



**Malaysia Competition Commission**

**Case No. 700–1/1/33/2019**

Competition Act 2010 [Act 712]

Decision of the Competition Commission

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

Competition Commission

v.

1. Abadi Malaysia Sdn. Bhd.
2. Kota Lanskap Sdn. Bhd.
3. Usia Maintenance Sdn. Bhd.

**DATE: 30 JUNE 2025**

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

- (i) Tan Sri Dato' Sri Idrus bin Harun (Chairman);
- (ii) Datuk Roziah binti Abudin;
- (iii) Datuk Mairin bin Idang @ Martin;
- (iv) Mr. Ahmad Fauzi bin Sungip;
- (v) Mr. Surrendren Sathasivam;
- (vi) Mr. Surya Putra bin Dato' Mohamed Taulan;
- (vii) Mr. Wan Mohd Rosdi bin Wan Dolah; and
- (viii) Mr. Ir. Rusman bin Abu Samah.

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## INTRODUCTION

1. This Decision (“the Decision”) concludes the findings of an investigation undertaken by the Malaysia Competition Commission (“the Commission”) to establish whether infringements of section 4(1) read with section 4(2)(d) and section 4(3) of the Competition Act 2010 (“the Act”) had been committed by the enterprises named in this Decision following the receipt of a complaint of alleged agreements among enterprises with the object to perform bid rigging. In this Decision, the named enterprises shall be individually referred to herein as “Party” and collectively referred to as “Parties”.
2. The Commission commenced an investigation pursuant to section 15 of the Act upon receipt of the complaint. The complaint alleged the existence of anti-competitive arrangements in relation to the submissions of bids for tenders issued by Perbadanan Putrajaya (“PPJ”) relating to the provision of maintenance works. The purpose of the investigation was to determine whether the alleged arrangements contravened section 4(1) read with section 4(2)(d) and section 4(3) of the Act.
3. This Decision is addressed to the following Parties:
  - (a) Abadi Malaysia Sdn. Bhd.;
  - (b) Kota Lanskap Sdn. Bhd.; and
  - (c) Usia Maintenance Sdn. Bhd.

4. By this Decision, the Commission hereby, pursuant to section 40 of the Act, imposes a financial penalty and issues directions on each of the Parties for their respective Infringement as elaborated in **PART 3** of this Decision.

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## PART 1: THE FACTS

### A. THE PARTIES

5. Based on the evidence gathered, the Commission finds that the enterprises described in **paragraphs 6 to 17** below had engaged in concerted practices and entered into agreements that infringed the section 4 prohibition of the Act to perform acts of bid rigging.

#### A.1 ABADI MALAYSIA SDN. BHD.

6. Abadi Malaysia Sdn. Bhd. (267664-U) (“Abadi Malaysia”) is a private limited company incorporated on 23.6.1993. Its principal business address is at No. 85B, Level 2, Jalan Diplomatik, Presint 15, 62502 Putrajaya, Wilayah Persekutuan Putrajaya. Abadi Malaysia was previously known as Lakaran Jitu Sdn. Bhd. (“Lakaran Jitu”) until the change of its name, which took place on 09.02.2024.<sup>1</sup>
7. Abadi Malaysia provides a range of services in logistics, transportation, landscaping, construction, and various technical areas within the mechanical, electrical, plumbing, and civil engineering domains.<sup>2</sup>
8. Abadi Malaysia is registered as a G6 contractor with the Construction Industry Development Board (“CIDB”). Abadi Malaysia holds a Government Works Procurement Certificate and a

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<sup>1</sup> Companies Commission of Malaysia search on Abadi Malaysia dated 16.4.2024.

<sup>2</sup> Companies Commission of Malaysia search on Abadi Malaysia dated 16.4.2024.

Bumiputera Status Certificate, which allows Abadi Malaysia to bid for government tenders.<sup>3</sup> Prior to the change of name, which took place on 09.02.2024, Abadi Malaysia participated in the tendering process as Lakaran Jitu. Since Abadi Malaysia was previously known as Lakaran Jitu, therefore, in this Decision, any reference to “Abadi Malaysia” is a reference to both Abadi Malaysia and Lakaran Jitu.

9. The list of directors and shareholders of Abadi Malaysia is as shown in **Table 1** below:

**Table 1:** List of directors and shareholders of Abadi Malaysia

ABADI MALAYSIA/LAKARAN JITU	
DIRECTOR	SHAREHOLDER
Ismarani binti Siran (“Ismarani”)	Ismarani (99%)
Cevian binti Jupirin (“Cevian”)	Cevian (1%)

## A.2 KOTA LANSKAP SDN. BHD.

10. Kota Lanskap Sdn. Bhd. (923117-K) (“Kota Lanskap”) is a private limited company incorporated on 24.11.2010. Its principal business address is at No. 85C, Level 3, Jalan Diplomatik, Presint 15, 62502 Putrajaya, Wilayah Persekutuan Putrajaya.<sup>4</sup>
11. Kota Lanskap provides a range of services in general trading, maintenance, landscaping, construction, and various technical

<sup>3</sup> Government Works Procurement Certificate and Bumiputera Status Certificates submitted by CIDB pursuant to Section 18 Notice dated 26.4.2024.

<sup>4</sup> Companies Commission of Malaysia search on Kota Lanskap dated 16.4.2024.

areas within the mechanical, electrical, plumbing, and civil engineering domains.<sup>5</sup>

12. Kota Lanskap is registered as a G7 contractor with the CIDB and possesses a Government Works Procurement Certificate and a Bumiputera Status Certificate, which allows Kota Lanskap to bid for government tenders.<sup>6</sup> Kota Lanskap was previously registered with the CIDB as a G6 contractor, allowing Kota Lanskap to submit bids for the tenders listed in this Decision.
13. The list of directors and shareholders of Kota Lanskap is as shown in **Table 2** below:

**Table 2:** List of directors and shareholders of Kota Lanskap

KOTA LANSKAP	
DIRECTOR	SHAREHOLDER
Mohd Ikhwan bin Mohd Rosli ("Ikhwan")	Ikhwan (50%)
Mohd Shazran bin Mohammad Rasyid ("Shazran")	Shazran (50%)

### A.3 USIA MAINTENANCE SDN. BHD.

14. Usia Maintenance Sdn. Bhd. (324753-U) ("Usia Maintenance") is a private limited company incorporated on 26.11.1994. Its principal business address is at Lot 45441, Kg. Dato Abu Bakar Baginda, 43000 Kajang, Selangor. Usia Maintenance was previously known

<sup>5</sup> Companies Commission of Malaysia search on Kota Lanskap dated 16.4.2024.

<sup>6</sup> Government Works Procurement Certificate and Bumiputera Status Certificates submitted by CIDB pursuant to Section 18 Notice dated 26.4.2024.

as Tunas Awam Pemaju Sdn. Bhd. (“Tunas Awam Pemaju”) until the change of its name which took place on 15.08.2019.<sup>7</sup>

15. Usia Maintenance provides a range of services in general trading, maintenance, landscaping, transportation, construction, and various technical areas within the mechanical, electrical, plumbing, and civil engineering domains.<sup>8</sup>
16. Usia Maintenance is registered as a G6 contractor with the CIDB and possesses a Government Works Procurement Certificate and a Bumiputera Status Certificate, which allows Usia Maintenance to bid for government tenders.<sup>9</sup> Prior to the change of name, which took place on 15.08.2019, Usia Maintenance participated in the tendering process as Tunas Awam Pemaju. Since Usia Maintenance was previously known as Tunas Awam Pemaju, therefore, in this Decision, any reference to “Usia Maintenance” is a reference to both Usia Maintenance and Tunas Awam Pemaju.
17. The list of directors and shareholders of Usia Maintenance is as shown in **Table 3** below:

**Table 3:** List of directors and shareholders of Usia Maintenance

USIA MAINTENANCE/TUNAS AWAM PEMAJU	
DIRECTOR	SHAREHOLDER
Md Sallehen bin Haji Basarah ("Sallehen")	Sallehen (80%)

<sup>7</sup> Companies Commission of Malaysia search on Usia Maintenance dated 16.4.2024.

<sup>8</sup> Companies Commission of Malaysia search on Usia Maintenance dated 16.4.2024.

<sup>9</sup> Government Works Procurement Certificate and Bumiputera Status Certificates submitted by CIDB pursuant to Section 18 Notice dated 26.4.2024.

Muhammad Hafizi bin Mohd Hassan ("Hafizi")	Hafizi (20%)
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## B. BACKGROUND OF THE INDUSTRY

18. The Parties, as explained above, are registered contractors with CIDB, holding the Government Works Procurement Certificates and the Bumiputera Status Certificates. These certifications qualify them to participate in government tenders for construction industry projects, provided they meet the specific requirements set by the procurement agency.
19. In this case, the Parties had taken part in the tenders called by PPJ. PPJ is a corporation established under the Perbadanan Putrajaya Act 1995 (Act 563) to manage and administer the Federal Territory of Putrajaya. The functions of PPJ, among others, are to perform all functions of a local government in the Federal Territory of Putrajaya and to promote, stimulate, facilitate and undertake commercial development, infrastructure development and residential development in the Federal Territory of Putrajaya<sup>10</sup>. For the said purpose, PPJ periodically calls for tenders.
20. The tenders under consideration in this Decision pertain to the provision of maintenance works for the designated areas in Putrajaya. **Table 4** provides the details on the said tenders.

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<sup>10</sup> Sections 4(1)(a) & (c) of Perbadanan Putrajaya Act 1995.

**Table 4:** Details of the Tenders

NO.	TENDER NAME	ADVERTISEMENT DATE	REQUIRED FIELD CODE	NUMBER OF BIDDERS	PARTIES PARTICIPATED AS BIDDER	SUCCESSFUL BIDDER	BID AMOUNT (RM)
1.	Tender Maintenance for Amenity Trees in the various precincts, in Putrajaya	25.01.2018	CE 14 (Landscape)	12	1. Abadi Malaysia 2. Usia Maintenance	Usia Maintenance	[X]
2.	Tender Maintenance for Kompleks Kejiranan in Precinct 11, Putrajaya	27.09.2018	F01 (Building Facility and Infrastructure)	30	1. Abadi Malaysia 2. Kota Lanskap 3. Usia Maintenance	Rotoplus Engineering Services Sdn Bhd	[X]
3.	Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya	12.05.2019	CE 14 (Landscape)	21	1. Abadi Malaysia 2. Kota Lanskap 3. Usia Maintenance	Risda Semaian dan Landskap Sdn Bhd	[X]
4.	Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya	12.05.2019	CE 14 (Landscape)	34	1. Abadi Malaysia 2. Kota Lanskap 3. Usia Maintenance	Risda Semaian dan Landskap Sdn Bhd	[X]
5.	Tender Maintenance for Landscape in Kejiranan in Precincts 7, 8, 9 and 11, Putrajaya	11.10.2019	CE 14 (Landscape)	29	1. Abadi Malaysia 2. Kota Lanskap 3. Usia Maintenance	Abadi Malaysia	[X]

**NON-CONFIDENTIAL: PUBLIC VERSION**

NO.	TENDER NAME	ADVERTISEMENT DATE	REQUIRED FIELD CODE	NUMBER OF BIDDERS	PARTIES PARTICIPATED AS BIDDER	SUCCESSFUL BIDDER	BID AMOUNT (RM)
6.	Tender Maintenance Project for Main Drain, Gross Pollutant Trap and Retention Pond, in various precincts, in Putrajaya	05.04.2021	CE21 (Civil Engineering Construction)	36	1. Abadi Malaysia 2. Usia Maintenance	ZR Construction Sdn Bhd	[X]

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## C. INVESTIGATION PROCEDURES AND PROCESSES

21. On 01.04.2019, the Commission received a letter from PPJ alleging the existence of acts of bid rigging in the tenders called by PPJ.
22. Based on the assessment of the complaint by the Commission, the Commission found indications pointing towards possible bid rigging agreements and concerted practices affecting the tenders called by PPJ. The Commission then commenced a formal investigation against the Parties.
23. During the investigation against the Parties, the Commission has issued notices pursuant to sections 18(1)(a) and (b) of the Act. These notices were issued to require the provision of information and/or documents, to record written statements of witnesses based on provided information and documents, or in response to inquiries made by the Commission's officers.
24. The interviews conducted by the Commission during the course of the investigation against the Parties and other relevant individuals are set out in **Annexe A**.
25. The execution of search and seizure with warrants by the Commission during the course of the investigation against the Parties is set out in **Annexe B**.
26. On 10.9.2024, the Commission served the Proposed Decision dated 30.08.2024 to the Parties.

27. On 24.09.2024, 25.09.2024 and 27.09.2024, the documents in the Commission's file were made available to the Parties for inspection, and the sessions were attended by the representatives of the Parties, respectively.
28. The Parties were given until 28.10.2024 to submit their written representations to the Commission.
29. However, each of the Parties, via their letters dated 16.10.2024, requested an extension of time to submit their written representations to the Commission. The Parties also requested for a second session for them to access the documents in the Commission's file to be made available to the Parties for inspection.
30. The Commission, via a letter dated 23.10.2024, agreed to grant an extension of time for the Parties to submit their written representation until 11.11.2024. The Commission also agreed to a second session for the Parties to inspect the documents in the Commission's file on 28.10.2024, whereby the Parties were represented by a single legal representative.
31. On 11.11.2024, the Parties, via their legal representative, submitted a joint written representation to the Commission. The Parties opted to have an oral representation conducted. The Parties also, via a letter to the Commission from their legal representative, highlighted that the Parties could not access the digital documents provided by the Commission, due to which they may wish to submit further written representation and shall also made oral representation to the

Commission once they are provided with the relevant digital documents.

32. The Commission, on 12.11.2024, had provided the Parties with the relevant digital documents. The Parties, via their legal representative on 27.02.2025, had submitted their additional representations for the purpose of the oral representation to the Commission.
33. Pursuant to section 37 of the Act, a joint oral representation session was conducted on 13.03.2025, and the Parties were represented by their legal representative.

**D. WRITTEN & ORAL REPRESENTATIONS - THE PARTIES' ARGUMENTS ON THE UNREASONABLENESS OF THE TIMEFRAME GRANTED TO THEM**

*Parties' Arguments*

34. In their representations, the Parties collectively objected to the short and unreasonable period given by the Commission to the Parties to submit their written representation<sup>11</sup>. The Parties claimed that they had requested by way of letters to the Commission dated 16.10.2024 for an extension of time of at least one to two months for the submission of their written representations<sup>12</sup>. However, the

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<sup>11</sup> Written representation submitted by the Parties at paragraph 5.

<sup>12</sup> Written representation submitted by the Parties at paragraph 5.

Commission only granted a 14-day extension of time from the original deadline set by the Commission<sup>13</sup>.

35. The Parties argued that the amount of time given was unreasonable because of, *inter alia*, the large number of documents involved - with some of these documents referring to competition law jurisprudence from jurisdictions other than Malaysia, the length of time the Commission took to conduct its investigation as well as the fact that the Parties needed time to select and choose their legal representative<sup>14</sup>.
36. The Parties also contended that the Commission had included evidence of and from original documents obtained pursuant to the Commission's exercise of formal powers under the Act, and the access to which was limited and subject to terms such as access and printing fees which necessitated more than one access session for the Parties in order for them to prepare their written representation<sup>15</sup>.

### *The Commission's Decision*

37. The Commission disagrees with the Parties' argument above. The Commission had, in fact, duly considered the Parties' request for an extension and exercised its discretion to grant an additional 14 days beyond the original deadline. In total, the Parties had 63 days from

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<sup>13</sup> Written representation submitted by the Parties at paragraph 5.

<sup>14</sup> Written representation submitted by the Parties at paragraphs 6-10.

<sup>15</sup> Written representation submitted by the Parties at paragraph 11.

the date of the service of the Proposed Decision to the final deadline to submit their written representation. The Commission considers this overall timeline to be reasonable and sufficient, taking into account the nature of the investigation and the applicable procedural requirements.

38. As for access to the documents in the Commission's file, the access was granted fairly and in accordance with established administrative procedures. The Commission facilitated two separate access sessions for the Parties. For each of the access sessions, the Parties' representatives concluded their respective reviews of the documents within one hour. Furthermore, the conditions attached to access, such as fees for reproduction and printing, were based on standard procedures adopted by the Commission procedures, and did not impede the Parties' ability to review or obtain necessary documents.
39. The Commission therefore dismisses the arguments made by the Parties and maintains that the time and access provided were fair, reasonable and sufficient to ensure that the Parties were accorded the right to be heard, while balancing the public interest need for an efficient and timely enforcement process.

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## **PART 2: LEGAL AND ECONOMIC ASSESSMENT**

40. This Part sets out the legal and economic frameworks in which the Commission evaluates the evidence obtained during the course of its investigation. The evidence, as evaluated, forms the basis of the findings of the Commission as set out in this Decision.

### **A. THE SECTION 4 PROHIBITION**

41. Section 4(1) of the Act prohibits agreements between enterprises which have as their object or effect the significant prevention, restriction, or distortion of competition in any market for goods or services.
42. Under section 4(2)(d) of the Act, without prejudice to the generality of subsection (1), a horizontal agreement between enterprises that has the object of bid rigging is deemed to have the object of significantly preventing, restricting or distorting competition in any market for goods or services. Under section 4(3) of the Act, any enterprise which is a party to an agreement that is prohibited under section 4(1) read with section 4(2)(d) of the Act shall be liable for an infringement of the prohibition.

### **B. APPLICATION OF SECTION 4 PROHIBITION TO THE PARTIES**

43. Section 2 of the Act defines “enterprise” to mean “...any entity carrying on commercial activities relating to goods or services...”. Each of the Parties, therefore, constitutes an “enterprise” for the purposes of the Act as each of the Parties carries on commercial or

economic activities relating to, amongst other things, the provision of maintenance works.

## C. AGREEMENT

44. Section 2 of the Act provides a comprehensive definition of ‘agreement’ which includes any form of contract, arrangement or understanding, whether or not legally enforceable, and includes a decision by an association and concerted practice. The term ‘concerted practice’ is also defined under section 2 of the Act, and it involves any form of direct or indirect contact or communication between enterprises.<sup>16</sup> Concerted practices are any forms of coordination, direct or indirect, between enterprises that fall short of a formal agreement but still result in a coordinated approach to their business conduct.<sup>17</sup>

45. Direct or indirect contact or communication may include sharing of important parameters of their economic activity comprising including price or non-price information.<sup>18</sup> Typically, information sharing can be part of a broader cartel infringement. Information sharing can take various forms, including indirect exchange of commercially sensitive information through a third party. A concerted practice

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<sup>16</sup> (i) Case 48/69 *ICI v Commission* [1972] ECR 619; (ii) *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206; and (iii) CCS 600/008/06 *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at paragraphs 42 until 45.

<sup>17</sup> Case 50481: *Design, construction and fit-out services* (16.4.2019), at paragraph 5.69.

<sup>18</sup> CCCS 500/7003/17 *Infringement of the Section 34 Prohibition in relation the Provision of Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* dated 14.12.2020, at paragraph 50.

exists, even if the enterprise does not enter into a formal written agreement.<sup>19</sup>

46. As a result, the section 4 prohibition intends to catch a wide range of conduct that amounts to an ‘agreement’, a term that includes “concerted practice”.
47. In *Dresdner Bank v Commission*<sup>20</sup>, the Court of First Instance (“CFI”) of the European Union held that the concept of an agreement centres around the existence of a concurrence of wills between at least two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties’ intention.
48. In the *Pre-Insulated Pipe Cartel Case*<sup>21</sup>, the European Commission held that:

*“(134) An agreement for the purposes of Article 85(1) may also fall well short of the certainty required for the enforcement of a commercial contract. **Its exact terms may never be expressed:** the fact of agreement will have to be inferred from all the circumstances. The divergent interests of the cartel members may also preclude a full consensus on all issues. One or other party may have reservations about some particular aspect of the arrangement while still adhering to the common enterprise.*

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<sup>19</sup> *Design, Construction, and Fit-out Services* (Case 50481), at paragraphs 5.64 until 5.74.

<sup>20</sup> *Dresdner Bank v Commission* cases T-44/02 etc, EU: T: 2006:271, at paragraph 55.

<sup>21</sup> COMP IV/35.691/E.4 [1999] OJ L24/50, 1999 CMLR 402, at paragraph 134.

***Some aspects may deliberately be left vague or undefined. It may be that the parties agree (expressly or tacitly) to adopt a common plan and that they have to meet on a continuing basis to work out the details, alter or amend it from time to time or resolve particular difficulties.”***  
*[emphasis added]*

49. In determining if an agreement exists, while it is essential to show the existence of a joint intention to act on the market in a specific way,<sup>22</sup> it is not necessary to establish a joint intention to pursue an anti-competitive aim.<sup>23</sup>
50. The fact that a party may have played a limited role in establishing the agreement, may not be fully committed to its implementation, or participated only under pressure from other parties, does not exclude them from being considered a participant in the agreement. In *Sarrio v Commission*<sup>24</sup>, the European Court of Justice (“ECJ”) of the European Union held that:

*“50 It must be accepted, as the Court of First Instance accepted, that participation by an undertaking in meetings that have an anti-competitive object has the effect de facto of creating or strengthening a cartel and that the fact that an undertaking does not act on the outcome of those meetings is not such as to relieve it of responsibility for the fact of its*

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<sup>22</sup> Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, at paragraph 2.

<sup>23</sup> *GlaxoSmithKline Services Unlimited v Commission* T-168/01, EU:T:2006:265, at paragraph 77.

<sup>24</sup> Case C-291/98 *P Sarrio v Commission* [2000] ECR I-9991, at paragraph 50.

*participation in the cartel, unless it has publicly distanced itself from what was agreed in them...*

51. Each enterprise must determine independently the policy that it intends to adopt on the market.<sup>25</sup> This principle precludes any direct or indirect contact between enterprises, the object or effect of which is to create conditions of competition which do not correspond to the normal conditions of the market in question.<sup>26</sup>

**D. OBJECT OR EFFECT OF SIGNIFICANTLY PREVENTING, RESTRICTING OR DISTORTING COMPETITION**

52. Section 4(1) of the Act prohibits “*a horizontal or vertical agreement between enterprises in so far as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services*”. It is trite law that the presence of the word “or” in the phrase “object or effect” implies that “object” and “effect” are alternative and not cumulative requirements.<sup>27</sup>
53. It then follows that where an agreement has as its object the significant prevention, restriction or distortion of competition, it is unnecessary to prove that the agreement would have an anti-competitive effect in order to find an infringement of section 4 of the Act.<sup>28</sup>

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<sup>25</sup> *Suiker Unie and Others v Commission* joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, EU:C:1975:174, at paragraph 173.

<sup>26</sup> *Ibid*, at paragraph 174.

<sup>27</sup> *Societe Technique Miniere v Maschinenbau Ulm* Case 56/65 [1966] CMLR 357, at page 249.

<sup>28</sup> *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at paragraph 357.

54. In the case of *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore*<sup>29</sup>, the Competition and Consumer Commission of Singapore (“CCS”) found that the object of an agreement is not based on the subjective intention of the parties when entering into an agreement, but on:

*“...the objective meaning and purpose of the agreement considered in the economic context in which it is to be applied. Where an agreement has as its object the restriction of competition, it is unnecessary to prove that agreement would have an anti-competitive effect in order to find an infringement of section 34.”*

55. It is only when the object of the agreement is not clear with respect to its anti-competitive intent or purpose that there is a need to examine if the agreement might have an anti-competitive effect.

**E. SECTION 4(2)(d) OF THE ACT – HORIZONTAL AGREEMENT TO PERFORM AN ACT OF BID RIGGING IS DEEMED TO HAVE THE OBJECT OF SIGNIFICANTLY PREVENTING, RESTRICTING, OR DISTORTING COMPETITION IN ANY MARKET FOR GOODS OR SERVICES**

56. Section 4(2)(d) of the Act is a deeming provision regarding an agreement (which, as per definition, includes “concerted practice”) to perform an act of bid rigging. Such an agreement is deemed to

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<sup>29</sup> *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at paragraph 49.

have the objective of significantly preventing, restricting, or distorting competition in any market for goods or services. The Act, however, does not specifically define what constitutes an act of bid rigging. However, we are guided by the case law.

57. In *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission*<sup>30</sup>, the Competition Appeal Tribunal (“CAT”) of Malaysia summarizes the features or characteristics of bid rigging as follows:

*“(1) there must be two or more enterprises involved in any tender process or price fixing, (2) there must be some form of agreement, regardless whether it is enforceable or not, between the parties with the objective to significantly distort the normal conditions of competition, (3) that the parties to the agreement have agreed amongst themselves who should win the tender, (4) there must be collaboration and collusion between the parties to the agreement with clear intention to distort the normal conditions of competition, and (5) all of the above must done in a concerted effort amongst the parties to the agreement. **But it is not necessary all the five elements to be present in a bid rigging attempt.**”*

*[emphasis added]*

58. A competitive tender process relies on independently formulated bids from tenderers, ensuring structured competition and promoting transparency and efficiency.<sup>31</sup> However, if tenders are influenced by

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<sup>30</sup> *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission* [2023] MLJU 2631, at paragraph 14.

<sup>31</sup> *Apex Asphalt and Paving Co. Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209.

knowledge of other participants' bids or collusion, it disrupts the competitive nature of the tender process, leading to abnormal market conditions.<sup>32</sup>

59. Procurement procedures are designed to ensure fair and healthy competitive bidding amongst bidders. Enterprises are expected to act autonomously, in that each interested bidder prepares and submits their bid independently of the other bidders. The requirement for independent bids in the tender process is also illustrated in *Apex Asphalt and Paving Co. Limited v Office of Fair Trading*<sup>33</sup>, and *Makers UK Limited v Office of Fair Trading*<sup>34</sup>.
60. Engaging in such collusion and cooperation through concerted practices, in agreeing to perform acts of bid rigging, not only *reduces the number of competitive bids*<sup>35</sup> but also gives the “*tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.*”<sup>36</sup>

*[The remainder of this page is intentionally left blank]*

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<sup>32</sup> *Ibid*, at paragraphs 208 and 209.

<sup>33</sup> *Ibid*, at paragraphs 208 and 209.

<sup>34</sup> *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11.

<sup>35</sup> *Apex Asphalt and Paving Co. Limited v Office of Fair Trading*, [2005] CAT 4, at paragraph 251.

<sup>36</sup> *Ibid*, at paragraph 251.



61. It is important for tenderers to prepare their bid submissions independently as set out by the CAT of the United Kingdom (“UK”)<sup>37</sup>:

*“209. ...The competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.”*

62. In *Apex Asphalt and Paving Co. Limited v Office of Fair Trading*, Howard Evans (a building contractor) sent a fax to Apex (another building contractor) with prices stipulated for two tenders with Dudley Property Consultancy (“DPC”) for the supply or repair, maintenance and improvement services for flat roofs. Apex submitted bids to DPC with the stipulated price. Howard Evans also submitted its bids for the same tenders.
63. In its decision, the Office of Fair Trading (“OFT”) found that Apex and Howard Evans entered into concerted practices in relation to the making of tender bids for the said tenders. On appeal to the CAT of the UK, Apex argued that Howard Evans merely acceded to Apex’s request for the figures in relation to the two tenders, and the submission of bids with the stipulated prices by Apex was not a result of the alleged concerted practice.

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<sup>37</sup> *Ibid*, [2005] CAT 4, at paragraph 209.

64. The CAT of the UK affirmed the decision made by the OFT after considering the facts gathered by the OFT as follows:

- (a) Apex and Howard Evans both accepted an invitation to tender for the Dudley Contracts;
- (b) Apex's understanding was that DPC looked unkindly at tenders that were not returned by the due date after accepting the invitation to tender;
- (c) Howard Evans completed the estimating process for the Dudley Contracts (and Apex knew this);
- (d) Howard Evans wanted to win the tender for the Dudley Contracts;
- (e) Apex did not wish to submit an independent tender by the tender date;
- (f) Apex contacted Howard Evans requesting figures; Howard Evans supplied figures to Apex; and
- (g) Apex submitted a tender in respect of the Dudley Contracts using the figures supplied to it by Howard Evans.

65. The CAT of the UK held as follows:

*"243. The requirement of concertation is met by Apex contacting Howard Evans, and Howard Evans sending Apex a fax with figures to submit. This contact:*

- (a) shows that Howard Evans's conduct in sending that fax was not unilateral;*
- (b) infringes against the principle that each undertaking must determine independently the policy it intends to adopt on the market;*

(c) *constitutes direct contact between Howard Evans and Apex which had as its object or effect –*

- i. disclosure to Howard Evans of the course of conduct which Apex was to adopt or was contemplating adopting in the tendering process; and*
- ii. influencing Apex's conduct on the market*

*which contravenes the principle against direct or indirect contact set out in Suiker Unie at paragraph 174.”*

### *Information sharing*

66. The disclosure and/or exchange of sensitive commercial information, such as prices, may further facilitate collusion between parties and indicate participation in a concerted practice. Even a single meeting or isolated exchange of information is sufficient to prove a concerted practice.<sup>38</sup>

67. Agreements involving the sharing of pricing or other commercially significant information among competitors have been recognized as anti-competitive by object.<sup>39</sup> It is not necessary for the pricing or other commercially significant information previously shared among the competitors to match the actual bidding price or other commercially significant information for the purpose of bidding.<sup>40</sup>

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<sup>38</sup> Case C-8/08 *T-Mobile Netherlands BV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, at paragraphs 59, 60, 61 and 63; and CA98/02/2009 *Bid rigging in the Construction Industry*, OFT Decision of 21.9.2009, at pages 350 until 353.

<sup>39</sup> Case 50481: *Design, construction and fit-out services* (16.4.2019), at paragraph 5.93.

<sup>40</sup> *Suo Motu Case No. 02 of 2020 In Re: Alleged anti-competitive conduct by various bidders in supply and installation of signages at specified locations of State Bank of India across India*, at paragraph 35.

68. Information exchange that removes uncertainty about the timing, extent, and details of modifications in the market conduct is considered to have an anti-competitive objective.<sup>41</sup> It is pertinent to note that an essential feature of a competitive tendering process is that each interested bidder prepares and submits its bids independently.
69. Information exchange can create mutually consistent expectations regarding the uncertainties present in the market. Enterprises can then reach a common understanding of the terms of coordination of their competitive behaviour, even without a formal written agreement on coordination.<sup>42</sup>
70. In *Re: Alleged anti-competitive conduct by various bidders in supply and installation of signage at specified locations of the State Bank of India across India*<sup>43</sup>, Macromedia Digital (a consultant and not a bidder) sent emails to several enterprises (then became bidders) containing attachments of the bidding sequence and the prices. It was found that Macromedia Digital sent the emails at the behest of one of the enterprises based on the agreement reached between Macromedia Digital and all of the recipients of the said emails. The Competition Commission of India (“CCI”) found that the price in the emails matched the actual bids, which clearly indicated a meeting of minds between the bidders.

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

<sup>42</sup> Section 2 of the Competition Act 2010; and CA98/02/2009 *Bid rigging in the Construction Industry*, OFT Decision of 21.9.2009, at pages 349 and 350.

<sup>43</sup> Suo Motu Case No. 02 of 2020 In *Re: Alleged anti-competitive conduct by various bidders in supply and installation of signages at specified locations of State Bank of India across India*.

