



**Malaysia Competition Commission**

**Case No. 700/1/1/17/2017**

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. Agenda Eksklusif Sdn. Bhd.
2. Star Apax Enterprise
3. Nekad Waja Resources
4. Spectron Sdn. Bhd.
5. Teknokrat Makmur Enterprise
6. Prospectrum Sdn. Bhd.
7. NK Panorama Enterprise

**DATE: 30 AUGUST 2024**

## INFRINGEMENT DECISION

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

- (i) Dato' Seri Mohd Hishamudin Bin Md Yunus (Chairman);
- (ii) Datuk Mairin Bin Idang @Martin;
- (iii) Dato' Ir. Hj. Mohd Jamal Bin Sulaiman;
- (iv) Dr. Nor Mazny Binti Abdul Majid;
- (v) Tuan Wan Mohd Rosdi Bin Wan Dolah;
- (vi) Tuan Ir. Rusman Bin Abu Samah;
- (vii) Tuan Surya Putra Bin Dato' Mohamed Taulan;
- (viii) Tuan Ahmad Fauzi Bin Sungip; and
- (ix) Tuan Surrendren Sathasivam.

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## INTRODUCTION

1. This Decision (“the Decision”) concludes that the enterprises named in **paragraph 3** herein have infringed the prohibition imposed under section 4(1) read with section 4(2)(d) and section 4(3) (“section 4 prohibition”) of the Competition Act 2010 [Act 712] (“the Act”). In this Decision, the named enterprises shall be individually referred to herein as “Party” and collectively referred to as “Parties”.
2. The Parties have infringed the section 4 prohibition by participating in anti-competitive agreements and/or concerted practices to rig a series of projects concerning the Ministry of Defence (“Infringement” or “Infringements”).
3. This Decision is addressed to the following Parties:
  - (i) Agenda Eksklusif Sdn. Bhd.;
  - (ii) Star Apax Enterprise;
  - (iii) Nekad Waja Resources;
  - (iv) Spectron Sdn. Bhd.;
  - (v) Teknokrat Makmur Enterprise;
  - (vi) Prospectrum Sdn. Bhd.; and
  - (vii) NK Panorama Enterprise.
4. By this Decision, the Commission hereby, pursuant to section 40 of the Act, issues directions to the Parties as elaborated in **PART 4** of this Decision. In addition, the Commission imposes a financial penalty and directions on each of the Parties for their respective Infringement, as set out in **Table 35** and **Table 36**.

5. In this Decision, the following terms in Bahasa Malaysia as set out in the left column of **Table 1** below, wherever they appear in this Decision, shall bear the corresponding English translations as set out in the right column of the same **Table**.

**Table 1: English Translations to Bahasa Melayu Terms**

<b>BAHASA MELAYU TERM</b>	<b>ENGLISH TRANSLATION</b>
Alat Ganti Laris Untuk TDM	High Demand Spare Parts For TDM
Alat Ganti Laris Untuk TLDM	High Demand Spare Parts For TLDM
Alat Kebompaan / Alat Penyelamat / Pemadam Api	Fire Equipment / Rescue Equipment / Fire Extinguisher
Cat Semula	Repaint
Harga Masuk Tender	Tender Entry Price
Harga Senggaraan (Tanpa Alat Ganti)	Maintenance Price (Without Spare Parts)
Kos Pembaikan, Senggaraan dan Ujian	Repair, Maintenance and Testing Costs
Kos Seunit Alat Pemadam Api	Unit Cost of Fire Extinguisher
Nombor Kod Dokumen	Document Code Number
Nombor Siri	Serial Number
Panduan Perubahan Maklumat Perniagaan	Business Information Changes Guide
Pekeliling Perbendaharaan Malaysia PK 2.1	Malaysian Treasury Circular PK 2.1
Pemasangan	Installation
Senarai Alat Ganti Laris (Mandatori) Untuk Senggaraan APAK TD	List of High Demand Spare Parts (Mandatory) for APAK TD Maintenance
Peralatan Kawalan Api	Fire Control Equipment
Sijil Perolehan Kerajaan	Government Procurement Certificate
Sistem Pencegahan Kebakaran	Fire Prevention System
Surat Niat	Letter of Intent
Surat Setuju Terima	Letter of Acceptance
Tentera Darat Malaysia	Royal Malaysian Army
Tentera Laut Diraja Malaysia	Royal Malaysian Navy
Ujian Hidro statik	Hydrostatic test

## **PART 1: THE FACTS**

### **A. THE PARTIES**

6. Based on the evidence gathered, the Commission finds that the enterprises described in **paragraphs 7 to 39** below had engaged in agreements and /or concerted practices that infringed the section 4 prohibition of the Act, that is to say, to perform acts of bid rigging:

- (i) Agenda Eksklusif Sdn. Bhd.;
- (ii) Star Apax Enterprise;
- (iii) Nekad Waja Resources;
- (iv) Spectron Sdn. Bhd.;
- (v) Teknokrat Makmur Enterprise;
- (vi) Prospectrum Sdn. Bhd.; and
- (vii) NK Panorama Enterprise.

#### **A.1 AGENDA EKSKLUSIF SDN. BHD**

7. Agenda Eksklusif Sdn. Bhd. (576449–W)<sup>1</sup> (“Agenda Eksklusif”) is a local private limited company established on 9.4.2002. The company is engaged in works of supply and restoration for the Royal Malaysian Navy, Royal Malaysian Army, Royal Malaysian Air Force, Royal Malaysia Police, and Department of Fire and Rescue Services, providing services such as fire protection systems, marine engine parts and equipment, boats, and ships.<sup>2</sup> Its business address

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<sup>1</sup> Companies Commission of Malaysia search on Agenda Eksklusif dated 17.11.2023.

<sup>2</sup> Agenda Eksklusif. (n.d.) “Latar Belakang” Retrieved from <http://agendaeksklusif.com/bahasa/latar-belakang/>.



is No. 71, Persiaran 3/5, Seksyen 3, Pusat Bandar Seri Manjung, Seri Manjung, 32040 Perak.

8. The names of directors and shareholders of Agenda Eksklusif at the material time are as listed in **Table 2** below:

**Table 2:** List of Directors and Shareholders of Agenda Eksklusif

AGENDA EKSKLUSIF	
DIRECTOR	SHAREHOLDER
Dato' Rosdi bin Md Isah	Dato' Rosdi bin Md Isah (70%)
Datin Khairul Aqilah binti Shapiai	Datin Khairul Aqilah binti Shapiai (30%)

Dato' Rosdi bin Md Isah and Datin Khairul Aqilah binti Shapiai are husband and wife.<sup>3</sup>

9. The following Directors/employees of Agenda Eksklusif at the material time will be referred to in the Decision:
- (a) Dato' Rosdi Bin Md Isah ("Dato' Rosdi"), Managing Director and a shareholder;
  - (b) Shamill Shahril Bin Zulkapli ("Shamill"), Project Manager;
  - (c) Raja Nurnaim binti Raja Mahmud ("Raja Nurnaim"), Manager;
  - (d) Nur Ain binti Mohamed Nayan ("Nur Ain"), Marketing Clerk;
  - (e) Syazalina binti Mohamed Zawawi ("Syazalina"), employee; and
  - (f) Fetty Faidura binti Tajudin, ("Fetty"), Clerk.

<sup>3</sup> Written Representation of Agenda Eksklusif dated 29.3.2024, page 21; and Written Representation of Star Apax dated 29.3.2024, page 20.

## A.2 STAR APAX ENTERPRISE

10. Star Apax Enterprise (IP0186185-X)<sup>4</sup> (“Star Apax”) is a sole proprietorship business established on 15.11.2002 and is engaged in the supply of fire safety equipment, among others. The principal business address is Lot 35594 (PT 1814/PLOT 49), Kawasan Perindustrian Seri Manjung, 32040 Seri Manjung, Perak.
  
11. Dato’ Rosdi of Agenda Eksklusif established Star Apax in 2002.<sup>5</sup> From 2008 to 2012, Dato’ Rosdi ensured that Agenda Eksklusif and Star Apax participated in tenders where Agenda Eksklusif and Star Apax met the bid prerequisites set forth by the procuring agencies.<sup>6</sup> From 2008 to 2012, Dato’ Rosdi ensured that Agenda Eksklusif and Star Apax participated in tenders where Agenda Eksklusif and Star Apax met the bid prerequisites set forth by the procuring agencies.<sup>7</sup> Dato’ Rosdi, at various points of time, designated other persons to be the proprietor of Star Apax, namely, Mohd Zulkifli bin Othman, from May 2008 to June 2014, Mohd Nasrullah bin Mohd Yunus, from June 2014 to May 2015, and Zulhalfi bin Zainal Abadi (“Zulhalfi”), from June 2015 to December 2015. Each of these individuals assumed this role of “proprietor” during distinct timeframes. Dato’ Rosdi contended that the decision was made because he was

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<sup>4</sup> Companies Commission of Malaysia search on Star Apax dated 17.11.2023.

<sup>5</sup> Paragraph 1 of the Statement of Dato’ Rosdi recorded on 5.1.2022; and Paragraph 3 of the Companies Commission of Malaysia search on Agenda Eksklusif Sdn Bhd dated 17.11.2023.

<sup>6</sup> Paragraph 39 of the Statement of Dato’ Rosdi recorded on 5.1.2022.

<sup>7</sup> Paragraph 39 of the Statement of Dato’ Rosdi recorded on 5.1.2022.

physically unable to attend site visits and fulfil the responsibilities of a Star Apax owner in person.<sup>8</sup>

12. The Companies Commission of Malaysia's record ("SSM record")<sup>9</sup>, confirms the registration, and subsequent removal, dates of Mohd Zulkifli bin Othman, Mohd Nasrullah bin Mohd Yunus, Raja Nurnaim and Zulhalfi as the owners of Star Apax, as outlined below:

**Table 3:** Star Apax Ownership Registration and Removal Dates (2008-Present)<sup>10</sup>

NO	NAME	DATE OF REGISTRATION	DATE OF REMOVAL
1	Mohd Zulkifli bin Othman	7.5.2008	18.6.2014
2	Mohd Nasrullah bin Mohd Yunus	18.6.2014	20.5.2015
3	Raja Nurnaim binti Raja Mahmud	8.4.2015	23.6.2015
4	Zulhalfi bin Zainal Abadi	23.6.2015	11.12.2015
5	Raja Nurnaim binti Raja Mahmud	11.12.2015 to date	-

13. The aforementioned individuals listed in row 1 until 4 relinquished their roles as proprietors of Star Apax due to their departure from Star Apax.<sup>11</sup> Since 11.12.2015, Raja Nurnaim, an employee of Agenda Eksklusif, has been recorded as the proprietor of Star Apax.<sup>12</sup>

<sup>8</sup> Paragraph 4 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>9</sup> Companies Commission of Malaysia search on Star Apax dated 17.11.2023.

<sup>10</sup> Companies Commission of Malaysia search on Star Apax dated 17.11.2023.

<sup>11</sup> Paragraph 4 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>12</sup> Companies Commission of Malaysia search on Star Apax dated 17.11.2023; *Penyata Caruman bulan 7/2016* Agenda Eksklusif; and *Penyata Caruman bulan 10/2020* Agenda Eksklusif.

14. A company registration search and inquiry conducted by the Commission revealed that Dato' Rosdi from Agenda Eksklusif had intermittently registered and subsequently withdrawn his name as the proprietor, of Star Apax. This is evident from the following **Table 4**:

**Table 4:** Dato' Rosdi's Ownership Registration and Removal Dates (2002-2020)<sup>13</sup>

REGISTRATION	REMOVAL
15.11.2002	25.8.2008
25.6.2012	8.4.2015
25.4.2016	6.3.2017
19.6.2017	5.7.2017
1.8.2018	3.9.2020

15. Dato' Rosdi of Agenda Eksklusif informed the Commission about his decision to relinquish his designation as the proprietor of Star Apax. He stated that he took this action to obtain a G2 licence from the Construction Industry Development Board ("CIDB") on behalf of Agenda Eksklusif. Dato' Rosdi explained that it was necessary to give up his ownership of Star Apax because it was prohibited for an individual to possess ownership in two entities with identical Government Employment Certificate (*Sijil Perolehan Kerja Kerajaan*) and CIDB licence.<sup>14</sup>
16. Building upon the discussion in **paragraphs 11 to 15**, the Commission observes that, notwithstanding several instances wherein two individuals were simultaneously registered as

<sup>13</sup> Companies Commission of Malaysia search on Star Apax dated 17.11.2023.

<sup>14</sup> Paragraph 1 of the Statement of Dato' Rosdi recorded on 24.11.2021; Paragraph 6 of the Statement of Dato' Rosdi recorded on 5.1.2022; and *Keperluan Prosedur Pendaftaran Kontraktor & Manual Pengguna, Versi 02* (04 Jan 2018).

proprietors of Star Apax, the SSM record still classified Star Apax's business ownership as a sole proprietorship instead of as a partnership.

17. According to the Companies Commission of Malaysia ("Companies Commission") the difference between sole proprietorship and partnership in the categorisation of business ownership is determined by the number of registered proprietors at the particular point of time in question.<sup>15</sup>
  
18. According to the Business Information Changes Update Guide (*Panduan Perubahan Maklumat Perniagaan*) dated 26.2.2021, provided by the Companies Commission, if a sole proprietorship has multiple registered proprietors, it will be automatically classified as a partnership.<sup>16</sup> On the other hand, a partnership featuring only a single registered proprietor will be designated as a sole proprietorship.<sup>17</sup> The Companies Commission provided the following information regarding Star Apax's business ownership and proprietors since its inception:

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<sup>15</sup> Paragraphs 6,7 and 8 of the Statement of Murnilawati recorded on 3.3.2023 and paragraphs 9.2 until 9.4, *Panduan Perubahan Maklumat Perniagaan* 26.2.2021. See section 2 of the Companies Commission of Malaysia Act 2001 [614] which defined "business entity" in the case of the Registration of Businesses Act 1956 [Act 197], as any sole proprietorship or partnership; in section 2 of the Businesses Act 1956 [Act 197], "associate of a business" includes any person who is in law the owner or a joint owner or part owner of any business and every person who is a partner in any business which is the property of a partnership; and see the definition of "partnership" in section 3 of the Partnership Act 1961 (Revised 1974) (Act 135).

<sup>16</sup> Paragraphs 6 until 8 of the Statement of Murnilawati recorded on 3.3.2023 and paragraphs 9.2 until 9.4, *Panduan Perubahan Maklumat Perniagaan* 26.2.2021. See the definition of 'partnership' in section 3 of the Partnership Act 1961 (Revised 1974) (Act 135).

<sup>17</sup> Paragraphs 6 until 8 of the Statement of Murnilawati recorded on 3.3.2023; and Paragraphs 9.2 until 9.4, *Panduan Perubahan Maklumat Perniagaan* 26.2.2021.

**Table 5:** Star Apax Business Ownership Changes (15.11.2002 - 26.8.2022)<sup>18</sup>

DATE	PROPRIETOR/OWNER	TYPE OF BUSINESS OWNERSHIP
15.11.2002 - 7.5.2008	Dato' Rosdi Bin Md Isah	Sole Proprietorship
7.5.2008 - 28.5.2008	Dato' Rosdi Bin Md Isah Mohd Zulkifli bin Othman	Partnership
28.5.2008 - 25.6.2012	Mohd Zulkifli bin Othman	Sole Proprietorship
25.6.2012 - 18.6.2014	Dato' Rosdi Bin Md Isah Mohd Zulkifli bin Othman	Partnership
18.6.2014 - 8.4.2015	Dato' Rosdi Bin Md Isah Mohd Nasrullah bin Mohd Yunus	Partnership
8.4.2015 - 20.5.2015	Mohd Nasrullah bin Mohd Yunus Raja Nurnaim binti Raja Mahmud	Partnership
20.5.2015 - 23.6.2015	Raja Nurnaim binti Raja Mahmud	Sole Proprietorship
23.6.2015 - 11.12.2015	Zulhafi bin Zainal Abadi	Sole Proprietorship
11.12.2015 - 25.4.2016	Raja Nurnaim binti Raja Mahmud	Sole Proprietorship
25.4.2016 - 6.3.2017	Dato' Rosdi Bin Md Isah Raja Nurnaim binti Raja Mahmud	Partnership
6.3.2017 - 19.6.2017	Raja Nurnaim binti Raja Mahmud	Sole Proprietorship
19.6.2017 - 5.7.2017	Dato' Rosdi Bin Md Isah Raja Nurnaim binti Raja Mahmud	Partnership
5.7.2017 - 1.8.2018	Raja Nurnaim binti Raja Mahmud	Sole Proprietorship
1.8.2018 - 3.9.2020	Dato' Rosdi Bin Md Isah Raja Nurnaim binti Raja Mahmud	Partnership
3.9.2020 - 26.8.2022	Raja Nurnaim binti Raja Mahmud	Sole Proprietorship

<sup>18</sup> Paragraph 12 of the Statement of Murnilawati recorded on 3.3.2023; and Companies Commission of Malaysia search on Star Apax dated 17.11.2023.

19. According to the information presented in **Table 5**, the Commission notes that within the pertinent investigation time frames from 25.4.2016 to 6.3.2017 and from 1.8.2018 to 3.9.2020, Star Apex functioned as a partnership involving Dato' Rosdi of Agenda Eksklusif and Raja Nurnaim, as stated in the subsequent **Table 6**:

**Table 6:** List of owners and business ownership of Star Apex

DATE	NAME OF REGISTERED PROPRIETOR	BUSINESS OWNERSHIP	TENDER OPENING & CLOSING DATES
25.4.2016 - 6.3.2017	Dato' Rosdi Bin Md Isah Raja Nurnaim binti Raja Mahmud	Partnership	<b><u>Tender APAK 2016:</u></b> 22.11.2016 - 13.12.2016 <b><u>Tender ELSA 2016:</u></b> 14.10.2016 - 8.11.2016
1.8.2018 - 3.9.2020	Dato' Rosdi Bin Md Isah Raja Nurnaim binti Raja Mahmud	Partnership	<b><u>Tender APAK 2020:</u></b> 7.3.2020 - 30.4.2020 <b><u>Tender ELSA 2020:</u></b> 13.3.2020 - 4.6.2020

20. The following owner/employee of Star Apex at the material time will be referred to in the Decision:
- (a) Raja Nurnaim, as owner; and
  - (b) Zulhalfi, as Marketing Executive/Manager.

### A.3 NEKAD WAJA RESOURCES

21. Nekad Waja Resources (IP0440001-V)<sup>19</sup> ("Nekad Waja") is a partnership business owned by Shamill Shahril Bin Zulkapli ("Shamill") and Zuraidah binti Husin. During the periods of

<sup>19</sup> Companies Commission of Malaysia search on Nekad Waja dated 17.11.2023.

infringements, Nekad Waja was run as a sole proprietorship under Shamill.

22. The business was established on 12.10.2015. Nekad Waja is engaged in supplying fire safety equipment, among others. The principal business address of Nekad Waja is at No.81, Lorong 6, Taman Manjung Baru, 32040, Seri Manjung, Perak.
23. It is imperative to note that Shamill of Nekad Waja is also a Project Manager of Agenda Eksklusif.<sup>20</sup> According to Dato' Rosdi, although Shamill is not an employee of Star Apax, nonetheless, he, from time to time, did carry out works for Star Apax whenever Dato' Rosdi requested the latter to do so. Dato' Rosdi informed the Commission that Agenda Eksklusif remunerates Shamill for the works carried out for Agenda Eksklusif and Star Apax, concerning all tenders granted to these enterprises.<sup>21</sup>
24. To recapitulate, there appears to be a structural interconnection between Dato' Rosdi of Agenda Eksklusif, Raja Nurnaim of Star Apax/Agenda Eksklusif, and Shamill of Nekad Waja/Agenda Eksklusif in relation to these entities. Notably, both Raja Nurnaim and Shamill, who are employees of Agenda Eksklusif, possess ownership interests in different enterprises. Raja Nurnaim is the owner of Star Apax, while Shamill is the proprietor of Nekad Waja, as explained below:

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<sup>20</sup> Paragraph 2 of the Statement of Shamill recorded on 15.11.2022; *Penyata Caruman Bulan 7/2016* Agenda Eksklusif; and *Penyata Caruman Bulan 10/2020* Agenda Eksklusif.

<sup>21</sup> Paragraph 6 of the Statement of Dato' Rosdi recorded on 24.11.2021; and *Informasi Komisen Agenda Eksklusif kepada Shamill (2016-2020)*.



**Table 7:** Relationship between Dato' Rosdi, Raja Nurnaim and Shamill within Agenda Eksklusif, Star Apax and Nekad Waja

	<b>AGENDA EKSKLUSIF</b>	<b>STAR APAX</b>	<b>NEKAD WAJA</b>
Dato' Rosdi Bin Md Isah	Managing Director, majority shareholder	Founder, Sole proprietor/Partner <sup>22</sup>	-
Raja Nurnaim binti Raja Mahmud	Manager	Sole proprietor/Partner	-
Shamill Shahril Bin Zulkapli	Project Manager	-	Sole proprietor

25. Shamill and Zuraidah binti Husin, partners of Nekad Waja are referred to in this Decision.<sup>23</sup>

#### **A.4 SPECTRON SDN. BHD.**

26. Spectron Sdn. Bhd. (70255-A)<sup>24</sup> ("Spectron") is a private limited company established on 5.5.1981. Spectron is engaged in the supply, installation, servicing and maintenance of industrial welding, gas detecting and safety equipment for government bodies. Its current business address is No. 1-19, Prima Avenue 2, Jalan Kenari 13C, Bandar Puchong Jaya, 47170 Puchong, Selangor.
27. The list of directors and shareholders of Spectron at the material time are described in **Table 8** below:

<sup>22</sup> Note: Refer to Table 4 above for the dates Dato' Rosdi had registered and removed his name from Star Apax's Companies Commission registration.

<sup>23</sup> Companies Commission of Malaysia search on Nekad Waja dated 17.11.2023.

<sup>24</sup> Companies Commission of Malaysia search on Spectron dated 17.11.2023.

**Table 8:** List of Directors and Shareholders of Spectron

<b>SPECTRON</b>	
<b>DIRECTOR</b>	<b>SHAREHOLDER</b>
Ong Sue Bune	Ong Sue Bune (39%)
Muzalifah binti Md Badar	Muzalifah binti Md Badar (39%)
Nor Aimah binti Md Badar	Giam Ah Lee @ Ngeam Chong Lee (21%)

28. The following Directors/Shareholders of Spectron will be referred to in the Decision:
- (a) Muzalifah binti Md Badar, (“Muzalifah”), Director; and
  - (b) Ong Sue Bune, Director;

#### **A.5 TEKNOKRAT MAKMUR ENTERPRISE**

29. Teknokrat Makmur Enterprise (IP0206750-V)<sup>25</sup> (“Teknokrat”) is a sole proprietorship business owned by A Manan Bin Muhammed. The business was established on 8.4.2004 and is engaged in supplying fire prevention systems, as well as providing maintenance and repair services for safety equipment, firefighting gear, and fire extinguishers.
30. The principal business address of Teknokrat is at No. 41, Persiaran PM 3/3, Seksyen 3, Pusat Bandar Seri Manjung, 32040 Seri Manjung, Perak.

<sup>25</sup> Companies Commission of Malaysia search on Teknokrat dated 17.11.2023.

31. Sole proprietor, A Manan Bin Muhammed (“Manan”), is referred to in this Decision.

#### A.6 PROSPECTRUM SDN. BHD.

32. Prospectrum Sdn. Bhd. (553316-X)<sup>26</sup> (“Prospectrum”), is a private limited company established on 14.7.2001. Prospectrum is engaged in the business of supplying and servicing firefighting and marine equipment, as well as construction works. Its principal business address is No. 19 Persiaran 3/3, Seksyen 3, Pusat Bandar Seri Manjung, Seri Manjung, 32040 Perak.
33. The list of directors and shareholders of Prospectrum at the material time are described in **Table 9** below:

**Table 9:** List of Directors and Shareholders of Prospectrum

PROSPECTRUM	
DIRECTOR	SHAREHOLDER
Kamaliah Binti Ahmad	Kamaliah Binti Ahmad (42.5%)
Noradzmi Bin Nayan	Noradzmi Bin Nayan (57.5%)

34. The following Directors/Shareholders of Prospectrum will be referred to in the Decision:
- (a) Noradzmi Bin Nayan (“Noradzmi”), Director; and
  - (b) Kamaliah Binti Ahmad, Director.

