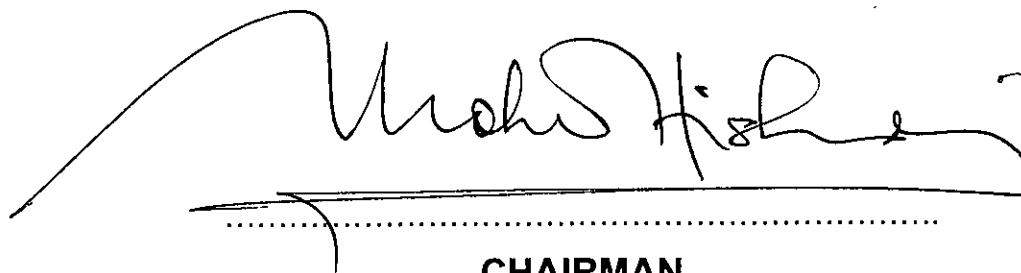
546. In conclusion, the Commission, pursuant to section 40(4) of the Act, imposes the following financial penalties as shown in **Table 43** below:

Table 43: Financial Penalty

PARTY	INFRINGEMENTS PERIODS	FINANCIAL PENALTY (RM)
FFM	31 January 2020 – 31 March 2020; 1 October 2020 – 31 January 2021; 1 February 2021 – 30 June 2022	42,689,583.64
Gold Coin	31 January 2020 – 31 March 2020; 1 October 2020 – 31 January 2021; 1 February 2021 – 30 June 2022	97,511,670.48
Leong Hup	31 January 2020 – 31 March 2020; 1 October 2020 – 31 January 2021; 1 February 2021 – 30 June 2022	157,470,027.02
PK Agro	31 January 2020 – 31 March 2020; 1 October 2020 – 31 January 2021; 1 February 2021 – 30 June 2022	47,800,793.00
Dindings	1 February 2021 – 30 June 2022	70,023,622.35

547. The payment of the financial penalty can be made via direct transfer or by cheque deposited with the Commission within 30 days from the date of this Decision.

DATED: 11 DECEMBER 2023

A handwritten signature in black ink, appearing to read 'Mohd Hishamudin Bin Md Yunus'. The signature is written in a cursive style and is positioned above a solid horizontal line, which is itself above a dotted horizontal line.

CHAIRMAN

DATO' SERI MOHD HISHAMUDIN BIN MD YUNUS