## F. BURDEN AND STANDARD OF PROOF

71. The Commission bears the burden of proving that the infringement under section 4 of the Act has been committed. The standard of proof applied in deciding whether an infringement of section 4 of the Act has been established is the civil standard, which is commonly known as proof on the balance of probabilities.
72. In the case of *Napp Pharmaceutical Holdings Limited v. Director General of Fair Trading*, the CAT of the UK ruled that while the standard of proof is the civil standard and the OFT must provide strong and compelling evidence to prove an infringement, this approach does not prevent the OFT from relying on inferences or presumptions that would typically arise from a given set of facts, in the absence of contrary evidence.<sup>44</sup>
73. Anti-competitive conduct is, by its very nature, hidden and discrete. Given the clandestine nature of such conduct, it is highly likely that evidence obtained by the Commission during its investigation may be fragmentary and sparse, such that it will be necessary to reconstruct certain details by deduction.<sup>45</sup> In *People's All India Anti-Corruption and Crime Prevention Society v Usha International Limited. & Others Case*<sup>46</sup>, the CCI held that:

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<sup>44</sup> [2002] CAT 1, [2002] Comp AR 13, at paragraphs 110 -111.

<sup>45</sup> *Gold Chic Poultry Supply Pte. Ltd. And Anor. V CCCS and Other Appeals* [2020] SGCAB 1, at paragraph 69.

<sup>46</sup> *People's All India Anti-Corruption and Crime Prevention Society v Usha International Limited & Others* Case No. 90 of 2016, at paragraph 77.

*“...there is rarely direct evidence of action in concert and in such situations, the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in co-operation with each other. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia, which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules...”*

*In the present case, it is important to look at the conduct of the OPs in other tenders as well to infer the existence of any agreement in relation to the Impugned Tender. **Modus of a cartel is not a one-time affair; rather, people who cartelise, pursue their anti-competitive agenda through various means, either simultaneously or one followed by the other.** Thus, there is merit in the DG relying upon the cooperation exhibited by OPs in other tenders also...”*  
[emphasis added]

74. In *Westfalen Gassen Nederland BV v. Commission*,<sup>47</sup> the CFI of the European Union ruled that given the clandestine nature of cartels, where little or nothing may be committed in writing, even a single piece of evidence or wholly circumstantial evidence may be sufficient to meet the required standard, depending on the particular context and circumstances. The ECJ of the European Union in the

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<sup>47</sup> Case T-303/02 [2007] *Westfalen Gassen Nederland BV v Commission* 4 CMLR 334, at paragraphs 106 and 107.

*Dyestuffs*<sup>48</sup> case highlighted that evidence must be assessed holistically:

*"68 ...the question whether there was concerted action in this case can only be correctly determined if the evidence on which the contested decision is based is considered, not in isolation, but as a whole."*

75. In other words, a piece of evidence should not be evaluated on its own but in relation to other evidence. Therefore, the reliability of a piece of evidence may be judged based on its consistency with other known facts.
76. Statements which go against the interests of the person making them are generally considered highly reliable evidence. This principle was reaffirmed by the General Court of the European Union in *Toshiba Corp v. European Commission*<sup>49</sup>:

*"48. When a person admits to committing an infringement and thereby acknowledges facts that go beyond those directly inferred from documentary evidence alone, this inherently suggests, unless there are exceptional circumstances indicating otherwise, that the person has chosen to tell the truth. Therefore, statements that are adverse to the interests of the person making them are typically viewed as particularly trustworthy evidence."*

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<sup>48</sup> Case 48/69 *ICI v Commission* [1972] ECR 619, at paragraph 68.

<sup>49</sup> *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8, at paragraph 48.

77. When determining whether the evidence meets the required standard, it is important to note that proving the specific mechanism by which the anti-competitive objective was achieved is not mandatory. In *Bavaria NV v. European Commission (Re Dutch Beer Cartel)*<sup>50</sup>, the applicant contested the reliability of a leniency applicant's statement, claiming it was too general and vague. The General Court dismissed this argument:

*“69. As regards the allegedly general character of the statement, it must also be pointed out that, in practice, the Commission is often obliged to prove the existence of an infringement under conditions which are hardly conducive to that task, in that several years may have elapsed since the time of the events constituting the infringement and a number of the undertakings covered by the investigation have not actively cooperated therein. Whilst it is necessarily incumbent upon the Commission to establish that an illegal market-sharing agreement was concluded ... **it would be excessive also to require it to produce evidence of the specific mechanism by which that object was attained... Indeed, it would be too easy for an undertaking guilty of an infringement to escape any penalty if it was entitled to base its argument on the vagueness of the information produced regarding the operation of an illegal agreement in circumstances in which the existence and anticompetitive purpose of the agreement had***

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<sup>50</sup> Case T-235/07 *Bavaria NV v European Commission (Re Dutch Beer Cartel)* [2013] 4 CMLR 37.



*nevertheless been sufficiently established...” [emphasis added]*

78. Therefore, given the nature of the evidence found in this Decision concerning anti-competitive agreements, it is sufficient if the body of evidence, viewed as a whole, proves that an infringement of the section 4 prohibition, on the balance of probabilities, has been committed. The evidence constitutes direct evidence, circumstantial evidence, and inferences made by the Commission from an established set of facts.

## **G. THE RELEVANT MARKET**

79. The term ‘market’ is defined in section 2 of the Act. The purpose of defining a market is to identify whether all enterprises are competing in the same product or geographical market or to define the boundaries of the product or geographical market in which all the enterprises compete.
80. Market definition serves a dual purpose in the context of the section 4 prohibition. First, it provides the framework for assessing whether an agreement has a significant anti-competitive effect in a market.<sup>51</sup> Second, it provides the basis for determining the relevant turnover for the purpose of calculating financial penalties.

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<sup>51</sup> *Malaysian Airline System Bhd. v Competition Commission & Another Appeal* [2022] 1 CLJ 856, at paragraph 7 “The requirement to specify and identify the ‘market’ was embedded in the very ‘deemed’ provision, and, if this requirement was not met, the deemed effect could not be applied. Only after having identified the relevant market MyCC could assess whether particular conduct (or agreement) was anti-competitive in nature.”

*Relevant product market*

81. In assessing the relevant product market, the Commission assess the nature of the project in each tender. Therefore, the Commission finds:

- (a) The tender for the Maintenance for Amenity Trees in the various precincts, in Putrajaya, is in relation to the maintenance of amenity trees, covering all aspects ancillary to it, such as preliminary works, workforce management, waste management and provision of equipment, within the designated area situated in various precincts in Putrajaya;
- (b) The tender for the Maintenance for *Kompleks Kejiranan* in Precinct 11, Putrajaya, is in relation to the maintenance of civil and structural, mechanical and electrical, plumbing and sanitary, water features/swimming pool and landscape, and the services of cleaning and pest control within the designated area situated in Precinct 11, Putrajaya;
- (c) The tender for the Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya, is in relation to the maintenance of landscape covering all aspects ancillary to it, such as landscape design, plant maintenance and replacement (trees, palms, shrubs, bamboo, ground cover and grass), soil restoration and other horticultural needs, fertilisation, pest and disease control, weed control and waste disposal, within the designated area situated in Precinct 1, Putrajaya;
- (d) The tender for the Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya, is in relation to the maintenance of landscape, civil and

structural, plumbing and irrigation system, landscape, fields and public facilities for Taman Wawasan and Taman Pancarona situated respectively in Precinct 2 and Precinct 18, Putrajaya;

- (e) The tender for the Maintenance for Landscape in Kejiranan in Precincts 7, 8, 9 and 11, Putrajaya, is in relation to the maintenance of landscape covering all aspects ancillary to it, such as preliminary works, workforce management and logistics management within the designated area situated in Precincts 7, 8, 9 and 11 in Putrajaya; and
- (f) The tender for the Maintenance Project for Main Drain, Gross Pollutant Trap and Retention Pond, in various precincts, in Putrajaya, is in relation to the maintenance and cleaning of main drainage system (main drain), Gross Pollutant Trap and Retention Pond within the designated area situated in various precincts in Putrajaya.

82. Based on the nature of each of the projects, the Commission finds that the relevant product market in this investigation is the market related to public procurements for PPJ relating to the maintenance works pertaining to building facilities and infrastructure, landscape and civil engineering construction.

*Relevant geographic market*

83. The relevant geographic market in this present case is the Federal Territory of Putrajaya.

*Conclusion on the Relevant Markets*

84. Based on the above, the Commission finds that the relevant market affected by the infringement, for the purpose of determining the respective relevant turnover of the Parties, is the public procurement for PPJ relating to the maintenance works for building facility and infrastructure, landscape, and civil engineering construction in the Federal Territory of Putrajaya.

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## H. THE ANALYSIS OF THE EVIDENCE

85. Before proceeding to examine the evidence collected by the Commission in each of the tenders, the Commission deems it appropriate to note the casual, frequent and dynamic nature of the interaction between the Parties and other enterprises, namely, Gading Saga Sdn. Bhd. and Tunas Nasional Holdings Sdn. Bhd. Gading Saga Sdn. Bhd. and Tunas Nasional Holdings Sdn. Bhd. are registered G7 contractor with the CIDB. The Parties, Gading Saga Sdn. Bhd. and Tunas Nasional Sdn. Bhd., have familial connections through their directors and staff.

### ***Gading Saga Sdn. Bhd.***

86. Gading Saga Sdn. Bhd. (554940-K) (“Gading Saga”) is a private limited company incorporated on 31.07.2001. Its principal business address is at No. 3B, Jalan Kenanga 1/1, Salak Perdana, 43900 Sepang, Selangor.<sup>52</sup>
87. Gading Saga provides a range of services in transportation, landscaping and general construction.<sup>53</sup>
88. Gading Saga is registered as a G7 contractor with the CIDB and possesses a Government Works Procurement Certificate and

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<sup>52</sup> Companies Commission of Malaysia search on Gading Saga dated 16.4.2024.

<sup>53</sup> Companies Commission of Malaysia search on Gading Saga dated 16.4.2024.

Bumiputera Status Certificate, which allows Gading Saga to bid for government tenders.<sup>54</sup>

89. The list of directors and shareholders of Gading Saga is as shown in **Table 5** below:

**Table 5:** List of directors and shareholders of Gading Saga

GADING SAGA	
DIRECTOR	SHAREHOLDER
Fairus Ayuswani binti Mohd Nasiran ("Fairus")	Fairus (51%)
Muhammad Hidayat bin Mohd Hassan ("Hidayat")	Hidayat (49%)

***Tunas Nasional Holdings Sdn. Bhd.***

90. Tunas Nasional Holdings Sdn. Bhd. (536867-H) ("Tunas Nasional Holdings") is a private limited company incorporated on 15.01.2001. Its principal business address is at MK3-30-13, Arte Mont Kiara, No.15, Jalan Sultan Ahmad Shah, 50480 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur.<sup>55</sup>
91. Tunas Nasional Holdings provides a range of services in transportation, construction and general contracting.<sup>56</sup>

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<sup>54</sup> Government Works Procurement Certificate and Bumiputera Status Certificates submitted by CIDB pursuant to Section 18 Notice dated 26.4.2024.

<sup>55</sup> Companies Commission of Malaysia search on Tunas Nasional Holdings dated 16.4.2024.

<sup>56</sup> Companies Commission of Malaysia search on Tunas Nasional Holdings dated 16.4.2024.

92. Tunas Nasional Holdings is registered as a G7 contractor with the CIDB and possesses a Government Works Procurement Certificate and Bumiputera Status Certificate, which allows Tunas Nasional Holdings to bid for any government tenders.<sup>57</sup>
93. The list of directors and shareholders of Tunas Nasional Holdings is as shown in **Table 6** below:

**Table 6:** List of directors and shareholders of Tunas Nasional

TUNAS NASIONAL	
DIRECTOR	SHAREHOLDER
Mohd Hassan bin Hj. Bosarah ("Hassan")	Hassan (74%)
Muhammad Haniff bin Mohd Hassan	Muhammad Haniff bin Mohd Hassan (26%)

94. Given the nature of their businesses and the licences held by the Parties, Gading Saga and Tunas Nasional Holdings, they share a common ground: securing tenders as a key source of their revenue. In the course of their daily operations, the Parties, Gading Saga and Tunas Nasional Holdings, frequently communicated with each other, in person and also through various other means such as WhatsApp chats, phone calls and emails. Conversations pertaining to tenders were explicit, and as a result, the staff of the Parties, Gading Saga and Tunas Nasional Holdings coordinated their efforts in preparing the bids. They often used a premises located in Diamond Square, Gombak, which at the time was the offices for both Usia Maintenance and Tunas Nasional Holdings, for the preparation of bid submissions.

<sup>57</sup> Government Works Procurement Certificate and Bumiputera Status Certificates submitted by CIDB pursuant to Section 18 Notice dated 26.4.2024.

**WhatsApp Group named “Office P15 Putrajaya 🌱”**

95. Cevian of Abadi Malaysia created this WhatsApp group on 19.02.2017 with the staff and/or directors of the Parties, Gading Saga and Tunas Nasional Holdings as the participants.<sup>58</sup> Although the WhatsApp Group was created in 2017, the conversations available as evidence for the Commission ran from 12.04.2019 until 06.05.2021, which was the day that the Commission executed the search and seizure with warrants on the premises of Abadi Malaysia and Kota Lanskap.<sup>59</sup>
96. In the said WhatsApp Group, there were numerous conversations among the Parties, Gading Saga and Tunas Nasional Holdings concerning tenders on a regular basis spanning from 2019 to 2021. Samples of these conversations are provided below:

**Conversation in 2019**

*[30/04/2019, 10:39:29 AM] En Lihin: K yo jgn lupa site visit yg ni*

*[30/04/2019, 10:40:20 AM] En Lihin: GS / TNH 2hb*

*[30/04/2019, 10:40:20 AM] K-Kak Yo: Okey*

97. The investigation confirmed that “En Lihin” and “Kak Yo” in the WhatsApp conversation dated 30.04.2019 referred to Sallehen of Usia Maintenance and Fairus of Gading Saga, respectively.

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<sup>58</sup> Participants of the WhatsApp Group “Office P15 Putrajaya 🌱”; and Section 7.3.18 Evidence No 18: IMG-1725.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>59</sup> The WhatsApp Group “Office P15 Putrajaya 🌱”; and Image 1 of Section 7.3.19 Evidence No 19: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd; The WhatsApp Group “Office P15 Putrajaya 🌱”; and Section 7.2.1 Evidence No 1: \_chat of the Digital Forensic Report Kota Lanskap Sdn Bhd.



98. Additionally, the investigation also confirmed that “GS” and “TNH” in the same WhatsApp conversation referred to Gading Saga and Tunas Nasional Holdings, respectively. This was confirmed by Sallehen of Usia Maintenance in his statement.

Question: “14. Terangkan maksud perbualan kamu pada 30 April 2019?”

Answer: “Kak Yo merujuk kepada Fairus. Saya hanya mengingatkan Fairus dan Fairus akan mengingatkan orang lain. Secara umumnya, ahli dalam WhatsApp Group ini mempunyai peranan masing-masing. Sebagai contoh, Fairus mahir tentang kerja-kerja fasiliti dan bidang tender tersebut. Fairus akan menguruskan keperluan tender ini bagi GS dan TNH.”<sup>60</sup>

### Conversation in 2019

[29/10/2019, 10:07:39 PM] En Sallehen: Berita terkini .., tender 5 tahun ni diteruskan ..,

[29/10/2019, 10:33:57 PM] Cevian.J: Krts p9. Due date khamis ni, 31 oktb 🙌

[29/10/2019, 10:40:52 PM] En Sallehen: Semua kena turun kerjasama ..

99. The investigation confirmed that “En Sallehen” and “Cevian J” in the WhatsApp conversation dated 29.10.2019 referred to Sallehen of Usia Maintenance and Cevian of Abadi Malaysia, respectively. Additionally, the investigation also confirmed that “Krts p9” in the

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<sup>60</sup> Paragraph 14 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

same WhatsApp conversation refers to a tender that the Parties intended to participate in. Sallehen of Usia Maintenance explained the conversation as follows:

Question: *“18. Apa tujuan kamu memaklumkan tender krts p9 dalam WhatsApp Group tersebut.”*

Answer: *“Sebagai pemberitahuan bahawa tender ini akan diiklankan.”*

Question: *“19. Apa maksud “semua kena turun kerjasama”.*

Answer: *“Kerani-kerani bagi syarikat anak beranak ini perlu bantu membantu dalam menyediakan dokumen tender.”*

Question: *“20. Syarikat mana yang menyertai tender ini”.*

Answer: *“Saya tidak ingat.”*<sup>61</sup>

### **Conversation in 2020**

*[09/04/2020, 1:20:41 PM] En Sallehen: Apakah status tender2 yg kita masuk ni ? dh siap isi ?*

*[09/04/2020, 1:20:51 PM] En Sallehen: Tender tasik ?*

*[09/04/2020, 1:21:25 PM] Ina Gombak: Blm*

*[09/04/2020, 1:21:30 PM] Ina Gombak: Harga blm bg*

*[09/04/2020, 1:21:57 PM] Ina Gombak: 3 plk tu*

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<sup>61</sup> Paragraphs 18, 19 and 20 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

*[09/04/2020, 1:22:08 PM] Ina Gombak: Kalo bole dpt harga cepat cepat isi*

*[09/04/2020, 1:22:14 PM] En Sallehen: Harga tasik saya dh maklumkan kt tuan Hj hassan*

*[09/04/2020, 1:22:29 PM] Ina Gombak: Nnt bila ttiba kuar tarikh hntr xkalut*

*[09/04/2020, 1:22:40 PM] En Sallehen: Betul puan*

*[09/04/2020, 1:23:06 PM] Ina Gombak: Cev folo up.sbb die buat harga.ina tggl tulis sj*

100. The investigation confirmed that En Sallehen, Ina Gombak, Hassan and Cev in the WhatsApp conversation dated 9 April 2020 referred to Sallehen of Usia Maintenance, Norazlina bt Darus (“Norazlina”) and Hassan of Tunas Nasional Holdings, and Cevian of Abadi Malaysia, respectively.

101. Additionally, the investigation also confirmed that “Tender tasik” in the same WhatsApp conversation refers to a tender that was issued by PPJ. However, it was not one of the tenders referred to in this Decision because the calling of this tender did not match with the timeline of any of the tenders which are the subject matter of this Decision, as this conversation took place in 2020, whereas none of the tenders in this Decision were called in 2020. Sallehen of Usia Maintenance explained the conversation as follows:

Question: “23. Terangkan maksud perbualan kamu.”

Answer: “Ia merujuk kepada tender Tasik yang diiklankan oleh Perbadanan Putrajaya. Ada beberapa syarikat yang kita masuk

*kerana tender ini boleh disertai oleh syarikat yang memegang lesen G6 dan G7. Kami tidak memenangi tender ini.”*

Question: “24. Apa maksud “harga tasik”.

Answer: “Ia merujuk kepada nilai tender yang sebelum ini.”

Question: “27. Jelaskan situasi di mana terdapat perbincangan atau penyediaan harga untuk sesuatu tender di antara kamu, Cevian dan Hassan.”

Answer: “Secara amnya, harga tender di Putrajaya tidak memerlukan pengiraan yang kompleks kerana skop yang sama, dan tender penyelenggaraan sentiasa berulang setiap dua tahun. Cevian tahu harga pembekal manakala Hassan mempunyai pengalaman.”<sup>62</sup>

### **Conversation in 2021**

[25/02/2021, 2:57:22 PM] En Sallehen: Tender2 pjc dh mula diiklankan ..., jgn lupa beli berita harian setiap hari ...,TQ

[25/02/2021, 3:50:43 PM] En Sallehen: Pn dayang bolehlah prepari awal2 dokumen yg perlu sign oleh kumpulan A.

102. The Commission infers that “Tender2 pjc” in the WhatsApp conversation dated 25.02.2021 refers to tenders that the Parties intended to participate in. The investigation confirmed from Sallehen of Usia Maintenance that “kumpulan A” refers to government officers

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<sup>62</sup> Paragraphs 23, 24 and 27 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

who are authorised to certify documents as a true copy (see **paragraph 109** below).

103. As the creator of the said WhatsApp Group, Cevian of Abadi Malaysia stated that the purpose of the said WhatsApp Group was to facilitate the sharing of information and coordination amongst them in furtherance to requests made by the directors and/or staffs of the Parties, Gading Saga and Tunas Nasional Holdings regarding the preparations of bid submissions to participate in the tenders.<sup>63</sup>

***Physical meetings held between the Parties, Gading Saga and Tunas Nasional Holdings***

104. Between the years 2019 and 2020, Cevian of Abadi Malaysia recorded the discussions that took place in the said meetings in writing. These meetings took place in the office premises of Abadi Malaysia, Usia Maintenance, Gading Saga, and Tunas Nasional Holdings.
105. Some of these minutes recorded discussions between the attendees pertaining to tenders including discussions about their intention to bid in certain tenders, their planned involvements, coordination of manpower for the preparations of bid submissions, and the Parties', Gading Saga's and Tunas Nasional Holdings' potential appointments as subcontractors to the winning bidder.<sup>64</sup>

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<sup>63</sup> Paragraphs 10 and 11 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022; and Paragraph 4 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

<sup>64</sup> Item 2.5 Pengurusan Tender and 3.1 Pembentangan Carta Organisasi yang Baru contained in Minit Mesyuarat Kemajuan Kerja Bagi Pengurusan Pentadbiran Syarikat Tunas Nasional Holdings Sdn Bhd Bil 1/2019 dated 3.1.2019; Minit Mesyuarat Kemajuan Kerja bagi Pengurusan Pentadbiran Syarikat

***Coordination of staff for the preparation of bid submissions***

106. Cevian of Abadi Malaysia's employment history included her previous working experience at Usia Maintenance, Gading Saga, Kota Lanskap and Tunas Nasional Holdings before being a shareholder of Abadi Malaysia and appointed as the director of Abadi Malaysia in 2014.<sup>65</sup>
107. Cevian of Abadi Malaysia admitted that she received payments from Kota Lanskap, Usia Maintenance, Gading Saga and Tunas Nasional Holdings for her role in preparing the company profiles for their bid submissions<sup>66</sup>, and sharing the prices obtained from the suppliers and/or Abadi Malaysia's own bid price with Kota Lanskap, Usia Maintenance, Gading Saga and Tunas Nasional Holdings.<sup>67</sup>
108. Cevian of Abadi Malaysia stated that it became customary for Kota Lanskap and Usia Maintenance to inform her of their intention to bid

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Tunas Nasional Holdings Sdn Bhd Bil. 3/2019 dated 31.7.2019; Minit Mesyuarat Kemajuan Kerja bagi Pengurusan Pentadbiran Syarikat Tunas Nasional Holdings Sdn Bhd Bil. 4/2019 dated 19.9.2019; Minit Mesyuarat Kemajuan Kerja bagi Pengurusan Pentadbiran Syarikat Tunas Nasional Holdings Sdn Bhd Bil. 5/2019 dated 21.11.2019; Minit Mesyuarat Kemajuan Kerja bagi Pengurusan Pentadbiran Syarikat Tunas Nasional Holdings Sdn Bhd Bil. 2/2020 dated 19.2.2020; Minit Mesyuarat Kemajuan Kerja bagi Pengurusan Pentadbiran Syarikat Tunas Nasional Holdings Sdn Bhd Bil. 4/2020 dated 15.7.2020; Paragraphs 71 and 72 of the Statement of Hassan of Tunas Nasional recorded on 15.12.2021; Paragraph 8 of the Statement of Hassan of Tunas Nasional Holdings recorded on 4.4.2022; Paragraph 92 of the Statement of Sallehen of Usia Maintenance recorded on 15.12.2021; Paragraph 5 of the Statement of Dayang of Tunas Nasional Holdings recorded on 8.2.2022; Paragraph 59 of the Statement of Ikhwan of Kota Lanskap recorded on 8.11.2022; Paragraph 7 of the Statement of Fairus of Gading Saga recorded on 8.2.2022; and Paragraphs 33, 34, 35, 36 and 37 of the Statement of Cevian of Abadi Malaysia recorded on 12.1.2022; Item 5 Laporan tender JB dan JL stated in Mesyuarat Kemajuan Kerja Pengurusan Pentadbiran Syarikat 2019 Kali Ke Dua (3).

<sup>65</sup> Companies Commission of Malaysia search on Abadi Malaysia dated 16.4.2024; Paragraphs 2 until 5 of the Statement of Cevian of Abadi Malaysia recorded on 6.5.2021; and Paragraphs 3 until 6 of the Statement of Cevian of Abadi Malaysia recorded on 12.1.2022.

<sup>66</sup> Paragraph 15 of the Statement of Cevian of Abadi Malaysia recorded on 6.5.2021.

<sup>67</sup> Paragraphs 16 and 19 of the Statement of Cevian of Abadi Malaysia recorded on 6.5.2021.

on specific tenders and, in return, she would provide advice on the tender requirements and supervise their staff in the preparation of their bid submissions.<sup>68</sup>

109. The role of Cevian of Abadi Malaysia was integral to the process of the preparation of the bid submissions. Sallehen of Usia Maintenance shared his prior experience in preparing Usia Maintenance's bid as follows:

*“Kita ada rujuk pada dia (Cevian) untuk keperluan tender dan harga barang seperti racun, baja dan lain-lain mengikut harga semasa kerana dia mempunyai kemahiran dan mempunyai senarai pembekalnya sendiri. **Kita pernah masuk tender sebelum ini tetapi gagal memenangi sebarang tender. Pekerja kita masih baru di bidang tender. Sebagai contoh Usia Maintenance Sdn Bhd tidak pernah memenangi sebarang tender kerana tidak mengikut spesifikasi tender. Sebagai contoh, saya tidak tahu bahawa pengesahan dokumen perlu dilakukan oleh pegawai kumpulan A iaitu pegawai gred 41 dan ke atas. Saya sebaliknya mengesahkan dokumen di Pesuruhjaya Sumpah.**”*<sup>69</sup>

*[emphasis added]*

110. Consequently, the Parties, Gading Saga and Tunas Nasional Holdings coordinated the staff for the preparations of the bid

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<sup>68</sup> Paragraph 18 of the Statement of Cevian of Abadi Malaysia recorded on 6.5.2021; Paragraphs 85 and 86 of the Statement of Cevian of Abadi Malaysia recorded on 12.1.2022; and Paragraphs 2 until 6 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>69</sup> Paragraph 26 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

submissions. The Commission found numerous private WhatsApp chats between the staff of the Parties, Gading Saga and Tunas Nasional Holdings to support this finding. Norazlina of Tunas Nasional Holdings, when confronted with her private WhatsApp chats with Cevian of Abadi Malaysia, states as follows:

*“Ayat, “Dorg tgok balik bq lama krts sor. Yg kita tulis reramai haritu” merujuk kepada tender lama yang kami pernah masuk sebelum ini. **Perkataan “reramai” merujuk kepada satu masa penyediaan dokumen tender yang dilakukan secara beramai-ramai yang bertempat di pejabat Diamond Square, Setapak, Jalan Gombak, Kuala Lumpur.**”<sup>70</sup>*  
*[emphasis added]*

111. Nur Yatie binti Abu Hashim (“Nur Yatie”), a former employee of Kota Lanskap, when confronted with her private WhatsApp chats with Cevian of Abadi Malaysia, states as follows:

*“Semasa di Alamat Gombak, saya telah diberikan salinan dokumen oleh Cevian untuk diisi ke dalam dokumen yang lain. Seingat saya, **maklumat yang diisi ke dalam dokumen tersebut berkait dengan maklumat syarikat dan BQ.**”<sup>71</sup>*  
*[emphasis added]*

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<sup>70</sup> WhatsApp conversation between Cevian and Norazlina on 30.04.2019; Image 5 of Section 7.3.26 Evidence No 26: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd; Paragraph 48 of the Statement of Norazlina of Tunas Nasional Holdings recorded on 10.2.2022.

<sup>71</sup> WhatsApp conversation between Cevian and Nur Yatie on 16.10.2018; Section 7.3.1 Evidence No 1: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd; Paragraph 12 of the Statement of Nur Yatie of KL Facilities (M) Sdn. Bhd. recorded 10.2.2022.



112. Dayang Aslinda binti Abdul Rahman (“Dayang”) of Tunas Nasional Holdings explained that this sharing of manpower arose due to the challenges faced by the Parties, Gading Saga and Tunas Nasional Holdings. She states as follows:

*“...Saya merupakan pekerja senior di TNH dan mempunyai pengalaman dalam penyediaan dokumen tender. **Pekerja yang menyediakan dokumen tender di TNH, TAP, LJ dan GS sering bertukar ganti dan tidak tetap kerana apabila mempunyai pengalaman mereka akan akan berhenti di syarikat tersebut dan bertukar kerja ke syarikat lain. Oleh itu, khidmat tunjuk ajar saya diperlukan.**”<sup>72</sup>*

*“**Khidmat tunjuk ajar yang diberikan oleh saya kepada pekerja tersebut adalah mengenalpasti jenis dokumen yang perlu dilampirkan dalam dokumen tender seperti Memorandum of Association (“MOA”), Article of Association, Borang 24, Borang 49, sijil CIDB, penyata bank, laporan audit, pengalaman kerja dan peralatan syarikat.**”<sup>73</sup>*  
*[emphasis added]*

113. Ikhwan of Kota Lanskap acknowledged the inexperience of his staff, stating that he leveraged the knowledge and experience of the other parties to enhance his bid submission. He states as follows:

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<sup>72</sup> Paragraph 6 of the Statement of Dayang of Tunas Nasional Holdings recorded on 8.2.2022.

<sup>73</sup> Paragraph 7 of the Statement of Dayang of Tunas Nasional Holdings recorded on 8.2.2022.

*“Penyediaan dokumen tender saya serahkan kepada Wani. Saya ada minta Wani untuk merujuk kepada ahli-ahli Dewan Perniagaan & Perindustrian Melayu Putrajaya (“DPPMP”) untuk menyediakan dokumen tender dan menimba ilmu untuk penyediaan dokumen tender”.<sup>74</sup>*  
*[emphasis added]*

114. This admission highlights a deliberate strategy to compensate for internal shortcomings by relying on external expertise. Such reliance on the capabilities of others evidences a deeper level of coordination between the parties, further indicating an act to perform bid rigging as the coordination was done with the involvement of Usia Maintenance and Abadi Malaysia, who were also the bidders in the tenders.

115. The investigation by the Commission confirmed that Wani refers to Intan Nur Shazwani binti Nasir (“Shazwani”) of Kota Lanskap and the Parties, Gading Saga and Tunas Nasional Holdings are members of the Dewan Perniagaan & Perindustrian Melayu Putrajaya (“DPPMP”). When confronted with her private WhatsApp chats in the year 2021 with Cevian of Abadi Malaysia, she states as follows:

*“Merujuk kepada komunikasi Whatsapp diatas saya bersetuju bahawa saya masih menerima arahan daripada Cevian dan melaksanakan arahan tersebut”.<sup>75</sup>*

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<sup>74</sup> Paragraph 4 of the Statement of Ikhwan of Kota Lanskap recorded on 8.11.2022.

<sup>75</sup> WhatsApp conversations between Cevian and Shazwani dated 20.1.2021, 3.2.2021 and 15.2.2021; Section 7.3.25 Evidence No 25: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd; Paragraph 64 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022.

116. Fairus of Gading Saga also confirmed to the Commission that she, on multiple occasions, facilitated the information exchanges between the Parties in relation to their proposed bid prices.<sup>76</sup>

117. Statements by various individuals interviewed by the Commission further confirmed that the premises located at Diamond Square, Gombak, which were the office of Tunas Nasional Holdings and Usia Maintenance, were used by the Parties, Gading Saga and Tunas Nasional Holdings for the preparations of the bid submissions.<sup>77</sup>

*[The remainder of this page is intentionally left blank]*

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<sup>76</sup> Paragraphs 23, 29, 37 and 41 of the Statement of Fairus of Gading Saga recorded on 8.2.2022.