<sup>26</sup> Companies Commission of Malaysia search on Prospectrum dated 17.11.2023.

## A.7 NK PANORAMA ENTERPRISE

35. NK Panorama Enterprise (IP0189407-H)<sup>27</sup> (“NK Panorama”) is a sole proprietorship business owned by Nurfarah Liyana Binti Noradzmi (“Nurfarah Liyana”). The business is primarily engaged in the supply of fire prevention equipment, among other products and services.
36. The business address of NK Panorama is No. 19, Persiaran 3/3, Seksyen 3, Pusat Bandar Seri Manjung, Seri Manjung, 32040 Perak.
37. It is significant to note that Nurfarah Liyana, the proprietor of NK Panorama, shares a close familial relationship with Noradzmi from Prospectrum, they are father and daughter.
38. Nurfarah Liyana has informed the Commission that she holds decision-making authority for NK Panorama. Despite this, she has admitted to seeking advice from her father, Noradzmi, on matters pertaining to business.<sup>28</sup> Noradzmi has affirmed his position as an advisor to NK Panorama.<sup>29</sup> Notably, both NK Panorama and Prospectrum also share a mutual business address.<sup>30</sup>
39. Nurfarah Liyana, the proprietor of NK Panorama, will be referred to in the Decision.

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<sup>27</sup> Companies Commission of Malaysia search on NK Panorama dated 17.11.2023.

<sup>28</sup> Paragraphs 30, 39 and 42 of the Statement of Nurfarah Liyana recorded on 17.11.2023.

<sup>29</sup> Paragraph 23 of the Statement of Noradzmi recorded on 17.11.2023.

<sup>30</sup> Companies Commission of Malaysia search on Prospectrum dated 17.11.2023; and Companies Commission of Malaysia search on NK Panorama dated 17.11.2023.

## B. BUSINESS AND INDUSTRY LANDSCAPE

40. The Ministry of Defence (“MINDEF”) is responsible for the management of the Malaysian Armed Forces. The Procurement Division of MINDEF bears the responsibility of formulating, managing, and overseeing procurement activities for MINDEF. These activities involve the execution of tender procedures for goods, services, and projects valued at more than RM500,000.00.<sup>31</sup>

## C. THE RELEVANT PROJECTS

41. Presented in **Table 10** below the details pertaining to the infringements identified by the Commission and which shall be elaborated in this Decision. This table outlines the relevant tender projects, the tender projects field codes, the advertisement tender dates, the bidding enterprises, the infringing Parties and the successful bidder of each project.

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<sup>31</sup> Paragraph 5 of the Statement of Mejar Khairul Iskandar recorded on 21.4.2022.

**Table 10:** Details of the Relevant Tender Projects

NO.	TENDER NAME	FIELD CODE	ADVERTISEMENT DATE	NUMBER OF BIDDERS	INFRINGING PARTIES	SUCCESSFUL BIDDER
1.	<b>KP/PERO1D/T218/2016/OE</b>  Perkhidmatan Senggaraan dan Pembekalan Alat Ganti <i>Emergency Life Support Apparatus, Air Breathing Apparatus, Breathing Air Compressor dan Anti Gas Respirator Mask</i> untuk TLDM bagi Tempoh 3 tahun.  <b>(“Tender ELSA 2016”)</b>	120601 120602 220401	14.10.2016	7 bidders:  1. Agenda Eksklusif 2. Nekad Waja 3. Star Apax 4. Destini Prima Sdn. Bhd. 5. Ocean Success (Malaysia) Sdn. Bhd. 6. Prospectrum 7. Spectron Services Sdn. Bhd.	<b>1. Agenda Eksklusif</b> <b>2. Nekad Waja</b> <b>3. Star Apax</b>	<b>Agenda Eksklusif</b>
2.	<b>KP/PERO1D/T228/2016/OE</b>  Perkhidmatan Senggaraan Pengisian Semula, Bekalan dan Pemasangan Alat Ganti Pemadam Api Kecil (APAK) untuk Tentera Darat dan Tentera Laut DiRaja Malaysia bagi Tempoh 3 tahun.	120601 120602 220401	22.11.2016	9 bidders:  1. Agenda Eksklusif 2. Nekad Waja 3. Star Apax 4. NK Panorama 5. Ocean Success (Malaysia) Sdn. Bhd.	<b>1. Agenda Eksklusif</b> <b>2. Nekad Waja</b> <b>3. Star Apax</b> <b>4. NK Panorama</b> <b>5. Prospectrum</b> <b>6. Teknokrat</b>	<b>Star Apax</b>

NO.	TENDER NAME	FIELD CODE	ADVERTISEMENT DATE	NUMBER OF BIDDERS	INFRINGING PARTIES	SUCCESSFUL BIDDER
	<i>("Tender APAK 2016")</i>			6. Prospectrum 7. Qismu Wira Sdn. Bhd. 8. Spectron Services Sdn. Bhd. 9. Teknokrat		
3.	<b>KP/PERO1D/T024/2019/OE</b>  Perkhidmatan Senggaraan Pengisian Semula, Bekalan dan Pemasangan Alat Ganti Pemadam Api Kecil untuk Tentera Darat dan Tentera Laut DiRaja Malaysia bagi Tempoh 3 tahun.  <i>("Tender APAK 2020")</i>	120601 120602 220401	7.3.2020	11 bidders:  1. Agenda Eksklusif 2. Nekad Waja 3. Star Apax 4. Muse Enterprise 5. Tegas Gemilang Enterprise 6. Seraya Anggerik Enterprise 7. Spectron 8. Aftech Engineering & Supplies	<b>1. Agenda Eksklusif</b>  <b>2. Nekad Waja</b>  <b>3. Star Apax</b>  <b>4. Spectron</b>	<b>Spectron</b>

NO.	TENDER NAME	FIELD CODE	ADVERTISEMENT DATE	NUMBER OF BIDDERS	INFRINGING PARTIES	SUCCESSFUL BIDDER
				9. Kulim Safety Training & Services 10. RAF Engineering Sdn. Bhd 11. Prospectrum		
4.	<b>KP/PERO1D/T311/2019/OE</b>  Perkhidmatan Senggaraan dan Pembekalan Alat Ganti <i>Air Breathing Apparatus (ABA)</i> , <i>Emergency Life Support Apparatus (ELSA)</i> , <i>Breathing Air Compressor (BAC)</i> dan <i>Anti Gas Respirator Mask (AGRM)</i> untuk Tentera Laut DiRaja Malaysia bagi Tempoh 3 tahun.  <b>(“Tender ELSA 2020”)</b>	120601 120602 220401	13.3.2020	7 bidders: 1. Agenda Eksklusif 2. Nekad Waja 3. Star Apax 4. Ocean Success (Malaysia) Sdn. Bhd. 5. Prospectrum 6. Spectron 7. Aura Efektif Sdn. Bhd.	<b>1. Agenda Eksklusif</b> <b>2. Nekad Waja</b> <b>3. Star Apax</b> <b>4. Spectron</b>	<b>Agenda Eksklusif</b>



42. Tender advertisements would include a designated field code that entities can use to evaluate their eligibility for participation. The **Table 11** below outlines the relevant field codes applicable to all procurements, in this case, are set out in:

**Table 11:** Relevant Field Codes

FIELD CODE	WORKS SPECIFICATION
120601	Sistem Pencegahan Kebakaran
120602	Peralatan Kawalan Api
220401	Alat Kebompaan / Alat Penyelamat / Pemadam Api

#### **D. INVESTIGATIONS PROCEDURES AND PROCESS**

43. On 16.3.2017, the Commission received a letter dated 7.2.2017, addressed to the Secretary of the Government Procurement Division, Ministry of Finance Malaysia (“MOF”). The complaint raised allegations that Agenda Eksklusif and Star Apax had attempted to manipulate the MOF registration certificate, which is a mandatory document for tender submissions, with the intent of enabling both entities to meet the eligibility criteria for submitting bids in connection with Tender ELSA 2016. The Commission, in its assessment, identified several red flags indicating bid rigging arrangements between the bidders in the said tender.
44. On 5.3.2019, the Commission commenced a formal investigation centred on Tender APAK 2016 and Tender ELSA 2016, and involving Agenda Eksklusif, Star Apax, and Nekad Waja. Nevertheless, as the investigation advanced, the Commission identified grounds to suspect multiple agreements:

- (i) An agreement involving Agenda Eksklusif and Star Apax with the object to perform bid rigging for the following projects: APAK 2016, ELSA 2016, APAK 2020 and ELSA 2020.
  - (ii) An agreement involving Agenda Eksklusif and Nekad Waja, with the object to perform bid rigging for the following projects: APAK 2016, ELSA 2016, APAK 2020 and ELSA 2020.
  - (iii) An agreement involving Agenda Eksklusif and Teknokrat, with the object to perform bid rigging for APAK 2016 project.
  - (iv) An agreement between Spectron and Agenda Eksklusif, with the object to perform bid rigging for the following projects: APAK 2020 and ELSA 2020.
  - (v) An agreement between NK Panorama and Prospectrum, with the object to perform bid rigging for APAK 2016 project.
45. Throughout the course of the investigation, the Commission issued a total of 51 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 responses to inquiries made by the Commission's officers.
46. Pursuant to section 18 of the Act, the Commission conducted interviews with the following parties:

**Table 12:** Interviews of Parties by the Commission

NAME	ENTITY/AGENCY	DESIGNATION	DATE OF INTERVIEW
Dato' Rosdi Bin Md Isah	Agenda Eksklusif	Managing	25.03.2021
		Director	24.11.2021
		Shareholder	05.01.2022
	Star Apax	Partner	27.7.2022

NAME	ENTITY/AGENCY	DESIGNATION	DATE OF INTERVIEW
			08.11.2022
Shamill Shahril Bin Zulkapli	Agenda Eksklusif	Project Manager	25.03.2021 24.11.2021
	Nekad Waja	Sole proprietor	15.11.2022
Raja Nurnaim binti Raja Mahmud	Agenda Eksklusif	Manager	25.03.2021 24.11.2021
	Star Apax	Partner	05.01.2022
Nur Ain binti Mohamed Nayan	Agenda Eksklusif	Marketing Clerk	24.03.2021 23.11.2021
Fetty Faidura binti Tajudin	Agenda Eksklusif	Clerk	24.03.2021 23.11.2021
Auni Ismah binti Ahmad Jamlkhair	Agenda Eksklusif	Administration Clerk	24.03.2021 23.11.2021 25.11.2021
Nurizzati binti Shaudin	Amen Enterprise	Administration Clerk	24.03.2021
Murnilawati binti Mustapha	Companies Commission of Malaysia	Executive	03.03.2023
Nurfarah Liyana Binti Noradzmi	NK Panorama	Sole Proprietor	07.12.2022
Muzalifah binti Md Badar	Spectron	Director Shareholder	03.05.2021
Nor Aimah binti Md Badar	Spectron	Director Shareholder	19.01.2022
Ong Sue Bune	Spectron	Director	19.01.2022 10.11.2022
Zulhafi bin Zainal Abadi	Star Apax	Former Marketing Executive and Manager	07.02.2022
A Manan Bin Muhammed	Teknokrat	Sole proprietor	16.11.2022
Noradzmi Bin Nayan	Prospectrum	Director Shareholder	07.12.2022
Karpakam a/p Marimuthu	Prospectrum	Administration Clerk	06.12.2022 08.12.2022

NAME	ENTITY/AGENCY	DESIGNATION	DATE OF INTERVIEW
Mejar Khairul Iskandar bin Kamnoorizahar	Ministry of Defense Malaysia	Officer of Procurement Unit, Department of Procurement	21.04.2022 02.11.2022

47. Pursuant to section 25 of the Act, the Commission executed four search and seizure operations under warrant at four premises, as set out in **Table 13** below:

**Table 13:** Summary of Search and Seizure Exercises Executed

NO	MAGISTRATES' COURT	NAME AND ADDRESS OF PREMISES	WARRANT NUMBER	DATE OF WARRANT	SEARCH AND SEIZURE DATE
1.	Seri Manjung	Agenda Eksklusif No. 71 & 71A (Tingkat Bawah dan Atas), Persiaran 3/5, Seksyen 3, Pusat Bandar Seri Manjung, 32040 Seri Manjung, Perak.	30580	23.3.2021	24.3.2021
2.	Seri Manjung	Nekad Waja No. 79 & 79A (Tingkat Bawah dan Atas), Persiaran 3/5, Seksyen 3, Pusat Bandar Seri	30581	23.3.2021	24.3.2021

NO	MAGISTRATES' COURT	NAME AND ADDRESS OF PREMISES	WARRANT NUMBER	DATE OF WARRANT	SEARCH AND SEIZURE DATE
		Manjung, 32040 Seri Manjung, Perak.			
3.	Seri Manjung	Star Apax No. 132 (Tingkat 2), Persiaran Venice Raya 1, Desa Manjung Raya, 32200 Lumut, Perak.	30582	23.3.2021	24.3.2021
4.	Seri Manjung	Prospectrum No. 19 & 19A (Tingkat bawah dan atas), Persiaran PM3/3, Seksyen 3, Pusat Bandar Seri Manjung, 32040 Seri Manjung, Perak	35314	5.12.2022	6.12.2022

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48. On 19.12.2023 the Commission served the proposed Decision dated 11.12.2023 to the Parties. From 10.1.2023 to 16.2.2024, the documents in the Commission's file were made available to the Parties for inspection. All the Parties except NK Panorama and Prospectrum, inspected the Commission's file. NK Panorama and Prospectrum had informed the Commission that they did not require access to the Commission's file.<sup>32</sup>
49. By 29.3.2024, all the Parties submitted their respective written representations to the Commission.
50. On 27.3.2024, Prospectrum informed the Commission that they did not require oral representation and would rely on their written representation. NK Panorama made the same request to the Commission on 1.4.2024. All the other remaining five Parties requested for oral representation.
51. Pursuant to section 37 of the Act, oral representations were conducted by Agenda Eksklusif, Star Apax, Nekad Waja, Spectron and Teknokrat, and were completed by 29.4.2024.<sup>33</sup>

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<sup>32</sup> Prospectrum letter dated 27.3.2024; and NK Panorama email dated 1.4.2024.

<sup>33</sup> Oral Representation Transcript dated 29.4.2024, page 3.

## PART 2: LEGAL AND ECONOMIC ASSESSMENT

52. This section begins by setting out the legal and economic framework upon which the Commission grounds its assessment of the evidence obtained in this case. Subsequently, it delineates the evidence pertaining to the horizontal agreements and/or concerted practices with the object to perform bid rigging, as relied upon by the Commission. Following that, it undertakes an analysis of the evidence and articulates the inferences, findings, and conclusions drawn by the Commission.

### A. AGREEMENTS AND CONCERTED PRACTICES

53. In section 2 of the Act, “agreement” is comprehensively defined and includes concerted practices. In accordance with section 2 of the Act, concerted practices include conduct concerning any form of direct or indirect contact or communication between enterprises.<sup>34</sup> Direct contact or communication may include strategic and commercially sensitive information-sharing. A concerted practice exists, even if the enterprise does not enter into a formal written agreement.<sup>35</sup> Further, it is not necessary to characterise an infringement as either an agreement or a concerted practice; it is sufficient that the conduct in question amounts to one or the other.<sup>36</sup>

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<sup>34</sup> Case 48/69 *Imperial Chemical Industries Ltd v European Commission* [1972] ECR 619, at paragraph 68, at paragraphs 65 to 68; *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206; and 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 to 45.

<sup>35</sup> *Design, Construction, and Fit-out Services* (Case 50481), at paragraphs 5.64 to 5.74.

<sup>36</sup> CCS 500/001/09 *Collusive Tendering (Bid-Rigging) in Electrical and Building Works*, at paragraphs 45 to 47.

54. The prohibition outlined in section 4 of the Act applies to all forms of agreements, irrespective of their legal enforceability, either in written or oral form. Moreover, an agreement can be inferred from the conduct and actions of the involved Parties. It is of significance to emphasise that even if an enterprise fails to adhere to the agreement's terms, the purported anti-competitive agreement remains within the purview of the section 4 prohibition.
55. Further, the participation in the agreement does not depend on the level of involvement a party has in the said agreement. This means that even if a party is not fully committed to implementing the agreement, the said party can still be held liable.<sup>37</sup> In addition, their participation under pressure from other parties also do not exclude them from being a party to the agreement.<sup>38</sup>

**B. SECTION 4(2)(d) OF THE ACT – HORIZONTAL AGREEMENT WITH THE OBJECT TO PERFORM BID RIGGING**

56. Section 4(2)(d) of the Act prohibits horizontal agreements and/or concerted practices with the object to perform bid rigging. Bid rigging entails a collusive agreement amongst bidders that significantly prevents, restricts or distorts competition in a tendering process.<sup>39</sup>
57. A competitive tendering process relies on independently and separately formulated bids from the tenderer, ensuring structured

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<sup>37</sup> Case C-291/98 P *Sarrio v Commission* [2000] ECR I-9991, at paragraph 50.

<sup>38</sup> Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 90; and CA98/02/2009 *Bid Rigging in the Construction Industry in England*, at page 350.

<sup>39</sup> MyCC Handbook, Help Us Detect Bid Rigging, at page 2.



competition and promoting transparency and efficiency.<sup>40</sup> However, if tenders are influenced by knowledge of other participants' bids or as a result of collusion, it disrupts the competitive nature of the tendering process, leading to abnormal market conditions.<sup>41</sup> Bid rigging, which gives the procurer the false and misleading impression that the bids received are competition is especially detrimental in public procurement. It wastes resources for buyers and taxpayers, diminishes public confidence in the competitive process, and undermines the benefits of a competitive market.<sup>42</sup>

58. The conduct of bid rigging can occur by multiple *modus operandi*. In the case of *England and Scotland Roofing*, the Office of Fair Trade (“OFT”) (currently known as Competition and Markets Authority or CMA) outlined four types of bid rigging: cover bidding or cover pricing, bid suppression, bid rotation, and market division.<sup>43</sup>
59. In *Carglass*<sup>44</sup>, the European Commission (“EC”), identified an infringement by cartel participants who engaged in the practice of “covering each other”. This was committed by either not submitting

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<sup>40</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1; *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208, 209 and 248 to 251; CA98/02/2009 Bid rigging in the Construction Industry in England, at paragraph III.71; Case 50697 Competition Act 1998 Supply of demolition and related services, paragraph 3.29 and *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11, at paragraphs 13 and 15.

<sup>41</sup> *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209; CA98/02/2009 Bid rigging in the Construction Industry in England, at paragraphs III.92 to II.98; and Case 50697 Competition Act 1998 Supply of demolition and related services, at paragraph 3.22.

<sup>42</sup> MyCC Handbook, Help Us Detect Bid Rigging, at page 2; and *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1.

<sup>43</sup> CA 98/01/2005 *Collusive Tendering for Mastic Asphalt Flat-Roofing and Car Park Surfacing Contracts Scotland*, at paragraph 41.

<sup>44</sup> Case COMP/39125 *Carglass*, at paragraph 103.

any quotes or by quoting higher prices than the agreed-upon winner.<sup>45</sup> These actions, among others, collectively constituted a “complex of infringements” that exhibits all the characteristics of an agreement.<sup>46</sup>

60. In another case, *International Removal Services*<sup>47</sup>, the EC ascertained that the enterprises had collaborated in the submission of cover quotes. The EC held that the act of submitting cover quotes, among other factors, created a deceptive illusion of choice for the customer. As a result, all received prices were intentionally inflated, even surpassing the amount proposed by the entities considered the “lowest bidder”.<sup>48</sup>

### *Information Sharing*

61. In addition, 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. A single meeting or isolated exchange of information is sufficient to prove concerted practices.<sup>49</sup>

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<sup>45</sup> Case COMP/39125 *Carglass*, at paragraph 103.

<sup>46</sup> Case COMP/39125 *Carglass*, at paragraph 496; Case 50481 *Design, Construction, and Fit-out Services*, at paragraphs 5.86 to 5.91; and *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11, at paragraphs 14, 15, 103 and 104.

<sup>47</sup> Case COMP/38.543 – *International Removal Services*, at paragraphs 359 to 370.

<sup>48</sup> Case COMP/38.543 – *International Removal Services*, at paragraphs 359 to 370; and (Joined Cases T-208/08 and T-209/08) *Gosselin Group and Stichting Administratiekantoor Portielje v Commission*, at paragraph 67.

<sup>49</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 September 2009, at pages 350 to 353.

62. In established United Kingdom and European Union case law, agreements and/or concerted practices involving the sharing of pricing or other commercially significant information among competitors have been recognized as anti-competitive by object.<sup>50</sup> 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>51</sup>
63. Information exchanges can create mutually consistent expectations regarding the uncertainties present in the market. On that basis, enterprises can then reach a common understanding on the terms of coordination of their competitive behaviour, even without a formal written agreement on coordination.<sup>52</sup>
64. The *Construction Industry* identified cover bids in the tendering process as an example of the anti-competitive exchange of pricing information.<sup>53</sup> This encompassed disclosing intended bids or elements of the initial or provisional price tendered during the tender process before final bids. Moreover, the disclosure to a competitor of whether they intend to participate in the tendering process, even without the exchange of pricing information, can have an anti-

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<sup>50</sup> Case 50481 *Design, Construction, and Fit-out Services*, at paragraphs 5.93.

<sup>51</sup> CA98/02/2009 *Bid rigging in the Construction Industry in England*, at paragraphs III.92 to II.98; *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, at paragraphs 248 to 251; 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>52</sup> Section 2 of the Act; and CA98/02/2009 *Bid rigging in the Construction Industry in England*, at pages 349 and 350.

<sup>53</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.125.

competitive object or effect, significantly reducing uncertainty for the competitor in the market.<sup>54</sup>

*Object of Significantly Preventing, Restricting or Distorting Competition*

65. In the present case, the Commission makes an objective assessment of the agreements and/or concerted practices with the object to perform bid rigging, irrespective of the parties' subjective intentions. Further, the Commission relies on the sharing of sensitive commercial information, like bidding prices, to prove collusion and concerted practices.
66. Due to the harmful effects of bid rigging, under section 4(2)(d) of the Act, it is explicitly stated that horizontal agreement(s) between enterprises which has the “object” to perform bid rigging is deemed to have the “object” of significantly preventing, restricting, or distorting competition in any market for goods or service.
67. The Competition Appeal Tribunal (“CAT”) in *Apex Asphalt* explained that submitting an anti-competitive cover bid restricts competition by reducing the number of competitive bids for that particular tender, depriving the procurer of the opportunity to seek competitive replacement bids, preventing other contractors from offering competitive bids for that tender, and giving the procurer a false impression of the market's competitive nature, potentially leading to future tender processes being similarly impaired.<sup>55</sup>

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<sup>54</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.126.

<sup>55</sup> *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 250 to 253.

68. In *Design, Construction, and Fit-out Services*<sup>56</sup>, CMA (UK) has determined that agreements and/or concerted practices to submit cover bids to potential customers seeking competitive bids demonstrate sufficient harm to competition. As such, there is no requirement to examine their specific effects further. Due to their inherent nature, these practices are detrimental to the effective functioning of fair competition.
69. The presentation of the bids by the Parties had created a misleading perception for the procuring entity, namely, MINDEF, who unknowingly believed that the Parties were genuine bidders engaging in competitive bid submissions. The Commission observes that the Parties' collusion in preparing the bids to MINDEF created a false impression of the market's competitive nature and consequently deprived MINDEF of the benefit of the tendering process to attain optimal value and pricing for its procurement. The agreements and/or concerted practices to exchange sensitive commercial information had the object to perform an act of bid rigging and therefore the object of significantly preventing, restricting, or distorting competition.

### **C. BURDEN OF PROOF**

70. The Commission bears the burden of proving that an infringement under section 4 has been committed. The standard of proof to be applied is the civil standard which is on the balance of probabilities.

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<sup>56</sup> Case 50481 *Design, Construction, and Fit-out Services*, at paragraphs 5.84 to 5.88.

71. Given the nature of the evidence of anti-competitive conduct in a case concerning anti-competitive agreement such as that found in this Decision, it is sufficient if the body of evidence, viewed as a whole, proves that an infringement of the section 4 prohibition had on a balance of probabilities been committed. Such evidence would consist of direct evidence, circumstantial evidence, and inferences that can be made from established facts.<sup>57</sup>

#### **D. THE RELEVANT MARKET**

72. Section 2 of the Act provides a definition of the term “market”. The purpose of defining a market is to identify all the enterprises 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.
73. Market definition serves a dual purpose in the context of section 4 prohibition. First, if necessary, it provides the framework for assessing whether an agreement has a significant anti-competitive effect in a market. Second, it provides the basis for determining the relevant turnover for the purpose of calculating financial penalties.

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<sup>57</sup> *Gold Chic Poultry Supply Pte. Ltd. and Anor & Ors v CCCS and Other Appeals* [2020] SGCAB 1, at paragraphs 67 to 73; *Case 48/69 Imperial Chemical Industries Ltd v European Commission* [1972] ECR 619, at paragraph 68; and *In Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, JFE Engineering*, at paragraphs 179 and 180.

*Relevant product market*

74. The Commission considers all the infringements placed in the supply and maintenance for two types of product markets as provided below:

- (i) For Tender APAK 2016 and Tender APAK 2020, the focal product is the supply and maintenance of small fire extinguishers,<sup>58</sup> and
- (ii) For Tender ELSA 2016 and Tender ELSA 2020, the focal product is the supply and maintenance of:
  - (a) Emergency Life Support Apparatus;
  - (b) Air Breathing Apparatus;
  - (c) Breathing Air Compressor; and
  - (d) Anti-Gas Respirator Mask.<sup>59</sup>

75. In order to participate in Tenders APAK 2016, APAK 2020, ELSA 2016, and ELSA 2020, prospective bidders must be registered under field codes 120601, 120602, or 220401 with the MOF, Pejabat Kewangan Sabah, or Pejabat Kewangan Persekutuan Sarawak.<sup>60</sup> As mandated by the *Pekeliling Perbendaharaan Malaysia PK 2.1*, these field code qualifications constitute prerequisites for eligibility

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<sup>58</sup> *Kertas Taklimat Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, page 5; and *Kertas Taklimat Tender APAK 2020 No. Tender: KP/PER1OD/T024/2020/0E*, page 1.

<sup>59</sup> *Kertas Taklimat Tender ELSA 2016 No. Tender: KP/PER1OD/T218/2016/0E*, page 12; and *Kertas Taklimat Tender ELSA 2020 No. Tender: KP/PER1OD/T311/2019/0E*, page 1.

<sup>60</sup> *Kertas Taklimat Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, page 53; *Kertas Taklimat Tender APAK 2020 No. Tender: KP/PER1OD/T024/2020/0E*, page 16; *Kertas Taklimat Tender ELSA 2016 No. Tender: KP/PER1OD/T218/2016/0E*, page 61; and *Kertas Taklimat Tender ELSA 2020 No. Tender: KP/PER1OD/T311/2019/0E*, page 15.

in the supply of products and/or services for the aforementioned tenders.<sup>61</sup>

76. Consequently, while evaluating the substitutability of the focal product, it is imperative to consider the specific field code requirements. This is due to the fact that not all enterprises capable of supplying and/or servicing are permitted to partake in the tender if they fail to fulfil the stipulated field code requirement.

*Relevant geographic market*

77. For the purposes of determining the relevant turnover for each of the infringements, the Commission finds that the supply of spare parts and maintenance services for the focal product of Tender APAK 2016, Tender APAK 2020, Tender ELSA 2016 and Tender ELSA 2020 is for all Royal Malaysian Army (TDM) and/or the Royal Malaysian Navy (TLDM) camps nationwide. Therefore, the relevant geographic market covers the whole of Malaysia.

*Relevant markets: conclusion*

78. In light of the above, the Commission finds that the relevant market affected by the alleged infringement for the purpose of determining the relevant turnover of the Parties, comprises:

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<sup>61</sup> *Pekeliling Perbendaharaan Malaysia PK 2.1*, at paragraph 8.12 (xiv)(a); and Paragraph 11 of the Statement of Mejar Khairul Iskandar recorded on 21.4.2022.



- (i) For Tender ELSA 2016, the supply of spare parts and maintenance services of life saving equipment, including the Emergency Life Support Apparatus, Air Breathing Apparatus, Breathing Air Compressor and Anti Gas Respirator Mask for TLDM in Malaysia;
- (ii) For Tender APAK 2016, the supply of spare parts and maintenance services of fire control equipment, including of small fire extinguisher for TDM and TLDM in Malaysia;
- (iii) For Tender ELSA 2020, the supply of spare parts and maintenance services of life saving equipment, including the Emergency Life Support Apparatus, Air Breathing Apparatus, Breathing Air Compressor and Anti Gas Respirator Mask for TLDM in Malaysia; and
- (iv) For Tender APAK 2020, the supply of spare parts and maintenance services of fire control equipment, including of small fire extinguisher for TDM and TLDM in Malaysia.

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## E. APPLICATION TO THE PRESENT CASE

### E.1 TENDER APAK 2016

#### Background

79. Tender APAK 2016 involves the procurement of maintenance services, supply and installation of spare parts for small fire extinguishers for TDM and TLDM over a span of three years.<sup>62</sup> The tender was advertised online on 22.11.2016.<sup>63</sup>
80. On 7.4.2017, MINDEF accepted Star Apax's bid amounting RM[~~8~~] for Tender APAK 2016, subject to the fulfilment of requirements.<sup>64</sup>
81. On 3.5.2017, the Letter of Acceptance (*Surat Setuju Terima*) for Tender APAK 2016 to appoint the successful bidder was issued to Star Apax.<sup>65</sup> The letter was signed on 5.5.2017 by Raja Nurnaim, the owner of Star Apax and the employee of Agenda Eksklusif, Nur Ain as a witness.<sup>66</sup>

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<sup>62</sup> *Kertas Taklimat Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, page 5.

<sup>63</sup> *Kertas Taklimat Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, page 53.

<sup>64</sup> *Letter of Acceptance*, dated 3.5.2017, *Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, pages 110 to 112.

<sup>65</sup> *Letter of Acceptance* dated 3.5.2017, *Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, pages 110 to 113.

<sup>66</sup> *Letter of Acceptance* dated 3.5.2017, *Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/0E*, pages 110 to 113.

82. The Commission has identified horizontal agreements and/or concerted practices with the object to perform bid rigging involving six Parties in Tender APAK 2016.
83. The bid rigging arrangements by the six Parties are listed below:
- (i) Agenda Eksklusif with Star Apax and Nekad Waja
  - (ii) Agenda Eksklusif and Teknokrat
  - (iii) Prospectrum and NK Panorama

**(i) Agenda Eksklusif with Star Apax and Nekad Waja**

*Evidence retrieved from Agenda Eksklusif's premise*

84. The Commission carried out a search and seizure operation with warrant at the office premises of Agenda Eksklusif on 24.3.2021. During the operation, evidence was examined, and statements were recorded from Agenda Eksklusif's employees who were familiar with the relevant facts and circumstances of the investigation.
85. During the search and seizure operation at Agenda Eksklusif premises, the Commission discovered three separate Microsoft Excel worksheets detailing the summary of three different prices for tender submission of Tender APAK 2016.<sup>67</sup> An extract of the Microsoft Excel spreadsheets co-ordinately named **Sheet 1**, **Sheet 2** and **Sheet 3** is produced as below:

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<sup>67</sup> Digital Forensic Report: MyCC (IED)700-2/7(8), pages 28 to 33.

**Sheet 1:** Document titled “KEMBARA C1-TENDER.xlsx” located under the folder named “HARGA”<sup>68</sup>

A - HARGA SENGGARAAN (TANPA ALAT GANTI)									
Bil	Huraian perkara	Kos Seunit Alat Pemadam Api	Anggaran Penggunaan 3 tahun (Unit APAK)		Jumlah (RM)		Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
			TD	TLDM	TD	TLDM			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	Kos Pembaikan, Senggaraan dan Ujian	████	████	████	████	████	████	████	████
2	Label (Sticker)	████	████	████	████	████	████	████	████
3	Cat Semula	████	████	████	████	████	████	████	████
4	Pemasangan	████	████	████	████	████	████	████	████
5	Ujian Hidro statik	████	████	████	████	████	████	████	████
	Jumlah				████	████			
	Jumlah Keseluruhan (bil f + g))					████			
B. HARGA ALAT GANTI LARIS									
Bil	Perkara	Jumlah (RM)		Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti			
(a)	(b)	(c)		(d)	(e)	(f)			
1	Alat ganti laris untuk TD	████		Steel Recon Industries Sdn Bhd	████	████			
2	Alat ganti laris untuk TLDM	████		Steel Recon Industries Sdn Bhd	████	████			
	Jumlah Keseluruhan (bil 1 hingga bil 2)	████							
C- HARGA KESELURUHAN (HARGA A + HARGA B) = ██████████									

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<sup>68</sup> Digital Forensic Report: MyCC (IED)700-2/7(8), pages 28 and 29.

**Sheet 2:** Document titled “KEMBARA C1 new.xlsx” located under the folder named “HARGA START APAX”<sup>69</sup>

A - HARGA SENGGARAAN (TANPA ALAT GANTI)									
Bil	Huraian perkara	Kos Seunit Alat Pemadam Api	Anggaran Penggunaan 3 tahun (Unit APAK)		Jumlah (RM)		Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
			TD	TLDM	TD	TLDM			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	Kos Pembaikan, Senggaraan dan Ujian	████	████	████	████	████	████	████	████
2	Label (Sticker)	████	████	████	████	████	████	████	████
3	Cat Semula	████	████	████	████	████	████	████	████
4	Pemasangan	████	████	████	████	████	████	████	████
5	Ujian Hidro statik	████	████	████	████	████	████	████	████
	Jumlah				████	████			
	Jumlah Keseluruhan (bil f + g))					████			
B - HARGA ALAT GANTI LARIS									
Bil	Perkara	Jumlah (RM)		Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti			
(a)	(b)	(c)		(d)	(e)	(f)			
1	Alat ganti laris untuk TD	████		Steel Recon Industries Sdn Bhd	████	████			
2	Alat ganti laris untuk TLDM	████		Steel Recon Industries Sdn Bhd	████	████			
	Jumlah Keseluruhan (bil 1 hingga bil 2)	████							
C - HARGA KESELURUHAN (HARGA A + HARGA B) = ██████████									

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<sup>69</sup> Digital Forensic Report: MyCC (IED)700-2/7(8), pages 30 and 31.

**Sheet 3:** Document titled “Kembaran C1.xlsx” under the folder named “Harga”.<sup>70</sup>

**A - HARGA SENGGARAAN (TANPA ALAT GANTI)**

Bil	Huraian perkara	Kos Seunit Alat Pemadam Api	Anggaran Penggunaan 3 tahun (Unit APAK)		Jumlah (RM)		Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
			TD	TLDM	TD	TLDM			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	Kos Pembaikan, Senggaraan dan Ujian	████	████	████	████	████	████	████	████
2	Label (Sticker)	████	████	████	████	████	████	████	████
3	Cat Semula	████	████	████	████	████	████	████	████
4	Pemasangan	████	████	████	████	████	████	████	████
5	Ujian Hidro statik	████	████	████	████	████	████	████	████
	Jumlah				████	████			
	Jumlah Keseluruhan (bil f + g)					████			

**B - HARGA ALAT GANTI LARIS**

Bil	Perkara	Jumlah (RM)	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(d)	(e)	(f)
1	Alat ganti laris untuk TD		Eversafe Extinguisher Sdn.Bhd	████	████
2	Alat ganti laris untuk TLDM		Eversafe Extinguisher Sdn.Bhd	████	████
	Jumlah Keseluruhan (bil 1 hingga bil 2)				

**C - HARGA KESELURUHAN (HARGA A + HARGA B) = ██████████**

Agenda Eksklusif's Possession of Star Apax and Nekad Waja's Bid Price Submissions for Tender APAK 2016

86. Upon analysing **Sheet 1**, **Sheet 2** and **Sheet 3** and comparing them with the Parties' Tender APAK 2016 submissions to MINDEF, the Commission discovered that **Sheet 1** corresponds to the submission for Tender APAK 2016 put forth by Agenda Eksklusif, **Sheet 2** corresponds with the Tender APAK 2016 submission made by Star Apax, and **Sheet 3** corresponds to the submissions for Tender APAK 2016 made by Nekad Waja to MINDEF.<sup>71</sup>

<sup>70</sup> Digital Forensic Report: MyCC (IED)700-2/7(8), pages 32 and 33.

<sup>71</sup> Agenda Eksklusif's Tender APAK 2016 documents submitted to MINDEF, page 7; Star Apax's Tender APAK 2016 documents submitted to MINDEF, page 9; and Nekad Waja's Tender APAK 2016 documents submitted to MINDEF, page 39.

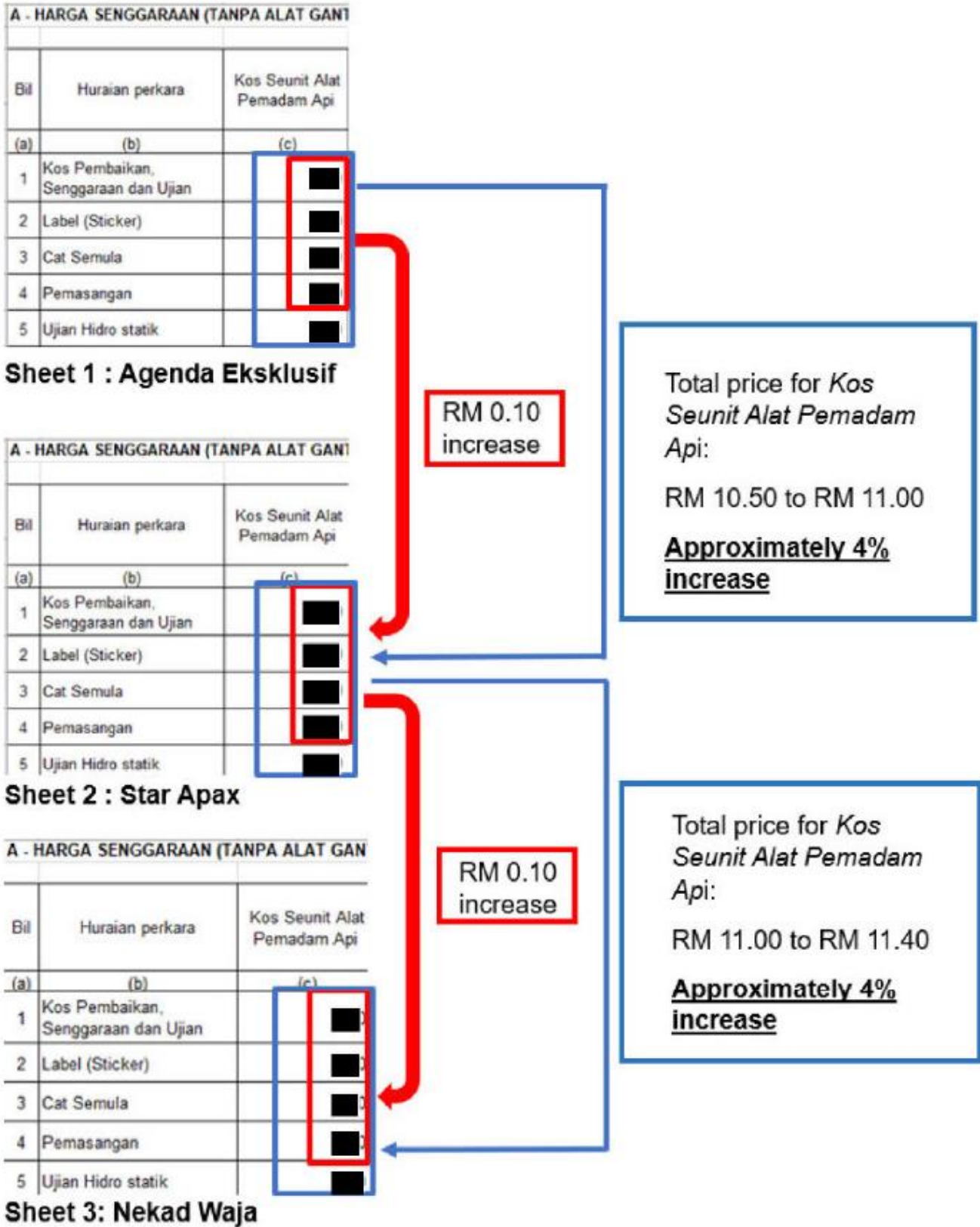
87. **Sheet 1**, **Sheet 2**, and **Sheet 3** show that Agenda Eksklusif possesses the bid price submissions of its competitors, Star Apax and Nekad Waja, for Tender APAK 2016. This can reasonably be deduced that a communication of Tender APAK details and prices existed between the three Parties.

Agenda Price Patterns in Bids Submitted by Agenda Eksklusif, Star Apax, and Nekad Waja to MINDEF

88. In addition, the Commission identifies an evident price pattern among the rates assigned to items categorised under “*Kos Seunit Alat Pemadam Api*” as tendered by Agenda Eksklusif, Star Apax and Nekad Waja for Tender APAK 2016. These price patterns are illustrated through the excerpt from **Sheet 1**, **Sheet 2** and **Sheet 3**, as presented in **Diagram 1** below:

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**Diagram1:** Comparison of Price Patterns in the Items for “*Kos Seunit Alat Pemadam Api*” offered by Agenda Eksklusif, Star Apax and Nekad Waja in Tender APAK 2016





89. The Commission identifies a systematic increment of RM0.10 for specific items, namely, “*Kos Pembaikan, Senggaraan dan Ujian*”, “*Label (Sticker)*”, “*Cat Semula*”, and “*Pemasangan*” within the *Harga Senggaraan (Tanpa Alat Ganti)* submission for the “*Kos Seunit Alat Pemadam Api*”.
90. This incremental pattern, evident from Agenda Eksklusif to Star Apax, and subsequently from Star Apax to Nekad Waja, as depicted in **Diagram 1** raises concerns of concerted practices between the three Parties. The inclusion of the “*Ujian Hidro statik*” item at an increment of RM0.10 by both Star Apax and Nekad Waja, in contrast to Agenda Eksklusif’s pricing, serves as additional evidence of collusion. Accordingly, the pricing structure of Agenda Eksklusif acts as the foundational price point.
91. **Diagram 1** also shows a compelling illustration of the aggregated cost for the “*Kos Seunit Alat Pemadam Api*” amounting to RM10.50 for Agenda Eksklusif, RM11.00 for Star Apax, and RM11.40 for Nekad Waja. The illustration shows a consistent approximate 4% increase from Agenda Eksklusif to Star Apax, and then from Star Apax to Nekad Waja. Such uniformity in pricing increments, on a balance of probabilities, indicates that the independent competitive behaviour of these three Parties in Tender APAK 2016 has been compromised, that there was collusion to provide cover bids through the sharing of pricing information. The reiterated role of Agenda Eksklusif as the reference price highlights the concerted nature of this price movement.

Close Proximity of the Date Created and Date Modified of Sheet 1, Sheet 2 and Sheet 3

92. The Commission further discovers that the Microsoft Excel spreadsheets, encompassing **Sheet 1**, **Sheet 2** and **Sheet 3**, were created on the exact date and time as presented below:

**Diagram 2:** Date created and last modified date of **Sheet 1**, **Sheet 2** and **Sheet 3** of the Microsoft Excel spreadsheets

Properties ▾ Size 22.2KB Title Add a title Tags Add a tag Categories Add a category Related Dates Last Modified 8/12/2016 2:09 PM Created 22/11/2016 3:33 PM Last Printed 8/12/2016 1:24 PM <b>Image 1:</b> Details of time and date per <b>Sheet 1</b> <sup>72</sup>	Properties ▾ Size 22.2KB Title Add a title Tags Add a tag Categories Add a category Related Dates Last Modified 7/4/2017 5:16 PM Created 22/11/2016 3:33 PM Last Printed 7/4/2017 5:16 PM <b>Image 2:</b> Details of time and date per <b>Sheet 2</b> <sup>73</sup>	Properties ▾ Size 22.6KB Title Add a title Tags Add a tag Categories Add a category Related Dates Last Modified 8/12/2016 5:19 PM Created 22/11/2016 3:33 PM Last Printed 8/12/2016 3:44 PM <b>Image 3:</b> Details of time and date per <b>Sheet 3</b> <sup>74</sup>
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93. A comparison of the date “Created” and the “Last Modified” based on **Diagram 2** is provided in **Table 14** below:

**Table 14:** Summary of date created and last modified date of **Sheet 1**, **Sheet 2** and **Sheet 3** of the Microsoft Excel spreadsheets

	CREATED	LAST MODIFIED	TENDER OPEN – CLOSING
<b>Sheet 1:</b> Agenda Eksklusif	22.11.2016, 3:33pm	8.12.2016, 2:09pm	22.11.2016 – 13.12.2016
<b>Sheet 2:</b> Star Apax	22.11.2016, 3:33pm	7.4.2017, 5.16pm	22.11.2016 – 13.12.2016

<sup>72</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 28 and 29.

<sup>73</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 30 and 31.

<sup>74</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 32 and 33.

	CREATED	LAST MODIFIED	TENDER OPEN – CLOSING
<b>Sheet 3:</b> Nekad Waja	22.11.2016, 3:33pm	8.12.2016, 5:19pm	22.11.2016 – 13.12.2016

94. **Table 14** shows that the documents were generated within the tender advertisement period and prior to the Tender APAK 2016 submission deadline. The presence of identical date and time stamps for the date created showed that a singular individual or a group of individuals, employing a single device, created and concluded the documents for all three Parties, namely, Agenda Eksklusif, Star Apax and Nekad Waja. It is also crucial to note that **Sheet 1**, **Sheet 2**, and **Sheet 3** exhibit a close proximity in the date and time of their last modification.
95. The circumstances set out above bear considerable significance in the context of bid rigging, establishing collusion between Agenda Eksklusif, Star Apax, and Nekad Waja.

Close Proximity of Agenda Eksklusif, Star Apax, and Nekad Waja’s Bid Submission Dates and Duration to MINDEF

96. MINDEF records for Tender APAK 2016 also reveal that Agenda Eksklusif, Star Apak, and Nekad Waja submitted their Tender APAK 2016 proposals on the same date, namely, 9.12.2016, in close proximity as to timing, with Agenda Eksklusif submitting at 10:43 am, Star Apak at 10:48 am, followed by Nekad Waja at 11:02 am.<sup>75</sup> This timing was considered by the Commission in its findings of collusion among Agenda Eksklusif, Star Apak, and Nekad Waja.

<sup>75</sup> Laporan Senarai Penghantaran Cadangan MINDEF dated 13.12.2016, page 76.

Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, and Nekad Waja

97. An examination of the tender documents submitted by Agenda Eksklusif, Star Apax and Nekad Waja for Tender APAK 2016 highlights that Agenda Eksklusif bid the lowest total price, at RM[~~RM~~], followed by Star Apax at RM[~~RM~~] and Nekad Waja at RM[~~RM~~], respectively.<sup>76</sup> **Table 15** summarise the price submitted by Agenda Eksklusif, Star Apax and Nekad Waja to the MINDEF:

**Table 15:** Price Submissions of the Parties to MINDEF.

PRICE SUBMISSION (RM)	NEKAD WAJA	STAR APAX	AGENDA EKSKLUSIF
Maintenance Price (Without Spare Parts) <i>(Harga Senggaraan (Tanpa Alat Ganti))</i>	[ <del>RM</del> ]	[ <del>RM</del> ]	[ <del>RM</del> ]
Selling Spare Parts for TDM <i>Alat Ganti Laris Untuk TDM</i>	[ <del>RM</del> ]	[ <del>RM</del> ]	[ <del>RM</del> ]
Selling Spare Parts for TLDM <i>Alat Ganti Laris Untuk TLDM</i>	[ <del>RM</del> ]	[ <del>RM</del> ]	[ <del>RM</del> ]
<b>Total</b>	[ <del>RM</del> ]	[ <del>RM</del> ]	[ <del>RM</del> ]

98. **Table 15** shows that Agenda Eksklusif presented the lowest price at RM[~~RM~~], followed by Star Apax and Nekad Waja in second and third positions, respectively. According to Dato' Rosdi, Agenda Eksklusif deliberately submitted the lowest bid compared to Star Apax and Nekad Waja. This strategic move aimed to maximise Agenda

<sup>76</sup> Paragraph 50 of the Statement of Dato' Rosdi recorded on 24.11.2021; Agenda Eksklusif's Tender APAK 2016 documents submitted to MINDEF, page 7; Star Apax's Tender APAK 2016 documents submitted to MINDEF, page 9; and Nekad Waja's Tender APAK 2016 documents submitted to MINDEF, page 39.