<sup>77</sup> Paragraphs 7 and 11 of the Statement of Norazlina of Tunas Nasional Holdings recorded on 10.2.2022; Paragraph 8 of the Statement of Dayang of Tunas Nasional Holdings recorded on 8.2.2022; Paragraph 13 of the Statement of Laila Afiqah of Usia Maintenance recorded on 27.4.2021; Paragraphs 12, 19, 27 and 35 of the Statement of Nur Yatie of KL Facilities (M) Sdn. Bhd. recorded on 10.2.2022; Paragraph 15 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022; Paragraphs 25, 40, 71, 76, 81, 87 and 92 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

***Overview on the conduct of the parties encompassing the six tenders called by PPJ***

118. The dynamic, casual and frequent conduct between the parties resulted in a mutual understanding of the role in the preparation of the bid submissions. Consequently, it is reasonable to expect that documentary evidence may be sparse. Therefore, every piece of evidence must be viewed in its entirety, and reasonable inferences must be drawn. The evidence concerning the conduct of the Parties, Gading Saga and Tunas Nasional Holdings in the six tenders called by PPJ is outlined chronologically in **Table 7** as follows:

**Table 7:** Overview of the conduct of the parties encompassing the six tenders

DATE	RELEVANT FACTS
25.01.2018	Tender Maintenance for Amenity Trees in various Precincts, in Putrajaya, was advertised.
29.01.2018	Email from Laila Afiqah binti Kaspar ("Laila Afiqah") of Usia Maintenance to Cevian of Abadi Malaysia with attachments.  <i>The attachments were two unsigned letters entitled "LAKARAN JITU.doc" and "TUNAS AWAM.doc", each authorising an individual to purchase the tender documents on behalf of Abadi Malaysia and Usia Maintenance, respectively.</i>
30.01.2018	WhatsApp conversation between Cevian of Abadi Malaysia and Siti Zulaiha binti Md Sallehen ("Siti Zulaiha") of Tunas Nasional Holdings.  <i>The conversation outlined the role of Cevian of Abadi Malaysia, and Siti Zulaiha and Dayang of Tunas Nasional Holdings, in relation to the preparation of bid submissions of Kota Lanskap and Usia Maintenance.</i>

**NON-CONFIDENTIAL: PUBLIC VERSION**

14.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachment, at 2.44pm.</p> <p><i>The attachment entitled "CARTA AMENITI 02.pdf" is regarding the organisation chart intended to be Abadi Malaysia's bid submission based on Ismarani's position as the Managing Director in the said chart.</i></p>
14.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachment, at 2.49pm.</p> <p><i>The attachment entitled "CARTA AMENITI 01.pdf" is regarding the organisation chart intended to be Abadi Malaysia's bid submission based on Ismarani's position as the Managing Director in the said chart.</i></p>
14.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachment, at 2.52pm.</p> <p><i>The attachment entitled "CARTA AMENITI 02.pdf" is regarding the organisation chart of Usia Maintenance, intended to be Usia Maintenance's bid submission based on Sallehen's position as the Managing Director in the said chart.</i></p>
14.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, at 5.25pm.</p> <p><i>The attachments entitled "CARTA AMENITI LJ.pdf" and "CARTA AMENITI TAP.pdf" are regarding the organisation charts of Abadi Malaysia and Usia Maintenance, which were used as reference by Cevian of Abadi Malaysia, and Siti Zulaiha and Dayang of Tunas Nasional Holdings, in the preparations of Abadi Malaysia's and Usia Maintenance's respective bid submissions.</i></p>
17.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments.</p> <p><i>The attachments entitled "CARTA AMENITI LJ.pdf" and "CARTA AMENITI TAP.pdf" are regarding the organisation charts of Abadi Malaysia and Usia Maintenance, which were used as reference by Cevian of Abadi Malaysia, and Siti Zulaiha and Dayang of Tunas Nasional Holdings, in the</i></p>

	<i>preparations of Abadi Malaysia's and Usia Maintenance's respective bid submissions.</i>
19.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, at 3.01pm.</p> <p><i>The attachments entitled "Harga Ameniti LJSB.xlsx" and "Harga Ameniti TAP.xlsx" were regarding the prices in the bills of quantities and summaries of tender intended to form part Abadi Malaysia's and Usia Maintenance's respective bid submissions.</i></p>
19.02.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, 5.14pm.</p> <p><i>The attachments entitled "CARTA AMENITI LJ.pptx" and "CARTA AMENITI TAP.pptx" were regarding the organisation charts of Abadi Malaysia and Usia Maintenance which were used as reference by Cevian of Abadi Malaysia, and Siti Zulaiha and Dayang of Tunas Nasional Holdings, in the preparations of Abadi Malaysia's and Usia Maintenance's respective bid submissions.</i></p>
20.02.2018	<p>WhatsApp conversation between Cevian of Abadi Malaysia and Fairus of Gading Saga.</p> <p><i>This conversation is regarding the intended action of Cevian of Abadi Malaysia to collect the bid submissions of Abadi Malaysia and Usia Maintenance from the binding shop.</i></p>
21.02.2018	<p>Last day of bid submissions.</p> <p>Abadi Malaysia and Usia Maintenance submitted their respective bids.</p> <p><i>The bid submissions contained prices which are identical to the prices contained in the email dated 19.02.2018. Additionally, Dayang of Tunas Nasional Holdings signed as a witness in Usia Maintenance's bid submission.</i></p>
27.09.2018	Tender Maintenance for Kompleks Kejiranan in Precinct 11, Putrajaya was advertised.

04.10.2018	Tender Briefing and Site Visit held by PPJ.
10.10.2018	Tender Documents purchased by Abadi Malaysia and Kota Lanskap, respectively.
11.10.2018	Tender Document purchased by Usia Maintenance.
16.10.2018	<p>Email from Tunas Nasional Holdings to Cevian of Abadi Malaysia with attachment.</p> <p><i>The attachment entitled "TAP.BARU.FB. – KOSONG" is regarding Usia Maintenance's supporting document (Form E) which later formed part of Usia Maintenance's bid submission.</i></p>
19.10.2018	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments.</p> <p><i>The attachments entitled "TAP Ameniti.pdf" and "TAP Dataran.pdf" are the supporting documents (pictures of works previously done for past projects) which later formed part of Usia Maintenance's bid submission.</i></p>
25.10.2018	<p>Last day of bid submissions.</p> <p>The Parties submitted their respective bids.</p> <p><i>The bid submissions of the Parties contained identical pricing and handwriting. The bid submission of Kota Lanskap contained a typographical error. The bid submissions of Kota Lanskap and Usia Maintenance proposed Cevian of Abadi Malaysia as the project manager for this project.</i></p>
03.01.2019	A meeting attended by the representatives of Abadi Malaysia, Gading Saga, Usia Maintenance and Tunas Nasional Holdings discussing the proposals for the preparations of the bid submissions by the Parties, Gading Saga and Tunas Nasional Holdings to be more centralised in terms of the location and allocation of resources.
12.05.2019	<p>Two tenders for maintenance were advertised as follows:</p> <p>Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya; and</p>



	Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.
14.05.2019	<p>WhatsApp conversation between Cevian of Abadi Malaysia and Laila Afiqah of Usia Maintenance.</p> <p><i>This conversation is regarding the role of Cevian of Abadi Malaysia and the other staff of the Parties, Gading Saga and Tunas Nasional Holdings, in relation to the purchases of tender documents.</i></p>
15.05.2019	The staff of Tunas Nasional Holdings, Nur Asiah Binti Ali Nurdin, purchased the tender document for Abadi Malaysia.
12.06.2019	<p>WhatsApp conversation between Cevian of Abadi Malaysia and Fairus of Gading Saga, between 11.18am and 11.39am.</p> <p><i>This conversation is regarding the intention of Cevian of Abadi Malaysia to write the bid submission prices into the bid submission documents.</i></p>
12.06.2019	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, at 5.12pm.</p> <p><i>The attachments entitled "Tender Jalan Protokol 9.499 KL.xlsx", "Tender Jalan Protokol 9.677 LJSB.xlsx" and "Tender Jalan Protokol 9.722 TAP.xlsx" are regarding the prices in the bills of quantities and summaries of tender intended to form part of Abadi Malaysia's, Kota Lanskap's and Usia Maintenance's respective bid submissions for Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya.</i></p>
12.06.2019	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, at 6.54pm.</p> <p><i>The attachments entitled "Tender Jalan Taman Wwsn 5,699 KL.xlsx", Tender Jalan Taman Wwsn 5.977 LJ.xlsx" and "Tender Jalan Taman Wwsn 6.422 TAP.xlsx" are regarding the prices in the bills of quantities and summaries of tender intended to form part Abadi Malaysia's, Kota Lanskap's and Usia Maintenance's respective bid submissions for Tender</i></p>



	<i>Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.</i>
13.06.2019	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, at 3.49pm.</p> <p><i>The attachments entitled “Tender Jalan Taman Wwsn 5,699 KL.xlsx”, “Tender Jalan Taman Wwsn 5.977 LJ.xlsx” and “Tender Jalan Taman Wwsn 6.422 TAP.xlsx” are regarding the prices of bills of quantities and summaries of tender intended to form part of Abadi Malaysia’s, Kota Lanskap’s and Usia Maintenance’s respective bid submissions for Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.</i></p>
13.06.2019	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings with attachments, at 3.50pm.</p> <p><i>The attachments entitled “Tender Jalan Taman Wwsn 5,699 KL.xlsx”, “Tender Jalan Taman Wwsn 5.977 LJ.xlsx” and “Tender Jalan Taman Wwsn 6.422 TAP.xlsx” are regarding the prices in the bills of quantities and summaries of tender intended to form part of Abadi Malaysia’s, Kota Lanskap’s and Usia Maintenance’s respective bid submissions for Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.</i></p>
17.06.2019	<p>Last day of bid submission for Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya.</p> <p>Abadi Malaysia, Kota Lanskap and Usia Maintenance submitted their respective bids.</p> <p><i>The bid submissions contained prices which are identical to the prices contained in the email dated 12.06.2019.</i></p>
19.06.2019	<p>Last day of bid submission for Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.</p> <p>The Parties submitted their respective bids.</p>

	<i>The bid submissions contained prices which are identical to the prices contained in the email dated 13.06.2019, at 3.50pm.</i>
11.10.2019	Tender Maintenance for Landscape in Kejiranan Precincts 7, 8, 9, and 11, Putrajaya was advertised.
24.10.2019	Email from Shazwani of Kota Lanskap to Cevian of Abadi Malaysia, with attachment.  <i>The attachment entitled "BQ LANDSKAP KEJIRANAN PRESINT 7,8,9 &amp; 11.xlsx" is regarding the items in the summary of tender and bill of quantities.</i>
29.10.2019	Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings, with attachment.  <i>The attachment entitled "BQ LANDSKAP KEJIRANAN PRESINT 7,8,9 &amp; 11.xlsx" is regarding the prices in the bills of quantities and summaries of tender intended to be the "price indicators" in forming the prices for the respective bid submissions of the Parties.</i>
31.10.2019	WhatsApp conversation between Fairus of Gading Saga and Cevian of Abadi Malaysia, between 5.01pm and 5.12pm.  <i>This conversation is regarding the price for the respective bid submission of the Parties.</i>
11.11.2019	Last day of bid submission.  The Parties submitted their respective bids.  <i>The bid submissions contained prices which are identical to the prices contained in the email dated 29.10.2019, at 3.50pm.</i>
05.04.2021	Tender Maintenance for Main Drain, Gross Pollutant Trap and Retention Pond, in various precincts, Putrajaya, was advertised.
30.04.2021	Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings, with attachments, at 5.26pm.

	<i>The attachments entitled “Tender Penyelenggaraan Sistem Perparitan USIA.xlsx” and “Tender Penyelenggaraan Sistem Perparitan LJ.xlsx” are regarding the prices in the bills of quantities and summaries of tender for the bid submission of Abadi Malaysia and Usia Maintenance.</i>
30.04.2021	<p>WhatsApp conversation between Cevian of Abadi Malaysia and Norazlina of Tunas Nasional Holdings, at 11.40pm.</p> <p><i>This conversation is regarding the revised prices for the bid submissions of Abadi Malaysia and Usia Maintenance.</i></p>
01.05.2021	<p>Email from Cevian of Abadi Malaysia to Tunas Nasional Holdings, with attachment.</p> <p><i>The attachment “Tender Penyelenggaraan Sistem Perparitan LJ.xlsx” is regarding the prices in the bill of quantities and summary of tender for the bid submission of Abadi Malaysia.</i></p>
03.05.2021	<p>WhatsApp conversation between Cevian of Abadi Malaysia and Norazlina of Tunas Nasional Holdings.</p> <p><i>This is a continuation of the conversation regarding the prices for the bid submissions of Abadi Malaysia and Usia Maintenance.</i></p>
04.05.2021	<p>Last day of bid submission.</p> <p>Abadi Malaysia and Usia Maintenance submitted their respective bids.</p> <p><i>The bid submissions contained prices which are identical to the prices contained in the emails dated 30.04.2021 and 01.05.2021.</i></p>

119. The Commission shall explain in detail the evidence that supports its findings of bid rigging agreements and concerted practices between the Parties facilitated by Gading Saga and Tunas Nasional Holdings for each of the six tenders being the subject matter of this Decision.

## **H.1 TENDER MAINTENANCE FOR AMENITY TREES IN THE VARIOUS PRECINCTS, PUTRAJAYA**

120. This tender was called through an advertisement on 25.01.2018 and closed on 21.02.2018. By 21.02.2018, PPJ received 12 bid submissions, including bid submissions from Abadi Malaysia and Usia Maintenance. Kota Lankap did not submit any bid for this tender.

121. Based on the evaluation conducted by the relevant tender committees of PPJ on the bid submissions, Usia Maintenance was recommended to receive the award for this tender. On 5.5.2018, Usia Maintenance accepted the letter of award for a value of RM[REDACTED].

### ***Emails and WhatsApp communications between Abadi Malaysia, Usia Maintenance and Tunas Nasional Holdings***

122. On 29.01.2018, four days after the tender was advertised, Laila Afiqah of Usia Maintenance sent an email to Cevian of Abadi Malaysia. This email contained two unsigned authorisation letters, which were “LAKARAN JITU.doc” and “TUNAS AWAM.doc”, bearing the respective letterheads of Abadi Malaysia and Usia Maintenance.<sup>78</sup> The respective authorisation letter authorised Shazwani (who worked for Gading Saga in 2018) and Ummi Atikah binti Husaini (an unidentified individual) to purchase the tender documents for Abadi Malaysia and Usia Maintenance, respectively.

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<sup>78</sup> Email from Laila Afiqah of Usia Maintenance to Cevian of Abadi Malaysia dated 29.1.2018; and Section 7.3.5 Evidence No 5: surat wakil.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

123. Laila Afiqah of Usia Maintenance was the staff member responsible for the preparation of the bid submission of Usia Maintenance.<sup>79</sup>

124. When confronted with this evidence, Laila Afiqah of Usia Maintenance failed to provide a satisfactory response, repeatedly answering “saya tidak ingat” and “saya tidak tahu”.<sup>80</sup> It was only when asked about the procedures for purchasing tender documents that she provided a detailed response as follows:

*“Saya perlu membawa sijil perolehan kerja kerajaan yang dikeluarkan oleh CIDB untuk membeli dokumen tender UM. Ini kerana dokumen tender hanya boleh dijual kepada individu yang dinamakan di dalam sijil tersebut. Sekiranya, individu tidak dinyatakan dalam sijil tersebut, dokumen tender tidak dapat dibeli.”*<sup>81</sup>

125. Based on her explanation, the Commission is of the view that the authorisation letters were intended for individuals other than those listed in the CIDB’s certificates to purchase the tender documents. This clearly indicates prior contact between Usia Maintenance and Abadi Malaysia, disclosing their intention to bid on this tender.

126. On 30.01.2018, Cevian of Abadi Malaysia and Siti Zulaiha of Tunas Nasional Holdings, in their WhatsApp conversation, outlined the role of Cevian of Abadi Malaysia as well as Dayang and Siti Zulaiha of

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<sup>79</sup> Paragraph 3 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

<sup>80</sup> Paragraphs 5, 6, 8 and 9 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

<sup>81</sup> Paragraph 7 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

Tunas Nasional Holdings regarding the preparations of supporting documents for the respective bid submissions of Abadi Malaysia and Usia Maintenance. The WhatsApp conversation mentioned “*carta organisasi*” and “*susun org*”.<sup>82</sup>

127. Subsequent to this WhatsApp conversation, there were six emails sent by Cevian of Abadi Malaysia to Tunas Nasional Holdings as follows:

**Table 8:** Emails sent by Cevian to Tunas Nasional Holdings

NO.	Date	Email	Subject	Attachment
1.	14.02.2018 at 2.44pm	From [X]@gmail.com to [X]@yahoo.com <sup>83</sup>	kak dayang	CARTA AMENITI 02.pdf
2.	14.02.2018 at 2.49pm	From [X]@gmail.com to [X]@yahoo.com <sup>84</sup>	kak dayang	CARTA AMENITI 01.pdf
3.	14.02.2018 at 2.52pm	From [X]@gmail.com to [X]@yahoo.com <sup>85</sup>	kak dayang	CARTA AMENITI 02.pdf
4.	14.02.2018 at 5.25pm	From [X]@gmail.com to [X]@yahoo.com <sup>86</sup>	kak dayang	CARTA AMENITI LJ.pdf and CARTA

<sup>82</sup> WhatsApp conversation between Cevian and Siti Zulaiha dated 30.1.2018; and Section 7.3.6 Evidence No 6: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>83</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 14.2.2018 at 2.44pm; and Section 7.3.7 Evidence No 7: kak dayang.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>84</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 14.2.2018 at 2.49pm; and Section 7.3.8 Evidence No 8: kak dayang.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>85</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 14.2.2018 at 2.52pm; and Section 7.3.9 Evidence No 9: kak dayang.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>86</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 14.2.2018 at 5.25pm; and Section 7.3.10 Evidence No 10: kak dayang.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

				AMENITI TAP.pdf
5.	17.02.2018	From [X]<[redacted]>@gmail.com to [X]<[redacted]>@yahoo.com <sup>87</sup>	Kak Dyg	CARTA AMENITI LJ.pdf and CARTA AMENITI TAP.pdf
6.	19.02.2018	From [X]<[redacted]>@gmail.com to [X]<[redacted]>@yahoo.com <sup>88</sup>	PILA	CARTA AMENITI LJ.pptx and CARTA AMENITI TAP.pptx

128. The Commission identified the nicknames in the subject of the emails as Dayang and Siti Zulaiha of Tunas Nasional Holdings.<sup>89</sup> The attachments to these emails were documents representing the proposed organisation charts for Abadi Malaysia and Usia Maintenance for the execution of the work for this tender. The draft organisation charts, shared via email from 14.02.2018 until 19.02.2018, showed several changes of personnel made to the proposed workforce for both Abadi Malaysia and Usia Maintenance for the execution of work for this tender.<sup>90</sup>

129. The Commission infers that these documents were the documents meant as “*carta organisasi*” and “*susun org*” in the WhatsApp

<sup>87</sup> Email from [X]<[redacted]>@gmail.com to [X]<[redacted]>@yahoo.com dated 17.2.2018; and Section 7.3.11 Evidence No 11: Kak Dyg.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>88</sup> Email from [X]<[redacted]>@gmail.com to [X]<[redacted]>@yahoo.com dated 19.2.2018 at 5.14pm; and Section 7.3.12 Evidence No 12: PILA.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>89</sup> Paragraph 34 of the Statement of Nur Yatie of KL Facilities (M) Sdn. Bhd recorded on 10.2.2022; Paragraph 28 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

<sup>90</sup> The Commission’s analysis of the said exchange of documents.

conversation between Cevian of Abadi Malaysia and Siti Zulaiha of Tunas Nasional Holdings on 30.01.2018.

130. On 19.02.2018, Cevian of Abadi Malaysia sent another email to Tunas Nasional Holdings, attaching two Excel documents, namely, “Harga Ameniti LJSB.xlsx” and “Harga Ameniti TAP.xlsx”, and the subject of the email was “Ina”.<sup>91</sup> Ina refers to Norazlina of Tunas Nasional Holdings.<sup>92</sup> “Harga Ameniti LJSB.xlsx” and “Harga Ameniti TAP.xlsx” both contained prices in the form of bills of quantities and summaries of tenders.

131. Cevian of Abadi Malaysia explained that she was asked by Laila Afiqah of Usia Maintenance to assist in preparing Usia Maintenance’s bid price. After doing so, she shared both the prepared bid price of Usia Maintenance and Abadi Malaysia’s own bid price with Laila Afiqah of Usia Maintenance. According to Cevian of Abadi Malaysia, the purpose of sharing Abadi Malaysia’s bid price was to provide Usia Maintenance with a reference price.<sup>93</sup> Her role is corroborated by Sallehen of Usia Maintenance.<sup>94</sup>

*[The remainder of this page is intentionally left blank]*

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<sup>91</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 19.2.2018 at 3.01pm; and Section 7.3.13 Evidence No 13: Ina.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>92</sup> Paragraph 12 of the Statement of Hassan of Tunas Nasional Holdings recorded on 4.4.2022.

<sup>93</sup> Paragraph 19 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>94</sup> Paragraphs 42 and 43 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.



132. However, she maintained that the prepared bid price of Usia Maintenance was not final.<sup>95</sup> Cevian of Abadi Malaysia explained that the directors or employees of Usia Maintenance were unable to complete their bid price due to a lack of skills in preparing their own bid price, and Cevian of Abadi Malaysia was paid to assist them with this task. She states that:

*“Pengarah atau pekerja syarikat TAP tidak dapat melengkapkan harga tawarannya kerana mereka kurang kemahiran untuk menyediakan harga tawaran dan saya telah diberi upah membantu mereka menyediakan harga tawaran. Pengiraan saya untuk harga tawaran untuk TAP adalah berdasarkan kepada peralatan, jentera dan tenaga kerja yang dimiliki oleh TAP dan quotation yang saya perolehi daripada pembekal. Pilihan pembekal adalah kebebasan saya sendiri dan mereka tidak menentukan pembekal mana yang saya perlu hubungi.”<sup>96</sup>*  
*[emphasis added]*

133. The investigation confirmed that “TAP” in the statement of Cevian of Abadi Malaysia dated 24.03.2024 refers to Tunas Awam Pemaju, the previous name of Usia Maintenance.
134. A comparison of the prices contained in the Excel documents with the bid submission of Usia Maintenance reveals a significant number of matching items<sup>97</sup> between the initial bid submission of

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<sup>95</sup> Paragraph 19 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>96</sup> Paragraph 22 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>97</sup> Bid submission of Usia Maintenance that has formed part of the contract with PPJ.

Usia Maintenance and the prices contained in an Excel document sent by Cevian of Abadi Malaysia to Tunas Nasional Holdings on 19.02.2018. The Commission infers that the price indicators used by both Abadi Malaysia and Usia Maintenance are strikingly similar, suggesting a common reference point to further adjust bidding prices in absence of competitive pressure from each other. The comparison made by the Commission is shown below in **Table 9**. The prices highlighted in orange indicates similarity of prices between Abadi Malaysia and Usia Maintenance.

**Table 9: Price Comparison made by the Commission**

	Excel Document in email dated 19.02.2018	Excel Document in email dated 19.02.2018	Initial Price in Bid Submission
<b>BQ</b>	<b>Abadi Malaysia</b>	<b>Usia Maintenance</b>	
<b>Preliminari</b>			
1.1	[X]	[X]	[X]
1.2	[X]	[X]	[X]
1.3	[X]	[X]	[X]
1.4.2	[X]	[X]	[X]
1.4.3	[X]	[X]	[X]
1.5	[X]	[X]	[X]
<b>Tenaga Pengurusan dan Teknikal</b>			
2.1	[X]	[X]	[X]
2.2.1 (i)	[X]	[X]	[X]
2.2.1(ii)	[X]	[X]	[X]
2.2.1 (iii)	[X]	[X]	[X]
2.2.1(iv)	[X]	[X]	[X]
2.3.1(i)	[X]	[X]	[X]
2.3.1(ii)	[X]	[X]	[X]
2.3.1(ii)	[X]	[X]	[X]

2.3.1(iii)	[X]	[X]	[X]
2.3.1(iv)	[X]	[X]	[X]
2.4.1(i)	[X]	[X]	[X]
2.4.1(ii)	[X]	[X]	[X]
2.4.1(iii)	[X]	[X]	[X]
2.4.1(iv)	[X]	[X]	[X]
2.5.1(i)	[X]	[X]	[X]
2.5.1(ii)	[X]	[X]	[X]
2.5.1(iii)	[X]	[X]	[X]
2.5.1(iv)	[X]	[X]	[X]
<b>Keselamatan</b>			
3.1	[X]	[X]	[X]
3.1	[X]	[X]	[X]
3.2.(i)	[X]	[X]	[X]
3.2(ii)	[X]	[X]	[X]
3.2(iii)	[X]	[X]	[X]
3.2(iv)	[X]	[X]	[X]
<b>Zon 1 - (Kawasan Kejiranan Presint 7,8,9, 10, 11 dan 12)</b>			
4.1.1	[X]	[X]	[X]
4.1.2	[X]	[X]	[X]
4.1.3	[X]	[X]	[X]
4.1.4	[X]	[X]	[X]
4.1.5	[X]	[X]	[X]
4.1.6	[X]	[X]	[X]
4.2.1	[X]	[X]	[X]
4.2.2(a)	[X]	[X]	[X]
4.2.2(b)	[X]	[X]	[X]
4.2.2(c)	[X]	[X]	[X]
4.2.3(a)	[X]	[X]	[X]
4.2.3(b)	[X]	[X]	[X]
4.2.4	[X]	[X]	[X]
4.4.1	[X]	[X]	[X]

4.4.2	[X]	[X]	[X]
4.4	[X]	[X]	[X]
<b>Zon 2 - (Kawasan Kejiranan Presint 14, 15, 16, 17 dan 18)</b>			
5.1.1	[X]	[X]	[X]
5.1.2	[X]	[X]	[X]
5.1.3	[X]	[X]	[X]
5.1.4	[X]	[X]	[X]
5.1.5	[X]	[X]	[X]
5.1.6	[X]	[X]	[X]
5.2.1	[X]	[X]	[X]
5.2.2(a)	[X]	[X]	[X]
5.2.2(b)	[X]	[X]	[X]
5.2.2(c)	[X]	[X]	[X]
5.2.3(a)	[X]	[X]	[X]
5.2.3(b)	[X]	[X]	[X]
5.2.4	[X]	[X]	[X]
5.4.1	[X]	[X]	[X]
5.4.2	[X]	[X]	[X]
5.4	[X]	[X]	[X]
<b>Zon 3 - (Kawasan Nusa Perdana, Sisiran dan Promenade)</b>			
6.1.1	[X]	[X]	[X]
6.1.2	[X]	[X]	[X]
6.1.3	[X]	[X]	[X]
6.1.4	[X]	[X]	[X]
6.1.5	[X]	[X]	[X]
6.1.6	[X]	[X]	[X]
6.2.1	[X]	[X]	[X]
6.2.2(a)	[X]	[X]	[X]
6.2.2(b)	[X]	[X]	[X]
6.2.2(c)	[X]	[X]	[X]
6.2.3(a)	[X]	[X]	[X]
6.2.3(b)	[X]	[X]	[X]

6.2.4	[X]	[X]	[X]
6.3.1	[X]	[X]	[X]
6.3.2	[X]	[X]	[X]
6.4	[X]	[X]	[X]
<b>Zon 4 - (Kawasan Jalan Protokol dan Jalan Presint 5 dan 6) dan Pengurusan Kompos</b>			
7.1.1	[X]	[X]	[X]
7.1.2	[X]	[X]	[X]
7.1.3	[X]	[X]	[X]
7.1.4	[X]	[X]	[X]
7.1.5	[X]	[X]	[X]
7.2.1	[X]	[X]	[X]
7.2.2(a)	[X]	[X]	[X]
7.2.2(b)	[X]	[X]	[X]
7.2.2(c)	[X]	[X]	[X]
7.2.3(a)	[X]	[X]	[X]
7.2.3(b)	[X]	[X]	[X]
7.2.4	[X]	[X]	[X]
7.3.1	[X]	[X]	[X]
7.3.2	[X]	[X]	[X]
7.4	[X]	[X]	[X]
7.5.1	[X]	[X]	[X]
7.5.2.a	[X]	[X]	[X]
7.5.2.b	[X]	[X]	[X]
7.5.2.c	[X]	[X]	[X]
7.5.2.d	[X]	[X]	[X]
7.5.2.e	[X]	[X]	[X]
7.5.2.f	[X]	[X]	[X]
7.5.2.g	[X]	[X]	[X]
7.5.2.h	[X]	[X]	[X]
7.5.2.i	[X]	[X]	[X]
7.5.2.j	[X]	[X]	[X]

135. The Commission regards that the pre-pricing communications had the object of reducing uncertainty as to the conduct of Abadi Malaysia and Usia Maintenance with regard to the prices to be set by them, and that such communications concerned the fixing of their bid prices. There are many ways in which prices can be fixed. It may involve fixing either the price itself or the components of a price, setting a minimum or maximum price at which prices are not to be reduced or increased. Or it may involve establishing the amount or percentage by which prices are to be increased or establishing a range outside which prices are not to move.
136. On 20.02.2018, Cevian of Abadi Malaysia communicated with Fairus of Gading Saga, telling the latter of her intention to collect the bid submissions of Abadi Malaysia and Usia Maintenance from the binding shop.<sup>98</sup> This communication took place a day before the closing date for the bid submissions, which implies that Abadi Malaysia and Usia Maintenance were not acting as competitors, but were acting in concert to ensure their coordination regarding the bids materialised.
137. As detailed in the paragraphs above, there was direct contact between Abadi Malaysia and Usia Maintenance with regard to the preparation of their bid submissions. Cevian of Abadi Malaysia was actively involved in the preparations of bid submissions for both Abadi Malaysia and Usia Maintenance. Tunas Nasional Holdings' staff facilitated the preparations of both bids as evidenced by the

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<sup>98</sup> WhatsApp conversation between Cevian of Abadi Malaysia and Fairus of Gading Saga on 20.2.2018; and Image 4 of Section 7.3.14 Evidence No 14: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

utilisation of its email account. The signature of Dayang of Tunas Nasional Holdings, as a witness, was also found in the bid submission of Usia Maintenance.<sup>99</sup>

138. Based on a holistic assessment of the evidence discussed above, the Commission concludes that the collective conduct of Abadi Malaysia and Usia Maintenance constituted an agreement and concerted practice to perform an act of bid rigging. During the bid preparation process, Abadi Malaysia and Usia Maintenance exchanged information that would typically be unavailable in a genuinely competitive relationship. By acting in concert, they eliminated the competitive pressure that would have benefited the tendering process.

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<sup>99</sup> Bid Submission of Usia Maintenance.

## H.2 TENDER MAINTENANCE FOR KOMPLEKS KEJIRANAN IN PRECINCT 11, PUTRAJAYA

139. This tender is one of the tenders highlighted by PPJ in their letter received by the Commission on 01.04.2019. This tender was called through an advertisement on 27.09.2018 and closed on 25.10.2018. By 25.10.2018, PPJ received 30 bid submissions, including those submitted by the Parties.
140. Based on the evaluation conducted by the relevant tender committees of PPJ on all of the bid submissions, Rotoplus Engineering Services Sdn. Bhd. was recommended to receive the award for this tender. On 12.03.2019, Rotoplus Engineering Services Sdn. Bhd. accepted the letter of award for this tender for a value of RM[§<].

### ***Emails between Abadi Malaysia and Tunas Nasional Holdings***

141. On 16.10.2018, Tunas Nasional Holdings sent an email to Cevian of Abadi Malaysia. This email contained a draft of an unsigned letter, in the form of a Word document, requesting for PPJ's assessment on Usia Maintenance's performance in executing Tender Maintenance for Amenity Trees in the various Precincts of Putrajaya, which was awarded to Usia Maintenance on 05.05.2018. The draft letter purported to emanate from Sallehen of Usia Maintenance. It is not clear who in Tunas Nasional Holdings sent out the email. Additionally, the accompanying email does not include any content in its body.<sup>100</sup>

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<sup>100</sup> The email from [§<]@yahoo.com to cevian dated 16.10.2018 at 4.43pm; and Section 7.3.2 Evidence No 2: SURAT TUNAS AWAM.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.



142. Despite that there was no instruction given in the said email, the signed version of the letter was signed by Sallehen of Usia Maintenance and was included in Usia Maintenance's bid submission together with Usia Maintenance's current project performance, which was required by PPJ under Form E as Current Project Performance (*Laporan Prestasi Kerja Semasa Petender*).<sup>101</sup>
143. The comparison between the document in the email and the document in the bid submission of Usia Maintenance is illustrated below:

*[The remainder of this page is intentionally left blank]*

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<sup>101</sup> Bid Submission of Usia Maintenance.

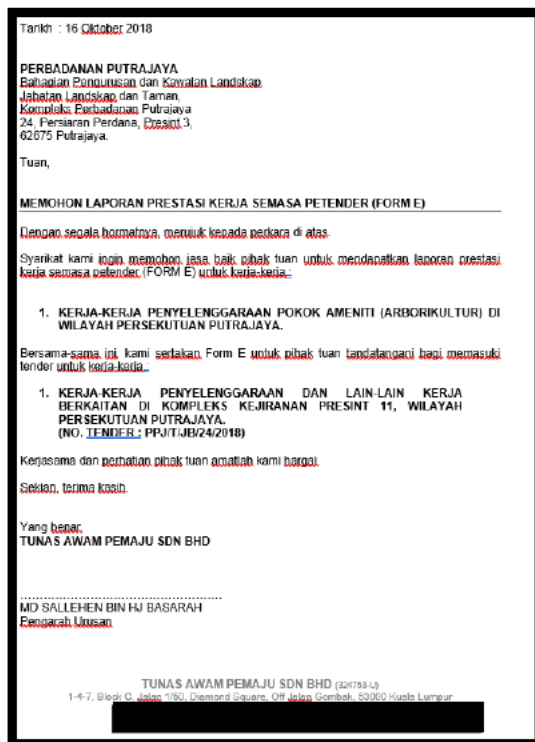


Image 1

Word version of the document in the email.

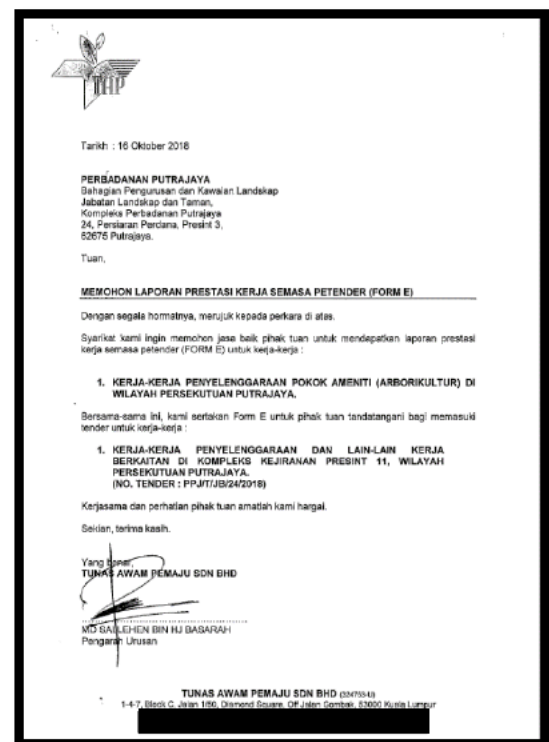


Image 2

Document in the bid submission of Usia Maintenance.

144. The email dated 16.10.2018 indicates that Abadi Malaysia and Tunas Nasional Holdings agreed to prepare the draft letter for obtaining the Form E of Usia Maintenance from PPJ. Abadi Malaysia upon receiving the said draft letter then shared it with Sallehen of Usia Maintenance.

145. On 19.10.2018, Cevian of Abadi Malaysia sent an email to Tunas Nasional Holdings. This email contained pictures showcasing Usia Maintenance's works for Tender Maintenance for Amenity Trees in various Precints in Putrajaya which was awarded to Usia

Maintenance on 05.05.2018. Again, the accompanying email does not include any content in its body<sup>102</sup>.

146. Just as in the case of the evidence discussed above, despite that there was no instruction given in the said email, the documents containing these pictures were included as part of the supporting documents in Usia Maintenance's bid submission.<sup>103</sup>

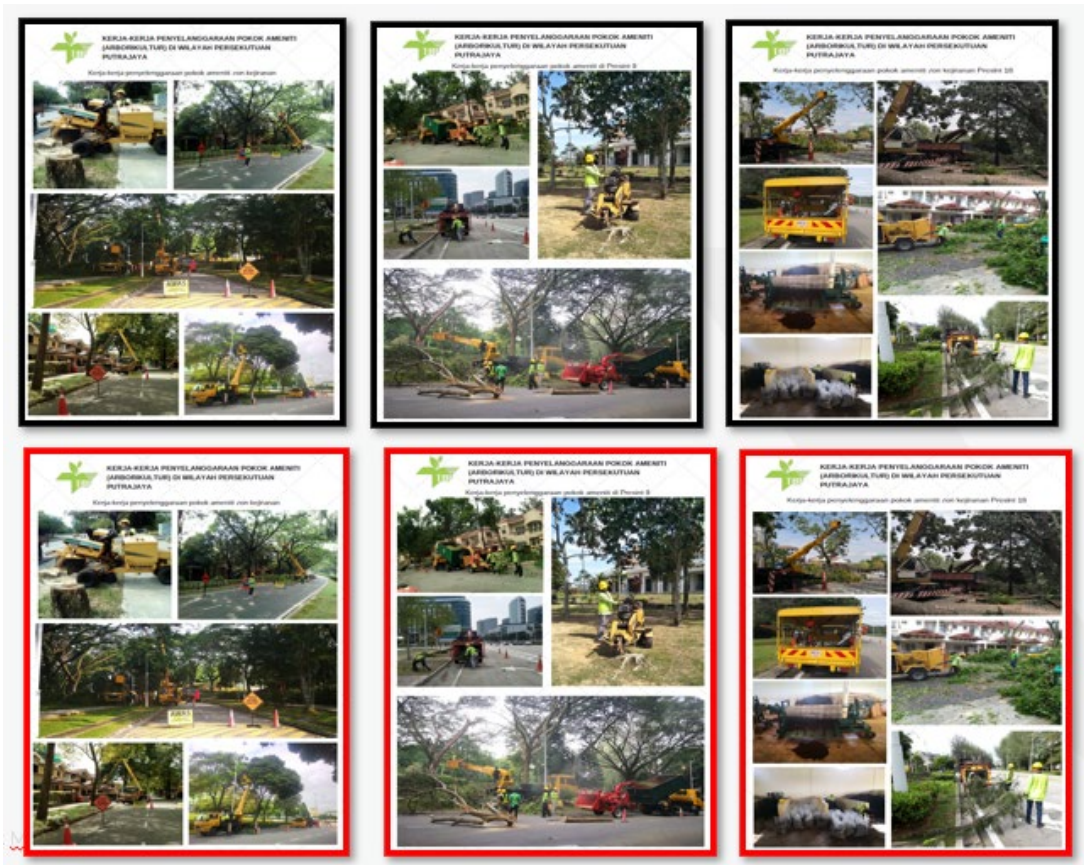
147. The comparison between the document in the email and the document in the bid submission is illustrated below:

*[The remainder of this page is intentionally left blank]*

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<sup>102</sup> Email from [REDACTED]@gmail.com to [REDACTED]@yahoo.com dated 19.10.2018; and Section 7.3.4 Evidence No 4: Gambar profile TAP.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

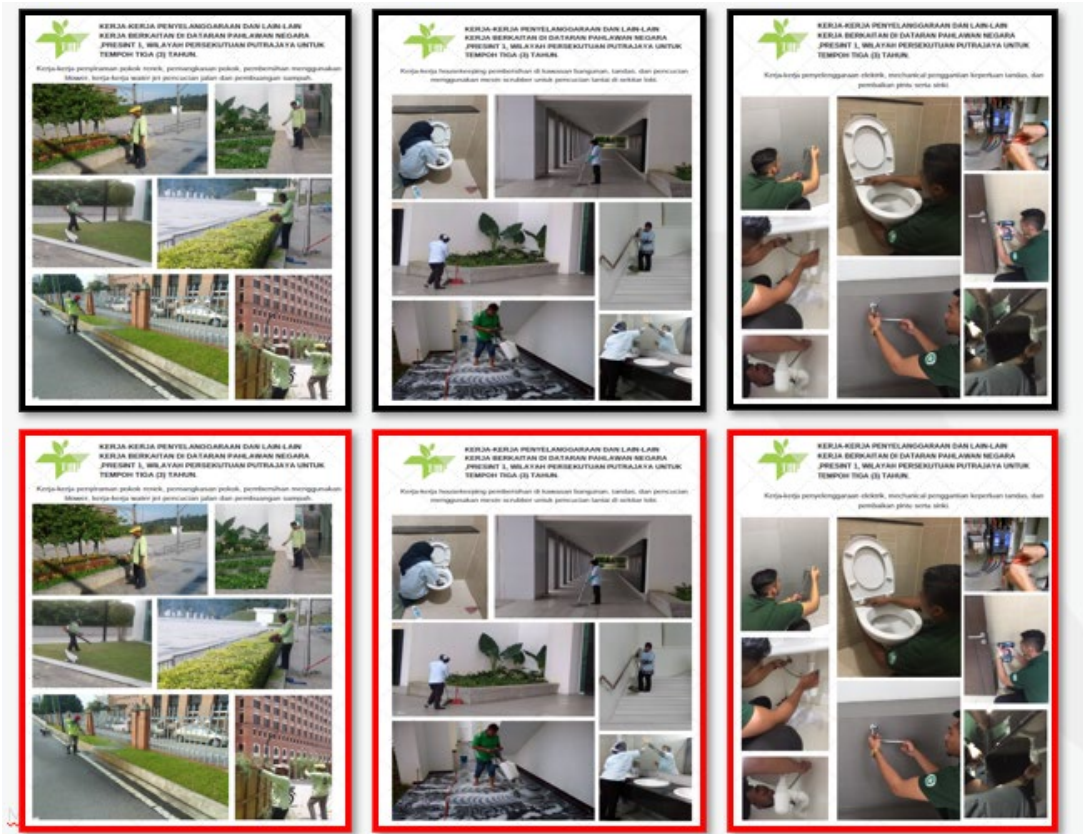
<sup>103</sup> Supporting document in the tender submission of Usia Maintenance.



**Image 3**

*Documents highlighted in black are documents attached in the email, while documents highlighted in red are documents in the bid submission of Usia Maintenance.*

*[The remainder of this page is intentionally left blank]*



**Image 4**

*Documents highlighted in black are documents attached in the email, while documents highlighted in red are documents in the bid submission of Usia Maintenance.*

148. The email dated 19.10.2018 indicates continuous coordination by Abadi Malaysia, Usia Maintenance and Tunas Nasional Holdings for the preparation of Usia Maintenance's bid submission.

*[The remainder of this page is intentionally left blank]*

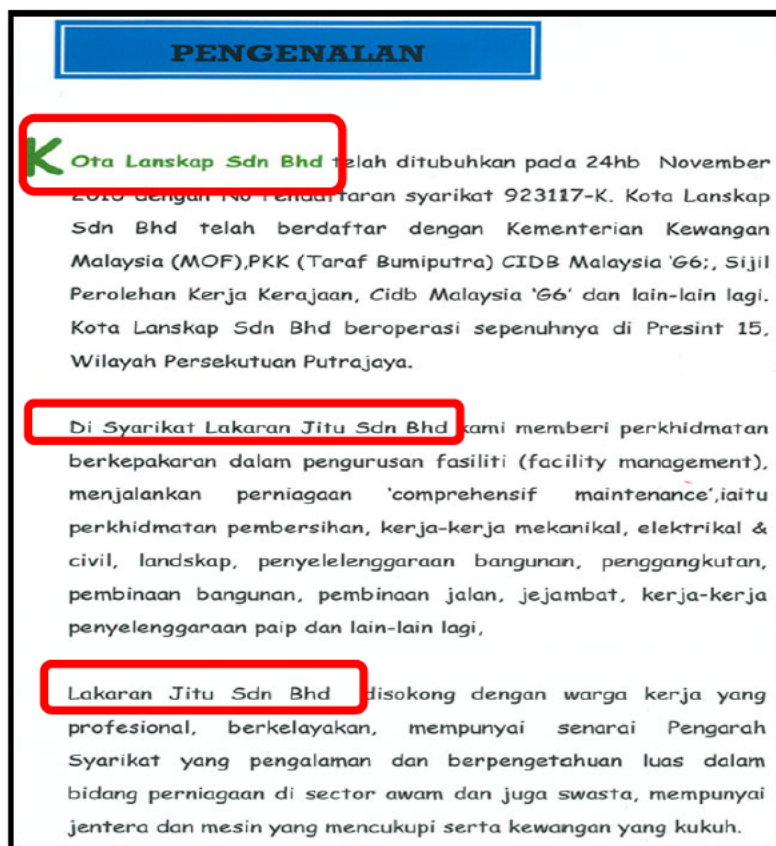


### ***The Commission's analysis of the bid submissions of the Parties***

149. In the course of the investigation, the Commission found discrepancies in the bid submissions of the Parties. These discrepancies were brought to the attention of the directors and/or staff of the Parties for explanation.

#### ***A. Typographical error in Kota Lanskap's company profile contained in the bid submission of Kota Lanskap***

150. The typographical error is illustrated below:



***Image 5***

*Kota Lanskap's company profile which is part of the bid submission of Kota Lanskap.*

151. Ikhwan of Kota Lanskap stated that the typographical errors were likely to be a product of copy and paste, due to the working relationship between Shazwani of Kota Lanskap and Cevian of Abadi Malaysia.<sup>104</sup> He informed the Commission that during the preparation of this tender, Shazwani (a staff member of Gading Saga at that time) was given the approval by Fairus of Gading Saga to assist him with the preparation of Kota Lanskap's bid submission.<sup>105</sup>

152. Ikhwan of Kota Lanskap further informed the Commission that he directed Shazwani to refer to the staff of the Parties, Gading Saga and Tunas Nasional Holdings for assistance in the preparation of Kota Lanskap's bid submission. He responded to the questions posed by the Commission as follows:

*“Question: Adakah terdapat individu lain yang terlibat dalam penyediaan dokumen tender Kota Lanskap Sdn Bhd?”*

*Answer: 18. Saya tidak pasti kerana saya serahkan sepenuhnya penyediaan dokumen tender kepada Wani dan saya ada minta dia untuk merujuk kepada mana-mana pihak yang dirasakan sesuai seperti ahli DPPMP untuk membantu beliau.*

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<sup>104</sup> Bid submission of Kota Lanskap; Paragraph 12a of the Statement of Ikhwan of Kota Lanskap recorded on 16.2.2022.

<sup>105</sup> Paragraphs 11, 13, 14, 15 and 16 of the Statement of Ikhwan of Kota Lanskap recorded on 8.11.2022.

*Question: Adakah Kota Lanskap melantik mana-mana individu selain pekerja Kota Lanskap termasuk Cevian untuk membantu dalam penyediaan dokumen tender ini?*

*Answer: 19. Tiada lantikan formal untuk bantuan penyediaan dokumen tender oleh mana-mana individu yang bukan pekerja Kota Lanskap. Konsep di bawah DPPMP adalah saling tolong menolong antara satu sama lain.”<sup>106</sup>*

153. This explanation indicates that there was an agreement and concerted practice in place between Kota Lanskap with Abadi Malaysia, Usia Maintenance, Gading Saga and Tunas Nasional Holdings pertaining to coordination of staffs for the preparation of Kota Lanskap’s bid submission. The fact that there is a typographical error in Kota Lanskap’s company profile proved that the document was prepared with reference to Abadi Malaysia’s document.

***B. Cevian as a director in the proposed organisation chart of Kota Lanskap and Usia Maintenance, contained in the bid submissions of Kota Lanskap and Usia Maintenance***

154. The proposed organisation charts in the bid submissions of Kota Lanskap and Usia Maintenance<sup>107</sup> are illustrated below:

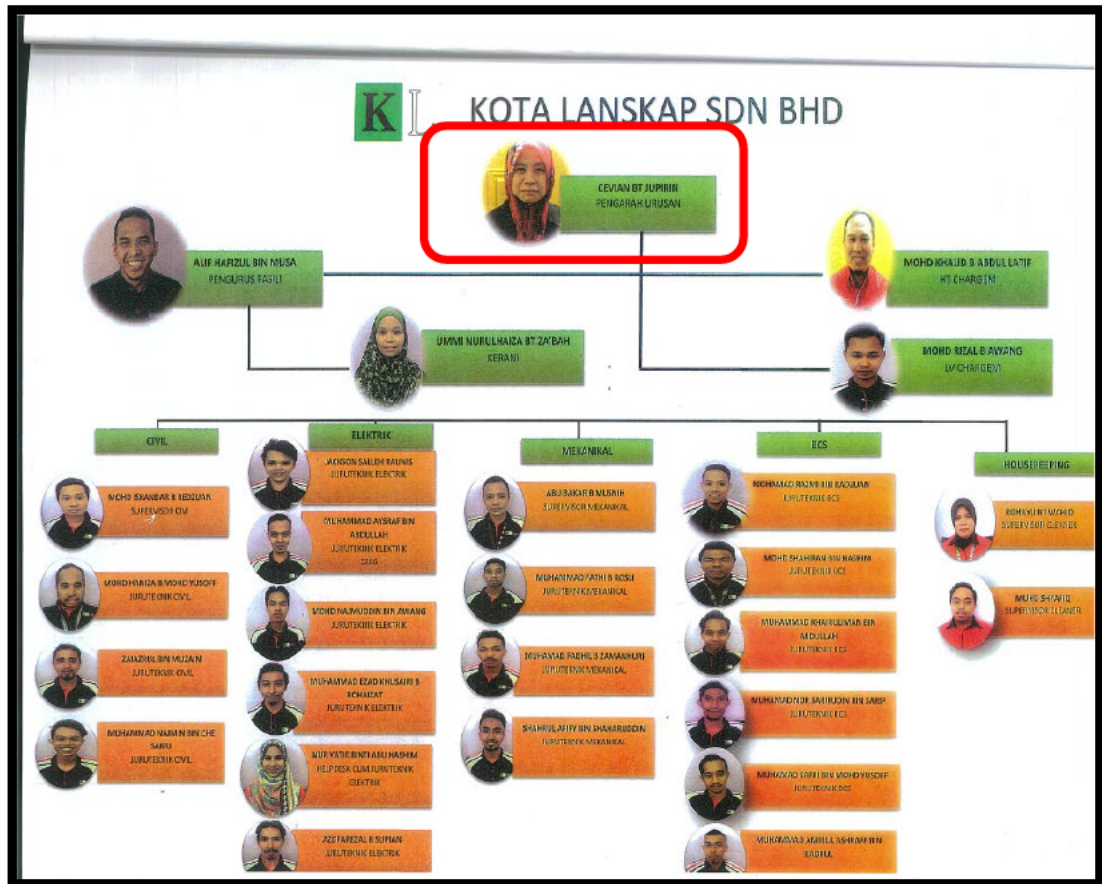
*[The remainder of this page is intentionally left blank]*

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<sup>106</sup> Paragraphs 18 and 19 of the Statement of Ikhwan of Kota Lanskap recorded on 8.11.2022.

<sup>107</sup> Bid submission of Kota Lanskap; and bid submission of Usia Maintenance.

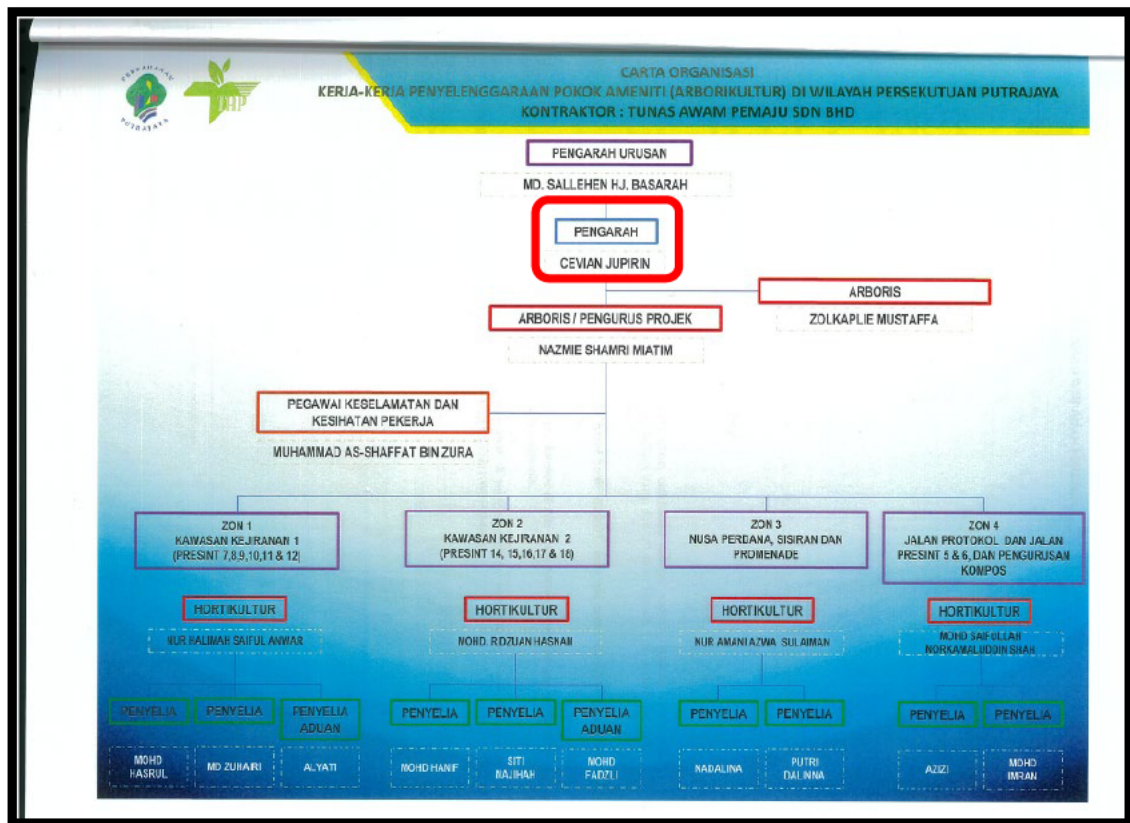




**Image 6**

*Kota Lanskap's organisation chart as one of the supporting documents forming part of the bid submission of Kota Lanskap.*

*[The remainder of this page is intentionally left blank]*



**Image 7**

*Usia Maintenance's organisation chart as one of the supporting documents forming part of the bid submission of Usia Maintenance.*

155. Ikhwan of Kota Lanskap stated that the organisation chart in the bid submission of Kota Lanskap was an old document, prepared during the tenure of Cevian of Abadi Malaysia, when she was the director of Kota Lanskap and the organisation chart was then used by Shazwani of Kota Lanskap to form part of this bid submission.<sup>108</sup> The same justification was also used by Cevian of Abadi Malaysia.<sup>109</sup>

<sup>108</sup> Bid submission of Kota Lanskap; Paragraph 12b of the Statement of Ikhwan of Kota Lanskap recorded on 16.2.2022.

<sup>109</sup> Bid submission of Kota Lanskap; Paragraph 29 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

156. The justifications provided by both Ikhwan of Kota Lanskap and Cevian of Abadi Malaysia are not acceptable as Kota Lanskap and Abadi Malaysia were required by PPJ to submit the current organisation charts containing details of head office and site/project organisation chart as well as details of the proposed management staff plan for the project in terms of functional responsibilities and lines of communication. Even if we consider the possibility of a genuine mistake, as claimed by Ikhwan of Kota Lanskap and Cevian of Abadi Malaysia, the consequence of this mistake would still indicate to PPJ that Kota Lanskap and Usia Maintenance had the capability and manpower to execute the project, thus misleading the tendering process.

**C. *Several handwriting styles contained in the bid submissions of the Parties***

157. The Commission observed that the handwriting styles in Form A – Maklumat Am Latar Belakang Petender were different in the respective bid submissions of the Parties. Conversely, the handwriting styles in *Borang D – Keempunyaan Loji dan Peralatan Pembinaan Utama* for all three bid submissions of the Parties were similar.<sup>110</sup> The several handwriting styles are illustrated below:

*[The remainder of this page is intentionally left blank]*

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<sup>110</sup> Bid submission of Abadi Malaysia; bid submission of Kota Lanskap; and bid submission of Usia Maintenance.

**FORM A**

**FORM A - MAKLUMAT AM LAR BELAKANG PETENDER**

1. Nama: KOTA LANSKAP Sdn Bhd

2. Alamat: 95 C, TINGKAT 3, JALAN DIPLOMAT  
PACENT 15

No. Telefon: [REDACTED] No. Faks: [REDACTED]

3. Pendaftaran dengan PKK

i) No. Pendaftaran: 020090506 - 21/12/2019

ii) Tarikh daftar: 05/11/2019 sah hingga 26/10/2020

iii) Kelas dan KepalaSub-Kepala: 06

iv) Taraf (Bumiputera/Bukan Bumiputera): BUMIPUTERA

v) Jika Bumiputera, tempoh sah taraf: Dari 05/11/2019 hingga 26/10/2020

4. Pendaftaran dengan Kementerian Kewangan

i) No. Pendaftaran: 357-00/0696

ii) Tarikh Daftar: 15/10/2018 sah hingga 14/10/2021

iii) Kod Bidang: 221001 - 221002

iv) Taraf (Bumiputera/Bukan Bumiputera): BUMIPUTERA

v) Jika Bumiputera, tempoh sah taraf: Dari 15/10/2018 hingga 14/10/2021

5. Pendaftaran dengan LPPMUCIB

i) No. Pendaftaran: 020090506 - 21/12/2019

ii) Tarikh mula berkuatkuasa: 05/11/2019 sah hingga 26/10/2020

iii) Grid/Kategori/Pengkelasan: 06, F01

6. Bagi Syarikat Sdn Bhd, nyatakan

i) Modal dibesarkan: RM [REDACTED]

ii) Modal dibayar: RM [REDACTED]

7. Pemilikan Utama Istin, jika ada

a) Pemilikan/kepemilikan LANDSCAP sejak 2010

b) KELOLA KAWAN sejak 2015

\*Nota: Petender perlu mengemukakan salinan asli kad pendaftaran (kenderaan db) yang diakui sah (certified true copy) untuk kenderaan/jentera/peralatan yang dinyatakan di atas.

**BORANG D**

**BORANG D - KEEMPUNYAAN LOJI DAN PERALATAN PEMBINAAN UTAMA**  
(Senarai peralatan utama untuk pembinaan utama kegunaan Penyebut Harga yang sesuai dan boleh digunakan untuk projek ini)

BIL.	BUATAN (JENIS, MODEL, BUATAN DAN KEUPAYAAN SAIZ)	DIMILIKI, DISEWA BELI ATAU DISEWA PAJAK	BILANGAN SETIAP SATU	NILAI SEMASA (RM)	UMUR (DARI TARIKH BELIAN ASAL)	TEMPAT SIMPANAN / DIGUNAKAN SEKARANG	CATATAN
1.	LORI RIGID - RAGD AM	DIMILIKI	2		2005		
2.	LORI RIGID - RAGD	DIMILIKI	2		2008		
3.	LORI RIGID - RAGD	DIMILIKI	2		2014		
4.	LORI RIGID - RAGD	DIMILIKI	1		2012		
5.	PACUAN EMPAT RODA	DIMILIKI	2		2018		
6.	BLUSH CUTTER	DIMILIKI	10		2009	D SIMPAH DI	SEWA
7.	BLOWER	DIMILIKI	2		2009	STIR 2G.	KEEMPUNYAAN
8.	WATERJET SPRAYER	DIMILIKI	2		2009	ARAB	BERADA DALAM
9.	CHAINSAW	DIMILIKI	4		2009		KEDAMAN BAK
10.	ECG TRIMMER - STIAL	DIMILIKI	3		2009		
11.	SCAFFOLDING	DIMILIKI	2		2016		
12.	FLOOR SCRUBBING MACHINE	DIMILIKI	2		2015		
13.	LONG ARM (TELESCOPE) PRUNER	DIMILIKI	8		2014		
14.	TANGGA OVERLIFT	DIMILIKI	5		2014		
15.	DIGITAL MULTIMETER	DIMILIKI	5		2014		
16.	DIGITAL EARTH TESTER	DIMILIKI	5		2014		
17.	DIGITAL CARPET CLEANING MACHINE AUTOMATIC	DIMILIKI	2		2015		
18.	AUTOMATIC GENERAL CLEANING EQP.	DIMILIKI	2		2015		
19.	WET & DRY VACUUM	DIMILIKI	2		2015		

\* Petender/penyebut harga perlu mengemukakan salinan asli kad pendaftaran (kenderaan db) yang diakui sah (certified true copy) untuk kenderaan/jentera/peralatan yang dinyatakan di atas.

Image 8

Part of the Bid Submission of Abadi Malaysia

**FORM A**

**FORM A - MAKLUMAT AM LAR BELAKANG PETENDER**

1. Nama: KOTA LANSKAP Sdn Bhd

2. Alamat: 95 C, TINGKAT 3, JALAN DIPLOMAT  
PACENT 15

No. Telefon: [REDACTED] No. Faks: [REDACTED]

3. Pendaftaran dengan PKK

i) No. Pendaftaran: 020180507 - 23/01/2020

ii) Tarikh daftar: 24/05/2018 sah hingga 31/05/2019

iii) Kelas dan KepalaSub-Kepala: 06

iv) Taraf (Bumiputera/Bukan Bumiputera): BUMIPUTERA

v) Jika Bumiputera, tempoh sah taraf: Dari 24/05/2018 hingga 31/05/2019

4. Pendaftaran dengan Kementerian Kewangan

i) No. Pendaftaran: 357-00/0696

ii) Tarikh Daftar: 15/10/2018 sah hingga 14/10/2021

iii) Kod Bidang: 221001 - 221002

iv) Taraf (Bumiputera/Bukan Bumiputera): BUMIPUTERA

v) Jika Bumiputera, tempoh sah taraf: Dari 15/10/2018 hingga 14/10/2021

5. Pendaftaran dengan LPPMUCIB

i) No. Pendaftaran: 020180507 - 23/01/2020

ii) Tarikh mula berkuatkuasa: 05/11/2019 sah hingga 15/05/2020

iii) Grid/Kategori/Pengkelasan: 06, F01

6. Bagi Syarikat Sdn Bhd, nyatakan

i) Modal dibesarkan: RM [REDACTED]

ii) Modal dibayar: RM [REDACTED]

7. Pemilikan Utama Istin, jika ada

a) Pemilikan/kepemilikan LANDSCAP sejak 2016

b) KELOLA KAWAN sejak [REDACTED]

\*Nota: Petender perlu mengemukakan salinan asli kad pendaftaran (kenderaan db) yang diakui sah (certified true copy) untuk kenderaan/jentera/peralatan yang dinyatakan di atas.