Eksklusif's probability of securing Tender APAK 2016.<sup>77</sup> It is worth noting that Nekad Waja mirrored the total price provided by Dato' Rosdi of Agenda Eksklusif for its bid for Tender APAK 2016 without any modifications.<sup>78</sup>

99. This leads to the findings that a simultaneous coordination amongst these three Parties existed, with the aim to coordinate pricing frameworks. This coordination shows the sharing of pertinent information, thereby affording them an undue advantage *vis-à-vis* their competitors in the tendering process of Tender APAK 2016.<sup>79</sup>
100. The aforementioned price strategies, imposed by the Parties is a planned strategy to rig Tender APAK 2016 process and gain an unfair competitive advantage. The parallel creation, involvement of common parties, and uniformity in pricing adjustments all collectively indicate concerted practices aimed at distorting the competitive bidding process to their benefit.

#### *Evidence retrieved from recorded statements*

101. In addition to the retrieval and subsequent analysis of the Microsoft Excel Worksheet comprising **Sheet 1**, **Sheet 2** and **Sheet 3** obtained from Agenda Eksklusif's premises as detailed in **paragraphs 85 to 100**, the Commission also based its findings on the recorded

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<sup>77</sup> Paragraph 50 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>78</sup> Paragraph 9 of the Statement of Shamill recorded on 24.11.2021.

<sup>79</sup> Case 50481 *Design, Construction, and Fit-out Services*, at paragraphs 5.89 to 5.95; Case T-141/07 *Market for Installation and Maintenance of Elevators and Escalators*; Judgment in Case C-286/13 *P Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; and Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41.

statements provided by Dato' Rosdi of Agenda Eksklusif, Shamil of Nekad Waja/ Agenda Eksklusif, Raja Nurnaim of Star Apax/ Agenda Eksklusif and personnel affiliated with Agenda Eksklusif.

102. In his recorded statement on 5.1.2022, Dato' Rosdi openly admitted that the determination to engage in tender activities associated with Ministries on behalf of Agenda Eksklusif, Star Apax and Nekad Waja, was the result of collective deliberation between himself and Shamil of Nekad Waja.<sup>80</sup> The subsequent analysis of this evidence will be categorised into two distinct parts for clarity and comprehensiveness:

- (a) Prior Coordination between Agenda Eksklusif and Star Apax; and
- (b) Prior Coordination between Agenda Eksklusif and Nekad Waja

(a) *Prior Coordination between Agenda Eksklusif and Star Apax*

103. Dato' Rosdi of Agenda Eksklusif/Star Apax became aware of Tender APAK 2016 through a publication in a newspaper advertisement and was informed about it by his employee (Marketing Clerk), Nur Ain, who holds the responsibility of furnishing Dato' Rosdi with a comprehensive listing of tenders advertised by MINDEF.<sup>81</sup> Dato' Rosdi and Nur Ain of Agenda Eksklusif would identify tenders where Agenda Eksklusif qualifies to participate.<sup>82</sup>

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<sup>80</sup> Paragraphs 10 and 18 of the Statement of Dato' Rosdi recorded on 5.1.2022; and Paragraph 8 of the Statement of Shamill recorded on 24.11.2021.

<sup>81</sup> Paragraph 30 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraph 4 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>82</sup> Paragraph 4 of the Statement of Nur Ain recorded on 23.11.2021.

104. In the process of determining prices for Tender APAK 2016, Dato' Rosdi instructed Nur Ain to request quotations from previously identified suppliers and to review the prices of previously awarded contracts. Drawing on insights gathered from these suppliers and his industry knowledge, Dato' Rosdi determined the prices suitable for Tender APAK 2016.<sup>83</sup>
105. Additionally, in his capacity as an Agenda Eksklusif's employee, Shamill of Agenda Eksklusif/ Nekad Waja engaged in consultations with Dato' Rosdi and made recommendations regarding the pricing propositions designated for Tender APAK 2016.<sup>84</sup> It is imperative to note that Dato' Rosdi as the instigator of the collusive conduct, made the decision regarding the pricing for the submission associated with Tender APAK 2016, for all three Parties, namely, Agenda Eksklusif, Star Apax and Nekad Waja.<sup>85</sup>
106. Following the determination of pricing submissions for Agenda Eksklusif, Dato' Rosdi's supplied Star Apax with a tender price marked-up in accordance with Agenda Eksklusif's established price rates.<sup>86</sup> Thereafter, the responsibility of compiling requisite tender documentation was vested in Nur Ain of Agenda Eksklusif.<sup>87</sup>

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<sup>83</sup> Paragraphs 34 ,35 and 36 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>84</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; Paragraph 8 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>85</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 8 of the Statement of Shamill recorded on 24.11.2021.

<sup>86</sup> Paragraph 37 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>87</sup> Paragraphs 37 and 38 of the Statement of Dato' Rosdi recorded on 24.11.2021.

107. Based upon the price list conveyed by Dato' Rosdi, Nur Ain proceeded to transcribe the tender price into the relevant tender documents designated for Agenda Eksklusif.<sup>88</sup> In the case of Star Apax, Nur Ain computed the marked-up tender price provided by Dato' Rosdi.<sup>89</sup> Subsequent to this process, Dato' Rosdi the instigator of the collusive conduct, assumed the role of finalising the price submissions for both Agenda Eksklusif and Star Apax.<sup>90</sup>

108. Nur Ain of Agenda Eksklusif was also entrusted with the task of assembling the Tender APAK 2016 submission documents on behalf of Agenda Eksklusif.<sup>91</sup> According to Dato' Rosdi, he requested an employee of Agenda Eksklusif, to prepare the tender documents designated for Star Apax.<sup>92</sup>

109. Upon the completion of the preparatory stages, the tender submission documents allocated for Agenda Eksklusif were submitted to Dato' Rosdi for his formal endorsement and signature. Similarly, Star Apax's finalised tender submission documents were presented to Raja Nurnaim of Star Apax/Agenda Eksklusif for her signature as owner of Star Apax.<sup>93</sup>

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<sup>88</sup> Paragraph 6 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>89</sup> Paragraph 7 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>90</sup> Paragraphs 6, 7 and 8 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>91</sup> Paragraph 10 of the Statement of Nur Ain recorded on 24.3.2021; Paragraph 38 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraph 5 of the Statement of Fetty Faidura recorded on 24.3.2021.

<sup>92</sup> Paragraph 38 of the Statement of Dato' Rosdi recorded on 24.11.2021; Paragraph 17 of the Statement of Dato' Rosdi recorded on 5.1.2022; and Paragraph 42 of the Statement of Fetty Faidura recorded on 23.11.2021. Note: At the time of recording his statement, the Commission was informed by Dato' Rosdi that Syazalina had left the company with effect from 1.7.2016.

<sup>93</sup> Paragraph 39 of the Statement of Dato' Rosdi recorded on 24.11.2021.



110. Upon scrutiny of Star Apax's tender submission, a noteworthy discrepancy came to light. Instead of the expected signature of Raja Nurnaim, the designated owner of Star Apax. The tender documents were signed by Zulhalfi, who was the manager of Star Apax at that time.<sup>94</sup> According to Dato' Rosdi's statement dated 5.1.2022, it was clarified that during the relevant period, Zulhalfi was an employee of Star Apax and signed the documents under Dato' Rosdi's direction.<sup>95</sup> This clarification was supported by statements from both Raja Nurnaim and Zulhalfi, confirming that Zulhalfi signed on behalf of Star Apax.<sup>96</sup>
111. Upon completing the preparation of Tender APAK 2016 submission for Agenda Eksklusif and Star Apax, Shamill, the sole owner of Nekad Waja and an employee of Agenda Eksklusif, submitted the tender documents to MINDEF.<sup>97</sup>
112. In this case, Dato' Rosdi holds two positions as Managing Director of Agenda Eksklusif and as a partner at Star Apax. Both entities met the necessary requirements, showing that they were individually capable of participating in Tender APAK 2016. However, despite this, Dato' Rosdi, using his positions, determined the price submissions for both entities to submit for Tender APAK 2016. Dato' Rosdi admitted that such a strategy was imposed to increase Agenda

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<sup>94</sup> Star Apax's Tender APAK 2016 documents submitted to MINDEF; Paragraph 6 of the Statement of Zulhalfi recorded on 7.2.2022; and Paragraph 13 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>95</sup> Paragraph 13 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>96</sup> Paragraph 6 of the Statement of Zulhalfi recorded on 7.2.2022; and Paragraph 20 of the Statement of Raja Nurnaim recorded on 5.1.2022.

<sup>97</sup> Paragraph 13 of the Statement of Shamill recorded on 24.11.2021.

Eksklusif's chances of winning Tender APAK 2016.<sup>98</sup> This behaviour creates the false and misleading appearance of a competitive bidding process for MINDEF.<sup>99</sup> Agenda Eksklusif and Star Apax submitted separate bids, making it seem like there were independent bids when, in fact, there were not.<sup>100</sup>

113. The decision and actions of Dato' Rosdi of Agenda Eksklusif for Star Apax, a separate entity, to participate and determined the submission price alongside with Agenda Eksklusif in Tender APAK 2016 demonstrate that the prices submitted by both parties were influenced by each other rather than by independent competitive bids. This amounts to an agreement, or at the very least a concerted practice, to commit bid rigging.

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<sup>98</sup> Paragraph 50 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>99</sup> Case COMP/38.543 – *International Removal Services*, at paragraphs 359 to 370; (Joined Cases T-208/08 and T-209/08) *Gosselin Group and Stichting Administratiekantoor Portielje v Commission*, at paragraph 67; and *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 250 to 253.

<sup>100</sup> Ref. Case No. 03/2013 *Delhi Jal Board v Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129.

(b) *Prior Coordination between Agenda Eksklusif and Nekad Waja*

114. Shamill, who serves as the sole proprietor of Nekad Waja and an employee of Agenda Eksklusif,<sup>101</sup> purchased the tender documents from MINDEF for Nekad Waja's participation in Tender APAK 2016.<sup>102</sup> In his capacity as an employee of Agenda Eksklusif, Shamill consulted with Dato' Rosdi regarding the pricing strategy for both Agenda Eksklusif and Star Apax in relation to Tender APAK 2016.<sup>103</sup> Additionally, Dato's Rosdi would also suggest estimated tender price for Nekad Waja bid submission to Shamil.<sup>104</sup>
115. Shamill also admitted to using a computer located at Agenda Eksklusif's premises to prepare the tender documents for Nekad Waja.<sup>105</sup> He also enlisted the help of Agenda Eksklusif's practical student to print various documents, including brochures and technical data, for the tender submissions of Nekad Waja.<sup>106</sup>
116. The consultation between Shamill and Dato' Rosdi regarding pricing strategies for Agenda Eksklusif in Tender APAK 2016, and Dato' Rosdi's involvement in advising Shamill on pricing submissions for

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<sup>101</sup> Paragraphs 1 and 3 of the Statement of Shamill recorded on 24.11.2021.

<sup>102</sup> Paragraphs 10 and 11 of the Statement of Shamill recorded on 24.11.2021.

<sup>103</sup> Paragraphs 8 and 9 of the Statement of Shamill recorded on 24.11.2021.

<sup>104</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraphs 8 and 9 of the Statement of Shamill recorded on 24.11.2021.

<sup>105</sup> Paragraph 12 of the Statement of Shamill recorded on 24.11.2021.

<sup>106</sup> Paragraph 11 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 9 of the Statement of Shamill recorded on 25.3.2021.

Nekad Waja,<sup>107</sup> demonstrates that the prices submitted by both parties for Tender APAK 2016 were influenced by shared information, thereby affecting their independent conduct in the tendering process. Further, the involvement of Shamill in discussions regarding price submissions for Agenda Eksklusif and Star Apax proves the existence of collusive practices aimed at coordinating bidding prices between the three Parties.

***Evidence Analysis: Bid Rigging Agreements and/or Concerted Practices Between Agenda Eksklusif and Star Apax, as well as Agenda Eksklusif and Nekad Waja in Tender APAK 2016***

117. The Commission obtained information and documents from Agenda Eksklusif's premise through search and seizure operation. Based on the evidence gathered at the premises, the Commission made the following findings:

- (i) Agenda Eksklusif's Possessed Star Apax and Nekad Waja's Bid Price Submissions for Tender APAK 2016 – **paragraphs 86 to 87**;
- (ii) Price Patterns in Bids Submitted by Agenda Eksklusif, Star Apax, and Nekad Waja to MINDEF – **paragraphs 88 to 91**;
- (iii) Close Proximity of the Date Created and Date Modified of **Sheet 1, Sheet 2 and Sheet 3** – **paragraphs 92 to 95**;
- (iv) Close Proximity of Agenda Eksklusif, Star Apax, and Nekad Waja's Bid Submission Dates and Times to MINDEF – **paragraph 96**; and

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<sup>107</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraphs 8 and 9 of the Statement of Shamill recorded on 24.11.2021.

- (v) Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, and Nekad Waja – **paragraph 97 to 100.**

118. In accordance with the findings in items (i) to (v) above, and the findings from recorded statements in **paragraphs 101 to 116**, the Commission finds that the similarity in the tender details and prices submitted by Agenda Eksklusif, Star Apax, and Nekad Waja for Tender APAK 2016 is not mere coincidence but the result of a bid rigging agreement, or at the very least a concerted practice, between the three Parties. The participation of Agenda Eksklusif, Star Apax and Nekad Waja in Tender APAK 2016 bidding process were not bona fide but due to cover bidding to enhance Agenda Eksklusif's prospects of winning the tender.<sup>108</sup>

119. The modus operandi involved Dato' Rosdi of Agenda Eksklusif setting the base price, while the Star Apax and Nekad Waja marked-up their prices from Agenda Eksklusif's base. Shamill, the sole owner of Nekad Waja and also employed by Agenda Eksklusif, was consulted during this pricing process.<sup>109</sup> Agenda Eksklusif, Star Apax, and Nekad Waja, each holding the necessary field code, submitted different bids for Tender APAK 2016 to MINDEF. However, the bids from all three Parties were based on shared tender details and price information.

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<sup>108</sup> Paragraphs 46 and 50 of the Statement of Dato' Rosdi recorded on 24.11.2021; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; Judgment in Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41; and CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.126.

<sup>109</sup> Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022; Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 50 of the Statement of Dato' Rosdi recorded on 24.11.2021.

120. Agenda Eksklusif's sharing of details and price information with Star Apax and Nekad Waja prior to their bid submissions for Tender APAK 2016 undermined the competitive integrity of the tender process. This exchange of information among the three Parties distorted the competitive nature of the tender process and eliminated the unpredictability of their behaviour, that true competition would have brought about, towards each other in the market.<sup>110</sup>
121. The Commission has duly examined the possibility that Nekad Waja altered the bid price recommended by Dato' Rosdi prior to submitting the tender application.<sup>111</sup> However, even if Nekad Waja altered Agenda Eksklusif bid price recommendation this does not relieve Nekad Waja from liability for the fact it did participate in bid rigging through the exchange of pricing information with Agenda Eksklusif, which influenced Nekad Waja's final bid price for Tender APAK 2016.<sup>112</sup>
122. Based on the presented findings, the Commission decided that Agenda Eksklusif and Star Apax, as well as Agenda Eksklusif and Nekad Waja, actively participated in horizontal agreements and/or concerted practices with the object to perform bid rigging through

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<sup>110</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry*, at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41; *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209; CA98/02/2009 *Bid rigging in the Construction Industry in England*, paragraphs III.92 to II.98; and Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.22.

<sup>111</sup> Paragraph 30 of the Statement of Shamill recorded on 15.11.2021.

<sup>112</sup> Case C-291/98 P *Sarrjo v Commission* [2000] ECR I-9991, at paragraph 50; and Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 90.

cover bids and the exchange of price information for Tender APAK 2016.

***The role of Agenda Eksklusif as the Instigator in the Bid Rigging Agreements and/or Concerted Practices with Star Apax, and Nekad Waja in Tender APAK 2016***

123. The Commission finds that Dato' Rosdi of Agenda Eksklusif acted as an instigator in the bid rigging agreement involving Star Apax and Nekad Waja for Tender APAK 2016. This decision is supported by the findings in **paragraphs 117 to 122**, where Dato' Rosdi colluded with Star Apax and Nekad Waja on tender details, influenced their participation in the tender, and coordinated their tender pricing based on Agenda Eksklusif's marked-up tender rates. Essentially, the bid rigging agreement among Agenda Eksklusif, Star Apax, and Nekad Waja was conducted under the instigation of Dato' Rosdi.

***(ii) Agenda Eksklusif and Teknokrat***

*Evidence retrieved from Agenda Eksklusif's premises*

124. During the search and seizure with warrant operation conducted on 24.3.2021, at Agenda Eksklusif's premises, the Commission uncovered tender documents in the form of Microsoft Excel spreadsheets, which were attributed to Teknokrat. These specific Microsoft Excel spreadsheets were found within Agenda Eksklusif's server, specifically in a folder labelled "*HARGA*".<sup>113</sup>

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<sup>113</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 34 and 35.

Agenda Eksklusif's Possession of Teknokrat's Bid Price Submissions for Tender APAK 2016

125. The Microsoft Excel spreadsheets discovered corresponds to the physical bid that Teknokrat submitted to MINDEF for Tender APAK 2016.<sup>114</sup>

126. An extract of the Microsoft Excel worksheet named **Sheet 4** is produced as below:

**Sheet 4:** Document titled "KEMBARAN C1.xlsx" under the folder named "HARGA"<sup>115</sup>

**A - HARGA SENGGARAAN (TANPA ALAT GANTI)**

Bil	Huraian perkara	Kos Seunit Alat Pemadam Api	Anggaran Penggunaan 3 tahun (Unit APAK)		Jumlah (RM)		Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
			TD	TLDM	TD	TLDM			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	Kos Pembaikan, Senggaraan dan Ujian	■	■	■	■	■	■	■	■
2	Label (Sticker)	■	■	■	■	■	■	■	■
3	Cat Semula	■	■	■	■	■	■	■	■
4	Pemasangan	■	■	■	■	■	■	■	■
5	Ujian Hidro statik	■	■	■	■	■	■	■	■
	Jumlah				■	■			
	Jumlah Keseluruhan (bil f + g))					■			

**B- HARGA ALAT GANTI LARIS**

Bil	Perkara	Jumlah (RM)	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(d)	(e)	(f)
1	Alat ganti laris untuk TD	■	Eversave Extinguisher Sdn Bhd	■	■
2	Alat ganti laris untuk TLDM	■	Eversave Extinguisher Sdn Bhd	■	■
	Jumlah Keseluruhan (bil 1 hingga bil 2)	■			

**C- HARGA KE SELURUHAN (HARGA A + HARGA B) = ■**

<sup>114</sup> *Kertas Taklimat Tender APAK 2016 No.Tender - KP PERO1D T228 2016 OE*, page 75 and Teknokrat's Tender APAK 2016 documents submitted to MINDEF, page 10.

<sup>115</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 34 dan 35.



*Evidence retrieved from recorded statements*

127. The discovery of Teknokrat's tender documents at Agenda Eksklusif's premises, on balance, is evidence that Agenda Eksklusif and Teknokrat communicated and collaborated during the preparation of Tender APAK 2016 submission. This finding is further supported by Dato' Rosdi of Agenda Eksklusif, who confirmed that he provided a price quotation to Teknokrat at the behest of its owner, Manan.<sup>116</sup>
128. Manan acknowledged Teknokrat's participation in Tender APAK 2016.<sup>117</sup> He asserted that Teknokrat possessed the necessary experience to meet the eligibility criteria for participating in Tender APAK 2016. Manan conceded to signing the relevant pages of the Tender APAK 2016 submission and providing the necessary documentation.<sup>118</sup>
129. However, within the same statement, Manan explicitly affirmed that he had never encountered the documents Teknokrat had presented to MINDEF for Tender APAK 2016. Additionally, he stated that he was not apprised of the price put forward by Teknokrat for the Tender APAK 2016.<sup>119</sup> Manan confirmed that he had not assessed Teknokrat's tender submission documents. In fact, this shows even

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<sup>116</sup> Paragraphs 52 and 53 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraph 31 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>117</sup> Paragraph 4 of the Statement of A. Manan bin Muhammed recorded on 16.11.2022.

<sup>118</sup> Paragraph 5 of the Statement of A. Manan bin Muhammed recorded on 16.11.2022.

<sup>119</sup> Paragraph 6 of the Statement of A. Manan bin Muhammed recorded on 16.11.2022.

more clearly that what happened is evidence of cover bidding, with no intention to win the tender.

***Evidence Analysis: Bid Rigging Agreement Between Agenda Eksklusif and Teknokrat***

130. The presence of Teknokrat's tender documents at Agenda Eksklusif's premises indicates communication and collusion between these two Parties in relation to Tender APAK 2016. This finding is further supported by the statements provided by Dato' Rosdi, where he explicitly stated that he provided a price quotation to Teknokrat upon request of its owner, Manan.
131. The communication and sharing of tender information between Agenda Eksklusif and Teknokrat during the preparation of Teknokrat's tender submission give raise to competition concerns. This exchange of information between Agenda Eksklusif and Teknokrat distorted the competitive nature of the tender process and reduced the unpredictability of their behavior in the market.<sup>120</sup>
132. Notwithstanding Manan's claim to be unaware of Teknokrat's pricing submission for the tender, the Commission maintains its stance that the evidence demonstrates Agenda Eksklusif and Teknokrat exchanged communication and tender information during the preparation of Teknokrat's submission for Tender APAK 2016.

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<sup>120</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry*, at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41; *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209; CA98/02/2009 *Bid rigging in the Construction Industry in England*, paragraphs III.92 to II.98; and Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.22.

133. The Commission finds that Agenda Eksklusif and Teknokrat engaged in an agreement with the object to perform bid rigging in Tender APAK 2016.

**(ii) *Prospectrum and NK Panorama***

*Evidence retrieved from Prospectrum's premises*

134. The Commission obtained tender documents containing two different price submissions for Tender APAK 2016 through a search and seizure operation at Prospectrum's premises.<sup>121</sup> An excerpt from each of the two tender documents found is provided below:

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<sup>121</sup> Prospectrum's Tender APAK 2016 documents pursuant to section 25 of the Act, page 29; and NK Panorama's Tender APAK 2016 documents pursuant to section 25 of the Act, page 25.

**Sheet 5:** Price submissions for Tender APAK 2016 retrieved from Prospectrum's premises<sup>122</sup>

**A - HARGA SENGGARAAN (TANPA ALAT GANTI)**

Bil	Perkara	Kos Seunit Alat Pemadam Api	Anggaran Penggunaan 3 tahun (Unit APAK)		Jumlah (RM)		Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
			TD	TLDM	TD	TLDM			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	Kos pembaikan, senggaraan dan ujian						}	}	}
2	Label (sticker)								
3	Cat semula								
4	Pemasangan								
5	Ujian hydro statik								
	Jumlah								
	Jumlah Keseluruhan (bil f + g))								

**B - HARGA ALAT GANTI LARIS**

Bil	Perkara	Jumlah (RM)	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(e)	(f)	(g)
1	Alat ganti laris untuk TD		EVERSAFE EXTINGUISHER SDN BHD		
2	Alat ganti laris untuk TLDM				
	Jumlah Keseluruhan (bil 1 hingga bil 2)				

**C-HARGA KESELURUHAN (HARGA A + HARGA B)** = [redacted]

**Sheet 6:** Price submissions for Tender APAK 2016 retrieved from Prospectrum's premises<sup>123</sup>

**A - HARGA SENGGARAAN (TANPA ALAT GANTI)**

Bil	Perkara	Kos Seunit Alat Pemadam Api	Anggaran Penggunaan 3 tahun (Unit APAK)		Jumlah (RM)		Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
			TD	TLDM	TD	TLDM			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	Kos pembaikan, senggaraan dan ujian						}	1 Hari	}
2	Label (sticker)								
3	Cat semula								
4	Pemasangan								
5	Ujian hydro statik								( Mempunyai Mesin Hydrostatik Senciri )
	Jumlah								
	Jumlah Keseluruhan (bil f + g))								

**B - HARGA ALAT GANTI LARIS**

Bil	Perkara	Jumlah (RM)	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(e)	(f)	(g)
1	Alat ganti laris untuk TD		Steel Recon Industries Marketing Sdn Bhd		
2	Alat ganti laris untuk TLDM				
	Jumlah Keseluruhan (bil 1 hingga bil 2)				

**C-HARGA KESELURUHAN (HARGA A + HARGA B)** = [redacted]

<sup>122</sup> NK Panorama's Tender APAK 2016 documents pursuant to section 25 of the Act, page 25.