**BORANG D**

**BORANG D - KEEMPUNYAAN LOJI DAN PERALATAN PEMBINAAN UTAMA**  
(Senarai peralatan utama untuk pembinaan utama kegunaan Penyebut Harga yang sesuai dan boleh digunakan untuk projek ini)

BIL.	BUATAN (JENIS, MODEL, BUATAN DAN KEUPAYAAN SAIZ)	DIMILIKI, DISEWA BELI ATAU DISEWA PAJAK	BILANGAN SETIAP SATU	NILAI SEMASA (RM)	UMUR (DARI TARIKH BELIAN ASAL)	TEMPAT SIMPANAN / DIGUNAKAN SEKARANG	CATATAN
1.	LORI RIGID - RAGD AM	DIMILIKI	2		2005		
2.	LORI RIGID - RAGD	DIMILIKI	2		2008		
3.	PACUAN EMPAT RODA	DIMILIKI	2		2018		
4.	BLUSH CUTTER	DIMILIKI	5		2015		
5.	BLOWER	DIMILIKI	5		2015		
6.	WATERJET SPRAYER	DIMILIKI	3		2015	LOJ 4SKFI.	SEWA KEEMPUNYAAN LOJI
7.	CHAINSAW	DIMILIKI	4		2015	AKAN DIBELI	BAH PERALATAN
8.	ECG TRIMMER	DIMILIKI	3		2015	SEKANG.	BERADA DALAM
9.	VACUUM WET & DRY	DIMILIKI	3		2010	RELANGER.	KEDAMAN BAK
10.	STAGING / SCAFFOLDING	DIMILIKI	2		2015		
11.	LONG ARM PRUNER	DIMILIKI	8		2010		
12.	TANGGA OVERLIFT	DIMILIKI	5		2015		
13.	FLOOR SCRUBBING MACHINE	DIMILIKI	2		2015		
14.	DIGITAL MULTIMETER	DIMILIKI	5		2015		
15.	DIGITAL EARTH TESTER	DIMILIKI	2		2015		
16.	CHYU FY	DIMILIKI	2		2015		

\* Petender/penyebut harga perlu mengemukakan salinan asli kad pendaftaran (kenderaan db) yang diakui sah (certified true copy) untuk kenderaan/jentera/peralatan yang dinyatakan di atas.

Image 9

Part of the Bid Submission of Kota Lanskap



**FORM A**

**FORM A – MAKLUMAT AJALATAR BELAKANG POKOK**

1. Nama: SHAZWANI KOTA LANSKAP

2. Alamat: 1-8-2 BLOK 1, JALAN 1/20

SHAZWANI KOTA LANSKAP 55P Jalan Cakrawala 2/200 Kuala Lumpur

No. Telefon:                      Tlx. Faks:                     

3. Pendaftaran dengan PKK:

(i) No. Pendaftaran: 5063/2016 - 6/10/2017

(ii) Tarikh daftar: 15/10/2016 Sah Negara 24/10/2016

(iii) Kelas dan KepalaSub-Kepala: CC

(iv) Taraf (Bumiputera/Bumiputera): BUMIPUTERA

(v) Jika Bumiputera, tempoh sah taraf: Dari 15/10/2016 hingga 24/10/2020

4. Pendaftaran dengan Kementerian Kemajuan:

(i) No. Pendaftaran: 217/2017

(ii) Tarikh daftar: 07/10/2017 Sah Negara 07/10/2017

(iii) Kelas dan KepalaSub-Kepala: CC, PA1

(iv) Taraf (Bumiputera/Bumiputera): BUMIPUTERA

(v) Jika Bumiputera, tempoh sah taraf: Dari 07/10/2017 hingga 07/10/2020

5. Pendaftaran dengan LEPAS/COS:

(i) No. Pendaftaran: 0100/2016 - 6/10/2017

(ii) Tarikh daftar: 15/10/2016 Sah Negara 24/10/2016

(iii) Kelas dan KepalaSub-Kepala: CC, PA1

6. Bagi Syarikat Sdn. Bhd. nyatakan:

(i) Modal dibenarkan: RM

(ii) Modal dibayar: RM

7. Pendaftaran Utama/Utama (jika ada):

(i) SHAZWANI KOTA LANSKAP sah 2017

(ii) POKOK sah 2017

\*Nota: Petanda perlu mengemukakan salinan cipta pendafatran (kenderaan dsh) yang disahkan sah (certified true copy) atau salinan pendafatran (yang berkaitan) yang disahkan dsh.

**BORANG D**

**BORANG D – KEEMPUNYAAN LOJI DAN PERALATAN PEMBINAAN UTAMA**

(Senarai peralatan utama untuk pembinaan utama kepunyaan Penyebut Harga yang sesuai dan boleh digunakan untuk projek ini)

BIL.	LOTI/LOJI (JENIS, MODEL, BUATAN DAN KEUPAYAAN SAIZ)	DI MILIKI, DISEWA, DISEWAJAJI ATAU DISEWAJAJAK	BILANGAN SETIAP SATU	NILAI SEMASA (RM)	UMUR (DARI TARikh BELIAN ASAL)	TEMPAT SIMPANAN / DIGUNAKAN SEKARANG	CATATAN
1.	LOJI RIGID - KARGO	DI MILIKI	2		2005		
2.	LOJI RIGID - BERO	DI MILIKI	2		2008		
3.	BALUAN EMPAY BERO	SEWA	1		2016		
4.	MEDIN 2 THUBBING	DI MILIKI	2		2009	LOT 17 2010	REKOR KEEMPUNYAAN BERADA
5.	BLOWER	DI MILIKI	4		2011	REKOR DOKUMEN	DALAM KEEMPUNYAAN
6.	WATERJET	DI MILIKI	4		2011	REKOR DOKUMEN	DALAM KEEMPUNYAAN
7.	MESIN KUMPAT	DI MILIKI	2		2013		
8.	VACUM WET 200Y	DI MILIKI	3		2015		
9.	HEDGE TRIMMER	DI MILIKI	3		2015		
10.	WATERJET SPRAYER	DI MILIKI	2		2015		
11.	STAGING SCAFFOLDING	DI MILIKI	3		2015		
12.	TANGGA EVERLASTY	DI MILIKI	3		2015		
13.	SKRIPIT	SEWA	1		2016		
14.	DIGITAL MULTIMETER	DI MILIKI	5		2016		
15.	CHAIN SAW	DI MILIKI	4		2016		
16.	DIGITAL EARTH TESTER	DI MILIKI	5		2016		

\* Potender/penyebut harga perlu mengemukakan salinan asli had pendafatran (kenderaan dsh) yang disahkan sah (certified true copy) untuk kenderaan/jenral/peralatan yang diregistrasikan di atas.

D/H

Image 10

### Part of the Bid Submission of Usia Maintenance

158. When presented with the bid submission of Kota Lanskap, Shazwani of Kota Lanskap was unable to recall who assisted her in filling in the sections of the bid document and who prepared the supporting documents.<sup>111</sup> Nevertheless, she recalled that she filled in the bid submission of Kota Lanskap at the old premises of Tunas Nasional Holdings located in Gombak as requested by Cevian of Abadi Malaysia.<sup>112</sup>
159. On the other hand, Sallehen of Usia Maintenance suggested that Cevian of Abadi Malaysia was responsible for filling out the details in *Borang D – Keempunyaan Loji dan Peralatan Pembinaan Utama*

<sup>111</sup> Paragraphs 6 and 7 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022.

<sup>112</sup> Paragraphs 9 and 15 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022.

for the Parties, which accounts for the similar handwriting style observed.<sup>113</sup>

160. Sallehen of Usia Maintenance admitted that it was customary for the Parties, Gading Saga and Tunas Nasional Holdings to complete the bid submissions together, given the extensive sections that required completion.<sup>114</sup>

161. This is corroborated by Nur Yatie, a former employee of Kota Lanskap who explained that following a WhatsApp conversation between her and Cevian of Abadi Malaysia during the tendering period, she went to the old premises of Tunas Nasional Holdings located in Gombak to fill in the document relating to bid submission.<sup>115</sup> According to her, there were other staff together with her at that time namely Cevian of Abadi Malaysia, Amalina of Usia Maintenance and Dayang of Tunas Nasional Holdings.<sup>116</sup>

162. The evidence of Dayang's signature in the bid submission of Usia Maintenance further substantiates the coordination between the staff of the Parties, Gading Saga and Tunas Nasional Holdings.<sup>117</sup>

163. This lack of recollection of these individuals involved indicates a broad pattern of concerted practice among the Parties, Gading Saga and Tunas Nasional Holdings. The inability to identify specific

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<sup>113</sup> Paragraph 50 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

<sup>114</sup> Paragraph 51 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

<sup>115</sup> Paragraph 12 of the Statement of Nur Yatie of KL Facilities (M) Sdn. Bhd. recorded on 10.2.2022

<sup>116</sup> Paragraph 13 of the Statement of Nur Yatie of KL Facilities (M) Sdn. Bhd. recorded on 10.2.2022

<sup>117</sup> Bid submission of Usia Maintenance.

contributors suggests that multiple individuals were involved, working together behind the scenes in the preparation of the bid submissions. The intermingling of resources highlights a systematic approach to bid riggings. By sharing critical tasks, such as completing sections of the bid submissions, the purpose of the Parties, Gading Saga and Tunas Nasional Holdings was to ensure consistency and alignment of their objectives to rig the bid. This conduct not only facilitates the exchanges of sensitive information but also aligns the Parties' strategies, to restrict competitive pressure that exists between genuine competitors in a properly functioning competitive marketplace.

***D. Prices in the bills of quantities contained in the bid submissions of the Parties***

164. Based on a comparison of prices in the bills of quantities contained in the bid submissions of the Parties, the Commission observed that there is a significant number of identical prices for numerous items and a consistent 50% price reduction for a few items in certain categories.<sup>118</sup> The comparison made by the Commission is shown below in **Table 10** below. The prices highlighted in orange indicate the similarity of prices between the Parties. The prices highlighted in yellow indicate a 50% reduction compared to the prices of Abadi Malaysia and Usia Maintenance.

*[The remainder of this page is intentionally left blank]*

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<sup>118</sup> Bid submission of Abadi Malaysia; bid submission of Kota Lanskap; and bid submission of Usia Maintenance.

**Table 10: Price Comparison made by the Commission**

BQ	Abadi Malaysia	Usia Maintenance	Kota Lanskap
Preliminary			
1A	[X]	[X]	[X]
1B	[X]	[X]	[X]
2A	[X]	[X]	[X]
2B	[X]	[X]	[X]
2C	[X]	[X]	[X]
2D(i)	[X]	[X]	[X]
2D(ii)	[X]	[X]	[X]
2D(iii)	[X]	[X]	[X]
2E(v)	[X]	[X]	[X]
2F Shift 1	[X]	[X]	[X]
2F Shift 2	[X]	[X]	[X]
3A	[X]	[X]	[X]
3B	[X]	[X]	[X]
3C	[X]	[X]	[X]
3D	[X]	[X]	[X]
Housekeeping			
Cleaning Services			
A	[X]	[X]	[X]
B	[X]	[X]	[X]
C	[X]	[X]	[X]
D	[X]	[X]	[X]
E	[X]	[X]	[X]
F	[X]	[X]	[X]
Specific Services			
A	[X]	[X]	[X]
B	[X]	[X]	[X]
C	[X]	[X]	[X]
D	[X]	[X]	[X]
E	[X]	[X]	[X]
F	[X]	[X]	[X]
G	[X]	[X]	[X]
H	[X]	[X]	[X]
I(i)	[X]	[X]	[X]
I(ii)	[X]	[X]	[X]
J(i)	[X]	[X]	[X]
J(ii)	[X]	[X]	[X]
K	[X]	[X]	[X]
Pool Maintenance			
A	[X]	[X]	[X]
B	[X]	[X]	[X]



**NON-CONFIDENTIAL: PUBLIC VERSION**

C	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D (Bulb 300W/12V and fittings)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D (Bulb 50W/12V and fittings)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D (Full Set Underwater light cover)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G(i)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G(ii)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Pest Control</b>			
A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Civil &amp; Structure</b>			
A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O(2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O(3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Q	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Plumbing &amp; Sanitary</b>			
A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**NON-CONFIDENTIAL: PUBLIC VERSION**

F			
G			
H			
I			
J			
K			
L			
M			
N			
O			
P			
Q			
R1			
R2			
R3			
R4			
R5			
R6			
R7			
R8			
R9			
R10			
R11			
R12			
R13			
R14			
R15			
R16			
R17			
R18			
R19			
Electrical & Mechanical			
Electrical			
A			
B			
C			
D			
E			
F			
G			
H			
Electrical Service - Pusat Kejiranan P11			
A			
B			
C			
D			

NON-CONFIDENTIAL: PUBLIC VERSION

E	[X]	[X]	[X]
F	[X]	[X]	[X]
G	[X]	[X]	[X]
Electrical Service			
A	[X]	[X]	[X]
B	[X]	[X]	[X]
C	[X]	[X]	[X]
D	[X]	[X]	[X]
E	[X]	[X]	[X]
F	[X]	[X]	[X]
G	[X]	[X]	[X]
H	[X]	[X]	[X]
I	[X]	[X]	[X]
J	[X]	[X]	[X]
K	[X]	[X]	[X]
L	[X]	[X]	[X]
M	[X]	[X]	[X]
N	[X]	[X]	[X]
O	[X]	[X]	[X]
P	[X]	[X]	[X]
Q	[X]	[X]	[X]
Q	[X]	[X]	[X]
Mechanical Service			
A	[X]	[X]	[X]
B	[X]	[X]	[X]
B(a)	[X]	[X]	[X]
B(b)	[X]	[X]	[X]
B(c)	[X]	[X]	[X]
B(d)	[X]	[X]	[X]
B(e)	[X]	[X]	[X]
B(f)	[X]	[X]	[X]
B(g)	[X]	[X]	[X]
B(h)	[X]	[X]	[X]
B(i)	[X]	[X]	[X]
B(j)	[X]	[X]	[X]
B(k)	[X]	[X]	[X]
B(l)	[X]	[X]	[X]
B(m)	[X]	[X]	[X]
B(n)	[X]	[X]	[X]
B(o)	[X]	[X]	[X]
B(p)	[X]	[X]	[X]
B(q)	[X]	[X]	[X]
C	[X]	[X]	[X]
D	[X]	[X]	[X]
E	[X]	[X]	[X]
F	[X]	[X]	[X]

**NON-CONFIDENTIAL: PUBLIC VERSION**

H			
I			
J			
K			
Mechanical Service			
J			
K			
L			
M			
N			
O			
Mechanical Service			
7A			
7B			
7C			
7D			
7E			
7F			
7G			
7H			
7I			
7J			
7G			
7H			
7I			
7J			
Landscape			
Maintenance of Soft Scape			
A			
B			
C			
D			
E			
F			
G			
H			
I			
J			
Maintenance of Soft Scape			
A			
B			
C			
D			
E			
F			
G			

H	[X]	[X]	[X]
I	[X]	[X]	[X]
J	[X]	[X]	[X]
Maintenance of Soft Scape			
A	[X]	[X]	[X]
B	[X]	[X]	[X]
C	[X]	[X]	[X]
D	[X]	[X]	[X]
E	[X]	[X]	[X]
F	[X]	[X]	[X]
G	[X]	[X]	[X]
H	[X]	[X]	[X]
I	[X]	[X]	[X]

165. When enterprises engage in bid riggings, one of the most telling signs is the alignment of their bid prices, as this indicates shared information and coordinated strategies.
166. As detailed in the paragraphs above, there was direct contact between the Parties with regards to the preparation of their bid submissions. The Parties were facilitated with by the directors and staff of Gading Saga and Tunas Nasional. The involvement of a staff from one Party in the bid preparation of another, points to a collaborative scheme, undermining the principle of independent and competitive bidding. In this regard, the Commission views the coordination of staffs as facilitating the exchange of detailed pricing information, enabling the Parties to submit the intended bid prices to PPJ.
167. Based on a holistic assessment of the evidence discussed above, the Commission concludes that the collective actions of the Parties constituted an agreement and concerted practice to perform acts of bid riggings. During the bid preparation process, the Parties exchanged information that would typically be unavailable in

genuine competitive relationships. By acting in concert, they eliminated the competitive pressure that would have benefitted the tendering process.

**H.3 TWO TENDERS MAINTENANCE NAMELY TENDER MAINTENANCE FOR LANDSCAPE ALONG JALAN PROTOKOL, PRECINCT 1, PUTRAJAYA, AND TENDER MAINTENANCE FOR TAMAN WAWASAN IN PRECINCT 2 AND TAMAN PANCARONA IN PRECINCT 18, PUTRAJAYA**

168. Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya, and Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya, were called through an advertisement on 12.05.2019.
169. By 17.06.2019, which was the last day for bid submission for Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya, PPJ received 21 bid submissions.
170. By 19.06.2019, which was the last day for bid submission for Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya, PPJ received 34 bid submissions.
171. The Parties submitted their bids for both tenders but none of them won any of these tenders.

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***WhatsApp communications between the Parties, Gading Saga and Tunas Nasional Holdings***

172. On 14.05.2019, two days after the tenders were advertised, there were WhatsApp conversations between Cevian of Abadi Malaysia and Laila Afiqah of Usia Maintenance. These conversations relate to the role of Cevian and the individuals who were suggested by Cevian of Abadi Malaysia to purchase the tender documents on behalf of the Parties.<sup>119</sup>

173. Laila Afiqah of Usia Maintenance explained that this conversation was because Cevian of Abadi Malaysia usually requested her to purchase the tender documents upon learning about the tender advertisements.<sup>120</sup>

174. The Commission considers this as indicative of a level of coordination between the Parties, Gading Saga and Tunas Nasional Holdings had evolved to such an extent that there was no longer a need for them to explicitly disclose their intentions to bid each time. At this juncture, there was a tacit understanding that the Parties would participate in the same tender, unless explicitly communicated otherwise. This implicit understanding established a consistent and systematic approach in the preparation of their respective bid submissions, demonstrating sophisticated and

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<sup>119</sup> WhatsApp conversation between Cevian of Abadi Malaysia and Laila of Usia Maintenance dated 14.5.2019; and Section 7.3.15 Evidence No 15: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>120</sup> Paragraph 30 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

ongoing collusive practices between the Parties facilitated by Gading Saga and Tunas Nasional Holdings.

175. After the said conversation, the staff of Kota Lanskap and Usia Maintenance purchased the tender documents for their respective enterprises.<sup>121</sup> As for Abadi Malaysia, the tender document was purchased by Nur Asiah Binti Ali Nurdin, a staff member of Tunas Nasional Holdings.<sup>122</sup>
176. When presented with the bid submissions of Kota Lanskap for the two tenders, Shazwani of Kota Lanskap confirmed to the Commission that she prepared part of the bid documents but was unable to recall the staff who assisted in filling in the remaining parts of the documents.<sup>123</sup>
177. A similar response was provided by Laila Afiqah of Usia Maintenance when presented with the bid submission of Usia Maintenance for the Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya.<sup>124</sup> With regards to Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya, Laila Afiqah of Usia Maintenance was able to confirm that the staff of Abadi Malaysia

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<sup>121</sup> Payroll Usia Maintenance for the month of May 2019; Borang Jualan Tender Usia Maintenance dated 15.5.2019; and Letter of Authorisation by Usia Maintenance dated 15.5.2019; Payroll Kota Lanskap for the month of May 2019 and June 2019; Borang Jualan Tender Kota Lanskap dated 15.5.2019; and Letter of Authorisation by Kota Lanskap dated 15.5.2019.

<sup>122</sup> Payroll Tunas Nasional Holdings for the month of May 2019 and June 2019; Borang Jualan Tender Abadi Malaysia dated 15.5.2019; and Letter of Authorisation by Abadi Malaysia dated 15.5.2019.

<sup>123</sup> Paragraphs 66 until 72 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022.

<sup>124</sup> Paragraphs 36 until 39 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.



and Tunas Nasional Holdings assisted her with the preparation of Usia Maintenance's bid submission.<sup>125</sup>

178. Subsequent to that, on 12.06.2019 at 11.18am, there were WhatsApp conversations between Cevian of Abadi Malaysia and Fairus of Gading Saga indicating that there was a discussion regarding the preparation of the bid submission for Usia Maintenance.<sup>126</sup> The Commission observed that Cevian of Abadi Malaysia completed the drawing up of the bid prices and requested confirmation from Fairus of Gading Saga. The latter replied that Hassan of Tunas Nasional Holdings had not provided his confirmation on the prices.

179. When presented with this evidence, Cevian of Abadi Malaysia denied the role of Hassan of Tunas Nasional Holdings with regard to the bid submission prices and explained that his role was rather related to the participation of Tunas Nasional Holdings in the tender. She stated that:

*“Peranan Hassan bukan berkenaan harga tetapi merujuk kepada penyertaan TNH untuk tender tersebut. Perkataan ‘image omitted’ di sini mungkin merujuk kepada iklan tender yang bukan berkenaan tender ‘G6 tmn wawasan & jln protokol.’”<sup>127</sup>*

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<sup>125</sup> Paragraphs 77 until 79 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

<sup>126</sup> WhatsApp conversation between Cevian of Abadi Malaysia and Fairus of Gading Saga dated 12.6.2019; and Image 5 of Section 7.3.14 Evidence No 14: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>127</sup> Paragraph 31 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

The investigation confirmed that “TNH” in the statement of Cevian of Abadi Malaysia dated 24.03.2024 refers to Tunas Nasional Holdings.

180. The Commission views the statement by Cevian of Abadi Malaysia as a bare denial on her part.
181. Firstly, the name of the tender mentioned in the conversation is “G6 tmn wawasan & jln protokol”. Tunas Nasional Holdings, being a G7 contractor, was precluded by PPJ’s requirement to participate in the said tenders. In Fairus of Gading Saga’s statement to the Commission, she explained that the participation in this tender was limited to G6 contractors only.<sup>128</sup>
182. Secondly, Fairus of Gading Saga explained that she communicated with Hassan of Tunas Nasional Holdings regarding the bid submission prices; hence, the word “bos hasan belum kompon lg” indicated that Hassan was referred to in relation to the said prices, and he had not provided his confirmation on the prices.<sup>129</sup>
183. Thirdly, Sallehen of Usia Maintenance stated that there had been instances where bid submission prices were discussed between Cevian of Abadi Malaysia, Hassan of Tunas Nasional Holdings and himself.<sup>130</sup>

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<sup>128</sup> Paragraph 21 of the Statement of Fairus of Gading Saga recorded on 8.2.2022.

<sup>129</sup> Paragraph 23 of the Statement of Fairus of Gading Saga recorded on 8.2.2022.

<sup>130</sup> Paragraph 27 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022.

***Emails between Abadi Malaysia and Tunas Nasional Holdings***

184. Later in the evening of 12.06.2019, there were two emails sent from Cevian of Abadi Malaysia to Tunas Nasional Holdings, attaching Excel documents containing prices of bills of quantities and summaries of tender for the Parties. The first email sent at 5.12pm relates to the Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya<sup>131</sup> while the second email was sent at 6.54pm and relates to Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.<sup>132</sup>
185. The next day, on 13.06.2019, Cevian of Abadi Malaysia sent two emails, at 3.49pm and 3.50pm, to Tunas Nasional Holdings. Both emails were related to Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya.<sup>133</sup>

*[The remainder of this page is intentionally left blank]*

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<sup>131</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 12.6.2019; and Section 7.3.17 Evidence No 17: Harga Tender Landskap G6 – Jalan Protokol.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>132</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 12.6.2019; and Section 7.3.20 Evidence No 20: Harga Tender Landskap G6 – Taman Wawasan & Taman Pancarona.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>133</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 13.6.2019 at 3.49pm; and Section 7.3.21 Evidence No 21: Tender Landskap G6 – Taman Pancarona.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.; Email from [X]@gmail.com to [X]@yahoo.com dated 13.6.2019 at 3.50pm; and Section 7.3.22 Evidence No 22: Tender Taman Wawasan.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

**A. *Email dated 12.06.2019 involving Tender Maintenance for Landscape along Jalan Protokol, Precinct 1 Putrajaya***

186. This email attached three Excel documents, namely “Tender Jalan Protokol 9.499 KL.xlsx”, “Tender Jalan Protokol 9.677 LJSB.xlsx” and “Tender Jalan Protokol 9.722 TAP.xlsx” which represent three sets of prices meant to be the bid prices of the Parties.

**B. *Emails pertaining to Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya***

187. Three emails were sent by Cevian of Abadi Malaysia to Tunas Nasional Holdings. The first email was sent on 12.06.2019<sup>134</sup> while the remaining two emails were sent on 13.06.2019<sup>135</sup>.

188. Each of these emails attached three Excel documents, which contained bid prices and the breakdown of the said bid prices according to the summary of tender and the items listed in the bill of quantities, which, overall, represent the bid submissions of the Parties. The overall bid submission prices remained unchanged, and only the breakdown of the said prices was revised, the latest one being the Excel sheet contained in the email dated 13.06.2019, at 3.50pm.

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<sup>134</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 12.6.2019; and Section 7.3.20 Evidence No 20: Harga Tender Landskap G6 – Taman Wawasan & Taman Pancarona.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>135</sup> Email from [X]@gmail.com to [X]@yahoo.com dated 13.6.2019 at 3.49pm; and Section 7.3.21 Evidence No 21: Tender Landskap G6 – Taman Pancarona.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.; Email from [X]@gmail.com to [X]@yahoo.com dated 13.6.2019 at 3.50pm; and Section 7.3.22 Evidence No 22: Tender Taman Wawasan.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

189. When confronted with the emails pertaining to Tender Maintenance for Landscape along Jalan Protokol, Precinct 1 Putrajaya and Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya, Cevian of Abadi Malaysia explained that she received payments from Kota Lanskap and Usia Maintenance to assist them in completing their bid prices<sup>136</sup>.
190. This is further supported by her own handwritten notes in her notebook stating the pricing figures of the Parties that correspond with the tender prices stated in the email and bid submissions.<sup>137</sup> She stated that at that time, the staff of Kota Lanskap and Usia Maintenance lacked the necessary skills to prepare comprehensive bids.<sup>138</sup>
191. The Commission has made a comparison between the prices contained in the emails and the bid submissions,<sup>139</sup> and they reveal multiple indications of bid rigging. The identical pricing in several key categories, the uniform provisional sums, the minimal variations in some items and the close total bid amounts suggest that Parties, Gading Saga and Tunas Nasional Holdings colluded to fix and coordinate the bid prices. The comparison made by the Commission is shown below in **Table 11**, **Table 12**, **Table 13** and **Table 14**. The prices highlighted in orange indicate the similarity of prices between the Parties.

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<sup>136</sup> Paragraphs 36 and 54 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>137</sup> Handwritten Notes wrapped in Plastic Cover (Sept – Jan 2019) identified as MWE 1 in the List of Items Seized from Kota Lanskap Sdn. Bhd. dated 6.5.2021.

<sup>138</sup> Paragraphs 36 and 54 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>139</sup> Bid Submission of Abadi Malaysia; Bid Submission of Kota Lanskap; Bid Submission of Usia Maintenance.