<sup>123</sup> Prospectrum's Tender APAK 2016 documents pursuant to section 25 of the Act, page 29.

Prospectrum's Possesses NK Panorama's Bid Price Submissions for Tender APAK 2016

135. Upon a thorough comparison of the two tender submission documents with the physical submission made by Prospectrum and NK Panorama for Tender APAK 2016 to MINDEF, the Commission makes the following key findings. A detailed analysis shows that **Sheet 5** precisely corresponds with the tender document submitted by NK Panorama to MINDEF for Tender APAK 2016.<sup>124</sup> Similarly, **Sheet 6** corresponds with the tender submission made by Prospectrum to MINDEF for Tender APAK 2016.<sup>125</sup>
136. Both **Sheet 5** and **Sheet 6** accurately represent the same total price submission details. The total price for NK Panorama is RM[~~×~~], while for Prospectrum it is RM[~~×~~]. These figures are consistent with the physical tender submissions presented by NK Panorama and Prospectrum to MINDEF.
137. The discovery of NK Panorama's Tender APAK 2016 price at Prospectrum's premises can reasonably be deduced to indicate that communication of commercially sensitive information existed between the two parties.

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<sup>124</sup> NK Panorama's Tender APAK 2016 documents submitted to MINDEF, page 6.

<sup>125</sup> Prospectrum's Tender APAK 2016 documents submitted to MINDEF, page 6.

Price Patterns in Bids Submitted by NK Panorama and Prospectrum to MINDEF

138. The Commission additionally notes that in Tender APAK 2016 NK Panorama's submitted price is RM0.05 less than Prospectrum's submission across all categories of "*Harga Senggaraan (Tanpa Alat Ganti)*", "*Senarai Alat Ganti Laris (Mandatory) Untuk Senggaraan APAK TLDM*", and "*Senarai Alat Ganti Laris (Mandatory) Untuk Senggaraan APAK TD*". This indicates that NK Panorama's tender bid is marginally lower than Prospectrum's for these specific categories.
139. The discovery of Tender APAK 2016 documents linked to NK Panorama at Prospectrum's premises, coupled with a consistent RM0.05 price difference in specific item categories, demonstrates an agreement to perform bid rigging through cover bids. Additionally, the investigation also revealed the fact that these two Parties share the same principal business address.

*Evidence retrieved from recorded statements*

140. In making the finding of bid rigging conduct, the Commission also supported its findings with statements recorded from Noradzmi, Director of Prospectrum and father of Nurfarah Liyana, who is the sole proprietor of NK Panorama.<sup>126</sup>

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<sup>126</sup> Statement of Nurfarah Liyana recorded on 7.12.2022; and Statement of Noradzmi recorded on 7.12.2022.

141. Noradzmi asserted that he encountered the advertisement for bid submissions for Tender APAK 2016 and inquired with Nurfarah Liyana about her interest in participating. Nurfarah Liyana expressed her interest in the opportunity.<sup>127</sup> Noradzmi also disclosed that while determining Prospectrum's bid price submission for Tender APAK 2016, he referred to a previous Tender APAK that Prospectrum had successfully secured as a point of reference.<sup>128</sup>
142. Regarding NK Panorama's bid price submission for Tender APAK 2016, Noradzmi provided NK Panorama with the bid price submission of Prospectrum, thus enabling NK Panorama to make necessary adjustments for its own tender submission.<sup>129</sup>
143. Nurfarah Liyana corroborated Noradzmi's statement by acknowledging that for specific price details that were unavailable from manufacturers or suppliers, she would seek assistance from her father.<sup>130</sup> She would then apply a mark-up to the prices provided by her father before incorporating them into NK Panorama's pricing. Moreover, she confessed to requesting "*harga selenggaraan*" (maintenance charges) from her father, which she subsequently modified for NK Panorama's use.<sup>131</sup>

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<sup>127</sup> Paragraph 18 of the Statement of Noradzmi recorded on 7.12.2022; and Paragraph 36 of the Statement of Nurfarah Liyana recorded on 7.12.2022.

<sup>128</sup> Paragraph 12 of the Statement of Noradzmi recorded on 7.12.2022.

<sup>129</sup> Paragraph 18 of the Statement of Noradzmi recorded on 7.12.2022

<sup>130</sup> Paragraph 39 of the Statement of Nurfarah Liyana recorded on 7.12.2022.

<sup>131</sup> Paragraph 39 of the Statement of Nurfarah Liyana recorded on 7.12.2022.

***Evidence Analysis: Bid Rigging Agreement Between Prospectrum and NK Panorama***

144. Based on the information and documents retrieved through search and seizure operation at Prospectrum's premises, the Commission gathered the following findings:

- (i) Prospectrum's Possessed NK Panorama's Bid Price Submissions for Tender APAK 2016 – **paragraphs 135 to 137**; and
- (ii) Price Patterns in Bids Submitted by NK Panorama and Prospectrum to MINDEF – **paragraphs 138 to 139**.

145. The findings above and those drawn from the recorded statements, as set out in **paragraphs 140 to 143**, clearly show that Prospectrum and NK Panorama engaged in an agreement with the object to perform bid rigging through covers bid and sharing of sensitive information for Tender APAK 2016.

146. The exchange of information between Prospectrum and NK Panorama reduced uncertainty between the two competitors and thereby had prevented a competitive tendering process in Tender APAK 2016.<sup>132</sup> The Commission finds that the shared pricing information between Prospectrum and NK Panorama, facilitated by Noradzmi and Nurfarah Liyana, served as a strategy to diminish

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<sup>132</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry* at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; and Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41.



competitive pressures through bid rigging conduct.<sup>133</sup> These actions resulted in distortions of competition and undermine the transparency that is vital for a competitive tendering process.

147. Therefore, the Commission makes a finding that NK Panorama participated in a horizontal agreement with the object to perform bid rigging through covers bid and sharing of sensitive information with Prospectrum, for Tender APAK 2016.

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<sup>133</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry* at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41; *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209; CA98/02/2009 *Bid rigging in the Construction Industry in England*, paragraphs III.92 to II.98; and Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.22.

## E.2 Tender ELSA 2016

### Background

148. Tender ELSA 2016 encompasses the provision of maintenance services and the supply of spare parts for various equipment, including Emergency Life Support Apparatus (ELSA), Air Breathing Apparatus (ABA), Breathing Air Compressor (BAC) and Anti Gas Respirator Mask (AGRM) for the TLDM in Malaysia over a three-year duration.<sup>134</sup> The tender ceiling price was RM[~~RM~~].<sup>135</sup>
149. On 24.1.2017, MINDEF accepted the bid made by Agenda Eksklusif totalling RM[~~RM~~], contingent upon the fulfilment of applicable requirements and conditions set forth by MINDEF.<sup>136</sup>
150. On 23.2.2017, the Letter of Acceptance was granted to Agenda Eksklusif for Tender ELSA 2016. The director of Agenda Eksklusif, Dato' Rosdi, appended his signature to the letter on 24.2.2017, while Raja Nurnaim served as the witness.<sup>137</sup>

### *Evidence retrieved from Agenda Eksklusif's premises*

151. As previously discussed, the Commission executed a search and seizure with warrant operation at the Agenda Eksklusif's premises

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<sup>134</sup> *Kertas Taklimat Tender ELSA 2016 No. Tender: KP/PERO1D/T218/2016/OE*, pages 13 and 61.

<sup>135</sup> *Kertas Taklimat Tender ELSA 2016 No. Tender: KP/PERO1D/T218/2016/OE*, pages 13.

<sup>136</sup> *Kertas Taklimat Tender ELSA 2016 No. Tender: KP/PERO1D/T218/2016/OE*, page 46 until 50.

<sup>137</sup> Letter of Acceptance dated 23.2.2017, *Kertas Taklimat Tender ELSA 2016 No. Tender: KP/PERO1D/T218/2016/OE*, pages 48 until 50.

on 24.3.2021. During the course of the inspection, relevant documents related to Tender ELSA 2016 were discovered and subsequently subjected to investigation.

152. The Commission discovered compelling evidence in the form of a portable document format (PDF) that outlines three distinct price summaries for the Tender ELSA 2016. Below are the excerpts from the aforementioned PDF documents, specifically, **Sheet 7**, **Sheet 8** and **Sheet 9**:

**Sheet 7:** PDF detailing the summary price of Agenda Eksklusif for Tender ELSA 2016<sup>138</sup>

**A-HARGA SENGGARAAN (TANPA ALAT GANTI)**

Kos Bagi Kerja Senggaraan & Ujian (Tanpa Alat Ganti)							
Bil	Perkara	Harga Mengikut Kawasan (RM)			Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
		KL/PJ	Luar KL/PJ	Sabah/ Sarawak			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	
1.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Air Breathing Apparatus (ABA)	█	█	█	█	█	█
2.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Emergency Life Support Apparatus (ELSA)	█	█	█	█	█	█
3.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Breathing Air Compressor (BAC)	█	█	█	█	█	█
4.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Anti Gas Respirator Mask (AGRM)	█	█	█	█	█	█
Jumlah Keseluruhan (bil 1 hingga bil 4)		█	█	█			

**B-HARGA ALAT GANTI MANDATORY (EX STOCK/TEMPATAN ATAU BULK INDENT)**

Bil	Perkara	Jumlah Harga Alat Ganti Ex Stock/Tempatan	Jumlah Harga Alat Ganti Bulk Indent	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(d)	(e)	(f)	(g)
1.	Air Breathing Apparatus (ABA)	█	-	Sabre Safety	█	█
2.	Emergency Life Support Apparatus (ELSA)	█	-	Sabre Safety	█	█
3.	Breathing Air Compressor (BAC)	█	-	Sabre Safety	█	█
4.	Anti Gas Respirator Mask (AGRM)	█	-	Sabre Safety	█	█
Jumlah Keseluruhan (bil 1 hingga bil 4)		█	-	Sabre Safety		

**C-HARGA KESELURUHAN (HARGA A + HARGA B)= . █**

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<sup>138</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 36 and 37.

**Sheet 8:** PDF detailing the summary price of Star Apax for Tender ELSA 2016<sup>139</sup>

**A-HARGA SENGGARAAN (TANPA ALAT GANTI)**

Kos Bagi Kerja Senggaraan & Ujian (Tanpa Alat Ganti)							
Bil	Perkara	Harga Mengikut Kawasan (RM)			Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
		KL/PJ	Luar KL/PJ	Sabah/Sarawak			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	
1.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Air Breathing Apparatus (ABA)	██	██	██	██	██	██
2.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Emergency Life Support Apparatus (ELSA)	██	██	██	██	██	██
3.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Breathing Air Compressor (BAC)	██	██	██	██	██	██
4.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Anti Gas Respirator Mask (AGRM)	██	██	██	██	██	██
<b>Jumlah Keseluruhan (bil 1 hingga bil 4)</b>		██	██	██			

**B-HARGA ALAT GANTI MANDATORY (EX STOCK/TEMPATAN ATAU BULK INDENT)**

Bil	Perkara	Jumlah Harga Alat Ganti Ex Stock/Tempatan	Jumlah Harga Alat Ganti Bulk Indent	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(d)	(e)	(f)	(g)
1.	Air Breathing Apparatus (ABA)	██	-	sabre safety	██	██
2.	Emergency Life Support Apparatus (ELSA)	██	-	sabre safety	██	██
3.	Breathing Air Compressor (BAC)	██	-	sabre safety	██	██
4.	Anti Gas Respirator Mask (AGRM)	██	-	sabre safety	██	██
<b>Jumlah Keseluruhan (bil 1 hingga bil 4)</b>		██	-	sabre safety		

**C-HARGA KESELURUHAN (HARGA A + HARGA B)=** ██████████ .....

**Sheet 9:** PDF detailing the summary price of Nekad Waja for Tender ELSA 2016<sup>140</sup>

**A-HARGA SENGGARAAN (TANPA ALAT GANTI)**

Kos Bagi Kerja Senggaraan & Ujian (Tanpa Alat Ganti)							
Bil	Perkara	Harga Mengikut Kawasan (RM)			Kekerapan Senggaraan	Tempoh Senggaraan	Waranti Kerja Senggaraan
		KL/PJ	Luar KL/PJ	Sabah/Sarawak			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	
1.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Air Breathing Apparatus (ABA)	██	██	██	██	██	██
2.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Emergency Life Support Apparatus (ELSA)	██	██	██	██	██	██
3.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Breathing Air Compressor (BAC)	██	██	██	██	██	██
4.	Kos Bagi Pembaikan Biasa, Penyelenggaraan dan Ujian Anti Gas Respirator Mask (AGRM)	██	██	██	██	██	██
<b>Jumlah Keseluruhan (bil 1 hingga bil 4)</b>		██	██	██			

**B-HARGA ALAT GANTI MANDATORY (EX STOCK/TEMPATAN ATAU BULK INDENT)**

Bil	Perkara	Jumlah Harga Alat Ganti Ex Stock/Tempatan	Jumlah Harga Alat Ganti Bulk Indent	Sumber Alat Ganti	Tempoh Penghantaran	Waranti Alat Ganti
(a)	(b)	(c)	(d)	(e)	(f)	(g)
1.	Air Breathing Apparatus (ABA)	██	-	keison product	██	██
2.	Emergency Life Support Apparatus (ELSA)	██	-	keison product	██	██
3.	Breathing Air Compressor (BAC)	██	-	keison product	██	██
4.	Anti Gas Respirator Mask (AGRM)	██	-	keison product	██	██
<b>Jumlah Keseluruhan (bil 1 hingga bil 4)</b>		██	-	keison product		

**C-HARGA KESELURUHAN (HARGA A + HARGA B)=** ██████████ .....

<sup>139</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 38 and 39.

<sup>140</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 40 and 41.

Agenda Eksklusif's Possession of Star Apax and Nekad Waja's Bid Price Submissions for Tender ELSA 2016

153. Upon conducting a comprehensive analysis, the Commission conducted an in-depth examination of the PDF documents. This investigation discovered that **Sheet 7** corresponds to the Tender ELSA 2016 submitted by Agenda Eksklusif, **Sheet 8** corresponds with the Tender ELSA 2016 put forward by Star Apax, and **Sheet 9** corresponds to the Tender ELSA 2016 presented by Nekad Waja.<sup>141</sup>
154. **Sheet 7**, **Sheet 8**, and **Sheet 9** show that Agenda Eksklusif possesses the bid price submissions of its competitors, Star Apax and Nekad Waja, for Tender ELSA 2016. This is clear evidence that there was an exchange of commercially sensitive information between the three Parties, demonstrating an intention to rig the bids submitted for Tender ELSA 2016.

Price Patterns in Bids Submitted by Agenda Eksklusif, Star Apax, and Nekad Waja to MINDEF

155. The Commission finds that Agenda Eksklusif, Star Apax, and Nekad Waja submitted bid prices with a uniform increment of 5%. This increment was observed from Agenda Eksklusif to Star Apax, and subsequently from Star Apax to Nekad Waja.

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<sup>141</sup> Agenda Eksklusif's Tender ELSA 2016 documents submitted to MINDEF, page 54; Star Apax's Tender ELSA 2016 documents submitted to MINDEF, page 73; and Nekad Waja's Tender ELSA 2016 documents submitted to MINDEF, page 30.

156. The pricing structure, similar to Tender APAK 2016, designates Agenda Eksklusif as the reference point for establishing the base price. Agenda Eksklusif had the lowest or base price (RM[~~ⓧ~~]), followed by Star Apax, which increased the price of Agenda Eksklusif by approximately 5%, resulting in a total price submission of RM[~~ⓧ~~]. Nekad Waja, on the other hand, added 10% to the price of Agenda Eksklusif, resulting in a total price submission of RM[~~ⓧ~~]. The consolidated price submissions are detailed in **Table 16** below:

**Table 16:** Price Submissions of the Parties to MINDEF

PRICE SUBMISSION (RM)	STAR APAX	NEKAD WAJA	AGENDA EKSKLUSIF
HARGA SENGARAAN	[ <del>ⓧ</del> ]	[ <del>ⓧ</del> ]	[ <del>ⓧ</del> ]
ALAT GANTI MANDATORY	[ <del>ⓧ</del> ]	[ <del>ⓧ</del> ]	[ <del>ⓧ</del> ]
<b>TOTAL</b>	[ <del>ⓧ</del> ]	[ <del>ⓧ</del> ]	[ <del>ⓧ</del> ]

157. The uniform in percentage increase of the price submissions in **Table 16**, on the balance of probabilities, indicates that the independent competitive behavior of these three parties in Tender ELSA has been compromised, that there was collusion to provide cover bids through the sharing of pricing information. The reiterated role of Agenda Eksklusif as the reference price highlights the concerted nature of this price movement.

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Close Proximity of the Date Created and Date Modified of the PDF Documents

158. The Commission further discovered that the PDF documents in **Sheet 7** to **Sheet 9** were generated on the same date and time, suggesting that they originated from a single source and were made into multiple copies. Additionally, the PDF documents were modified within a short timeframe, close to the closing date of Tender ELSA 2016. **Table 17** presents a comprehensive summary of these findings as follows:

**Table 17:** Summary of the “Modified” date of the PDF documents for all Parties<sup>142</sup>

	CREATED	LAST MODIFIED	TENDER OPEN – CLOSING DATES:
<b>AGENDA EKSKLUSIF</b>	14.10.2016, 8.56 am	7.11.2016, 7:57pm	14.10.2016 – 8.11.2016
<b>NEKAD WAJA</b>	14.10.2016, 8.56 am	7.11.2016, 7:58pm	
<b>STAR APAX</b>	14.10.2016, 8.56 am	7.11.2016, 9.26pm	

159. **Table 17** shows that the documents were generated within the tender advertisement period and prior to the Tender ELSA 2016 submission deadline. The presence of identical date and time stamps for the date created showed that a singular individual or a group of individuals, employing a single device, created the documents for all three Parties, namely, Agenda Eksklusif, Star Apax and Nekad Waja. It is also crucial to note that **Sheet 7**, **Sheet 8** and

<sup>142</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 36, 38 and 40.

**Sheet 9** also share a close proximity on the date and time it was last modified.

160. The circumstances outlined serve as evidence of a collusion arrangement between Agenda Eksklusif, Star Apax, and Nekad Waja to engage in bid rigging for Tender ELSA 2016.



















Close Proximity of the Last Modified Date of the Microsoft Excel Spreadsheets

161. The Commission also retrieved Microsoft Excel spreadsheets related with Tender ELSA 2016 submissions by Agenda Eksklusif, Nekad Waja, and Star Apax. These Microsoft Excel spreadsheets exhibited alterations prior to the tender's final date of closure on 8.11.2016. The Commission's analysis of these modifications is presented in **Tables 18 to 22**, below:

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**Table 18:** ELSA Mandatory itemised price list for all Parties.

Parties	Excel Documents (ELSA Mandatory)	
<b>Agenda Eksklusif</b> <sup>143</sup>	 mandatory agrm (1)	5/11/2016 2:53 PM
	 mandatory BA model SABRE CENTURION (1) - Copy	5/11/2016 2:53 PM
	 mandatory BA model SABRE CONTOUR (1)	7/11/2016 10:03 AM
	 mandatory BA model SIEBE GORMAN	5/11/2016 2:53 PM
	 mandatory COMPRESSOR model JUNIOR II BAUER	5/11/2016 2:53 PM
	 mandatory ELSA	7/11/2016 10:08 AM
<b>Star Apax</b> <sup>144</sup>	 mandatory agrm (1)	7/11/2016 7:24 PM
	 mandatory BA model SABRE CENTURION (1) - Copy	7/11/2016 3:46 PM
	 mandatory BA model SABRE CONTOUR (1)	7/11/2016 3:46 PM
	 mandatory BA model SIEBE GORMAN	7/11/2016 3:46 PM
	 mandatory COMPRESSOR model JUNIOR II BAUER	7/11/2016 3:48 PM
	 mandatory ELSA	7/11/2016 3:48 PM
<b>Nekad Waja</b> <sup>145</sup>	 mandatory agrm (1)	7/11/2016 2:59 PM
	 mandatory BA model SABRE CENTURION (1) - Copy	5/11/2016 2:25 PM
	 mandatory BA model SABRE CONTOUR (1)	7/11/2016 11:23 AM
	 mandatory BA model SIEBE GORMAN	5/11/2016 2:28 PM
	 mandatory COMPRESSOR model JUNIOR II BAUER	5/11/2016 2:31 PM
	 mandatory ELSA	7/11/2016 11:24 AM


































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<sup>143</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 70.

<sup>144</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 73.

<sup>145</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 76.

**Table 19:** ABA Spare Parts price list for all Parties

Parties	Excel Documents (ABA Spare Parts price list)	
<b>Agenda Eksklusif<sup>146</sup></b>	 contour 300&500-1  drager p212-1  drager p213-1  drager pa-90-1  drager pss 3000-1  SABRE ACSI-1  spare part list BA LALIZAS - MODEL 71327-1  spare part list BA LALIZAS - MODEL 71328-1  spare part list BA model SABRE CENTURION-1  spare part list BA model SABRE CONTOUR-1  spare parts list BA model SIEBE GORMAN-1	5/11/2016 2:46 PM 5/11/2016 2:45 PM 5/11/2016 2:41 PM 5/11/2016 2:39 PM 5/11/2016 2:37 PM 5/11/2016 2:33 PM 5/11/2016 2:23 PM 5/11/2016 2:21 PM 5/11/2016 2:19 PM 7/11/2016 10:33 AM 7/11/2016 3:34 PM
<b>Star Apax<sup>147</sup></b>	 contour 300&500-1 DONE  drager p212-1 DONE  drager p213-1 DONE  drager pa-90-1 DONE  drager pss 3000-1 DONE  SABRE ACSI-1 DONE  spare part list BA LALIZAS - MODEL 71327-1 DONE  spare part list BA LALIZAS - MODEL 71328-1 DONE  spare part list BA model SABRE CENTURION-1 DONE  spare part list BA model SABRE CONTOUR-1 DONE  spare parts list BA model SIEBE GORMAN-1 DONE	5/11/2016 4:32 PM 5/11/2016 5:01 PM 5/11/2016 5:09 PM 5/11/2016 5:12 PM 5/11/2016 5:15 PM 5/11/2016 5:18 PM 5/11/2016 5:21 PM 5/11/2016 5:29 PM 5/11/2016 5:35 PM 7/11/2016 11:59 AM 5/11/2016 5:55 PM
<b>Nekad Waja<sup>148</sup></b>	 contour 300&500-1  drager p212-1  drager p213-1  drager pa-90-1  drager pss 3000-1  SABRE ACSI-1  spare part list BA LALIZAS - MODEL 71327-1  spare part list BA LALIZAS - MODEL 71328-1  spare part list BA model SABRE CENTURION-1  spare part list BA model SABRE CONTOUR-1  spare parts list BA model SIEBE GORMAN-1	5/11/2016 2:35 PM 5/11/2016 2:51 PM 5/11/2016 2:53 PM 5/11/2016 2:55 PM 5/11/2016 3:01 PM 5/11/2016 3:07 PM 5/11/2016 3:09 PM 5/11/2016 3:10 PM 5/11/2016 3:24 PM 7/11/2016 11:31 AM 7/11/2016 3:40 PM



















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<sup>146</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 79.

<sup>147</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 82.

<sup>148</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 85.