**Table 11:** Price Comparison in the Summaries of Tender for the Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya

	Excel document	Bid Submission	Excel document	Bid Submission	Excel document	Bid Submission
Summary of Tender	Abadi Malaysia		Usia Maintenance		Kota Lanskap	
Preliminari	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Tenaga Pekerja Pengurusan dan Teknikal	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Keselamatan dan Kesihatan Pekerja	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Kemudahan Logistik	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Penyelenggaraan Zon 1	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Penyelenggaraan Zon 2	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Penyelenggaraan Zon 3	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Penyelenggaraan Zon 4	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Wang Peruntukan Sementara (Provisional Sum)	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

**Table 12:** Price Comparison in the Bills of Quantities for the Tender  
Maintenance for Landscape along Jalan Protokol, Precinct 1 Putrajaya

	Excel document	Bid Submission	Excel document	Bid Submission	Excel document	Bid Submission
BQ	Abadi Malaysia		Usia Maintenance		Kota Lanskap	
Preliminary						
1.1.1	✂		✂		✂	
1.2.1	✂		✂		✂	
1.3.1	✂		✂		✂	
1.4.1	✂		✂		✂	
Tenaga Pekerja Pengurusan dan Teknikal						
2.1	✂	✂	✂	✂	✂	✂
Keselamatan dan Kesihatan Pekerja						
3.1.1	✂		✂		✂	
Kemudahan Logistik						
4.1.1	✂		✂		✂	
4.1.2	✂		✂		✂	
Penyelenggaraan Zon 1						
5.1.1	✂		✂		✂	
5.2.1	✂		✂		✂	
5.3.1	✂		✂		✂	
5.3.2	✂		✂		✂	
5.3.3	✂		✂		✂	
5.3.4	✂		✂		✂	
5.3.5	✂		✂		✂	
5.3.6	✂		✂		✂	
5.3.7	✂		✂		✂	
5.3.8	✂		✂		✂	
5.4.1	✂		✂		✂	
5.5.1	✂		✂		✂	
5.5.2	✂		✂		✂	
5.5.3	✂		✂		✂	

**NON-CONFIDENTIAL: PUBLIC VERSION**

5.5.4	[X]	[X]	[X]
5.5.5	[X]	[X]	[X]
5.5.6	[X]	[X]	[X]
5.5.7	[X]	[X]	[X]
5.5.8	[X]	[X]	[X]
5.5.9	[X]	[X]	[X]
5.5.10	[X]	[X]	[X]
5.5.11	[X]	[X]	[X]
5.5.12	[X]	[X]	[X]
5.5.13	[X]	[X]	[X]
5.5.14	[X]	[X]	[X]
5.5.15	[X]	[X]	[X]
5.6.1	[X]	[X]	[X]
5.6.2	[X]	[X]	[X]
5.7.1	[X]	[X]	[X]
5.7.2	[X]	[X]	[X]
5.8.1	[X]	[X]	[X]
<b>Penyelenggaraan Zon 2</b>			
6.1.1	[X]	[X]	[X]
6.2.1	[X]	[X]	[X]
6.3.1	[X]	[X]	[X]
6.3.2	[X]	[X]	[X]
6.3.3	[X]	[X]	[X]
6.3.4	[X]	[X]	[X]
6.3.5	[X]	[X]	[X]
6.3.6	[X]	[X]	[X]
6.3.7	[X]	[X]	[X]
6.3.8	[X]	[X]	[X]
6.4.1	[X]	[X]	[X]
6.5.1	[X]	[X]	[X]
6.5.2	[X]	[X]	[X]
6.5.3	[X]	[X]	[X]



**NON-CONFIDENTIAL: PUBLIC VERSION**

6.5.4	[X]	[X]	[X]
6.5.5	[X]	[X]	[X]
6.5.6	[X]	[X]	[X]
6.5.7	[X]	[X]	[X]
6.5.8	[X]	[X]	[X]
6.5.9	[X]	[X]	[X]
6.5.10	[X]	[X]	[X]
6.5.11	[X]	[X]	[X]
6.5.12	[X]	[X]	[X]
6.5.13	[X]	[X]	[X]
6.5.14	[X]	[X]	[X]
6.5.15	[X]	[X]	[X]
6.6.1	[X]	[X]	[X]
6.6.2	[X]	[X]	[X]
6.7.1	[X]	[X]	[X]
6.7.2	[X]	[X]	[X]
6.8.1	[X]	[X]	[X]
6.8.2	[X]	[X]	[X]
6.8.3	[X]	[X]	[X]
6.9.1	[X]	[X]	[X]
<b>Penyelenggaraan Zon 3</b>			
7.1.1	[X]	[X]	[X]
7.2.1	[X]	[X]	[X]
7.2.2	[X]	[X]	[X]
7.2.3	[X]	[X]	[X]
7.2.4	[X]	[X]	[X]
7.2.5	[X]	[X]	[X]
7.2.6	[X]	[X]	[X]
7.2.7	[X]	[X]	[X]
7.2.8	[X]	[X]	[X]
7.3.1	[X]	[X]	[X]
7.4.3	[X]	[X]	[X]

**NON-CONFIDENTIAL: PUBLIC VERSION**

7.4.4	[X]	[X]	[X]
7.4.5	[X]	[X]	[X]
7.4.6	[X]	[X]	[X]
7.4.7	[X]	[X]	[X]
7.4.8	[X]	[X]	[X]
7.4.9	[X]	[X]	[X]
7.4.10	[X]	[X]	[X]
7.4.11	[X]	[X]	[X]
7.4.12	[X]	[X]	[X]
7.4.13	[X]	[X]	[X]
7.4.14	[X]	[X]	[X]
7.4.15	[X]	[X]	[X]
7.4.16	[X]	[X]	[X]
7.4.17	[X]	[X]	[X]
7.5.1	[X]	[X]	[X]
7.5.2	[X]	[X]	[X]
7.6.1	[X]	[X]	[X]
7.6.2	[X]	[X]	[X]
7.7.1	[X]	[X]	[X]
<b>Penyelenggaraan Zon 4</b>			
8.1.1	[X]	[X]	[X]
8.2.1	[X]	[X]	[X]
8.2.2	[X]	[X]	[X]
8.2.3	[X]	[X]	[X]
8.2.4	[X]	[X]	[X]
8.2.5	[X]	[X]	[X]
8.2.6	[X]	[X]	[X]
8.2.7	[X]	[X]	[X]
8.2.8	[X]	[X]	[X]
8.3.1	[X]	[X]	[X]
8.4.3	[X]	[X]	[X]
8.4.4	[X]	[X]	[X]

**NON-CONFIDENTIAL: PUBLIC VERSION**

8.4.5	[X]	[X]	[X]
8.4.6	[X]	[X]	[X]
8.4.7	[X]	[X]	[X]
8.4.8	[X]	[X]	[X]
8.4.9	[X]	[X]	[X]
8.4.10	[X]	[X]	[X]
8.4.11	[X]	[X]	[X]
8.4.12	[X]	[X]	[X]
8.4.13	[X]	[X]	[X]
8.4.14	[X]	[X]	[X]
8.4.15	[X]	[X]	[X]
8.4.16	[X]	[X]	[X]
8.4.17	[X]	[X]	[X]
8.5.1	[X]	[X]	[X]
8.5.2	[X]	[X]	[X]
8.6.1	[X]	[X]	[X]
8.6.2	[X]	[X]	[X]
8.7.1	[X]	[X]	[X]

*[The remainder of this page is intentionally left blank]*

**Table 13:** Price Comparison in the Summaries of Tender for the Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya

	Excel document	Bid Submission	Excel document	Bid Submission	Excel document	Bid Submission
<b>SOT</b>	<b>Abadi Malaysia</b>		<b>Usia Maintenance</b>		<b>Kota Lanskap</b>	
<i>Preliminari</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Penyediaan Tenaga Pekerja Pengurusan Dan Teknikal</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Kemudahan Logistik</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Penyelenggaraan Landskap Taman Wawasan</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Penyelenggaraan Landskap Taman Pancarona</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Penyelenggaraan Padang Dan Kemudahan Awam</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Penyelenggaraan Landskap Kejur / Elektrikal / Kolam Pancuran /Plumbing/ Sistem Pengairan / Kejuruteraan Awam</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Wang Peruntukan Sementara (Provisional Sum)</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
<i>Total</i>	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

**Table 14:** Price Comparison in the Bills of Quantities for the Tender  
Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in  
Precinct 18, Putrajaya

	Excel document	Bid Submission	Excel document	Bid Submission	Excel document	Bid Submission
BQ	Abadi Malaysia		Usia Maintenance		Kota Lanskap	
PRELIMINARI						
1.1.1	✕		✕		✕	
1.2.1	✕		✕		✕	
1.3.1	✕		✕		✕	
PENYEDIAAN TENAGA PEKERJA PENGURUSAN DAN TEKNIKAL						
2.1.1	✕		✕		✕	
2.2.1	✕		✕		✕	
2.3.1	✕		✕		✕	
2.3.2	✕		✕		✕	
2.4.1	✕		✕		✕	
2.5.1	✕		✕		✕	
2.5.2	✕		✕		✕	
2.6.1	✕		✕		✕	
KEMUDAHAN LOGISTIK						
3.1.1	✕		✕		✕	
PENYELENGGARAAN LANDSKAP TAMAN WAWASAN						
4.1.1	✕		✕		✕	
4.2.1	✕		✕		✕	
4.3.1	✕		✕		✕	
4.3.2	✕		✕		✕	
4.4.1	✕		✕		✕	
4.4.2	✕		✕		✕	
4.4.3	✕		✕		✕	
4.4.4	✕		✕		✕	
4.4.5	✕		✕		✕	
4.4.6	✕		✕		✕	
4.4.7	✕		✕		✕	

**NON-CONFIDENTIAL: PUBLIC VERSION**

4.5.1	[X]	[X]	[X]
4.6.1	[X]	[X]	[X]
4.6.2	[X]	[X]	[X]
4.6.3	[X]	[X]	[X]
4.6.4	[X]	[X]	[X]
4.6.5	[X]	[X]	[X]
4.6.6	[X]	[X]	[X]
4.6.7	[X]	[X]	[X]
4.6.8	[X]	[X]	[X]
4.6.9	[X]	[X]	[X]
4.6.10	[X]	[X]	[X]
4.6.11	[X]	[X]	[X]
4.6.12	[X]	[X]	[X]
4.6.13	[X]	[X]	[X]
4.6.14	[X]	[X]	[X]
4.6.15	[X]	[X]	[X]
4.6.16	[X]	[X]	[X]
4.7.1	[X]	[X]	[X]
4.7.2	[X]	[X]	[X]
4.8.1	[X]	[X]	[X]
4.8.2	[X]	[X]	[X]
4.9.1	[X]	[X]	[X]
4.10.1	[X]	[X]	[X]
4.10.2	[X]	[X]	[X]
4.11.1	[X]	[X]	[X]
4.11.2	[X]	[X]	[X]
4.11.3	[X]	[X]	[X]
4.11.4	[X]	[X]	[X]
4.11.6	[X]	[X]	[X]
4.11.7	[X]	[X]	[X]
4.11.8	[X]	[X]	[X]
4.11.9	[X]	[X]	[X]

4.12.1	[X]	[X]	[X]
4.13.1	[X]	[X]	[X]
<b>PENYELENGGARAAN LANDSKAP TAMAN PANCARONA</b>			
5.1.1	[X]	[X]	[X]
5.2.1	[X]	[X]	[X]
5.3.1	[X]	[X]	[X]
5.3.2	[X]	[X]	[X]
5.4.1	[X]	[X]	[X]
5.4.2	[X]	[X]	[X]
5.4.3	[X]	[X]	[X]
5.4.4	[X]	[X]	[X]
5.4.5	[X]	[X]	[X]
5.4.6	[X]	[X]	[X]
5.4.7	[X]	[X]	[X]
5.5.1	[X]	[X]	[X]
5.6.1	[X]	[X]	[X]
5.6.2	[X]	[X]	[X]
5.6.3	[X]	[X]	[X]
5.6.4	[X]	[X]	[X]
5.6.5	[X]	[X]	[X]
5.6.6	[X]	[X]	[X]
5.6.7	[X]	[X]	[X]
5.6.8	[X]	[X]	[X]
5.6.9	[X]	[X]	[X]
5.6.10	[X]	[X]	[X]
5.6.11	[X]	[X]	[X]
5.6.12	[X]	[X]	[X]
5.6.13	[X]	[X]	[X]
5.6.14	[X]	[X]	[X]
5.6.15	[X]	[X]	[X]
5.6.16	[X]	[X]	[X]
5.7.1	[X]	[X]	[X]

**NON-CONFIDENTIAL: PUBLIC VERSION**

5.7.2	[X]	[X]	[X]
5.8.1	[X]	[X]	[X]
5.8.2	[X]	[X]	[X]
5.9.1	[X]	[X]	[X]
5.10.1	[X]	[X]	[X]
5.11.1	[X]	[X]	[X]
5.11.2	[X]	[X]	[X]
5.12.1	[X]	[X]	[X]
5.12.2	[X]	[X]	[X]
5.12.3	[X]	[X]	[X]
5.12.4	[X]	[X]	[X]
5.12.5	[X]	[X]	[X]
5.12.6	[X]	[X]	[X]
5.12.7	[X]	[X]	[X]
5.12.8	[X]	[X]	[X]
5.13.1	[X]	[X]	[X]
5.14.1	[X]	[X]	[X]
5.14.2	[X]	[X]	[X]
5.14.3	[X]	[X]	[X]
<b>PENYELENGGARAAN PADANG DAN KEMUDAHAN AWAM</b>			
6.1.1	[X]	[X]	[X]
6.2.1	[X]	[X]	[X]
6.2.2	[X]	[X]	[X]
6.2.3	[X]	[X]	[X]
6.2.4	[X]	[X]	[X]
6.2.5	[X]	[X]	[X]
6.2.6	[X]	[X]	[X]
6.3.1	[X]	[X]	[X]
6.3.2	[X]	[X]	[X]
6.3.3	[X]	[X]	[X]
6.4.1	[X]	[X]	[X]
<b>PENYELENGGARAAN LANDSKAP KEJUR / ELEKTRIKAL / KOLAM PANCURAN / PLUMBING/ SISTEM PENGAIRAN / KEJURUTERAAN AWAM</b>			



**NON-CONFIDENTIAL: PUBLIC VERSION**

7.1.1	[REDACTED]	[REDACTED]	[REDACTED]
7.1.2	[REDACTED]	[REDACTED]	[REDACTED]
7.2.1	[REDACTED]	[REDACTED]	[REDACTED]
7.2.2	[REDACTED]	[REDACTED]	[REDACTED]
7.3.1	[REDACTED]	[REDACTED]	[REDACTED]
7.3.2	[REDACTED]	[REDACTED]	[REDACTED]
7.4.1	[REDACTED]	[REDACTED]	[REDACTED]
7.4.2	[REDACTED]	[REDACTED]	[REDACTED]
7.5.1	[REDACTED]	[REDACTED]	[REDACTED]
7.5.2	[REDACTED]	[REDACTED]	[REDACTED]
7.5.3	[REDACTED]	[REDACTED]	[REDACTED]
7.5.4	[REDACTED]	[REDACTED]	[REDACTED]
7.5.5	[REDACTED]	[REDACTED]	[REDACTED]
7.5.6	[REDACTED]	[REDACTED]	[REDACTED]
7.5.7	[REDACTED]	[REDACTED]	[REDACTED]
7.5.8	[REDACTED]	[REDACTED]	[REDACTED]
7.5.9	[REDACTED]	[REDACTED]	[REDACTED]
7.5.10	[REDACTED]	[REDACTED]	[REDACTED]
7.5.11	[REDACTED]	[REDACTED]	[REDACTED]
7.5.12	[REDACTED]	[REDACTED]	[REDACTED]
7.6.1	[REDACTED]	[REDACTED]	[REDACTED]
7.6.2	[REDACTED]	[REDACTED]	[REDACTED]
7.6.3	[REDACTED]	[REDACTED]	[REDACTED]
7.7.1	[REDACTED]	[REDACTED]	[REDACTED]
7.7.2	[REDACTED]	[REDACTED]	[REDACTED]
7.7.3	[REDACTED]	[REDACTED]	[REDACTED]
7.7.4	[REDACTED]	[REDACTED]	[REDACTED]
7.7.5	[REDACTED]	[REDACTED]	[REDACTED]
7.7.6	[REDACTED]	[REDACTED]	[REDACTED]
7.7.7	[REDACTED]	[REDACTED]	[REDACTED]
7.7.8	[REDACTED]	[REDACTED]	[REDACTED]
7.7.9	[REDACTED]	[REDACTED]	[REDACTED]

**NON-CONFIDENTIAL: PUBLIC VERSION**

7.7.10	[REDACTED]	[REDACTED]	[REDACTED]
7.7.11	[REDACTED]	[REDACTED]	[REDACTED]
7.8.1	[REDACTED]	[REDACTED]	[REDACTED]
7.8.2	[REDACTED]	[REDACTED]	[REDACTED]
7.8.3	[REDACTED]	[REDACTED]	[REDACTED]
7.8.4	[REDACTED]	[REDACTED]	[REDACTED]
7.8.5	[REDACTED]	[REDACTED]	[REDACTED]
7.8.6	[REDACTED]	[REDACTED]	[REDACTED]
7.8.7	[REDACTED]	[REDACTED]	[REDACTED]
7.9.1	[REDACTED]	[REDACTED]	[REDACTED]
7.10.1	[REDACTED]	[REDACTED]	[REDACTED]
7.11.1	[REDACTED]	[REDACTED]	[REDACTED]
7.11.2	[REDACTED]	[REDACTED]	[REDACTED]
7.11.3	[REDACTED]	[REDACTED]	[REDACTED]
7.11.4	[REDACTED]	[REDACTED]	[REDACTED]
7.11.5	[REDACTED]	[REDACTED]	[REDACTED]
7.11.6	[REDACTED]	[REDACTED]	[REDACTED]
7.11.7	[REDACTED]	[REDACTED]	[REDACTED]
7.11.8	[REDACTED]	[REDACTED]	[REDACTED]
7.11.9	[REDACTED]	[REDACTED]	[REDACTED]
7.11.10	[REDACTED]	[REDACTED]	[REDACTED]
7.11.11	[REDACTED]	[REDACTED]	[REDACTED]
7.11.12	[REDACTED]	[REDACTED]	[REDACTED]
7.11.13	[REDACTED]	[REDACTED]	[REDACTED]
7.11.14	[REDACTED]	[REDACTED]	[REDACTED]
7.11.15	[REDACTED]	[REDACTED]	[REDACTED]
8.1.1	[REDACTED]	[REDACTED]	[REDACTED]

192. In an attempt to provide a justification, Cevian of Abadi Malaysia tried to portray these emails as “assistance” and downplayed their

significance by asserting that Kota Lanskap and Usia Maintenance determined their final bid prices.<sup>140</sup>

193. However, based on the comparisons as set out in the Tables above, the bid prices in the bid submissions of Kota Lanskap and Usia Maintenance matched exactly as per the prices contained in the email dated 12.06.2019 for Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya; and the email dated 13.06.2019 at 3.50pm for Tender Maintenance for Taman Wawasan in Precinct 2, Putrajaya.
194. Such striking similarities between the bid submissions and the emails cannot be due to a mere assisting role, and the same indicates the meeting of minds amongst the Parties to fix and to coordinate their bid prices.
195. Based on a holistic assessment of the evidence discussed above, the Commission concludes that the collective actions of the Parties constituted an agreement and concerted practice to perform acts of bid rigging. During the bid's preparation process, the Parties exchanged information that would typically be unavailable in a genuine competitive relationship. By acting in concert, they eliminated the competitive pressure that would have benefited the tendering process.

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<sup>140</sup> Paragraphs 38 and 54 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

#### **H.4 TENDER MAINTENANCE FOR LANDSCAPE IN KEJIRANAN IN PRECINCTS 7, 8, 9 AND 11, PUTRAJAYA**

196. This tender was called through an advertisement on 11.10.2019 and closed on 11.11.2019. By 11.11.2019, PPJ received 29 bid submissions, including those made by the Parties.
197. Based on the evaluation conducted by the relevant tender committees of PPJ on all the bid submissions, Abadi Malaysia was recommended to receive the award for this tender. On 03.01.2020, Abadi Malaysia accepted the letter of award for the tender with a value of RM[REDACTED].

*[The remainder of this page is intentionally left blank]*

***Emails between Kota Lanskap and Abadi Malaysia, and Abadi Malaysia and Tunas Nasional Holdings***

198. On 24.10.2019, Shazwani of Kota Lanskap sent an email to Cevian of Abadi Malaysia.<sup>141</sup> This email contained an excel document listing the items in the summary of tender and bill of quantities. The said excel document does not contain any pricing. Shazwani of Kota Lanskap explained that Cevian of Abadi Malaysia requested her to prepare the said excel document as part of the preparation for the bid submission. She stated that:

Question: *“Apa tujuan BQ Landskap Kejiranan Presint 7,8,9, & 11 dihantar ke Cevian?”*

Answer: *“Saya menghantar dokumen ini kepada Cevian, kerana saya yang key-in maklumat “Deskription of BQ”. Saya ingin menjelaskan bahawa sebelum harga ditulis kami akan menulis dahulu deksription of BQ.”<sup>142</sup> Saya mendapat arahan daripada Cevian untuk mengisi maklumat deksription of BQ, selepas selesai mengisi saya akan menghantar semula kepada Cevian melalui emel.”<sup>143</sup>*

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<sup>141</sup> Email from [X]@gmail.com to [X]@gmail.com dated 24.10.2019; and Section 7.3.23 Evidence No 23: BQ.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>142</sup> Paragraph 22 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022.

<sup>143</sup> Paragraph 23 of the Statement of Shazwani of Kota Lanskap recorded on 3.11.2022.

199. With the explanation provided by Shazwani of Kota Lanskap on the said email, the Commission infers that there is a tacit understanding between the Parties regarding the coordination amongst staff for the preparation of their respective bid submissions.
200. On 29.10.2019, Cevian of Abadi Malaysia sent an email to Tunas Nasional Holdings.<sup>144</sup> This email contained an Excel document listing the prices in the summary of tender and bill of quantities. The Commission views this piece of evidence as an indicator of a reference price drawn up by Cevian of Abadi Malaysia prior to preparing the bid prices for the Parties.

***Communications between Abadi Malaysia, Gading Saga and Tunas Nasional Holdings***

201. On 31.10.2019, there was a WhatsApp conversation between Fairus of Gading Saga and Cevian of Abadi Malaysia regarding the bid prices of the Parties.<sup>145</sup> This evidence was presented to Fairus of Gading Saga, to whom she confirmed that she communicated the bid prices to Hassan of Tunas Nasional Holdings.<sup>146</sup>
202. With the explanation provided by Fairus of Gading Saga, the Commission considers that the communication between Abadi Malaysia and Tunas Nasional Holdings, facilitated by Gading Saga,

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<sup>144</sup> Email from [✕]@gmail.com to [✕]@yahoo.com dated 29.10.2019; and Section 7.3.24 Evidence No 24: Tender Kejiranan Presint 7,8,9 & 11.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>145</sup> WhatsApp Conversation between Fairus and Cevian on 31.10.2019: and Image 6 of Section 7.3.14 Evidence No 14: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>146</sup> Paragraph 37 of the Statement of Fairus of Gading Saga recorded on 8.2.2022.

leads to the conclusion that the bid prices of the Parties were fixed and coordinated to achieve a certain outcome.

203. Laila Afiqah of Usia Maintenance, who filled in the price of Usia Maintenance's bid submission, confirmed to the Commission that there was contact between her and the staff of Abadi Malaysia during the preparation of Abadi Malaysia's bid submission.<sup>147</sup>
204. A comparison of the prices contained in the Excel documents with the bid submissions of the Parties reveals a significant number of matching items, total bid amounts were very close to each other, and where there are variations, they are minimal.<sup>148</sup> The comparison made by the Commission is shown below in **Table 15** and **Table 16**. The prices highlighted in orange indicate the similarity of prices between the Parties.

*[The remainder of this page is intentionally left blank]*

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<sup>147</sup> Paragraphs 83 until 87 of the Statement of Laila Afiqah of Usia Maintenance recorded on 3.11.2022.

<sup>148</sup> Summary of tender in Abadi Malaysia's bid submission that has formed part of the contract with PPJ; and Bill of Quantities in Abadi Malaysia's bid submission that has formed part of the contract with PPJ; Summary of tender in the bid submission of Usia Maintenance; and Bill of Quantities in the bid submission of Usia Maintenance; Summary of tender in the bid submission of Kota Lanskap; and Bill of Quantities in the bid submission of Kota Lanskap.

**Table 15:** Price Comparison in the Summaries of Tender

	Email 29/10	Initial price stated in the Bid Submission	Bid Submission	Bid Submission
<b>SOT</b>	[no specific name]	Abadi Malaysia	Usia Maintenance	Kota Lanskap
Preliminary	[✂]	[✂]	[✂]	[✂]
Penyediaan Tenaga Pekerja Pengurusan dan Teknikal	[✂]	[✂]	[✂]	[✂]
Kemudahan Logistik	[✂]	[✂]	[✂]	[✂]
Penyelenggaraan Landskap Zon 1 - Presint 7,8 & 9	[✂]	[✂]	[✂]	[✂]
Penyelenggaraan Landskap Zon 1 - Presint 11	[✂]	[✂]	[✂]	[✂]
Wang Peruntukan Sementara (Provisional Sum)	[✂]	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]	[✂]

*[The remainder of this page is intentionally left blank]*



**Table 16:** Price Comparison in the Bills of Quantities

		Initial price stated in the Bid Submission	Bid Submission	Bid Submission
Preliminary	Email 29/10	Abadi Malaysia	Usia Maintenance	Kota Lanskap
1.1.1	[✂]	[✂]	[✂]	[✂]
1.2.1	[✂]	[✂]	[✂]	[✂]
1.3.1	[✂]	[✂]	[✂]	[✂]
1.4.1	[✂]	[✂]	[✂]	[✂]
<b>Penyediaan Tenaga Pekerja Pengurusan dan Teknikal</b>				
2.1.1	[✂]	[✂]	[✂]	[✂]
2.1.2	[✂]	[✂]	[✂]	[✂]
<b>Kemudahan Logistik</b>				
3.1.1	[✂]	[✂]	[✂]	[✂]
3.1.2	[✂]	[✂]	[✂]	[✂]
<b>Penyelenggaraan Landskap Zon 1 - Presint 7,8 &amp; 9</b>				
4.1.1	[✂]	[✂]	[✂]	[✂]
4.2.1	[✂]	[✂]	[✂]	[✂]
4.2.2	[✂]	[✂]	[✂]	[✂]
4.2.3	[✂]	[✂]	[✂]	[✂]
4.2.4	[✂]	[✂]	[✂]	[✂]
4.2.5	[✂]	[✂]	[✂]	[✂]
4.2.6	[✂]	[✂]	[✂]	[✂]
4.2.7	[✂]	[✂]	[✂]	[✂]
4.3.1	[✂]	[✂]	[✂]	[✂]
4.4.1	[✂]	[✂]	[✂]	[✂]
4.4.2	[✂]	[✂]	[✂]	[✂]
4.4.3	[✂]	[✂]	[✂]	[✂]
4.4.4	[✂]	[✂]	[✂]	[✂]
4.4.5	[✂]	[✂]	[✂]	[✂]
4.4.6	[✂]	[✂]	[✂]	[✂]

4.4.7	[X]	[X]	[X]	[X]
4.4.8	[X]	[X]	[X]	[X]
4.4.9	[X]	[X]	[X]	[X]
4.5.1	[X]	[X]	[X]	[X]
4.5.2	[X]	[X]	[X]	[X]
4.6.1	[X]	[X]	[X]	[X]
4.6.2	[X]	[X]	[X]	[X]
4.7.1	[X]	[X]	[X]	[X]
<b>Penyelenggaraan Lanskap Zon 1 - Presint 11</b>				
5.1.1	[X]	[X]	[X]	[X]
5.2.1	[X]	[X]	[X]	[X]
5.2.2	[X]	[X]	[X]	[X]
5.2.3	[X]	[X]	[X]	[X]
5.2.4	[X]	[X]	[X]	[X]
5.2.5	[X]	[X]	[X]	[X]
5.2.6	[X]	[X]	[X]	[X]
5.2.7	[X]	[X]	[X]	[X]
5.3.1	[X]	[X]	[X]	[X]
5.4.1	[X]	[X]	[X]	[X]
5.4.2	[X]	[X]	[X]	[X]
5.4.3	[X]	[X]	[X]	[X]
5.4.4	[X]	[X]	[X]	[X]
5.4.5	[X]	[X]	[X]	[X]
5.4.6	[X]	[X]	[X]	[X]
5.4.7	[X]	[X]	[X]	[X]
5.4.8	[X]	[X]	[X]	[X]
5.4.9	[X]	[X]	[X]	[X]
5.5.1	[X]	[X]	[X]	[X]
5.5.2	[X]	[X]	[X]	[X]
5.6.1	[X]	[X]	[X]	[X]
5.6.2	[X]	[X]	[X]	[X]
5.7.1	[X]	[X]	[X]	[X]

Wang Peruntukan Sementara (Provisional Sum)				
6.1.1	[X]	[X]	[X]	[X]
Total	[X]	[X]	[X]	[X]

205. The Commission's view pertaining to the pre-pricing communications has been discussed in the paragraphs set out above.

206. Based on a holistic assessment of the evidence discussed above, the Commission concludes that the collective actions of the Parties constituted an agreement through concerted practices to perform acts of bid rigging. During the bid's preparation process, the Parties exchanged information that would typically be unavailable in a genuine competitive relationship. By acting in concert, they eliminated the competitive pressure that would have benefited the tendering process.

#### **H.5 TENDER MAINTENANCE FOR MAIN DRAIN, GROSS POLLUTANT TRAP AND RETENTION PERIOD, IN VARIOUS PRECINCTS, PUTRAJAYA**

207. This tender was called through an advertisement on 05.04.2021 and closed on 04.05.2021. By 04.05.2021, PPJ received 36 bid submissions, including those made by Abadi Malaysia and Usia Maintenance. Kota Lanskap did not bid for this tender.

208. Based on the evaluation conducted by the relevant tender committees of PPJ on all the bid submissions, ZR Construction Sdn. Bhd. was recommended to receive the award of this tender. On

20.9.2021, ZR Construction Sdn Bhd accepted the letter of award for the tender with a value of RM[~~8~~].

***Agreement and Concerted Practice between Abadi Malaysia and Usia Maintenance***

209. Both Sallehen of Usia Maintenance and Cevian of Abadi Malaysia confirmed to the Commission that Cevian of Abadi Malaysia assisted with the preparation of Usia Maintenance's bid price.<sup>149</sup>

210. In drawing up the bid price for Usia Maintenance, she stated that her calculation for the bid price was based on the services and maintenance required within the scope of this tender. To her knowledge, there was no need for equipment, machinery or suppliers because the scope of work involved cleaning, grass cutting, trash collection and drain cleaning which only required labour and services of the workers.<sup>150</sup>

211. The Commission finds evidence of the drawing up of the bid prices for Abadi Malaysia and Usia Maintenance as discussed below.

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<sup>149</sup> Paragraph 87 of the Statement of Sallehen of Usia Maintenance recorded on 15.4.2022; and Paragraph 62 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>150</sup> Paragraph 66 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

***Emails and communications between Abadi Malaysia and Tunas Nasional Holdings***

212. On 30.04.2021, at 5.26pm, Cevian of Abadi Malaysia sent an email to Tunas Nasional Holdings.<sup>151</sup> This email contained two excel documents containing the bid prices and the breakdown of the bid prices in the summary of tender and the items listed in the bill of quantities intended for Abadi Malaysia and Usia Maintenance.
213. Later that day, at 11.40pm, Cevian of Abadi Malaysia notified Norazlina of Tunas Nasional Holdings through WhatsApp that the price of RM[<] intended for the bid price of Abadi Malaysia to be revised.<sup>152</sup>
214. On 01.05.2021, Cevian of Abadi Malaysia sent an email to Tunas Nasional Holdings. This email contained the bid price and breakdown of the bid price in the summary of tender and the items listed in the bill of quantity intended for Abadi Malaysia.<sup>153</sup> The Commission takes the view that this email was meant to be the revised price as referred to in the WhatsApp conversation dated 30.04.2021<sup>154</sup>. The WhatsApp conversation is set out below:

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<sup>151</sup> Email from [<]@gmail.com to [<]@yahoo.com on 30.4.2021; and Section 7.3.27 Evidence No 27: Harga Tender Penyelenggaraan Perparitan.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>152</sup> WhatsApp conversation between Cevian and Norazlina dated 30.4.2021 and 3.5.2021; and Image 4 of Section 7.3.26 Evidence No 26: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>153</sup> Email from [<]@gmail.com to [<]@yahoo.com on 1.5.2021; and Section 7.3.28 Evidence No 28: Harga Tender Parit\_LJ.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>154</sup> WhatsApp conversation between Cevian and Norazlina dated 30.4.2021; and Image 4 of Section 7.3.26 Evidence No 26: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

*“[30/04/2019, 11:40:32 PM] Cevian J: Harga tender parit, yg 7.29 tu cancel. Esok aku email harga baru. Tukar 7.89”*

215. On 03.05.2021, Norazlina of Tunas Nasional Holdings texted Cevian of Abadi Malaysia inquiring about the price of Usia Maintenance to which Cevian of Abadi Malaysia clarified that the bid price for Usia Maintenance was detailed as per the email sent on 30.04.2021, while the bid price for Abadi Malaysia was specified in the email sent on 01.05.2021.<sup>155</sup>

216. Hassan of Tunas Nasional Holdings denied his knowledge of the said emails.<sup>156</sup> Nevertheless, the WhatsApp conversation between Norazlina of Tunas Nasional Holdings and Cevian of Abadi Malaysia clearly suggests that there was a discussion that took place between Hassan and Norazlina of Tunas Nasional Holdings regarding the emails sent by Cevian of Abadi Malaysia. Norazlina of Tunas Nasional Holdings states as follows:

*“Ayat ‘Pastu satu lg company tu harga dia ubah. Pakai yg email latest tu’ bermaksud En Hassan mungkin pernah berbincang mengenai harga dengan Cevian. Oleh itu, berkemungkinan terdapat perbualan mengenai harga antara mereka yang menyebabkan perubahan kepada harga.”<sup>157</sup>*

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<sup>155</sup> Email from [X]@gmail.com to [X]@yahoo.com on 1.5.2021; and Section 7.3.28 Evidence No 28: Harga Tender Parit\_LJ.eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.

<sup>156</sup> Paragraph 24 of the Statement of Hassan of Tunas Nasional Holdings recorded on 4.4.2022.

<sup>157</sup> Paragraph 70 of the Statement of Norazlina of Tunas Nasional Holdings recorded on 10.2.2022.

217. A comparison of the prices contained in the Excel documents with the bid submissions of Abadi Malaysia and Usia Maintenance reveals a significant number of aligned pricings across multiple items and categories, and minimal variations in some items indicate a coordinated bid.<sup>158</sup> The comparison made by the Commission is shown below in **Table 17** and **Table 18**. The prices highlighted in orange indicate the similarity of prices between Abadi Malaysia and Usia Maintenance.