**Table 20:** AGRM Spare Parts price list for all Parties.

Parties	Excel Documents (AGRM Spare Parts price list)	
<b>Agenda Eksklusi</b> <sup>149</sup>	 AVON FM 2, CT12-1  AVON S10-1  DAREGER PANAORAMA NOVA0-1  FORSHEDA A4-1  RACAL PANORAMA BS 4667-1  WESSEX 1005, F2-102-2-1	5/11/2016 1:45 PM 5/11/2016 1:38 PM 5/11/2016 1:38 PM 5/11/2016 1:37 PM 5/11/2016 1:37 PM 7/11/2016 3:36 PM
<b>Star Apax</b> <sup>150</sup>	 AVON FM 2, CT12-1 DONE  AVON S10-1 DONE  DAREGER PANAORAMA NOVA0-1 DONE  FORSHEDA A4-1 DONE  RACAL PANORAMA BS 4667-1 DONE  WESSEX 1005, F2-102-2-1 DONE	5/11/2016 5:56 PM 5/11/2016 6:01 PM 5/11/2016 6:04 PM 5/11/2016 6:05 PM 5/11/2016 6:15 PM 5/11/2016 6:17 PM
<b>Nekad Waja</b> <sup>151</sup>	 AVON FM 2, CT12-1  AVON S10-1  DAREGER PANAORAMA NOVA0-1  FORSHEDA A4-1  RACAL PANORAMA BS 4667-1  WESSEX 1005, F2-102-2-1	8/11/2021 11:05 AM 7/11/2016 4:13 PM 7/11/2016 4:14 PM 7/11/2016 4:14 PM 7/11/2016 4:15 PM 7/11/2016 4:35 PM


































[The remainder of this page intentionally left blank]

<sup>149</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 88.

<sup>150</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 91.

<sup>151</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 94.

**Table 21:** BAC Spare Parts price list for all Parties

Parties	Excel Documents (BAC Spare Parts price list)	
<b>Agenda Eksklusif</b> <sup>152</sup>	 spare part list COMPRESSOR model BAUER K15-10	7/11/2016 4:39 PM
	 spare part list COMPRESSOR model C5404	5/11/2016 3:59 PM
	 spare part list COMPRESSOR model CTP-150	5/11/2016 3:52 PM
	 spare part list COMPRESSOR model CTP-F 150	7/11/2016 4:30 PM
	 spare part list COMPRESSOR model draeger	5/11/2016 3:41 PM
	 spare part list COMPRESSOR model JUNIOR II BAUER	5/11/2016 3:38 PM
	 spare part list COMPRESSOR model K 14-5.5 & K 14-7.5	5/11/2016 3:32 PM
	 spare part list COMPRESSOR model K20-20	5/11/2016 3:29 PM
	 spare part list COMPRESSOR model MARINER 200 DAN MARINE II	5/11/2016 3:21 PM
	 spare part list COMPRESSOR model mv120-4-2	5/11/2016 3:12 PM
	 spare part list COMPRESSOR model U3W	7/11/2016 2:21 PM
<b>Star Apax</b> <sup>153</sup>	 spare part list COMPRESSOR model BAUER K15-10	5/11/2016 4:09 PM
	 spare part list COMPRESSOR model C5404	5/11/2016 3:59 PM
	 spare part list COMPRESSOR model CTP-150	5/11/2016 3:52 PM
	 spare part list COMPRESSOR model CTP-F 150	7/11/2016 12:10 PM
	 spare part list COMPRESSOR model draeger	5/11/2016 3:41 PM
	 spare part list COMPRESSOR model JUNIOR II BAUER	5/11/2016 3:38 PM
	 spare part list COMPRESSOR model K 14-5.5 & K 14-7.5	5/11/2016 3:32 PM
	 spare part list COMPRESSOR model K20-20	5/11/2016 3:29 PM
	 spare part list COMPRESSOR model MARINER 200 DAN MARINE II	5/11/2016 3:21 PM
	 spare part list COMPRESSOR model mv120-4-2	5/11/2016 3:12 PM
	 spare part list COMPRESSOR model U3W	7/11/2016 12:23 PM
<b>Nekad Waja</b> <sup>154</sup>	 spare part list COMPRESSOR model BAUER K15-10	5/11/2016 5:25 PM
	 spare part list COMPRESSOR model C5404	5/11/2016 5:29 PM
	 spare part list COMPRESSOR model CTP-150	5/11/2016 5:33 PM
	 spare part list COMPRESSOR model CTP-F 150	7/11/2016 10:54 AM
	 spare part list COMPRESSOR model draeger	5/11/2016 5:40 PM
	 spare part list COMPRESSOR model JUNIOR II BAUER	5/11/2016 5:08 PM
	 spare part list COMPRESSOR model K 14-5.5 & K 14-7.5	5/11/2016 5:47 PM
	 spare part list COMPRESSOR model K20-20	5/11/2016 5:52 PM
	 spare part list COMPRESSOR model MARINER 200 DAN MARINE II	5/11/2016 6:19 PM
	 spare part list COMPRESSOR model mv120-4-2	5/11/2016 6:23 PM
	 spare part list COMPRESSOR model U3W	7/11/2016 10:50 AM













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<sup>152</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 97.

<sup>153</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 100.

<sup>154</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 103.

**Table 22:** ELSA Spare Parts price list for all Parties

Parties	Excel Documents (ELSA Spare Parts price list)	
<b>Agenda Eksklusif</b> <sup>155</sup>	 DRAGER.-1	5/11/2016 1:51 PM
	 LALIZAS-1	5/11/2016 1:50 PM
	 ocenco-1	5/11/2016 1:49 PM
	 SABRE-1	7/11/2016 10:28 AM
<b>Star Apax</b> <sup>156</sup>	 DRAGER.-1 DONE	5/11/2016 6:18 PM
	 LALIZAS-1 DONE	5/11/2016 6:20 PM
	 ocenco-1 DONE	7/11/2016 9:43 AM
	 SABRE-1 DONE	7/11/2016 11:50 AM
<b>Nekad Waja</b> <sup>157</sup>	 DRAGER.-1	5/11/2016 3:33 PM
	 LALIZAS-1	5/11/2016 3:36 PM
	 ocenco-1	5/11/2016 3:38 PM
	 SABRE-1	7/11/2016 11:28 AM

162. **Table 18** to **Table 22**, as presented above, show that the Microsoft Excel spreadsheets were amended prior to the tender's closing date and the price submissions of Agenda Eksklusif, Star Apax, and Nekad Waja to MINDEF for Tender ELSA 2016. These Microsoft Excel spreadsheets correspond to the physical tender submissions received by MINDEF for Tender ELSA. The information highlighted in red draws attention to two pivotal findings by the Commission:

- (a) The last modified dates of the documents from Agenda Eksklusif, Star Apax, and Nekad Waja were in close proximity in time; and
- (b) The documents of Agenda Eksklusif, Star Apax and Nekad Waja were modified prior to the tender's closing date of 8.11.2016, between 5.11.2016 and 7.11.2016, as illustrated in **Tables 18** to **22** above.

<sup>155</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 106.

<sup>156</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 109.

<sup>157</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 112.

163. The evidence in **Tables 18 to 22** show that the documents were produced during the period of the tender advertisement and preceding the submission deadline. In addition, the closely aligned last modified dates suggest that the same co-located individual or a group of individuals finalised the documents for all three Parties.

Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, and Nekad Waja

164. Throughout the Commission's investigation, Dato' Rosdi of Agenda Eksklusif/ Star Apax openly acknowledged that the participation of Star Apax and Nekad Waja in Tender ELSA 2016 was a deliberate tactic to enhance Agenda Eksklusif's likelihood of securing the tender.<sup>158</sup> After conferring with Shamill, Dato' Rosdi conclusively determined the final submission price for Agenda Eksklusif, Star Apax and Nekad Waja.<sup>159</sup>

165. As part of a concerted strategy to increase their chances of winning the tender, Agenda Eksklusif purposefully formulated a lower final price for its Tender ELSA 2016 submission in contrast to Star Apax and Nekad Waja.<sup>160</sup> The total price quoted by Nekad Waja in its Tender ELSA 2016 bid retained the original price submitted by Dato' Rosdi of Agenda Eksklusif.<sup>161</sup>

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<sup>158</sup> Paragraph 9 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 25 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>159</sup> Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022; Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 29 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>160</sup> Paragraph 29 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>161</sup> Paragraph 9 of the Statement of Shamill recorded on 24.11.2021.

166. The prices provided by the Parties to MINDEF are outlined in **Table 23** as follows:

**Table 23:** Price Submissions of the Parties to MINDEF

PRICE SUBMISSION (RM)	STAR APAX	NEKAD WAJA	AGENDA EKSKLUSIF
HARGA SENGARAAN	[REDACTED]	[REDACTED]	[REDACTED]
ALAT GANTI MANDATORY	[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL</b>	[REDACTED]	[REDACTED]	[REDACTED]

167. **Table 23** clearly shows that Agenda Eksklusif submitted the lowest bid price, whilst Star Apax and Nekad Waja submitted higher prices. This is consistent with Dato' Rosdi's assertion that the lowest price was designed for Agenda Eksklusif as a strategic move to increase its chances of securing Tender ELSA 2016.

168. The foregoing fact shows that Agenda Eksklusif, Star Apax, and Nekad Waja exchanged sensitive pricing information to construct their bids, with Star Apax and Nekad Waja providing cover bids, thereby conferring upon Agenda Eksklusif an unfair advantage over other bidders.

*Evidence retrieved from recorded statements*

169. The evidence shows that Star Apax and Nekad Waja did not participate in the bidding process in good faith. Instead, they colluded with Agenda Eksklusif to enhance its prospects of securing Tender ELSA 2016. This evidence is further supported by the statements provided by Dato' Rosdi of Agenda Eksklusif/Star Apax, Shamill of Nekad Waja/Agenda Eksklusif, Raja Nurnaim of Star



Apax/ Agenda Eksklusif, and the employees of Agenda Eksklusif, demonstrating communications and collusion among Agenda Eksklusif, Star Apax, and Nekad Waja for Tender ELSA 2016.<sup>162</sup>

170. The discussion on the evidence will be divided into two parts:

- (a) Prior Coordination Between Agenda Eksklusif and Star Apax;  
and
- (b) Prior Coordination Between Agenda Eksklusif and Nekad Waja.

(a) *Prior Coordination Between Agenda Eksklusif and Star Apax*

171. The modus operandi used to prepare and secure Tender APAK 2016 was replicated for Tender ELSA 2016. Mirroring the approach taken in Tender APAK 2016, Dato' Rosdi, upon being informed of Tender ELSA 2016, took the decision for both Agenda Eksklusif and Star Apax to submit their respective bids.<sup>163</sup>

172. The strategy utilised in Tender ELSA 2016 shares resemblances with the preceding situation in which Dato' Rosdi instructed Nur Ain of Agenda Eksklusif to collect supplier quotations and compile pricing information from previously awarded contracts. Leveraging his industry expertise and the gathered supplier prices, Dato' Rosdi

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<sup>162</sup> Statement of Dato' Rosdi recorded on 5.1.2022; Statement of Dato' Rosdi recorded on 24.11.2021; Statement of Nur Ain recorded on 24.3.2021; Statement of Nur Ain recorded on 23.11.2021; Statement of Shamill recorded on 25.3.2021; Statement of Shamill recorded on 24.11.2021; Statement of Raja Nurnaim recorded on 5.1.2022; Statement of Fetty recorded on 23.11.2021; Statement of Fetty recorded on 24.3.2021; and Statement of Zulhalfi recorded on 7.2.2022.

<sup>163</sup> Paragraph 9 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraph 11 of the Statement of Nur Ain recorded on 23.11.2021.



then proceeded to determine the pricing strategy for the Tender ELSA 2016 submission.<sup>164</sup>

173. In the process of deliberating over the price submissions, Dato' Rosdi engaged in consultations with Shamill, an employee of Agenda Eksklusif and the registered proprietor of Nekad Waja.<sup>165</sup> Whilst suggestions on price were provided by Shamill, it was Dato' Rosdi, the instigator of the collusive conduct, who decided the price for the Tender ELSA 2016 bids to be put forth by Agenda Eksklusif, Star Apax and Nekad Waja.<sup>166</sup>

174. The pricing structure employed for Tender ELSA 2016 closely resembled that of Tender APAK 2016. Dato' Rosdi set up the tender price for Agenda Eksklusif and then provided a marked-up price for Star Apax, derived from Agenda Eksklusif's established tender price.<sup>167</sup> Upon establishing the pricing details, the task of compiling the necessary documentation, including pricing documentation was entrusted to Nur Ain.<sup>168</sup> Thereafter, Dato' Rosdi confirmed the price submissions for both Agenda Eksklusif and Star Apax.<sup>169</sup>

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<sup>164</sup> Paragraphs 13,14,15 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>165</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; Paragraph 8 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>166</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 8 of the Statement of Shamill recorded on 24.11.2021.

<sup>167</sup> Paragraphs 13 and 15 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>168</sup> Paragraph 16 of the Statement of Dato' Rosdi recorded on 24.11.2021; Paragraph 9 of the Statement of Fetty recorded on 23.11.2021; and Paragraph 14 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>169</sup> Paragraphs 13 and 15 of the Statement of Nur Ain recorded on 23.11.2021.

175. Nur Ain assumed the responsibility of preparing the tender submissions on behalf of Agenda Eksklusif<sup>170</sup>, while Syazalina, also an employee of Agenda Eksklusif, undertook the preparation of the tender submissions for Star Apax.<sup>171</sup> The Commission acknowledges that Syazalina may not have been solely responsible for preparing Star Apax's tender documents, as this task could also have been carried out by Fetty, another employee of Agenda Eksklusif.<sup>172</sup>
176. Dato' Rosdi failed to verify the identity of Agenda Eksklusif employee who contributed to the preparation for the documentation for Star Apax.<sup>173</sup> After finalising the tender documents for Agenda Eksklusif, they were presented to Dato' Rosdi for his signature. According to Dato' Rosdi, the tender documents related to Star Apax were submitted to Raja Nurnaim, who serves as both a partner of Star Apax and an employee member of Agenda Eksklusif, for her signature.<sup>174</sup>
177. However, after examining Star Apax's tender documents retrieved from MINDEF, the Commission verified that the signatory was that

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<sup>170</sup> Paragraph 10 of the Statement of Nur Ain recorded on 24.3.2021; and Paragraph 17 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>171</sup> Paragraph 17 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>172</sup> Paragraphs 32 and 33 of the Statement of Fetty recorded on 23.11.2021; and Paragraph 6 of the Statement of Fetty recorded on 24.3.2021.

<sup>173</sup> Paragraph 17 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>174</sup> Paragraph 18 of the Statement of Dato' Rosdi recorded on 24.11.2021.

of Zulhalfi, the Manager of Star Apax, and not that of Raja Nurnaim, as previously stated by Dato' Rosdi.<sup>175</sup>

178. Both Raja Nurnaim and Dato' Rosdi, acting on behalf of Agenda Eksklusif, have confirmed that Zulhalfi, as the manager of Star Apax at the that time, signed on behalf of Star Apax for Tender ELSA 2016.<sup>176</sup> This signature was affixed on Dato' Rosdi's instruction.<sup>177</sup>
179. Upon finalising the tender submissions for Agenda Eksklusif and Star Apax, Shamill, on behalf of Agenda Eksklusif, Star Apax and Nekad Waja, proceeded to submit the tender documents to MINDEF.<sup>178</sup>
180. Dato' Rosdi's actions in determining the price submissions for both Agenda Eksklusif and Star Apax caused a false competitive bidding process in Tender ELSA 2016. In this case, both parties submitted their bids separately, making it seem as if they were independent bidders to MINDEF. However, unbeknownst to MINDEF, they were colluding.

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<sup>175</sup> Companies Commission of Malaysia search on Star Apax dated 17.11.2023; and Paragraph 9 of the Statement of Zulhalfi recorded on 7.2.2022.

<sup>176</sup> Paragraphs 12 and 13 of the Statement of Raja Nurnaim recorded on 5.1.2022; and Paragraph 13 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>177</sup> Paragraph 13 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>178</sup> Paragraph 1, 2 and 3 of the Statement of Shamill recorded on 24.11.2021.

(b) *Prior Coordination Between Agenda Eksklusif and Nekad Waja*

181. In anticipation of Tender ELSA 2016, Shamill, the proprietor of Nekad Waja, obtained the requisite tender documents from MINDEF.<sup>179</sup> Following this, Shamill consulted with Dato' Rosdi concerning the price submission for Tender ELSA 2016, covering both Agenda Eksklusif and Star Apax.<sup>180</sup> It is important to emphasise that Shamill concurrently maintains an employment position as Project Manager at Agenda Eksklusif.<sup>181</sup> Dato' Rosdi provided Shamill with the suggested price submission for Nekad Waja in preparation for Tender ELSA 2016.<sup>182</sup>

182. Dato' Rosdi acknowledged that, upon Shamill's request, he would provide a price offer to be utilised as Nekad Waja's quotation submission for Tender ELSA 2016.<sup>183</sup> This price was calculated by applying a markup to the total price submitted by Agenda Eksklusif for the same tender application.<sup>184</sup>

183. Upon receiving Dato' Rosdi's price submission, Shamill utilised the computer at Agenda Eksklusif's premises to prepare the tender documents for Nekad Waja.<sup>185</sup> Additionally, Shamill instructed a

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<sup>179</sup> Paragraph 17 of the Statement of Shamill recorded on 24.11.2021.

<sup>180</sup> Paragraph 8 of the Statement of Shamill recorded on 24.11.2021.

<sup>181</sup> Paragraph 1 of the Statement of Shamill recorded on 25.3.2021.

<sup>182</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraphs 8 and 9 of the Statement of Shamill recorded on 24.11.2021.

<sup>183</sup> Paragraph 24 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>184</sup> Paragraph 28 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>185</sup> Paragraph 18 of the Statement of Shamill recorded on 24.11.2021.

practical student from Agenda Eksklusif to print brochures and technical data for the submission.<sup>186</sup>

184. Based on the abovementioned, both Dato' Rosdi and Shamill admitted in their recorded statements that they communicated the prices of Tender ELSA 2016 with each other. This shows that the prices submitted for Tender ELSA 2016 by both Agenda Eksklusif and Nekad Waja were influenced by the information exchanged, thereby affecting their conduct in the tendering process. The involvement of Shamill in discussions regarding price submissions for Agenda Eksklusif and Star Apax proves the existence of collusive practices aimed at coordinating bidding prices between the three Parties.

***Evidence Analysis: Bid Rigging Agreements and/or Concerted Practices Between Agenda Eksklusif, Star Apax and Nekad Waja for Tender ELSA 2016***

185. The Commission obtained information and documents from Agenda Eksklusif's premises through a search and seizure operation, based on the evidence gathered at the premises, the Commission made the following findings:

- i. Agenda Eksklusif's Possessed Star Apax and Nekad Waja's Bid Price Submissions for Tender ELSA 2016 – **paragraph 153 to 154;**

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<sup>186</sup> Paragraph 17 of the Statement of Shamill recorded on 24.11.2021.

- ii. Price Patterns in Bids Submitted by Agenda Eksklusif, Star Apax, and Nekad Waja to MINDEF – **paragraphs 155 to 157**;
  - iii. Close Proximity of the Date Created and Date Modified of the PDF Documents – **paragraphs 158 to 160**;
  - iv. Close proximity of the last modified date of the Microsoft Excel spreadsheets – **paragraphs 161 to 163**; and
  - v. Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, and Nekad Waja – **paragraphs 164 to 168**.
186. Drawing on the findings outlined above and those from the recorded statements, as set out in **paragraphs 169 to 184**, the Commission determines that the similarities in the tender specifics and pricing submitted by Agenda Eksklusif, Star Apax, and Nekad Waja for Tender ELSA 2016 is not mere coincidence but the result of an agreement among the three Parties to commit bid rigging. Agenda Eksklusif, Star Apax, and Nekad Waja's participation in the bidding process was not bona fide but due to cover bidding arrangement to enhance Agenda Eksklusif's prospects of winning the tender.<sup>187</sup>
187. The modus operandi in Tender ELSA 2016 was similar to that of Tender APAK 2016. Dato' Rosdi of Agenda Eksklusif set the base price, while Star Apax and Nekad Waja marked up their prices accordingly. Shamill, the sole owner of Nekad Waja and an employee of Agenda Eksklusif, was consulted during this process.

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<sup>187</sup> Paragraphs 46 and 50 of the Statement of Dato' Rosdi recorded on 24.11.2021; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; Judgment in Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41; and CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.126.

<sup>188</sup> Despite each party holding the necessary field code and submitting different bids to MINDEF, their bids were based on shared tender details and price information.

188. Agenda Eksklusif's sharing of price information and communication with Star Apax and Nekad Waja prior to their bid submissions for Tender ELSA 2016 undermined the competitive integrity of the tender process. This exchange of information among the three Parties distorted the competitive nature of the tender process and eliminated the unpredictability of their behaviour, that pure competition would have ensured, towards each other in the market.<sup>189</sup>

189. The Commission has duly examined the possibility that Nekad Waja altered the bid price recommended by Dato' Rosdi prior to submitting the tender application.<sup>190</sup> Be that as it may, the Commission maintains that this action does not negate the fundamental point that there was an exchange of pricing information between two competing enterprises, Agenda Eksklusif and Nekad Waja, which influenced Nekad Waja's final bid price for Tender ELSA 2016.<sup>191</sup> In fact, Nekad Waja's behaviour strengthens the Commission's finding that the alteration of the bid price was carried out for the purposes

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<sup>188</sup> Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022; Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 50 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>189</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry* at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; and Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41.

<sup>190</sup> Paragraph 30 of the Statement of Shamill recorded on 15.11.2021.

<sup>191</sup> Case C-291/98 P *Sarrío v Commission* [2000] ECR I-9991, at paragraph 50; and Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 90.

of cover-bidding – i.e. in furtherance of their bid-rigging agreement and/or concerted practice.

190. Based on the presented evidence, the Commission finds that Agenda Eksklusif and Star Apax, as well as Agenda Eksklusif and Nekad Waja, actively participated in horizontal agreements and/or concerted practices with the object to perform bid rigging through cover bids and the exchange of price information for Tender ELSA 2016.

***The role of Agenda Eksklusif as the instigator for the agreements and/or concerted practices entered with Star Apax and Nekad Waja for Tender ELSA 2016***

191. The Commission finds that Dato' Rosdi of Agenda Eksklusif instigated the bid rigging agreement involving Star Apax and Nekad Waja for Tender ELSA 2016. This decision is supported by the findings in **paragraphs 185 to 190**, where Dato' Rosdi colluded with Star Apax and Nekad Waja on tender details, influenced their participation in the tender, and coordinated their tender pricing based on Agenda Eksklusif's marked-up tender rates. Essentially, the bid rigging agreement among Agenda Eksklusif, Star Apax, and Nekad Waja was conducted under the instigation of Dato' Rosdi.

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### E.3 Tender APAK 2020

#### Background

192. MINDEF advertised Tender APAK 2020 on 7.3.2020<sup>192</sup>, comprising a procurement tender for maintenance services, supply and installation of spare parts for small fire extinguishers for TDM and TLDM over a 3-year period.<sup>193</sup> The specified ceiling price is RM[~~8~~].<sup>194</sup>

193. On 17.8.2020, the MINDEF issued its Letter of Acceptance to Spectron, formally approving the bid proposal amounting to RM[~~8~~].<sup>195</sup> Muzalifah, a director of Spectron affixed her signature to the letter and Shamill, sole proprietor of Nekad Waja, acted as a witness.<sup>196</sup>

194. For Tender APAK 2020, the Commission has identified horizontal agreements and/or concerted practices that have the object to perform an act of bid rigging involving Agenda Eksklusif, Star Apax, Nekad Waja and Spectron.

195. The bid arrangements by the Parties are listed below:

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<sup>192</sup> *Kertas Taklimat Tender APAK 2020 No.Tender-KP/PERO1D/T024/2020/OE*, page 3.

<sup>193</sup> *Kertas Taklimat Tender APAK 2020 No.Tender-KP/PERO1D/T024/2020/OE*, page 2.

<sup>194</sup> *Kertas Taklimat Tender APAK 2020 No.Tender-KP/PERO1D/T024/2020/OE*, page 2.

<sup>195</sup> Letter of Acceptance for Tender APAK 2020, pages 74 to 79.

<sup>196</sup> Letter of Acceptance for Tender APAK 2020, page 38.

- (i) Agenda Eksklusif with Star Apax and Nekad Waja; and
- (ii) Agenda Eksklusif and Spectron.

*Evidence retrieved at Agenda Eksklusif's premises*

196. In the course of executing the search and seizure operation carried out at the premises of Agenda Eksklusif on 24.3.2021, the Commission acquired electronic duplicates of tender submission files and associated documents pertinent to Tender APAK 2020. Significantly, among the retrieved files, a Microsoft Excel worksheet has been identified. This worksheet sets out the comprehensive tender submission prices assigned to Agenda Eksklusif, Star Apax, Nekad Waja, and Spectron. The extraction of this Microsoft Excel worksheet has been documented and is presented in **Sheet 10** as follows:

**Sheet 10:** Microsoft Excel worksheet itemising all prices for all Parties found in Agenda Eksklusif's premise<sup>197</sup>

<u>SENARAI HARGA TENDER APAK 2020</u>					
NO.	KETERANGAN	STAR APAX	SPECTRON	AGENDA	NEKAD
1	HARGA SENGGAARAAN (TENTERA DARAT)	████████	████████	████████	████████
2	HARGA ALAT GANTI (TENTERA DARAT)	████████	████████	████████	████████
3	HARGA ALAT GANTI LARIS (TLDM)	████████	████████	████████	████████
	JUMLAH KESELURUHAN (RM)	████████	████████	████████	████████

<sup>197</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 42 and 43.

Agenda Eksklusif Possessed Star Apax, Nekad Waja and Spectron's Bid Price Submission for Tender APAK 2020

197. The Commission observes that the total prices listed in **Sheet 10** above match the price submissions documented in the assessment report of tender submissions recorded by MINDEF. An excerpt of the information extraction is displayed in **Table 24** below:

**Table 24:** Price submissions recorded by MINDEF.<sup>198</sup>

NOMBOR SIRI	HARGA TAWARAN
T024/01/11	RM[<]
T024/02/11	RM[<]
T024/03/11	RM[<]
T024/04/11	RM[<]

198. The Commission conducted a comparison of the “*Nombor Siri*” (Serial Numbers) of the bidders depicted in **Table 24** *vis-à-vis* the commensurate “*Nombor Kod Dokumen*” (Document Code Number) documented in the assessment report of tender submissions prepared by MINDEF.<sup>199</sup> Through this comparison, the Commission successfully identified the owners associated with each “*Nombor Siri*”. The extraction of the assessment report information is displayed in **Table 25**, unveiling the owners of the respective “*Nombor Siri*”.

<sup>198</sup> *Kertas Taklimat Tender APAK 2020 No.Tender-KP/PERO1D/T024/2020/OE*, page 17.

<sup>199</sup> *Kertas Taklimat Tender APAK 2020 No.Tender-KP/PERO1D/T024/2020/OE*, page 18.

**Table 25:** Name of bidders recorded by MINDEF.<sup>200</sup>

SERIAL NO.	ENTERPRISE	PRICE OFFER DOCUMENT CODE NUMBER	TECHNICAL OFFER DOCUMENT CODE NUMBER
01	Spectron	T024/A/01/11	T024/B/01/11
02	Agenda Eksklusif	T024/A/02/11	T024/B/02/11
03	Nekad Waja	T024/A/03/11	T024/B/03/11
04	Star Apax	T024/A/04/11	T024/B/04/11

199. **Sheet 10** shows that Agenda Eksklusif possessed the bid price submissions of its competitors, Star Apax, Nekad Waja and Spectron for Tender APAK 2020. From this, it can reasonably be deduced that an exchange and/or sharing of commercially sensitive information occurred between Agenda Eksklusif with Star Apax, Nekad Waja and Spectron.

Close Proximity of the Date Created and Date Modified of the Microsoft Excel Sheet

200. In addition, the Commission has successfully retrieved a folder named as “*Harga Masuk Tender*” (Bid Price) from Agenda Eksklusif’s premises. This folder contains files, including four distinct Microsoft Excel spreadsheets. These Microsoft Excel spreadsheets provide a detailed breakdown of costs contributing to the cumulative price proposals for Tender APAK 2020 and each spreadsheet is named after the involved parties. The pertinent dates and times of creation, modifications, and pertinent details related to the creation of these spreadsheets have been compiled in **Table 26** below.

<sup>200</sup> Kertas Taklimat Tender APAK 2020 No.Tender-KP/PERO1D/T024/2020/OE, page 18.

**Table 26:** Summary of dates and times of price breakdown documents for all Parties

PARTY	DOCUMENT TITLE	DATE CREATED	DATE LAST MODIFIED	TENDER OPEN – CLOSING DATES
Agenda Eksklusif <sup>201</sup>	HARGA AGENDA–SAMPUL A	23.3.2020, 4:25pm	24.3.2020, 4:10pm	7.3.2020 – 30.4.2020
Star Apax <sup>202</sup>	HARGA STAR APAX	23.3.2020, 4:15pm	30.3.2020, 4.15pm	
Nekad Waja <sup>203</sup>	HARGA NEKAD	23.3.2020, 4:29pm	24.3.2020, 4.12pm	
Spectron <sup>204</sup>	HARGA SPECTRON	23.3.2020, 4:22pm	24.3.2020, 4.13pm	

201. Based on the data provided in **Table 26**, it is clear that all the Microsoft Excel spreadsheets were created on the same date (23.3.2020), with only minor differences in the exact moments of their creation, which did not exceed a duration of 10 minutes. Moreover, the “date last modified” entries for Agenda Eksklusif, Star Apax, and Nekad Waja exhibit a sustained uniformity, characterised by temporal intervals not exceeding 10 minutes.

202. Nonetheless, a notable observation arises in the case of Star Apax, as it was modified approximately four hours after the specified closure date. Notwithstanding the modification, the Commission finds that the prices documented in these files, including the price of Star Apax’s price, precisely align with the prices submitted to MINDEF, as shown in **Table 24** and illustrated in **Table 27**:

<sup>201</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 44 and 45.

<sup>202</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 46 and 47.

<sup>203</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 48 and 49.

<sup>204</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 50 and 51.

**Table 27:** Price comparison table

PARTY	PRICE IN THE EXCEL SPREADSHEETS (RM)	PRICE RECORDED BY MINDEF (RM)
Agenda Eksklusif	[X]	[X]
Star Apax	[X]	[X]
Nekad Waja	[X]	[X]
Spectron	[X]	[X]

203. Consequently, the Commission observes a similarity in the pricing information presented in the spreadsheets featured both in **Sheet 10** and **Table 27** above, save for the case of Nekad Waja, where marginal disparities in pricing are evident, *vis-à-vis* Agenda Eksklusif, as demonstrated in **Table 28** below:

**Table 28:** The comparison table between the total price in “Harga Nekad” excel sheet and the price recorded by Agenda Eksklusif in Sheet 10

ITEMISED PRICE LIST	TOTAL PRICE IN EXCEL SHEET IN “HARGA NEKAD” (RM)	PRICE RECORDED BY AGENDA EKSKLUSIF IN SHEET 10
Harga Senggaraan (Tentera Darat)	[X]	[X]
Harga Alat Ganti (Tentera Darat)	[X]	[X]
Harga Alat Ganti Laris (TLDM)	[X]	[X]
<b>TOTAL</b>	[X]	[X]
<b>DIFFERENCES</b>	[X]	

204. Despite the discrepancy in the prices in **Table 28**, the Commission maintains its position that the Parties remain liable even if there is non-implementation or incomplete commitment to the anti-competitive agreement.<sup>205</sup>

<sup>205</sup> Case C-291/98 P *Sarrío v Commission* [2000] ECR I-9991, at paragraph 50; and Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 90.

Agenda Eksklusif's Possession Electronic Duplicates of Spectron's Tender APAK 2020 documents

205. Additionally, the Commission uncovered electronic duplicates of Spectron's tender documents during the search and seizure operation conducted at Agenda Eksklusif's premises. The Commission has extracted the electronic duplicates and presented them as follows:

**Image 4:** Spectron's softcopy tender submission files found in Agenda Eksklusif's premises<sup>206</sup>

 HARGA	29/3/2020 1:07 AM
 INDEKS APAK	22/3/2020 7:11 PM
 Jadual Pematuhan SOC spectron	29/3/2020 1:59 AM
 KEMBARAN A SKOP PERKHIDMATAN	26/3/2020 5:16 PM
 KEMBARAN B APAK ATM_1 (1)	26/3/2020 4:54 PM
 KEMBARAN C	29/3/2020 12:53 AM
 KEMBARAN D3	29/3/2020 2:01 AM
 KEMBARAN E1	28/4/2020 2:35 PM
 KEMBARAN H1. (1)	26/3/2020 5:43 PM
 Pengalaman Kerja	18/3/2020 9:11 AM
 Senarai Alat Ganti APak (1)	19/3/2020 3:13 PM
 SENARAI PEKRJA	19/4/2020 1:03 AM
 SENARAI SEMAK SAMPUL A	28/4/2020 2:02 PM
 SENARAI SEMAK	25/3/2020 12:51 AM
 Skop Kerja Selenggaraan Jadual TLDM	18/3/2020 10:28 AM

Note: The highlighted section indicates that Spectron's softcopy tender documents, as shown in **Table 29** below, were created after the advertisement date and modified before the closing date of Tender APAK 2020.

<sup>206</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), page 115.

206. Upon further examination, the Commission found that the documents extracted in **Image 4** were indeed generated after the advertisement date of 7.3.2020 and thereafter modified prior to the closure date of the tender, as outlined in **Table 29**:

**Table 29:** Summary of dates and times of Spectron documents found in Agenda Eksklusif's premises as represented in **Image 4** above

NAME OF DOCUMENT	CREATED	MODIFIED	TENDER OPEN – CLOSING DATES:
HARGA	23.3.2020, 4:22pm	29.3.2020, 1:07am	7.3.2020 – 30.4.2020
Jadual Pematuhan SOC Spectron	19.3.2020, 3:18pm	29.3.2020, 1:59am	
KEMBARAN B APAK ATM_1 (1)	18.3.2020, 4.08pm	26.3.2020, 4:54pm	
KEMBARAN C	24.3.2020, 1:39pm	29.3.2020, 12:53pm	
KEMBARAN D3	24.3.2020, 4:57pm	29.3.2020, 2.01am	
KEMBARAN E1	24.3.2020, 10:13pm	28.4.2020, 2:53pm	
KEMBARAN H1. (1)	25.3.2020, 12:59am	26.3.2020, 5:43pm	
SENARAI PEKRJA	26.3.2020, 5:46pm	19.4.2020, 1:03am	
SENARAI SEMAK SAMPUL A	26.3.2020, 4:17pm	28.4.2020, 2:02pm	

207. The documents mentioned in **Image 4** and **Table 29** hold significant importance as they contain crucial information regarding Spectron. These documents provide a plethora of details about Spectron, including the enterprise's particulars and the price submitted for the tender.

208. Despite the differences in the modification dates and times, the Commission notes that the prices documented in these documents



correspond to the price submissions recorded by MINDEF in **Table 24**, as illustrated in **Table 27** above. This goes to prove not only that sharing of sensitive and competitive price information occurred but also that competitively sensitive details relating to the tender were exchanged between Spectron and Agenda Eksklusif.

Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, Nekad Waja and Spectron

209. Based on MINDEF's recorded data, the Commission observes that Spectron's bid price stood as the lowest among the submissions presented by Agenda Eksklusif, Star Apax and Nekad Waja for Tender APAK 2020.

210. **Table 30** below presents the summarised total bid submissions recorded by MINDEF<sup>207</sup>:

**Table 30:** Price Submissions of the Parties to MINDEF

	SPECTRON	AGENDA EKSKLUSIF	STAR APAX	NEKAD WAJA
PRICE SUBMISSION(RM)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

211. The Commission considers this arrangement to have been devised in order to enhance the prospect of Spectron winning the Tender. This finding is fortified by the fact that Agenda Eksklusif and

<sup>207</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, pages 16 to 18.

Spectron had discussed to subcontract the work to Agenda Eksklusif if Spectron were to be successful in securing Tender APAK 2020.<sup>208</sup>

212. The Commission regards the subcontracting arrangement, in the context of the evidence of the case taken as a whole, as an act of undermining competition in the tendering process for Tender APAK 2020. It is evident that both Agenda Eksklusif and Spectron, colluded during the bidding process of Tender APAK 2020 to deliberately tilt it in Spectron's favour.

*Evidence retrieved from recorded statements*

213. In addition to the retrieval and analysis of the Microsoft Excel worksheet shown in **Sheet 10** above, as well as the recovery of Spectron's electronic copies of Tender APAK 2020 from Agenda Eksklusif's premises, the Commission also based its findings on recorded statements provided by Dato' Rosdi of Agenda Eksklusif, Shamill of Nekad Waja/Agenda Eksklusif, Raja Nurnaim of Star Apax/Agenda Eksklusif, Muzalifah and Ong Sue Bune of Spectron, in addition to the personnel associated with Agenda Eksklusif.<sup>209</sup>

214. The subsequent analysis of this evidence will be categorised into three distinct parts for clarity and comprehensiveness:

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<sup>208</sup> Paragraph 2 of the Statement of Dato' Rosdi recorded on 27.7.2022.

<sup>209</sup> Statement of the Statement of Dato' Rosdi recorded on 5.1.2022; Statement of Dato' Rosdi recorded on 24.11.2021; Statement of Dato' Rosdi recorded on 27.7.2022; Statement of Nur Ain recorded on 23.11.2021; Statement of Shamill recorded on 25.3.2021; Statement of Shamill recorded on 24.11.2021; Statement of Raja Nurnaim recorded on 24.11.2021; Statement of Fetty recorded on 23.11.2021; Statement of Zulhalfi recorded on 7.2.2022; Statement of Ong Sue Bune recorded on 19.1.2022; and Statement of Ong Sue Bune recorded on 10.11.2022.

- (a) Prior Coordination between Agenda Eksklusif and Star Apax;
- (b) Prior Coordination between Agenda Eksklusif and Nekad Waja; and
- (c) Prior Coordination between Agenda Eksklusif and Spectron.

(a) *Prior Coordination between Agenda Eksklusif and Star Apax*

215. Dato' Rosdi of Agenda Eksklusif discovered the tender advertisement for Tender APAK 2020 via the Government e-procurement system.<sup>210</sup> Shamill, the owner of Nekad Waja and the project manager at Agenda Eksklusif, also notified Dato' Rosdi about the tender advertisement. Shamill holds the responsibility of overseeing tender advertisements issued by MINDEF.<sup>211</sup>

216. Following a similar approach taken for Tender APAK 2016 and Tender ELSA 2016, Dato' Rosdi adopted an identical modus operandi for Tender APAK 2020. He implemented the same strategy for Agenda Eksklusif and Star Apax, aiming for both entities to participate in Tender APAK 2020.<sup>212</sup> Dato' Rosdi instructed the employees at Agenda Eksklusif to procure the necessary tender documents.<sup>213</sup> It is the usual practice for decisions regarding the participation of Agenda Eksklusif, Star Apax, and Nekad Waja in tenders related to Ministries to be jointly made by Dato' Rosdi and Shamill, who holds the position of Project Manager in Agenda

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<sup>210</sup> Paragraph 79 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>211</sup> Paragraph 27 of the Statement of Shamill recorded on 24.11.2021.

<sup>212</sup> Paragraph 79 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>213</sup> Paragraphs 80 and 83 of the Statement of Dato' Rosdi recorded on 24.11.2021.

Eksklusif.<sup>214</sup> Further, Dato' Rosdi informed Raja Nurnaim, his partner in Star Apax, about the intention to include Star Apax as a bidder in Tender APAK 2020.<sup>215</sup>

217. During the process of determining the price submissions for Tender APAK 2020, Dato' Rosdi directed Nur Ain of Agenda Eksklusif to solicit quotations from designated suppliers he had identified, including those from previously awarded contracts.<sup>216</sup> Leveraging these gathered price quotations, along with his industry experience, Dato' Rosdi formulated the final price determination for Tender APAK 2020.<sup>217</sup>

218. Additionally, Shamill of Nekad Waja/Agenda Eksklusif, serving as the Project Manager of Agenda Eksklusif, actively engaged in discussions and proffered suggestions regarding price submissions for Tender APAK 2020.<sup>218</sup> Nevertheless, Dato' Rosdi the instigator of the collusive conduct, make the decision for the bid prices to be submitted by Agenda Eksklusif and by Star Apax in Tender APAK 2020.<sup>219</sup>

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<sup>214</sup> Paragraph 10 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>215</sup> Paragraph 79 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>216</sup> Paragraph 83 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>217</sup> Paragraphs 84 and 85 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>218</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; Paragraph 8 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>219</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 8 of the Statement of Shamill recorded on 24.11.2021.

219. Upon finalising the price submission for Agenda Eksklusif, Dato' Rosdi provided Star Apax with a marked-up price derived from Agenda Eksklusif's pricing.<sup>220</sup> Thereafter, the price details were forwarded to Nur Ain in her capacity as the Marketing Clerk of Agenda Eksklusif, who was responsible for preparing the essential documentation required for the tender submissions.<sup>221</sup>
220. Using the price list furnished by Dato' Rosdi, Nur Ain undertook the task of inputting the price values into the designated tender documents intended for Agenda Eksklusif.<sup>222</sup> For Star Apax, Nur Ain calculated the itemised prices based on the total marked-up prices provided by Dato' Rosdi.<sup>223</sup> Ultimately, Dato' Rosdi reviewed and approved the final price submissions for both Agenda Eksklusif and Star Apax.<sup>224</sup>
221. Nur Ain undertook the task of preparing the tender documents for Agenda Eksklusif, whilst Fetty, another employee of Agenda Eksklusif, was responsible for preparing the tender documents for Star Apax.<sup>225</sup> Upon the finalisation of the tender documents for Agenda Eksklusif, they were presented to Dato' Rosdi for his

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<sup>220</sup> Paragraph 86 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>221</sup> Paragraph 86 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>222</sup> Paragraph 22 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>223</sup> Paragraph 23 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>224</sup> Paragraphs 22 until 24 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>225</sup> Paragraph 3 of the Statement of Fetty recorded on 23.11.2021.

endorsement. Likewise, the fully prepared tender documents for Star Apax were presented to Raja Nurnaim, for her signature.<sup>226</sup>

222. Following the preparation of the tender submissions for Agenda Eksklusif and Star Apax, Shamill of Nekad Waja/Agenda Eksklusif submitted the tender documents to MINDEF.<sup>227</sup>

223. Dato' Rosdi's intention and actions in respect of Tender APAK 2020 resulted in deceptive bidding by both Agenda Eksklusif and Star Apax. They presented themselves as separate entities when submitting their bids to MINDEF; when in reality this was not the case. When multiple entities submit bids separately within the same tender, they are expected to be individual decision-makers and independent procurement options to the procurer. Therefore, Agenda Eksklusif and Star Apax are required, according to the Act, to avoid entering into agreements and/or concerted practices with each other.<sup>228</sup>

*(b) Prior Coordination between Agenda Eksklusif and Nekad Waja*

224. Shamill of Nekad Waja/Agenda Eksklusif obtained the essential tender documents from MINDEF, for Nekad Waja's participation in Tender APAK 2020.<sup>229</sup> Acting as the Project Manager of Agenda

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<sup>226</sup> Paragraph 27 of the Statement of Fetty recorded on 23.11.2021; and Paragraph 50 of the Statement of Raja Nurnaim recorded on 24.11.2021.

<sup>227</sup> Paragraph 13 of the Statement of Shamill recorded on 24.11.2021.

<sup>228</sup> Ref. Case No. 03/2013 *Delhi Jal Board vs Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129.

<sup>229</sup> Paragraphs 1 and 28 of the Statement of Shamill recorded on 24.11.2021.

Eksklusif and concurrently as the owner of Nekad Waja, Shamill partook in discussions with Dato' Rosdi regarding the pricing propositions for both Agenda Eksklusif and Star Apax in Tender APAK 2020.<sup>230</sup> Dato' Rosdi furnished Shamill with recommended price submissions for Nekad Waja.<sup>231</sup>

225. Dato' Rosdi confirmed Shamill's statement to the Commission, affirming that he provided a price quotation for Nekad Waja on Shamill's request. This quotation was based on the marked-up price derived from Agenda Eksklusif's price submission.<sup>232</sup> In a subsequent statement to the Commission, Dato' Rosdi clarified that he did not provide a marked-up price for each individual item required for Tender APAK 2020. Instead, he only added a markup to the total tender price, hinging on the pricing advanced by Agenda Eksklusif. This clarification, however, does not change the underlying fact that the bids were not prepared independently by Agenda Eksklusif and Nekad Waja, but were based on collusive coordination between the two Parties.<sup>233</sup>

226. Shamill of Nekad Waja admitted to using the computer at Agenda Eksklusif's premises to prepare the tender documents.<sup>234</sup> He also disclosed that he sought the assistance of Auni, an employee of

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<sup>230</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021.

<sup>231</sup> Paragraphs 8, 9 and 10 of the Statement of Shamill recorded on 25.3.2021.

<sup>232</sup> Paragraph 92 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>233</sup> Paragraph 36 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>234</sup> Paragraph 29 of the Statement of Shamill recorded on 24.11.2021.

Agenda Eksklusif, to print various documents including brochures and technical data for the tender submission.<sup>235</sup>

227. The described actions and interactions constitute anti-competitive agreements and/or concerted practices between Agenda Eksklusif and Nekad Waja. The involvement of Shamill in discussions regarding price submissions for Agenda Eksklusif and Star Apex proves the existence of collusive practices aimed at coordinating bidding prices between the three Parties.

(c) *Prior Coordination between Agenda Eksklusif and Spectron*

228. Muzalifah of Spectron came across the advertisement for Tender APAK 2020 on MINDEF's website.<sup>236</sup> After deciding to participate, Spectron conducted online research to find reliable suppliers. However, Spectron faced difficulties in finding suppliers who could provide comprehensive and meticulous pricing information that adhered to the tender requirements.<sup>237</sup>

229. As a result, director Ong Sue Bune of Spectron, requested a comprehensive price list from Agenda Eksklusif. Both Spectron and Agenda Eksklusif mutually disclosed their intentions to partake in the Tender APAK 2020.<sup>238</sup> Ong Sue Bune, considering Spectron's

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<sup>235</sup> Paragraph 28 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 6 of the Statement of Auni Ismah recorded on 23.11.2021.

<sup>236</sup> Paragraph 14 of the Statement of Muzalifah recorded on 3.5.2021.

<sup>237</sup> Paragraph 2.4 of Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022.

<sup>238</sup> Paragraph 100 of the Statement of Dato' Rosdi recorded on 24.11.2021; Paragraph 23 of the Statement of Ong Sue Bune recorded on 10.11.2022; and Paragraph 13 of the Statement of Ong Sue Bune recorded on 19.1.2022.



inability to fulfil the required personnel and parts for Tender APAK 2020, as well as the Fire Department's certification for the fire extinguisher servicing, proposed a collaboration with Agenda Eksklusif to Dato' Rosdi of Agenda Eksklusif. This proposal was contingent upon Spectron successfully securing the winning bid for Tender APAK 2020.<sup>239</sup>

230. In response to Ong Sue Bune's proposal for collaboration, Dato' Rosdi of Agenda Eksklusif provided Spectron with a comprehensive price quotation as requested.<sup>240</sup> Dato' Rosdi personally instructed Nur Ain to provide a price quotation to Spectron, incorporating a markup from Agenda Eksklusif's price for this tender.<sup>241</sup> In addition to obtaining the price quotation, Spectron also received assistance from Agenda Eksklusif in preparing the necessary tender documents.<sup>242</sup>

231. In contrast to previous instances such as Tender APAK 2016 and Tender ELSA 2016, a notable distinction was uncovered by the Commission. In the case of Tender APAK 2020, it was Spectron that offered the lowest bid among the four Parties in the tendering process, instead of Agenda Eksklusif.<sup>243</sup> The Commission finds that

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<sup>239</sup> Paragraphs 13, 17 and 18 of the Statement of Ong Sue Bune recorded on 19.1.2022; and Paragraph 23 of the Statement of Ong Sue Bune recorded on 10.11.2022.