**Table 17: Price Comparison in the Summaries of Tender**

	Excel Email 30.4.2021	Excel Email 1.5.2021	Bid Submission	Excel Email 30.4.2021	Bid Submission
<b>SOT</b>	<b>Abadi Malaysia</b>			<b>Usia Maintenance</b>	
Kerja Awalan	[X]	[X]	[X]	[X]	[X]
Kerja-Kerja Pembersihan dan Penyelenggaraan Sistem Perparitan Utama (Main Drain)	[X]	[X]	[X]	[X]	[X]
Kerja-Kerja Pembersihan dan Penyelenggaraan 'Gross Pollutant Trap' (GPT)	[X]	[X]	[X]	[X]	[X]
Kerja-Kerja Pembersihan dan Penyelenggaraan Kolam Tadahan	[X]	[X]	[X]	[X]	[X]
Provisional Sum	[X]	[X]	[X]	[X]	[X]

<sup>158</sup> Summary of tender in the bid submission of Abadi Malaysia; and Bill of Quantities in the bid submission of Abadi Malaysia; Summary of tender in the bid submission of Usia Maintenance; and Bill of Quantities in the bid submission of Usia Maintenance.

**Table 18: Price Comparison in the Bills of Quantities**

	Excel Email 30.4.2021	Excel Email 1.5.2021	Bid Submission	Excel Email 30.4.2021	Bid Submission
BQ	Abadi Malaysia			Usia Maintenance	
Kerja Awalan					
1.1.1	[✂]	[✂]	[✂]	[✂]	[✂]
1.2.1	[✂]	[✂]	[✂]	[✂]	[✂]
1.3.1	[✂]	[✂]	[✂]	[✂]	[✂]
1.3.2	[✂]	[✂]	[✂]	[✂]	[✂]
1.4.1	[✂]	[✂]	[✂]	[✂]	[✂]
1.4.2	[✂]	[✂]	[✂]	[✂]	[✂]
1.4.3	[✂]	[✂]	[✂]	[✂]	[✂]
1.4.4	[✂]	[✂]	[✂]	[✂]	[✂]
1.5.1	[✂]	[✂]	[✂]	[✂]	[✂]
1.5.2	[✂]	[✂]	[✂]	[✂]	[✂]
1.5.3	[✂]	[✂]	[✂]	[✂]	[✂]
1.5.4	[✂]	[✂]	[✂]	[✂]	[✂]
1.5.5	[✂]	[✂]	[✂]	[✂]	[✂]
1.6.1	[✂]	[✂]	[✂]	[✂]	[✂]
Kerja-Kerja Pembersihan dan Penyelenggaraan Sistem Perparitan Utama (Main Drain)					
2.1.1	[✂]	[✂]	[✂]	[✂]	[✂]
2.2.1	[✂]	[✂]	[✂]	[✂]	[✂]
2.3.1	[✂]	[✂]	[✂]	[✂]	[✂]
2.4.1	[✂]	[✂]	[✂]	[✂]	[✂]
2.5.1	[✂]	[✂]	[✂]	[✂]	[✂]
2.5.2	[✂]	[✂]	[✂]	[✂]	[✂]
2.5.3	[✂]	[✂]	[✂]	[✂]	[✂]
Kerja-Kerja Pembersihan dan Penyelenggaraan 'Gross Pollutant Trap' (GPT)					
3.1.1	[✂]	[✂]	[✂]	[✂]	[✂]
3.1.2	[✂]	[✂]	[✂]	[✂]	[✂]
3.2.1	[✂]	[✂]	[✂]	[✂]	[✂]



3.2.2	[X]	[X]	[X]	[X]	[X]
3.2.3	[X]	[X]	[X]	[X]	[X]
3.3.1	[X]	[X]	[X]	[X]	[X]
3.3.2	[X]	[X]	[X]	[X]	[X]
3.4.1	[X]	[X]	[X]	[X]	[X]
3.4.2	[X]	[X]	[X]	[X]	[X]
3.4.3	[X]	[X]	[X]	[X]	[X]
<b>Kerja-Kerja Pembersihan dan Penyelenggaraan Kolam Tadahan</b>					
4.1.1	[X]	[X]	[X]	[X]	[X]
4.1.2	[X]	[X]	[X]	[X]	[X]
4.2.1	[X]	[X]	[X]	[X]	[X]
4.3.1	[X]	[X]	[X]	[X]	[X]
4.3.2	[X]	[X]	[X]	[X]	[X]
4.3.3	[X]	[X]	[X]	[X]	[X]
4.3.4	[X]	[X]	[X]	[X]	[X]
4.4.1	[X]	[X]	[X]	[X]	[X]
4.5.1	[X]	[X]	[X]	[X]	[X]
4.5.2	[X]	[X]	[X]	[X]	[X]

218. The Commission's view pertaining to the pre-pricing communications has been discussed in the paragraphs set out above.

219. The striking similarities found when comparing the bid prices in the emails dated 01.05.2021 and 30.4.2021 sent by Cevian to Tunas Nasional Holdings' email with the actual bid prices in the bid submissions of Abadi Malaysia and Usia Maintenance cannot be regarded as "advisory" as claimed by Cevian of Abadi Malaysia.<sup>159</sup> Such similarities indicate a meeting of minds between Abadi Malaysia and Usia Maintenance to fix the bid prices for the purpose

<sup>159</sup> Paragraph 63 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

of rigging the bids. Additionally, this agreement and concerted practice was facilitated by Tunas Nasional Holdings.

220. Based on a holistic assessment of the evidence discussed above, the Commission concludes that the collective actions of Abadi Malaysia and Usia Maintenance constituted an agreement and concerted practice to perform acts of bid riggings. During the bid preparation process, Abadi Malaysia was facilitated by Tunas Nasional Holdings to achieve their agreement. By acting in concert, they eliminated the competitive pressure that would have benefitted the tendering process.

## **I. THE COMMISSION'S FINDINGS OF INFRINGEMENT**

221. Upon reviewing the evidence in its entirety, the Commission finds that the Parties, Gading Saga and Tunas Nasional Holdings, had engaged in concerted practices and therefore entered into and reached agreements concerning the preparation of the bid submissions in each respective tender. The Commission has determined that the Parties are operating at the same horizontal level, and their conduct infringed sections 4(1), 4(2)(d) and 4(3) of the Act. Whilst the conduct of Gading Saga and Tunas Nasional Holdings was instrumental to the concerted practices and bid rigging agreements, they, however do not operate at the same level of the market as the Parties and did not actually bid for the tenders because they were G7 contractors, whereas only G6 contractors were qualified to bid. Otherwise, they also could have been held liable for infringing sections 4(1), 4(2)(d) and 4(3) of the Act.

222. The Commission therefore makes this Decision that the Parties had infringed section 4(1) read with section 4(2)(d) and section 4(3) of the Act. Accordingly, the Commission has decided to impose on the Parties the financial penalties and directions listed in **Part 3** below in respect of the infringing conduct pursuant to section 40 of the Act.

## **J. ADMISSION BY THE PARTIES**

223. The Parties had admitted to the facts and evidence set out by the Commission via their written representation and during the oral representation session<sup>160</sup>. Nonetheless, the Parties have raised arguments in both their written and oral representations in response to the Proposed Decision, and the Commission will therefore still be addressing these arguments in this Decision.

## **K WRITTEN & ORAL REPRESENTATIONS - ARGUMENTS MADE BY THE PARTIES IN RELATION TO THE FINDINGS OF THE COMMISSION**

### **K.1 ASSISTANCE WAS PROVIDED IN PERSONAL CAPACITY**

#### *Parties' Arguments*

224. The Parties contended that the Commission should not have attributed the alleged infringing conduct to the Parties solely based on the actions of Cevian of Abadi Malaysia<sup>161</sup>. While Cevian is a director of Abadi Malaysia, her alleged assistance to employees of the other companies was not undertaken in her capacity as a

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<sup>160</sup> Written representation submitted by the Parties at paragraphs 5 until 7 in page 17.

<sup>161</sup> Written representation submitted by the Parties at paragraph 18.

director or representative of Abadi Malaysia<sup>162</sup>. Instead, it was submitted that Cevian of Abadi Malaysia had acted purely in her personal capacity, outside of the scope of her role in Abadi Malaysia<sup>163</sup>.

225. The Parties further argued that the assistance provided by Cevian of Abadi Malaysia was done in a personal capacity and was personally remunerated for her assistance to employees of Kota Lanskap and Usia Maintenance<sup>164</sup>.

226. The Parties asserted that under the Act, acts of an individual can only be imputed to an enterprise where they are carried out during that person's role as an employee or director<sup>165</sup>. In the present case, the Parties argued that there is no evidence to show that the actions of Cevian of Abadi Malaysia were performed on behalf of Abadi Malaysia or under its direction<sup>166</sup>. Therefore, unless it is the Commission's position that a natural person can be deemed an enterprise in and of themselves, the Parties submitted that the conduct in question falls outside the scope of enterprise liability under the Act<sup>167</sup>.

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<sup>162</sup> Written representation submitted by the Parties at paragraph 19.

<sup>163</sup> Written representation submitted by the Parties at paragraph 20.

<sup>164</sup> Written representation submitted by the Parties at paragraph 21.

<sup>165</sup> Written representation submitted by the Parties at paragraph 21.

<sup>166</sup> Written representation submitted by the Parties at paragraph 21.

<sup>167</sup> Written representation submitted by the Parties at paragraph 22.

*The Commission's Decision*

227. The Commission has considered the Parties' argument that Cevian of Abadi Malaysia had acted entirely in her personal capacity when she provided assistance to Kota Lanskap and Usia Maintenance in the preparation of their bid submissions. The Commission finds this argument to be without merit.
228. Firstly, the Commission finds no credible evidence to support the contention that the conduct of Cevian of Abadi Malaysia was carried out in her personal capacity. There is no documentation or record from the time of the conduct to indicate that the Parties formally acknowledged or instructed that Cevian of Abadi Malaysia had acted solely on a personal basis. In her statement, Cevian of Abadi Malaysia merely stated that she was given fees for assisting them with matters relating to bid submissions and that both Kota Lanskap and Usia Maintenance were aware of her role and the fees given to her<sup>168</sup>. Even if this is true, the Commission argues that this is merely an afterthought.
229. Secondly, even if it were accepted (which the Commission does not) that Cevian of Abadi Malaysia had acted in her personal capacity, this argument does not relieve the Parties nor Abadi Malaysia from liability under the Act. It is a well-established principle in competition law that the acts of employees are attributable to the enterprise when carried out during or in connection with the commercial

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<sup>168</sup> Paragraph 4 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

activities of the enterprise. The ECJ of the European Union in the case of *VM Remonts*<sup>169</sup> affirmed this principle:

*“For the purposes of a finding of infringement of EU competition law, any anti-competitive conduct on the part of an employee is thus attributable to the undertaking to which he belongs, and that undertaking is, as a matter of principle, held liable for that conduct.”*

230. Thirdly, the fact that Cevian of Abadi Malaysia was allegedly paid personally by Kota Lanskap and Usia Maintenance to assist them with the preparation of bid submissions does not negate the existence of bid rigging conduct. The manner of payment is merely a contractual or administrative arrangement and does not alter the legal nature of the conduct. Cevian of Abadi Malaysia, in her capacity as the director of Abadi Malaysia, had the authority, access and incentive to coordinate the pricing of various bid submissions. Her actions clearly undermined the independence of decision-making that is essential in a competitive tender process<sup>170</sup>.

231. The principle of vicarious liability, as upheld in Malaysian jurisprudence (e.g., *GMP Kaisar Security (M) Sdn Bhd v Mohamad Amirul Amin bin Mohamed Amir* [2022] 6 MLJ 369<sup>171</sup>), establishes that an employer (or an enterprise) can be held liable for wrongful acts committed by employees or directors if these acts are

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<sup>169</sup> C-542/14, SIA ‘VM Remonts’, formerly SIA ‘DIV un KO’, SIA ‘Ausma grupa’, v. Konkurences padome, and Konkurences padome, v. IA ‘Pārtikas kompānija’ (21 July 2016) at para 24.

<sup>170</sup> Paragraph 4 of the Statement of Cevian of Abadi Malaysia recorded on 24.3.2022.

<sup>171</sup> *GMP Kaisar Security (M) Sdn Bhd v Mohamad Amirul Amin bin Mohamed Amir* [2022] 6 MLJ 369.

sufficiently connected to their role, even if unauthorised. Cevian of Abadi Malaysia's actions, both advising or collaborating with Kota Lanskap and Usia Maintenance, are inextricably linked to her professional capacity and expertise, which she would not have but for her role within Abadi Malaysia.

232. Even if Cevian of Abadi Malaysia was paid in her individual name, the relevant question is whether her actions compromised the independence of the pricing strategy of the Parties. In the case of *JJB Sports Plc*<sup>172</sup>, the CAT of the UK noted that even a single exchange of pricing information can constitute a concerted practice under competition law if it affects the independent decision-making of competitors.
233. In the present case, Cevian of Abadi Malaysia had knowledge of the bids, participated in the preparation of the bids, including the preparation of the bid prices for the Parties, and she had exchanged sensitive commercial information across the Parties.
234. The Commission also considers the purpose of maintaining and ensuring the integrity of the competitive process, particularly in respect of public procurement, in arriving at this decision. According to the "*Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*" ("*Garis Panduan Tipuan Bida*"), the purpose of the procurement process is to secure competitive bidding to achieve the best value.<sup>173</sup> This includes securing lower prices and/or better-

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<sup>172</sup> *JJB Sports Plc v Office of Fair Trading* [2004] CAT 17, at para 659.

<sup>173</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1.

quality products, thereby conserving resources that can be allocated to other goods and services.<sup>174</sup>

235. Moreover, both the *Garis Panduan Tipuan Bida* and the MyCC Guidelines on “Help Us Detect Bid Rigging” emphasise that bid rigging, particularly in public procurement, can be highly detrimental.<sup>175</sup> Such practices waste resources for buyers and taxpayers, diminish public confidence in the competitive process, and undermine the benefits of a competitive market.<sup>176</sup>

236. In this case, the Commission finds the conduct of the Parties in sharing their bid prices and subsequently having Cevian of Abadi Malaysia adjust the other Parties’ bid price, as clear evidence that goes towards the object to significantly prevent, restrict, and distort competition. It is inconceivable or unreasonable to believe that a tenderer would allow its competitor to seek the best price on its behalf in a normal, competitively functioning market.

237. Rather than submit independent, genuine bids, the actions of the Parties distorted the competition process, leaving PPJ with bid submissions that were influenced by collusion and coordinated strategies designed to eliminate the risks and unpredictability associated with competition.

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<sup>174</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1.

<sup>175</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1; and MyCC Handbook, Help Us Detect Bid Rigging, at page 1.

<sup>176</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1; MyCC Handbook, Help Us Detect Bid Rigging, at page 1.



238. Considering the afore-mentioned legal principle, the purpose of public procurement, the implications of bid rigging in public procurement, the evidence of this case and the purpose of the Act, the Commission finds the arguments raised by the Parties to be without merit and consequently dismisses said arguments.

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## K.2 PARTIES WERE MERELY PROVIDING MUTUAL ASSISTANCE

### *Parties' Arguments*

239. The Parties argued that in any functioning society or business community, cooperation and mutual assistance among individuals are essential.<sup>177</sup> This is common, particularly among family members, friends, and former colleagues.<sup>178</sup> This is not only common but also essential to collective progress and prosperity.<sup>179</sup> The Parties acknowledged the existence of familial ties and personal relationships between employees of the Parties, and the Parties are also members of the same business association and some of them had previously worked in one another's companies.<sup>180</sup> The Parties submitted that such personal connections and professional cooperation are to be expected and should not, by themselves, be construed as anti-competitive conduct.<sup>181</sup>

240. The Parties further contended that the assistance provided among the Parties was not intended to subvert the tender process but rather to overcome individual or organisational shortcomings.<sup>182</sup> The Parties argued that seeking help to improve and grow should not be equated with attempts to distort competition.<sup>183</sup> A distinction was

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<sup>177</sup> Written representation submitted by the Parties at paragraph 23.

<sup>178</sup> Written representation submitted by the Parties at paragraph 26.

<sup>179</sup> Written representation submitted by the Parties at paragraphs 23 and 26.

<sup>180</sup> Written representation submitted by the Parties at paragraph 25.

<sup>181</sup> Written representation submitted by the Parties at paragraph 27.

<sup>182</sup> Written representation submitted by the Parties at paragraph 28.

<sup>183</sup> Written representation submitted by the Parties at paragraph 29.

drawn between genuine assistance motivated by personal or community ties and wrongful conduct such as misrepresentation, theft of proprietary information, or corruption, which the Parties argued, falls under the jurisdiction of criminal enforcement authorities rather than competition law.<sup>184</sup>

241. The Parties also contended that the companies involved do not dominate the relevant market and are not among its largest players.<sup>185</sup> The market remains competitive, with numerous other bidders<sup>186</sup>. It was highlighted that in the relevant tenders, the Parties did not win most bids and were only awarded two of the six tenders referenced by the Commission.<sup>187</sup> Therefore, it was submitted that there was no concerted effort to rig bids or restrict competition, but rather isolated instances of human-level cooperation that should not be attributed to the Parties.<sup>188</sup>

242. The Parties noted that the Malaysian Anti-Corruption Commission (“MACC”) had investigated the matter and declined to take further action, supporting the Parties’ position that no elements of bribery or corruption were involved.<sup>189</sup>

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<sup>184</sup> Written representation submitted by the Parties at paragraph 28.

<sup>185</sup> Written representation submitted by the Parties at paragraph 31.

<sup>186</sup> Written representation submitted by the Parties at paragraph 31.

<sup>187</sup> Written representation submitted by the Parties at paragraph 32.

<sup>188</sup> Written representation submitted by the Parties at paragraph 32.

<sup>189</sup> Written representation submitted by the Parties at paragraph 30.

*The Commission's Decision*

243. The Commission has considered the Parties' arguments and acknowledges that collaboration and support within a community or business association are not inherently unlawful. However, the Commission rejects the arguments on the basis that the Act draws a clear legal line when such cooperation crosses into the realm of bid rigging and other forms of collusion that substantially prevent, restrict, or distort competition in any market for goods or services in Malaysia.

244. The Commission reiterates the provision of section 4(2) of the Act as follows:

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

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

*...*

*(d) perform an act of bid rigging,*

*is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services."*<sup>190</sup>

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<sup>190</sup> Section 4(2)(d) of the Competition Act 2010.

245. Section 4(2)(d) of the Act states that a horizontal agreement between enterprises which has the object of performing an act of bid rigging is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods and services. In this regard, this is considered a deeming provision whereby the Commission only needs to prove the existence of a horizontal agreement between enterprises, unless the contrary is proved, as stated in *Public Prosecutor v Yuvaraj*<sup>191</sup>. The Privy Council held:

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

246. In *Triple Zest Trading & Suppliers v. Applied Business Technologies*,<sup>192</sup> the Federal Court ruled that:

*"[56] To successfully rebut the presumption under s 10OA of the MA51, the respondent must prove on the balance of probabilities that by entering into the loan agreement with the appellants, it was not engaging in an act of 'lending of money at interest, with or*

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<sup>191</sup> *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89.

<sup>192</sup> *Triple Zest Trading & Suppliers & Ors. v Applied Business Technologies Sdn. Bhd.* [2023] 6 MLJ 818, paragraph 56.

*without security, by a moneylender to a borrower’, which is the meaning ascribed to the word ‘moneylending’ by s 2 of the MA51.”*

247. In *Malaysia Maritim Enforcement Agency v. Nyuyen Van Dai*, the Session Court has further explained that the prosecution must be very certain about which burden of proof they are relying on against the accused persons so that they can meet the correct standard i.e. whether to rebut the presumption on the balance of probabilities or to cast a reasonable doubt, which is lesser burden.<sup>193</sup>

248. Based on the *MAS/AirAsia COA Decision*, the deeming provision as provided in section 4(2) of the Act is sufficient to determine an infringement if the object is anti-competitive.<sup>194</sup>

249. Based on the authorities above, the Commission only needs to prove in accordance with the civil standard of proof, which is on the balance of probabilities, in determining whether the infringement under section 4 of the Act has been committed or not, as explained in **paragraph 78**. Therefore, the Commission, via the deeming provision, only needs to prove whether there is a horizontal agreement between enterprises that have the object of performing an act of bid rigging.

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<sup>193</sup> *Malaysia Maritim Enforcement Agency v Nyuyen Van Dai & Ors* [2020] MLJU 410, paragraph 49.

<sup>194</sup> *Malaysian Airline System Bhd v Competition Commission* [2022] 1 CLJ 856, paragraph 125, quoted in verbatim: “Once the object is significantly anti-competitive, it is unnecessary to show or prove that the agreement will have an appreciable adverse effect on competition. It is only when the object of the agreement is not clear with respect to its anti-competitive intent or purpose that there is required the need to examine if the agreement might have an anti-competitive effect”.

250. In the present case, the object to perform bid rigging is clear from the conduct of the Parties, which resulted in the deeming effect of section 4(2) of the Act being triggered. Bid rigging, by its very nature, prevents, restricts or distorts competition.<sup>195</sup> Bid rigging reduces the number of competitive bids, deprives the tenderer of genuine competitive bids, prevents other enterprises from submitting competitive bids, and gives the tenderer a false impression of market competition, potentially impairing future tender processes.<sup>196</sup>

251. Both the *Garis Panduan Tipuan Bida* and the MyCC Guidelines on “Help Us Detect Bid Rigging” emphasise that bid rigging, particularly in public procurement, is highly detrimental. Such practices waste resources for buyers and taxpayers, diminish public confidence in the competitive process and undermine the benefits of a competitive market. The CAT of Malaysia in the case of *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission*, when referring to section 4 of the Act and MyCC’s guidelines, identified key characteristics of bid rigging, including the involvement of multiple enterprises in a tender process, an agreement, whether enforceable or not, intended to distort competition, and collusion to predetermine the tender winner. The CAT held that while these elements are indicative of bid rigging, not all need to be present for a finding of infringement.<sup>197</sup>

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<sup>195</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, paragraphs III.92 to II.98; *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, at paragraphs 248 to 251 and Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.22.

<sup>196</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, paragraphs III.92 to II.98; *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, at paragraphs 248 to 251; and Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.22.

<sup>197</sup> *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission* [2023] MLJU 2631, at paragraphs 13 to 15.

252. Therefore, the Commission rejects the argument that “helping friends,” “community spirit,” or “overcoming shortcomings” are defences to a finding of bid rigging. Competition law does not consider subjective intent or moral justification as defences to *per se* violations such as bid rigging. The claim that the companies were merely assisting each other due to personal connections does not negate the fact that they submitted coordinated bids or otherwise influenced the tender process in a manner that eliminated genuine competition.
253. The Commission also rejects the Parties’ argument that the conduct is not anti-competitive because the parties are not dominant or because they did not win all tenders. The existence of other competitors or the lack of market dominance is not a defence to bid rigging. The Act prohibits anti-competitive agreements regardless of market share.
254. The fact that only two of six tenders were awarded to the Parties does not absolve the conduct. The relevant question is whether competition was distorted in those tenders due to the bid rigging conduct, not whether the colluding parties succeeded every time.
255. The Commission notes the Parties’ reference to the MACC’s investigation and the absence of findings of corruption or bribery. While this may be relevant in a criminal or public integrity context, it is immaterial to the Commission’s findings under the Act. The Commission’s jurisdiction is independent and distinct from that of the MACC.



### K.3 THE JURISDICTION OF THE COMMISSION

#### *Parties' Argument*

256. The Parties contended that the Commission should not decide on matters with regard to the capability and/or manpower of the Parties, as that is the responsibility of the body that will be deciding on the award of the tenders, which is the PPJ in this case, and any criminal element should fall under the jurisdiction of the police or the MACC.<sup>198</sup>

#### *The Commission's Decision*

257. While the Commission agrees that assessments involving technical qualifications or manpower are typically conducted by the procuring entities, this does not preclude the Commission from examining the conduct of the Parties from the perspective of competition law. The mandate given to the Commission under the Act, specifically under section 4(2)(d)<sup>199</sup> empowers the Commission to assess whether any agreement has the object or effect of rigging bids in tendering processes. This includes conduct that may affect the independence of the bids submitted, regardless of whether the bids meet the technical requirements set by the procuring entity.

258. In the present case, the Commission's focus is not on the manpower or technical capacity of the Parties but on whether the process by which the bids were submitted by the Parties was in any way

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<sup>198</sup> Written representation submitted by the Parties at paragraph 33.

<sup>199</sup> Section 4(2)(d) of the Competition Act 2010.

manipulated through coordination or the sharing of sensitive information.

259. Therefore, the argument raised by the Parties is irrelevant and while other authorities may have concurrent jurisdiction over different aspects of the tendering process, the Commission is duty bound to assess whether the competitive process has been distorted and therefore an infringement of the prohibitions laid out in the Act.

*[The remainder of this page is intentionally left blank]*

## PART 3: THE COMMISSION'S DECISION

### A. THE COMMISSION'S DECISION

260. On the basis of the evidence set out in this Decision, the Commission has made a decision addressed to the Parties, finding them liable for performing acts of bid rigging involving fixing the prices of bid submissions and concerted practices in the sharing of information, as well as the preparation of the bid submissions. Such conduct amounts to anti-competitive agreements in breach of section 4(1) read with section 4(2)(d) and section 4(3) of the Act. Such conduct is, as a matter of law, deemed to have the object of significantly preventing, restricting or distorting competition.

261. The Commission considers that the anti-competitive agreement described in this decision had the object of significantly preventing, restricting, or distorting competition. Such conduct is inherently a serious infringement of the Act and, therefore, requires the imposition of financial penalties. The principal object of the imposition of a financial penalty is deterrence, for both to prevent the Parties from repeating the infringements (specific deterrence) and to discourage others who might be tempted to engage in similar contraventions (general deterrence). The penalty imposed should be severe enough not to be regarded by the Parties or others as an acceptable cost of doing business.<sup>200</sup>

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<sup>200</sup> *Australian Competition and Consumer Commission v TPG Internet Ltd* [2013] HCA 54 at paragraph 64.

262. The Commission may impose on each of the Parties a financial penalty not exceeding the statutory maximum of 10% of the worldwide turnover of each of the Parties (see section 40(4) of the Act).
263. In addition to the imposition of financial penalties, the Commission has the power to issue directions to the Parties. Directions are made when it is necessary to end an infringement and, if required, to compel Parties to take action to remedy, mitigate, or eliminate any adverse effects of such infringement.
264. Following this finding of infringement, pursuant to section 40 of the Act, the Commission shall set out the penalties and remedial action that the Commission has decided to impose on the Parties in the subsequent paragraphs.

## **B. CALCULATION OF FINANCIAL PENALTIES**

265. 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<sup>201</sup>:

- (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);

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<sup>201</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.2.

- (f) role of the enterprise in the infringement;
- (g) recidivism;
- (h) existence of a compliance programme; and
- (i) level of financial penalties imposed on similar cases.

## **B.1 RELEVANT TURNOVER AND THE BASE FIGURE**

266. When determining the financial penalty for the Parties, the Commission initiates the process by establishing a 'base figure.' This figure is established by determining an appropriate proportion of the relevant turnover for the duration of the infringement, as elucidated below.

267. Upon determining the base figure, the Commission proceeds to make adjustments, taking into account aggravating circumstances in this case and mitigating considerations. These adjustments culminate in the determination of the final amount of the financial penalty.<sup>202</sup>

268. For the purpose of computing the financial penalty, the Commission relies on the financial information provided by the Parties in accordance with the section 18 notices issued by the Commission, dated from 04.04.2022 until 11.05.2022.

269. 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.

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<sup>202</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.2.

270. The Commission identifies the relevant product market affected by the infringing conduct as defined in **PART 2**.
271. The value of the projects according to the relevant product market as provided in **PART 2**, ranges from RM[~~8~~] to RM[~~8~~].
272. The Commission determines the base figure, taking into account the Parties' relevant turnover during the infringement period and the seriousness of the infringement.
273. In order to calculate the financial penalty, the Commission relies on the financial data provided by the Parties to determine their respective relevant turnovers.
274. After evaluating the seriousness of the infringement and the need to deter the Parties from engaging in bid rigging agreements in the future, the Commission determines that for the purpose of calculating the base figure, the appropriate percentage should be 10% of each of the Parties' relevant turnover.
275. Since public procurement involves the use of taxpayers' money and consumer welfare, bid rigging should be viewed as one of the most pernicious anticompetitive conducts, inviting a serious penalty to serve as a deterrence.

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## B.2 DURATION OF THE INFRINGEMENT

276. The Commission has determined that the periods of the infringement are as follows:

**Table 19:** Infringement Periods

<b>TENDER</b>	<b>PERIODS OF INFRINGEMENT</b>	<b>PARTIES</b>
<b>Tender Maintenance for Amenity Trees in the various precincts, in Putrajaya</b>	<b>Advertisement Date:</b> 25.01.2018  <b>Closing Date:</b> 21.02.2018  <b>Period of Infringement:</b> 28 days (from 25.01.2018 until 21.02.2018)	1. Abadi Malaysia; and 2. Usia Maintenance.
<b>Tender Maintenance for Kompleks Kejiranan in Precinct 11, Putrajaya</b>	<b>Advertisement Date:</b> 27.09.2018  <b>Closing Date:</b> 25.10.2018  <b>Period of Infringement:</b> 29 days (from 27.09.2018 until 25.10.2018)	1. Abadi Malaysia; 2. Kota Lanskap; and 3. Usia Maintenance.
<b>Tender Maintenance for Landscape along Jalan Protokol, Precinct 1, Putrajaya</b>	<b>Advertisement Date:</b> 12.05.2019  <b>Closing Date:</b> 17.06.2019  <b>Period of Infringement:</b> 37 days (from 12.05.2019 until 17.06.2019)	1. Abadi Malaysia; 2. Kota Lanskap; and 3. Usia Maintenance.
<b>Tender Maintenance for Taman Wawasan in Precinct 2 and Taman Pancarona in Precinct 18, Putrajaya</b>	<b>Advertisement Date:</b> 12.05.2019  <b>Closing Date:</b> 19.06.2019  <b>Period of Infringement:</b> 39 days	1. Abadi Malaysia; 2. Kota Lanskap; and 3. Usia Maintenance.

TENDER	PERIODS OF INFRINGEMENT	PARTIES
	(from 12.05.2019 until 19.06.2019)	
<b>Tender Maintenance for Landscape in Kejiranan in Precincts 7, 8, 9 and 11, Putrajaya</b>	<b>Advertisement Date:</b> 11.10.2019  <b>Closing Date:</b> 11.11.2019  <b>Period of Infringement:</b> 32 days (from 11.10.2019 until 11.11.2019)	1. Abadi Malaysia; 2. Kota Lanskap; and 3. Usia Maintenance.
<b>Tender Maintenance Project for Main Drain, Gross Pollutant Trap and Retention Pond, in various precincts, in Putrajaya</b>	<b>Advertisement Date:</b> 05.04.2021  <b>Closing Date:</b> 04.05.2021  <b>Period of Infringement:</b> 30 days (from 05.04.2021 until 04.05.2021)	1. Abadi Malaysia; and 2. Usia Maintenance.

277. As shown in **Table 19**, it is important to highlight the Commission's reliance on the advertisement date and the closing date to approximate the infringement period. This method is adopted because the Commission opines that the anti-competitive agreement among the parties to manipulate bid submissions to the procuring agency occurred within this timeframe.

278. The Commission observes that the infringements were committed discretely, spanning from January 2018 until May 2021, with each instance lasting for a relatively brief period, ranging from 28 days to 39 days. In line with the principles established by the Singapore competition authority in the case of *Maintenance Services for*



*Swimming Pools, Spas, Fountains, and Water Features*,<sup>203</sup> the CCCS recognises that bid-rigging effects are typically irreversible, challenging to rectify, and persistently impact stakeholders well beyond the actual duration of the infringements.<sup>204</sup>

279. In the present case, the Commission determines that, for the purpose of calculating penalties, the duration of the infringements shall be considered as one full year for each separate infringement period.<sup>205</sup>

### **B.3 AGGRAVATING FACTORS**

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

#### ***The role of an enterprise as an instigator***

281. The Commission considers the role of an enterprise as an instigator to be an aggravating factor.<sup>206</sup> In *Pre-insulated Pipes*,<sup>207</sup> the enterprise saw its fine increased for being the instigator of the cartel.

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<sup>203</sup> CCCS 500/7003/17 *Infringement of the Section 34 Prohibition in relation to the Provision of Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* dated 14.12.2020.

<sup>204</sup> CCCS 500/7003/17 *Infringement of the Section 34 Prohibition in relation to the Provision of Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* dated 14.12.2020, at paragraph 178.

<sup>205</sup> CCCS 500/7003/17 *Infringement of the Section 34 Prohibition in relation to the Provision of Maintenance Services for Swimming Pools, Spas, Fountains and Water Features* dated 14.12.2020, at paragraph 178.

<sup>206</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.4.

<sup>207</sup> COMP IV/35.691/E.4 [1999] OJ L24/50, 1999 CMLR 402.

282. As such, in the current case, there shall be a 50% upward adjustment of the base figure for any act of instigation by an enterprise.

***Lack of cooperation in the investigation***

283. The Commission considers the lack of co-operation by an enterprise to be an aggravating factor.<sup>208</sup> The omission of an employee of an enterprise to provide information and documents that could assist in the investigation, and the conduct of an employee of an enterprise disclosing the fact of or any details regarding the search and seizure conducted by the Commission a lack of co-operation by the enterprise. In *Tokai Carbon*,<sup>209</sup> the enterprise saw its fine increased for notifying other companies of the investigation by the Commission.

284. As such, in the current case, there shall be a 10% upward adjustment of the base figure for lack of cooperation by an enterprise.

***Multiple infringements by the Parties***

285. The Commission considers the frequency of participation in the infringements as an aggravating factor as follows:

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<sup>208</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.4.

<sup>209</sup> *Tokai Carbon and Others v Commission* [2004] ECR II – 1181, at paragraphs 312-315.

**Table 20:** Frequency of Infringements

FREQUENCY	UPWARD ADJUSTMENT OF THE BASE FIGURE
1	0
2	10%
3	20%
4	30%
5	40%
6	50%

### ***Involvement of directors or senior management in the bid rigging***

286. The Commission considers any involvement of directors or senior management as an aggravating factor.<sup>210</sup> In the UK Competition and Markets Authority (“CMA”) Case CE/9882-16<sup>211</sup>, the enterprise has had its fine increased due to the involvement of directors or senior management in the bid rigging arrangement.

287. As such, in the current case, there shall be a 10% upward adjustment of the base figure due to the involvement of directors and shareholders in the bid rigging agreement.

## **B.4 MITIGATING FACTOR**

288. The Commission may consider “cooperation” in the sense of cooperation that goes beyond their legal obligation as a mitigating factor. However, the threshold for such consideration is high. The cooperation must assist the Commission to prove the infringement and conclude the Commission’s regulatory process quickly and cost-effectively. This type of cooperation must go beyond merely

<sup>210</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.4.

<sup>211</sup> Case CE/9882-16, supply of products to the furniture industry (drawer wraps), at paragraph 6.27.

adhering to a request for information by the Commission. This approach to evaluating cooperation aligns with the precedent set in the UK CMA case of *Design, Construction, and Fit-out Services*<sup>212</sup>.

289. In addition to effective cooperation, the Commission may consider several other factors as mitigating factors, as outlined in the Commission's Guidelines on Financial Penalties.<sup>213</sup>
290. Firstly, a low degree of fault on the part of the infringing enterprise may be considered a mitigating factor. This acknowledges situations where the level of culpability is minimal.
291. Secondly, if an enterprise played a relatively minor role in the infringement, particularly if its involvement was secured through threats or coercion, this may be viewed as a mitigating circumstance. Recognising the dynamics of coercion and the varying levels of involvement provides a more detailed assessment of each party's contribution to the infringement.
292. Furthermore, the existence of a corporate compliance program that is suitable given the nature and size of the enterprise can serve as a mitigating factor. Such programs demonstrate a proactive approach to compliance and a commitment to adhering to regulatory standards, which the Commission values.

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<sup>212</sup> 50481 Design, Construction and Fit-out Services, at paragraph 6.34.

<sup>213</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.5.

293. Additionally, any compensation made to victims of the infringements can be taken into account. Efforts to rectify the harm caused by the infringement reflect a willingness to address the consequences and may influence the Commission's assessment of penalties.
294. In essence, while effective cooperation and other mitigating factors can influence the determination of penalties, the Commission maintains a rigorous standard for evaluating such considerations. By setting high expectations for cooperation and recognising a range of mitigating factors, the Commission seeks to ensure that penalties are fair, just, and reflective of the circumstances surrounding each infringement.

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

295. Section 40(4) of the Act prescribes a statutory limit on the final amount of the financial penalty that the Commission could impose on an enterprise found to have infringed a prohibition under section 4(1) read together with sections 4(2)(d) and 4(3) of the Act. The statutory limit stipulates that the financial penalty shall not exceed 10% of the enterprise's worldwide turnover during the period of the infringement.

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## **C. WRITTEN & ORAL REPRESENTATIONS - ARGUMENTS MADE BY THE PARTIES IN RELATION TO THE FINANCIAL PENALTY AND THE FINDINGS OF THE COMMISSION**

### **C.1 PLEA FOR LENIENCY BY THE PARTIES**

#### *Parties' Argument*

296. The Parties argued that infringements under the Act are civil, not criminal, and the Commission's primary aim is to promote free and fair market competition.<sup>214</sup> They contended that leniency should be granted, as many businesses lacked awareness of competition law prior to 2022, with bid rigging only recently becoming a focus of enforcement.<sup>215</sup> The Parties cautioned that imposing maximum penalties at the first instance risks discouraging enterprises' participation and innovation, particularly in light of the economic hardships caused by the COVID-19 pandemic, which have left many businesses struggling to recover.<sup>216</sup> They argued that excessive penalties could worsen these challenges, hindering economic growth and market stability.<sup>217</sup>

297. The Parties contended that their involvement in the bid rigging conduct should be viewed with leniency due to several mitigating factors. They highlighted that, in the six tenders subject to the

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<sup>214</sup> Written representation submitted by the Parties at paragraph 38.

<sup>215</sup> Written representation submitted by the Parties at paragraph 39.

<sup>216</sup> Written representation submitted by the Parties at paragraph 41.

<sup>217</sup> Written representation submitted by the Parties at paragraphs 41 and 42.

Commission's investigation, a total of 162 bids were submitted, out of which only 16 were submitted by the Parties.<sup>218</sup> Of the six tenders, only two were awarded to Abadi Malaysia and Usia Maintenance, respectively, while Kota Lanskap did not secure any tenders.<sup>219</sup> It is also noted that Kota Lanskap only won contracts through direct negotiation during the relevant period.<sup>220</sup>

298. The Parties submitted that this was their first involvement in bid rigging conduct, which they attributed to a genuine lack of awareness regarding the Competition Act 2010 at the time. They argued that during the material period, awareness of competition law was limited, particularly among small enterprises, and, unlike the present day, there were fewer educational or outreach initiatives by the Commission. They claimed their actions were driven by a sense of mutual assistance among friends and family members within the same business community and business association, rather than by any intention to engage in anti-competitive practices.
299. They further argued that there was no intent to cause harm or distort the market, and that in the two tenders they won, the Parties had submitted the lowest bids, which allegedly saved public funds without any compromise in quality or performance. No complaints were raised in relation to the completed works.

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<sup>218</sup> Written representation submitted by the Parties at paragraph 3, page 17.

<sup>219</sup> Written representation submitted by the Parties at paragraph 3, page 17.

<sup>220</sup> Written representation submitted by the Parties at paragraph 4, page 17.

300. The Parties raised significant concerns about their financial capacity to pay the proposed financial penalty.<sup>221</sup> They asserted that their profits after tax during the relevant period were modest and well below a 10% margin of gross revenue.<sup>222</sup> They argued that imposition of the proposed financial penalty would result in the winding up of the companies, affecting over 300 individuals—including employees and their families—who rely on the companies for their livelihoods. One of the affected employees is also a registered OKU (disabled person).<sup>223</sup>
301. In light of these circumstances, the Parties pleaded for leniency and urged the Commission to consider issuing a warning or a lesser sanction.<sup>224</sup> They offered to provide undertakings not to repeat the infringement and to attend relevant training or compliance courses. If a financial penalty must be imposed, they requested that it be set at a level proportionate to their financial ability, so as not to jeopardize the viability of the business or the welfare of their employees.<sup>225</sup>

### *The Commission's Decision*

302. The Commission has considered the Parties' plea for leniency. It is noted that the Parties have not submitted an application under the

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<sup>221</sup> Written representation submitted by the Parties at paragraphs 44 and 45.

<sup>222</sup> Written representation submitted by the Parties at paragraph 8, page 18.

<sup>223</sup> Written representation submitted by the Parties at paragraph 10, page 18.

<sup>224</sup> Written representation submitted by the Parties at paragraph 12, page 18.

<sup>225</sup> Written representation submitted by the Parties at paragraph 18, page 19.



Leniency Framework pursuant to section 41 of the Act. The Leniency Framework is designed to provide a reduction or exemption from financial penalties for enterprises that voluntarily admit involvement in an infringement and cooperate with the Commission in its investigation. The Leniency Framework operates under strict procedural and substantive conditions, including the requirement for prompt and full disclosure of information before the Commission issues a Proposed Decision. The present plea does not meet these statutory criteria.

303. In the present case, rather, what the Parties seek is a discretionary reduction in the quantum of financial penalty imposed under section 40 of the Act, based on a series of arguments that in their view constitute mitigating factors. The Commission dismisses each of these arguments, the reasons for which are set out in the paragraphs that follow.
304. The argument that the Parties lacked awareness of competition law prior to 2022 is insufficient to warrant a reduction in the financial penalty. Ignorance of the law does not constitute a defence, as it would create a precedent that undermines enforcement and encourages non-compliance. Therefore, the fact that the Parties may have had limited awareness of the specific provisions of the Act cannot be construed as a mitigating factor, particularly where the conduct of coordinating and assisting in bid submissions has undermined the principle of competitive independence.

305. While the Commission is mindful of the economic challenges posed by the COVID-19 pandemic, these difficulties cannot justify infringements of competition law. Allowing such infringements to go unaddressed would harm other market participants who operate within the bounds of the law and further erode consumer trust in the competitive process. Penalties are not intended to be punitive but proportionate to the severity of the infringement and the impact on the market, ensuring that enterprises are held accountable while reinforcing the need for deterrence.
306. The argument made by the Parties that only 2 of the 6 tenders were awarded to the Parties and that the total number of bids submitted was 162 is baseless. As detailed in **paragraphs 244 – 250** above, the Commission, in relying on the deeming provision, only needs to establish that there is a horizontal agreement between enterprises that have the object of performing an act of bid rigging. That only 2 of the 6 tenders were awarded to the Parties and that a total of 162 bids were submitted do not negate the findings made by the Commission.
307. In relation to the Parties' claims of financial hardship, the Commission calculated the financial penalty based on the turnover of the Parties during the period of infringement. Therefore, the amount of financial penalty imposed by the Commission is derived from the turnover of the Parties themselves. In fact, the Commission is also bound to the statutory limit in the Act in whereby the Commission may only impose a financial penalty up to 10% of the worldwide turnover of each of the Parties. In this regard, the Commission is of the view that the financial hardship shall not be a

mitigating factor that can justify for reduction or even immunity from financial penalty.

## **C.2 FINANCIAL PENALTY IMPOSED BY THE COMMISSION SHOULD BE FAIR**

### *Parties' Argument*

308. The Parties argued that the Commission, in its Proposed Decision, has imposed the maximum penalty allowable by law for a first-time infringement.<sup>226</sup> They submitted that under Section 40 of the Act, the Commission has the discretion to require the cessation of the infringement and issue directions to ensure it is not repeated, without resorting to severe financial penalties.<sup>227</sup> The Parties further contended that the Commission's aim should be to achieve a just and equitable outcome that safeguards the health of the market while ensuring that its decisions are not punitive in nature, particularly for first-time offenders.<sup>228</sup>

309. The Parties also contended that their financial position, as reflected in their audited accounts, demonstrates that they do not generate significant or consistent profits annually.<sup>229</sup> The Act does not mandate financial penalties but allows for discretion, setting a maximum cap of 10% of worldwide turnover during the infringement

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<sup>226</sup> Written representation submitted by the Parties at paragraph 35.

<sup>227</sup> Written representation submitted by the Parties at paragraph 36.

<sup>228</sup> Written representation submitted by the Parties at paragraph 37.

<sup>229</sup> Written representation submitted by the Parties at paragraph 43.

period.<sup>230</sup> Given the financial strain caused by the COVID-19 pandemic, which has left the Parties struggling to sustain operations, imposing such severe fines would jeopardise their survival.<sup>231</sup>

### *The Commission's Decision*

310. The Commission has assessed these arguments. Having regard to the nature and gravity of the infringement, the Commission finds that the penalties are proportionate to the seriousness of the conduct in question. In imposing these penalties, the Commission has borne in mind the dual objectives of deterrence: specific deterrence, to dissuade the infringing Parties from engaging in similar conduct in the future, and general deterrence, to signal to other market participants that anti-competitive behaviour will attract firm enforcement and substantial financial consequences.

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<sup>230</sup> Written representation submitted by the Parties at paragraph 44.

<sup>231</sup> Written representation submitted by the Parties at paragraph 45.

### C.3 REPUTATIONAL DAMAGE TO THE PARTIES

#### *Parties' Argument*

311. The Parties claimed that the Commission's media release, naming them before this Decision was reached, has caused severe reputational and financial harm, creating a perception of wrongdoing that has significantly impacted their ability to secure new jobs and tenders.<sup>232</sup> Usia Maintenance, for instance, faced audits and scrutiny while attempting to diversify its income streams directly linked to the negative publicity.<sup>233</sup> This premature disclosure, at a crucial time for tender applications, has irreparably damaged their credibility and trust in the market, despite the non-criminal nature and unresolved status of the case.<sup>234</sup> Coupled with their precarious financial position, imposing the maximum penalty would further jeopardise their survival and the livelihoods of their employees.<sup>235</sup>

312. Additionally, the Parties contended that the reputational harm suffered from the Commission's media release and subsequent press coverage—which mentioned “bid-rigging in six contracts worth RM45 million”—has already caused significant damage to their business and public image. They claim that the media reporting created the false impression that they won all six contracts and had engaged in criminal conduct.<sup>236</sup>

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<sup>232</sup> Written representation submitted by the Parties at paragraph 46.

<sup>233</sup> Written representation submitted by the Parties at paragraph 47.

<sup>234</sup> Written representation submitted by the Parties at paragraph 48.

<sup>235</sup> Written representation submitted by the Parties at paragraph 50.

<sup>236</sup> Written representation submitted by the Parties at paragraph 64.

*The Commission's Decision*

313. The Commission rejects this argument on the basis that the media release issued by the Commission specifically highlighted that the decision issued by the Commission is only a Proposed Decision, whereby the Parties are still given the opportunities to submit their written representations and/or oral representations for the consideration of the Commission. Further, section 16(i) of the Competition Commission Act 2010 provides that the function of the Commission includes “...to publish and otherwise raise awareness among the public on information concerning competition law...”.

314. In the case of *MyTeksi Sdn. Bhd. & Ors. v Suruhanjaya Persaingan* [2023] 1 LNS 1921, the High Court decided that:

*“[70] On the issue of the press release, I am of the view that it was fair in that the press statements made it clear that the Proposed Decision itself is not final and that the Applicants may still make representations to challenge MyCC’s Findings.<sup>237</sup>”*

315. Therefore, this argument is dismissed.

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<sup>237</sup> *MyTeksi Sdn Bhd & Ors. v Suruhanjaya Persaingan* [2023] 1 LNS 1921, paragraph 70.

## D. PENALTY FOR ABADI MALAYSIA

316. Abadi Malaysia was involved in six infringements by engaging in bid rigging agreements with the object of significantly preventing, distorting or restricting competition in the market of public procurement relating to the maintenance works for building facilities and infrastructure, landscape and civil engineering construction.
317. The Commission calculates the financial penalty based on the financial information submitted by Abadi Malaysia in response to the section 18 notice dated 04.04.2022 and the audited reports obtained from the Companies Commission of Malaysia.<sup>238</sup> It should be noted that the data submitted pertain to Abadi Malaysia's revenue for the period from 2018 to 2021.
318. **Calculation of base penalty:** Abadi Malaysia submitted that its relevant turnover throughout the duration of the infringements was RM[×] for the year 2018, RM[×] for the year 2019 and RM[×] for the year 2021. The total relevant turnovers for these three years are RM[×].
319. The Commission analysed the seriousness of the infringements and fixed the starting point at 10% of the relevant turnover. The starting amount, that is to say, the base figure for Abadi Malaysia is, therefore, RM[×] (10% of RM[×]).

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<sup>238</sup> Revenue information provided by Lakaran Jitu dated 6.4.2022, 2.5.2024, 23.5.2024, 17.7.2024 and 29.7.2024 pursuant to the Section 18 Notice issued by the Commission dated 4.4.2022; and Audited Report Abadi Malaysia for the year of 2018, 2019 and 2021 obtained from Companies Commission of Malaysia.

**320. Adjustment for aggravating factors:**

- (a) The Commission applies an uplift of 50% from the base figure for the role played by Cevian of Abadi Malaysia in instigating the bid rigging conduct of the Parties, amounting to RM[~~3~~] (50% of RM[~~3~~]);
- (b) The Commission applies an uplift of 10% from the base figure for the lack of cooperation by Cevian of Abadi Malaysia. She tipped off Hassan of Tunas Nasional Holdings by disclosing the arrival of the Commission Officers at Abadi Malaysia's premises and the request made by the Commission Officers during the execution of the search and seizure with warrants by the Commission.<sup>239</sup> The Commission applies an uplift of 10% from the base figure, amounting to RM[~~3~~] (10% of RM[~~3~~]);
- (c) The Commission applies an uplift of 50% from the base figure for the multiple infringements (six infringements) committed by Abadi Malaysia, amounting to RM[~~3~~] (50% of RM[~~3~~]); and
- (d) The Commission applies an uplift of 10% from the base figure for the involvement of Cevian of Abadi Malaysia as the director of Abadi Malaysia in the bid rigging agreement, amounting to RM[~~3~~] (10% of RM[~~3~~]).

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<sup>239</sup> Email from Cevian of Abadi Malaysia to Hassan of Tunas Nasional on 6.5.2021 at 11.19am and Section 7.3.16 Evidence No 16: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd; Email from Cevian of Abadi Malaysia to Hassan of Tunas Nasional on 6.5.2021 at 11.25am and Section 7.3.3 Evidence No 3: [No Subject].eml of the Digital Forensic Report Lakaran Jitu Sdn Bhd.



**321. Adjustment for mitigating factors:**

The Commission finds no mitigating factors.

**322.** Based on the above, the total amount of the financial penalty is RM[~~xxx~~] ( $RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~]).$

**323. Maximum penalty of 10% worldwide turnover:** The worldwide turnover of Abadi Malaysia is RM[~~xxx~~] for the financial year of 2018, RM[~~xxx~~] for the financial year of 2019 and RM[~~xxx~~] for the financial year of 2021<sup>240</sup>. The total worldwide turnover for these three years is RM[~~xxx~~]. The financial penalty to be imposed by the Commission against Abadi Malaysia cannot exceed 10% of this total worldwide turnover, which is RM[~~xxx~~] (*10% of RM[~~xxx~~]*).

**324. Financial Penalty:** The financial penalty of RM[~~xxx~~] exceeds the maximum penalty of RM[~~xxx~~] that the Commission can impose. As such, the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM1,984,939.49**.

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<sup>240</sup> Revenue information provided by Lakaran Jitu dated 6.4.2022, 2.5.2024, 23.5.2024, 17.7.2024 and 29.7.2024 pursuant to the Section 18 Notice issued by the Commission dated 4.4.2022; and Audited Report Abadi Malaysia for the year of 2018, 2019 and 2021 obtained from Companies Commission of Malaysia.

## E. PENALTY FOR KOTA LANSKAP

325. Kota Lanskap was involved in four infringements by engaging in bid rigging agreements with the object of significantly preventing, distorting or restricting competition in the market of public procurement relating to the maintenance works for building facilities and infrastructure, landscape and civil engineering construction.
326. The Commission calculates the financial penalty based on the financial information submitted by Kota Lanskap in response to the section 18 notice dated 11.05.2022 and the audited reports obtained from the Companies Commission of Malaysia.<sup>241</sup> It should be noted that the data submitted pertain to the company's revenue for the period from 2018 to 2021.
327. **Calculation of base penalty:** Kota Lanskap submitted that its relevant turnover throughout the durations of the infringements was RM[~~3~~] for the year 2018 and RM[~~3~~] for the year 2019. The total relevant turnovers for these two years are RM[~~3~~].
328. The Commission analysed the seriousness of the infringements and fixed the starting point, that is to say, the base figure, at 10% of the relevant turnover. The starting amount for Kota Lanskap is therefore RM[~~3~~] (10% of RM[~~3~~]).

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<sup>241</sup> Revenue information provided by Kota Lanskap dated 20.5.2022, 23.5.2022, 31.5.2024 and 30.7.2024 pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Audited Report Kota Lanskap for 2018 and 2019.

**329. Adjustment for aggravating factors:**

- (a) The Commission applies an uplift of 30% from the base figure for multiple infringements (four infringements) committed by Kota Lanskap, amounting to RM[~~3~~] (30% of RM[~~3~~]); and
- (b) The Commission applies an uplift of 10% from the base figure for the involvement of Ikhwan Rosli as the director, amounting to RM[~~3~~] (10% of RM[~~3~~]).

**330. Adjustment for mitigating factors:**

The Commission finds no mitigating factors.

331. Based on the above, the total amount of the financial penalty is RM[~~3~~] (RM[~~3~~] + RM[~~3~~] + RM[~~3~~]).

332. **Maximum penalty of 10% worldwide turnover:** The worldwide turnover of Kota Lanskap is RM[~~3~~] for the financial year of 2018 and RM[~~3~~] for the financial year of 2019<sup>242</sup>. The total worldwide turnover for these 2 years is RM[~~3~~]. The financial penalty to be imposed by the Commission against Kota Lanskap cannot exceed 10% of this total worldwide turnover, which is RM[~~3~~].

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<sup>242</sup> Revenue information provided by Kota Lanskap dated 20.5.2022, 23.5.2022, 31.5.2024 and 30.7.2024 pursuant to the Section 18 Notice issued by the Commission dated 11.5.2022; and Audited Report Kota Lanskap for 2018 and 2019.

333. The financial penalty of RM[~~8~~] exceeds the maximum penalty of RM[~~8~~] that the Commission can impose. As such, the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM768,135.35**.

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## F. PENALTY FOR USIA MAINTENANCE

334. Usia Maintenance was involved in six infringements by engaging in bid rigging agreements with the object of significantly preventing, distorting or restricting competition in the market of public procurement relating to the maintenance works for building facilities and infrastructure, landscape and civil engineering construction.
335. The Commission calculates the financial penalty based on the financial information submitted by Usia Maintenance in response to the section 18 notice dated 14.04.2022 and the audited reports obtained from the Companies Commission of Malaysia.<sup>243</sup> It should be noted that the data submitted pertain to the company's revenue for the period from 2018 to 2021.
336. **Calculation of base penalty:** Usia Maintenance submitted that its relevant turnover throughout the durations of the infringements was RM[×] for the year 2018, RM[×] for the year 2019 and RM[×] for the year 2021. The total relevant turnovers for these three years are RM[×].
337. The Commission analysed the seriousness of the infringement and fixed the starting point, that is to say, the base figure at 10% of the relevant turnover. The starting amount for Usia Maintenance is therefore RM[×] (10% of RM[×]).

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<sup>243</sup> Revenue information provided by Usia Maintenance dated 15.4.2022, 30.5.2024, 17.7.2024, 22.7.2024 and 30.7.2024 pursuant to the Section 18 Notice issued by the Commission dated 14.4.2022; and Audited Report Usia Maintenance for 2018, 2019 and 2021.

**338. Adjustment for aggravating factors:**

- (a) The Commission applies an uplift of 50% from the base figure for multiple infringements (six infringements) committed by Usia Maintenance, amounting to RM[] (50% of RM[]); and
- (b) The Commission applies an uplift of 10% from the base figure for the involvement Sallehen as the director, amounting to RM[] (10% of RM[]).

**339. Adjustment for mitigating factors:**

The Commission finds no mitigating factors.

340. Based on the above, the total amount of the financial penalty is RM[].

341. **Maximum penalty of 10% worldwide turnover:** The worldwide turnover of Usia Maintenance is RM[] for the financial year of 2018, RM[] for the financial year of 2019 and RM[] for the financial year of 2021<sup>244</sup>. The total worldwide turnover for these three years is RM[]. The financial penalty to be imposed by the Commission against Usia Maintenance cannot exceed 10% of this worldwide turnover, which is RM[].

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<sup>244</sup> Revenue information provided by Usia Maintenance dated 15.4.2022, 30.5.2024, 17.7.2024, 22.7.2024 and 30.7.2024 pursuant to the Section 18 Notice issued by the Commission dated 14.4.2022; and Audited Report Usia Maintenance for 2018, 2019 and 2021.

342. The financial penalty of RM[~~968,194.10~~] exceeds the maximum penalty of RM[~~968,194.10~~] that the Commission can impose. As such, the financial penalty is adjusted downwards to the amount of the maximum penalty of **RM968,194.10**.

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## G. REDUCTION OF FINANCIAL PENALTY

343. Considering the written and oral representations made by the Parties, including their admission of the facts and liability, the Commission has decided to exercise its discretion under section 40 of the Competition Act 2010 to reduce the financial penalty imposed on each Party by 20%. The final amount of the reduction of the financial penalty shall be reflected in **Table 21** below.
344. Notwithstanding the above decisions on the findings of liability, the Commission decides to exercise its discretion and accord this reduction, the Commission emphasises that bid rigging is a serious infringement of the Act, and any further contravention will be treated with full severity. The Commission also reminds the Parties that they must fully comply with all directions issued under this Decision. This continued adherence is essential to ensure the integrity of the competitive process and to prevent the recurrence of anti-competitive conduct.

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## H. CONCLUSION ON THE FINANCIAL PENALTY

345. In conclusion, the Commission pursuant to section 40(1)(c) of the Act, imposes the following financial penalties on the Parties as shown in **Table 21** below:

**Table 21:** Financial Penalty

<b>PARTY</b>	<b>FINANCIAL PENALTY</b>
Abadi Malaysia	RM1,587,951.59
Kota Lanskap	RM614,508.28
Usia Maintenance	RM774,555.28

## I. DIRECTIONS BY THE COMMISSION

346. In this case, as well as in general cases involving bid-rigging, financial penalties would be insufficient to either end the infringement or remedy the harm caused by the collusive conduct. Therefore, the Commission considers that it is appropriate to impose other directions as deterrence.

347. Accordingly, the Commission hereby directs the Parties to undertake the following:

### ***Cease and desist order***

348. The Parties to cease and desist from participating and engaging in any agreement which has the object of performing an act of bid rigging in relation to any future tenders that the Parties intend to participate.

***Carrying Out of Competition Law Compliance Programme***

349. The Parties shall carry out a comprehensive competition law compliance program, which shall involve shareholders, directors, senior managers having decision-making powers, as well as employees directly involved in the submission of tenders for the Parties.
350. The program shall be conducted by competition law experts or by lawyers knowledgeable in competition law and shall be conducted twice a year for 2 years after the issuance of the infringement decision under section 40 of the Act. Upon the completion of the program, the Parties shall procure a report by the said experts or lawyers detailing the training provided to the persons who received training and the level of knowledge on competition law that the shareholders, directors, senior managers and relevant employees had attained. The Parties are to submit the report from the said competition law experts or lawyers after the first year and the final report to the Commission within two weeks after the completion of the program.

**DATED: 30 JUNE 2025**



**CHAIRMAN**  
**TAN SRI DATO' SRI IDRUS BIN HARUN**

## ANNEXE A

## Persons interviewed by the Commission

ENTITY/AGENCY	NAME	DESIGNATION	DATE OF INTERVIEW
Abadi Malaysia	Cevian binti Jupirin	Director and Shareholder	06.05.2021, 12.01.2022 and 24.03.2022
Abadi Malaysia	Ismarani binti Siran	Director and Shareholder	16.02.2022
Gading Saga	Fairus Ayuswani binti Mohd Nasiran	Director and Shareholder	08.02.2022
KL Facilities (M) Sdn. Bhd.	Nur Yatie binti Abu Hashim	Administrative Clerk	10.02.2022
Kota Lanskap	Mohd Ikhwan bin Mohd Rosli	Director and Shareholder	16.02.2022
Kota Lanskap	Intan Nur Shazwani binti Nasir	Clerk	03.11.2022
PPJ	Ahmad Zubir bin Sopian	Director	23.01.2020 and 11.02.2020
PPJ	Ereezal bin Mat Jusak	Assistant Engineer	30.01.2020
PPJ	Rohani binti Abu Bakar	Senior Principal Assistant Director	21.01.2020 and 24.01.2020
PPJ	Tengku Mazuki bin Tengku Ismail	Senior Assistant Director	11.02.2020
Tunas Nasional Holdings	Dayang Aslinda binti Abdul Rahman	Administrative Manager	08.02.2022
Tunas Nasional Holdings	Mohd Hassan bin Hj Bosarah	Director and Shareholder	15.12.2021 and 04.04.2022
Tunas Nasional Holdings	Norazlina binti Darus	Head of Finance	10.02.2022
Usia Maintenance	Laila Afiqah binti Kaspar	Financial Administrative Assistant	27.04.2021 and 03.11.2023
Usia Maintenance	Md Sallehen bin Haji Basarah	Director and Shareholder	15.12.2021, 15.04.2022 and 16.01.2023
Usia Maintenance	Nur Amalina binti Tajudin	Clerk	27.04.2021

## ANNEXE B

## Premises searched by the Commission

NO.	NAME AND ADDRESS OF PREMISES	DATE	WARRANT NO (COURT)
1.	Kota Lanskap  85C, Tingkat 3, Jalan Diplomatik, Presint 15, 62502 Bandar Putrajaya, Putrajaya.	27.04.2021	04058 Putrajaya Magistrates Court
2.	Abadi Malaysia/Lakaran Jitu  85B Tingkat 2, Jalan Diplomatik, Presint 15, 62502 Bandar Putrajaya, Putrajaya.	06.05.2021	04061 Putrajaya Magistrates Court
3.	Kota Lanskap  85C, Tingkat 3, Jalan Diplomatik, Presint 15, 62502 Bandar Putrajaya, Putrajaya.	06.05.2021	04061 Putrajaya Magistrates Court