<sup>240</sup> Paragraphs 99 and 98 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>241</sup> Paragraph 98 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraph 25 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>242</sup> Paragraphs 53 and 59 of the Statement of Raja Nurnaim recorded on 24.11.2021; and Paragraphs 20 and 23 of the Statement of Muzalifah recorded on 3.5.2021.

<sup>243</sup> Paragraph 2 of the Statement of Dato' Rosdi recorded on 27.7.2022.

this arrangement was devised in order to enhance the prospect of Spectron winning the Tender.

232. Dato' Rosdi admitted that he provided Spectron with a price quotation that was lower than the one offered by Agenda Eksklusif.<sup>244</sup> He conceded that if Spectron were to be chosen as the successful bidder, Spectron would subcontract the work to Agenda Eksklusif.<sup>245</sup>

233. **Sheet 10**, found in Agenda Eksklusif's premises, reveals that Spectron had used the same price as in **Sheet 10** in its tender submission to MINDEF.<sup>246</sup> Spectron informed the Commission that despite using Dato' Rosdi's price for Tender APAK 2020 submission, Spectron would still yield a profit of 5% based on the value of the MINDEF work order.<sup>247</sup>

234. Agenda Eksklusif not only provided Spectron with a price quotation but also supplied additional materials such as audit reports, workers' information, and catalogues.<sup>248</sup> These actions led the Commission to conclude that Agenda Eksklusif undertook extensive efforts to ensure that Spectron had a competitive pricing advantage and submitted complete documents. The Commission discovered

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<sup>244</sup> Paragraph 2 of the Statement of Dato' Rosdi recorded on 27.7.2022.

<sup>245</sup> Paragraph 2 of the Statement of Dato' Rosdi recorded on 27.7.2022; and *Perjanjian Kerjasama Kontrak* between Spectron and Agenda Eksklusif dated 18.08.2020.

<sup>246</sup> Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022.

<sup>247</sup> Paragraphs 2.4 and 2.5 of Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022.

<sup>248</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 113 until 115.

Spectron's electronically stored tender documents, illustrated in **Image 4**,<sup>249</sup> were created after the advertisement date and underwent modifications prior to the tender's closing date as mentioned in **Table 29** above.<sup>250</sup>

235. The Commission's conclusion is supported by the above findings, which indicate that Spectron was involved in an agreement with Agenda Eksklusif to perform bid rigging in respect of Tender APAK 2020. This bid rigging agreement includes, among other things, the exchange of pricing information, the fixing of bid prices, and the establishment of subcontracting arrangement.

***Evidence Analysis: Bid Rigging Agreements and/or Concerted Practices Between Agenda Eksklusif with Star Apax, and Nekad Waja; as well as Agenda Eksklusif and Spectron***

236. The findings based on the evidence obtained by the Commission from the search and seizure at Agenda Eksklusif's premises is provided as below:

- (i) Agenda Eksklusif Possessed Star Apax's, Nekad Waja's and Spectron's Bid Price Submissions for Tender APAK 2020 – **paragraphs 197 to 199;**
- (ii) Close Proximity of the Date Created and Date Modified of the Microsoft Excel Sheet – **paragraphs 200 to 204;**

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<sup>249</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8).

<sup>250</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8).

- (iii) Agenda Eksklusif's Possession Electronic Duplicates of Spectron's Tender APAK 2020 documents – **paragraphs 205 to 208**; and
- (iv) Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, Nekad Waja and Spectron – **paragraphs 209 to 212**.

237. Drawing on the findings outlined above and those from the recorded statements, as set out in **paragraphs 213 to 235**, the Commission decided that Agenda Eksklusif, Star Apax, Nekad Waja, and Spectron did not act independently of each other in the bidding process. Instead, the four Parties entered into horizontal agreements and/or concerted practices with the object of submitting cover bids for Tender APAK 2020.

238. The modus operandi involved Dato' Rosdi of Agenda Eksklusif setting the base price, while the Star Apax and Nekad Waja marked-up their prices from Agenda Eksklusif's base. For Spectron, Spectron requested a comprehensive price list from Agenda Eksklusif, with the understanding that if Spectron won the tender, the work would be subcontracted to Agenda Eksklusif. From this, Spectron would still retain a 5% profit based on the value of the MINDEF work order.

239. Agenda Eksklusif's sharing of price information and communication with Star Apax, Nekad Waja and Spectron prior to their bid submissions for Tender APAK 2020 undermined the competitive integrity of the tender process. This exchange of information among the four Parties distorted the competitive nature of the tender

process and diminished the unpredictability of their behaviour towards each other in the market.<sup>251</sup>

240. Based on the evidence presented, it is clear that the four Parties participated in Tender APAK 2020, as demonstrated by the following facts:

- (a) All four parties registered with the relevant field code and submitted a copy of the MOF Registration Certification, as required by the tender advertisement. This step was essential for verifying eligibility when purchasing physical tender documents. MINDEF received physical tender documents from all parties, indicating their compliance with this requirement;
- (b) All four participating enterprises, namely Agenda Eksklusif, Nekad Waja, Spectron, and Star Apax, submitted separate bids for this tender. Each of these enterprises presented itself as an individual bidder during the tender process.<sup>252</sup>
- (c) However, all four parties, unbeknownst to MINDEF, were Parties to bid riggings.

241. Further, the subsequent act of notifying competitors to participate in the same tender constitutes an agreement with the object to rig the bidding process of Tender APAK 2020.<sup>253</sup>

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<sup>251</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry* at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; and Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41.

<sup>252</sup> Ref. Case No. 03/2013 *Delhi Jal Board v Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129.

<sup>253</sup> Case 50481 *Design, Construction, and Fit-out Services*, at paragraph 5.95; CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.126; Case C-286/13 P *Dole Food and Dole Fresh*

242. Based on the findings presented, the Commission concludes that there is a horizontal agreement with the object to perform bid rigging by Agenda Eksklusif in collusion with Star Apax, by Agenda Eksklusif in collusion with Nekad Waja, as well as by Agenda Eksklusif in collusion with Spectron.

***Agenda Eksklusif's as the instigator for the agreements and/or concerted practices with Nekad Waja and Star Apax that have the object to rig Tender APAK 2020***

243. The Commission finds that Dato' Rosdi of Agenda Eksklusif acted as an instigator in the bid rigging agreement involving Star Apax and Nekad Waja for Tender APAK 2020. This decision is supported by the findings in **paragraphs 236 to 242**, where Dato' Rosdi colluded with Star Apax and Nekad Waja on tender details, influenced their participation in the tender, and coordinated their tender pricing based on Agenda Eksklusif's marked-up tender rates. Essentially, the bid rigging agreement among Agenda Eksklusif, Star Apax, and Nekad Waja was conducted under the instigation of Dato' Rosdi.

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*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.

## E.4 Tender ELSA 2020

### Background

244. The Tender ELSA 2020 was issued to procure maintenance services and spare parts for emergency life supports apparatus (ELSA), air breathing apparatus (ABA), breathing air compressor (BAC) and anti-gas respirator mask (AGRM) for the TLDM for a period of three years.<sup>254</sup> The ceiling price for this tender was RM[~~8~~].<sup>255</sup>

245. On 13.03.2020, the advertisement for Tender ELSA 2020 was issued.<sup>256</sup> Prospective bidders were required to obtain the physical tender documents from the MINDEF office located in Kuala Lumpur, starting from 13.03.2020. The bid proposals were mandated to be submitted at the MINDEF office by the bid submission deadline of 4.6.2020.

246. Pursuant to the bid submitted by Agenda Eksklusif, on 4.9.2020, MINDEF issued a Letter of Intent (*Surat Niat*) to Agenda Eksklusif, expressing their intention to invite Agenda Eksklusif for a meeting.<sup>257</sup> The purpose of this meeting was to engage in further discussion and negotiation regarding the contractual terms and conditions that bind MINDEF and Agenda Eksklusif.

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<sup>254</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, pages 1 to 3.

<sup>255</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, pages 1 to 3.

<sup>256</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, pages 1 to 3.

<sup>257</sup> Letter of Intent issued by MINDEF on 4.9.2020.

247. On 8.9.2020, MINDEF officially accepted Agenda Eksklusif's bid proposal which amounted to RM[~~8~~]. MINDEF informed this acceptance through a Letter of Acceptance issued by MINDEF dated 8.9.2020.<sup>258</sup> This Letter of Acceptance was signed by Dato' Rosdi, the director of Agenda Eksklusif, and witnessed by Raja Nurnaim, a Manager of Agenda Eksklusif.<sup>259</sup> At this point of time Dato' Rosdi and Raja Nurnaim were partners of Star Apax.
248. There is compelling evidence that shows the existence of horizontal agreements and/or concerted practices with the object of performing bid rigging in relation to Tender ELSA 2020. These agreements and/or concerted practices involved Agenda Eksklusif with Star Apax, Nekad Waja and Spectron. The exchange of sensitive pricing information and collusion among the four Parties indicates concerted practices to rig Tender ELSA 2020 bidding process. Such actions significantly compromised the fairness and integrity of what was meant to be a competitive procurement process.

*Evidence retrieved from Agenda Eksklusif's premises*

249. During a search and seizure with warrant operation on 24.3.2021, the Commission successfully obtained electronic copies of tender submission files and documents related to Tender ELSA 2020 from Agenda Eksklusif's premises. These documents included Microsoft Excel spreadsheet files with titles such as "1. mandatory BA model

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<sup>258</sup> Letter of Acceptance for Tender ELSA 2020, pages 1 to 5.

<sup>259</sup> Letter of Acceptance for Tender ELSA 2020, pages 1 to 5.



SABRE CENTURION (1)",<sup>260</sup> "2. mandatory BA model SABRE CONTOUR (1)",<sup>261</sup> "3. mandatory BA model SIEBE GORMAN",<sup>262</sup> "4. mandatory ELSA",<sup>263</sup> "5. mandatory COMPRESSOR model JUNIOR II BAUER"<sup>264</sup> and "6. mandatory agrm (1)".<sup>265</sup> The following shows a single extracted Microsoft Excel worksheet from each respective category:

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

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<sup>260</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 52 and 53.

<sup>261</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 54 and 55.

<sup>262</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 56 and 57.

<sup>263</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 58 and 59.

<sup>264</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 60 and 61.

<sup>265</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 62 and 63.

Sheet 11: 1. mandatory BA model SABRE CENTURION (1)<sup>266</sup>

	Alat Ganti	Part Number	Kuantiti	Harga (RM)		Remark
				Sem.	Sbh/Swk	
	(b)	(c)	(g)	(d)	(e)	(f)
1	<b>LAMPIRAN 1</b>					
2	<b>(KEMBARAN D1-1)</b>					
3						
4	<b>SPARE PARTS LIST OF BREATHING APPARATUS FOR MODEL SABRE CENTURION ( MANDATORY)</b>					
5						
6						
7						
8						
9	<b><u>PANA SEAL POSITIVE PRESSURE FACEMASK, STANDARD HEAD HARNESS</u></b>					
10	O- Ring exhale valve					Ex-stock
11	<b><u>DEMAND VALVE AND HOSE ASSEMBLY</u></b>					
12	Demand valve cover & label					Ex-stock
13	Main diaphragm					Ex-stock
14	Bias spring					Ex-stock
15	O - Ring spares pack					Ex-stock
16	Catch and spring spares pack					Ex-stock
17	O - Ring					Ex-stock
18	Valve disc					Ex-stock
19	By pass knob					Ex-stock
20	Inlet stem assembly					Ex-stock
21	O - ring					Ex-stock
22	Reset button					Ex-stock
23	Latch spring					Ex-stock

[The remainder of this page is intentionally left blank]

<sup>266</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 52 and 53.

Sheet 12: 2. mandatory BA model SABRE CONTOUR (1)<sup>267</sup>

	Alat Ganti	Part Number	Kuantiti	Harga (RM)		Remark
				Sem.	Sbh/Swk	
	(b)	(c)	(d)	(e)	(f)	(g)
4	<b>SPARE PARTS LIST OF BREATHING APPARATUS FOR MODEL SABRE CONTOUR (MANDATORY)</b>					
5						
6						
7						
8						
9	<b>CYLINDER CONNECTOR</b>					
10	O - ring, spares pack					Ex-stock
11	O - ring Exhale Valve					Ex-stock
12	<b>DEMAND VALVE</b>					
13	Main diaphragm					Ex-stock
14	Bias spring, spare pack					Ex-stock
15	O - ring, spares pack					Ex-stock
16	Catch and spring spares pack					Ex-stock
17	O - ring, spares pack					Ex-stock
18	Valve disc, spares pack					Ex-stock
19	Bypass knob					Ex-stock
20	Inlet stem assembly, c/w o-rings, filter and assembly aid					Ex-stock
21	Bypass o -ring (x2), spares pack					Ex-stock
22	O - ring, spares pack					Ex-stock
23	Reset button, spares pack					Ex-stock
24	Secondary diaphragm, spares pack					Ex-stock
25	First breath latch spring					Ex-stock
26	Plunger spring					Ex-stock
27	<b>PRESSURE GAUGE, WHISTLE &amp; HOSE ASSEMBLY</b>					
28	O - ring, spares pack					Ex-stock

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<sup>267</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 54 and 55.

Sheet 13: 3. mandatory BA model SIEBE GORMAN<sup>268</sup>

	B	C	D	E	F	G	H	I
25	Washer	██████	██	██	██	Ex-stock		██
26	Demand valve seal	██████	██	██	██	Ex-stock		██
27	<b>REDUCING VALVE (041745.15) USED ON APPARATUS 014913 01 &amp; N 02,014913 03 &amp; 08</b>							
28	Bonded seal	██████	██	██	██	Ex-stock		██
29	O' ring	██████	██	██	██	Ex-stock		██
30	O' ring	██████	██	██	██	Ex-stock		██
31	O' ring	██████	██	██	██	Ex-stock		██
32	Bonded seal	██████	██	██	██	Ex-stock		██
33	Bonded seal	██████	██	██	██	Ex-stock		██
34	Filter	██████	██	██	██	Ex-stock		██
35	O'ring	██████	██	██	██	Ex-stock		██
36	<b>REDUCING VALVE (041745.03) USED ON APPARATUS 014734 16, 18 &amp; 014870 03 &amp; 04</b>							
37	Bonded seal	██████	██	██	██	Ex-stock		██
38	O-ring	██████	██	██	██	Ex-stock		██
39	O-ring	██████	██	██	██	Ex-stock		██
40	Spring	██████	██	██	██	Ex-stock		██
41	Filter	██████	██	██	██	Ex-stock		██
42	O-ring	██████	██	██	██	Ex-stock		██
43	<b>CYLINDER VALVE TYPE A USE ON APPARATUS NO (014870.08)</b>							
44	Spindle nut	██████	██	██	██	Ex-stock		██
45	Spring	██████	██	██	██	Ex-stock		██
46	Spindle washer	██████	██	██	██	Ex-stock		██
47	Spindle and tongue	██████	██	██	██	Ex-stock		██

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<sup>268</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 56 and 57.

Sheet 14: 4. mandatory ELSA<sup>269</sup>

Bil	Alat Ganti	Part Number	Kuantiti	Harga (RM)		Remark
				Sem.	Sbh/Swk	
(a)	(b)	(c)		(d)	(e)	(f)
<b>REDUCING VALVE ASSEMBLY</b>						
1	Charging connector assembly & bonded seal					Ex-stock
3	Knurled dust cap					Ex-stock
9	Flow restrictor					Ex-stock
11	1/8" BSP Bonded seal					Ex-stock
12	1/4" BSP Bonded seal					Ex-stock
<b>SUPPLY HOSE/ AIR HOOD SWIVEL CINNECTION CONNECTION</b>						
1	Diffuser					Ex-stock
2	Diffuser nut					Ex-stock
3	O-ring					Ex-stock
4	O-Clip Two Ears					Ex-stock
<b>JUMLAH KESELURUHAN (RM)</b>						

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<sup>269</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 58 and 59.



Sheet 15: 5. mandatory COMPRESSOR model JUNIOR II BAUER<sup>270</sup>

**LAMPIRAN 5  
(KEMBARAN D1-1)**

**SPARE PARTS LIST OF COMPRESSOR FOR MODEL JUNIOR II BAUER (MANDATORY)**

Siri	Alat Ganti	Part Number	Kuantiti	Harga (RM)		Catatan
				Sem.	Sbh/Swk	
(a)	(b)	(c)	(d)	(e)	(f)	(g)
<b>A. CRANKCASE DRIVING GEAR, PISTON CYLINDER</b>						
1	Compressor Oil					Ex-stock
2	O-ring					Ex-stock
3	Oil filter					Ex-stock
<b>D. INTAKE FILTER, INTERFILTER</b>						
1	Intake filter assy					Ex-stock
2	O-ring					Ex-stock
3	O-ring					Ex-stock
4	Interfilter					Ex-stock
<b>N. THREE PHASE MOTORS WITH ACCESSORIES &amp; DIESEL ENGINES WITH ACCESSORIES</b>						
1	V-Belt					Ex-stock
<b>JUMLAH KESELURUHAN (RM)</b>						

[The remainder of this page intentionally left blank]

<sup>270</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 60 and 61.

**Sheet 16:** 6. mandatory agrm (1)<sup>271</sup>

The screenshot shows an Excel spreadsheet with the following data:

Siri	Alat Ganti	Part Number	Kuantiti	Harga (RM)		Remark
				Sem.	Sbh/Swk	
(a)	(b)	(c)	(d)	(e)	(f)	(g)
1	Drinking Tube	██████████	██	██	██	Ex-stock
2	Canister Mouth Body	██████████	██	██	██	Ex-stock
3	Inlet Valve	██████████	██	██	██	Ex-stock
4	Canister Gasket	██████████	██	██	██	Ex-stock
5	Spring Retainer	██████████	██	██	██	Ex-stock
6	Gasket Canteen Cap	██████████	██	██	██	Ex-stock
7	"O" Ring, Canteen Cap	██████████	██	██	██	Ex-stock
JUMLAH KESELURUHAN (RM)				██	██	

Agenda Eksklusif Possessed Star Apax's, Nekad Waja's and Spectron's Bid Price Submissions for Tender ELSA 2020

250. Upon conducting a thorough analysis of the aforementioned Microsoft Excel spreadsheets, the Commission made the following discoveries:

<sup>271</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 62 and 63.

- (a) The Microsoft Excel spreadsheets discovered in Agenda Eksklusif's premise contained distinct price calculation formulas specifically designed for Agenda Eksklusif, Star Apax, Nekad Waja, and Spectron. These formulas were intended to determine the bid prices for the four Parties involved in Tender ELSA 2020.
- (b) Agenda Eksklusif, Star Apax, Nekad Waja and Spectron possessed percentage formulas intended for the computation of their respective price submissions for Tender ELSA 2020.
- (c) The Commission identifies a congruence between the price particulars specified in the "Agenda" and "Agenda (2)" tabs of the Microsoft Excel spreadsheets<sup>272</sup> and the price details presented in Agenda Eksklusif's physical bid submission to MINDEF<sup>273</sup>.
- (d) The Commission finds that the pricing details documented in the "Star Apax" and "Star Apax (2)" tabs of the Microsoft Excel spreadsheets<sup>274</sup> coincide with the price specification presented in Star Apax's physical bid submission to MINDEF. This confirmation is obtained through the records by the Commission via section 18 notice from Star Apax.<sup>275</sup>
- (e) The Commission finds that the price details in the "Spectron" and "Spectron (2)" tabs of the Microsoft Excel spreadsheets match exactly with the price details in Spectron's physical bid

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<sup>272</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 53, 55, 57, 59, 61 and 63.

<sup>273</sup> Agenda Eksklusif's Tender ELSA 2016 documents submitted to MINDEF.

<sup>274</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 53, 55, 57, 59, 61 and 63.

<sup>275</sup> Price Submission by Star Apax ELSA 2020, No. Tender: KP/PERO1D/T311/2019/OE) pursuant to the Section 18 Notice issued by the Commission dated 2.3.2023.



submission to MINDEF. This finding is based on the records obtained by the Commission from Spectron in accordance with section 18 of the Act.<sup>276</sup>

- (f) Upon careful analysis, we find that the prices documented in the "Nekad" and "Nekad (2)" tabs of the Microsoft Excel spreadsheets perfectly match the price details included in Nekad Waja's physical bid submission to MINDEF.<sup>277</sup> This finding is based on the records obtained by the Commission from Nekad Waja in accordance with section 18 of the Act.<sup>278</sup>
- (g) It is significant to note that the Microsoft Excel sheets were named according to the respective four parties, adding weight to this discovery.

251. The analysis leading to points (a) to (g) above, reveals significant findings that the Microsoft Excel Sheets contain sensitive pricing information reflecting the details of each Party's submission, along with customised formulas specific to each of the four Parties, for Tender ELSA 2020.

252. The aforementioned evidence shows that while the bids submitted by the four Parties appear independent, they were in fact the result of coordinated practices involving communication and exchange of sensitive price information for Tender ELSA 2020 among these Parties.

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<sup>276</sup> Price Submission by Spectron ELSA 2020, No. Tender: KP/PERO1D/T311/2019/OE pursuant to the section 18 Notice issued by the Commission dated 26.4.2021.

<sup>277</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 53, 55, 57, 59, 61 and 63.

<sup>278</sup> Price Submission by Nekad Waja ELSA 2020, No. Tender: KP/PERO1D/T311/2019/OE) pursuant to the section 18 Notice issued by the Commission dated 29.4.2021.

Price Patterns in Bids Submitted by Agenda Eksklusif, Star Apax, Nekad Waja and Spectron to MINDEF

253. The Commission has analysed multiple Microsoft Excel spreadsheets obtained from Agenda Eksklusif's premises, and has discovered pivotal evidence. Upon examining the Microsoft Excel spreadsheets titled "*HARGA KOS UPAH SENGGARAAN-SPECTRON*"<sup>279</sup> and "*HARGA KOS UPAH SENGGARAAN-NEKAD*",<sup>280</sup> a striking observation emerges. It is evident that the pricing for Nekad Waja and Spectron is derived from Agenda Eksklusif's pricing.<sup>281</sup> Specifically, the pricing for Nekad Waja is calculated by increasing Agenda Eksklusif's price by 2%, while the pricing for Spectron is established by setting it as a 3% increase over Agenda Eksklusif's price.
254. The identification of price details in the "*HARGA KOS UPAH SENGGARAAN-SPECTRON*" Microsoft Excel document that align with the ones submitted in Agenda Eksklusif's bid to both MINDEF and the Commission establishes compelling evidence of coordinated efforts. These findings indicate the sharing of sensitive pricing information between Spectron and Agenda Eksklusif during the bidding process of Tender ELSA 2020; whereas they were supposed to be competitors.

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<sup>279</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 64 and 65.

<sup>280</sup> Digital Forensic Report, Digital Forensic Reference No: MyCC (IED)700-2/7(8), pages 64 and 65.

<sup>281</sup> Agenda Eksklusif's Tender ELSA 2020 documents submitted to MINDEF, pages 7 and 8, refer to tab 59, 61, 62 and 63.

255. The matching of prices within the "*HARGA KOS UPAH SENGGARAAN-NEKAD*" Microsoft Excel worksheet shows that external factors influenced the pricing of Nekad Waja, resulting in a lack of independent bidding.
256. The aforementioned findings shows that Agenda Eksklusif, Star Apax, and Nekad Waja's participation in Tender ELSA 2020 were part of agreements and/or concerted practices with the object to perform bid rigging through cover bids.
257. The discussions between Dato' Rosdi of Agenda Eksklusif and Shamill of Nekad Waja/Agenda Eksklusif played a role in determining the final bid price submissions for Tender ELSA 2020 in respect of these three Parties. In order to enhance Agenda Eksklusif's chances of winning, Agenda Eksklusif deliberately set the final bid price submitted as the lowest as compared to the final bid prices of Star Apax and Nekad Waja.

Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, Nekad Waja and Spectron

258. After carefully assessing the bid submissions by Agenda Eksklusif, Star Apax, Nekad Waja, and Spectron to MINDEF, it is apparent that Agenda Eksklusif submitted the lowest bid. This fact become one of the contributing factors for Agenda Eksklusif to win the tender. The total bid price submissions of the four Parties recorded by MINDEF<sup>282</sup> are summarised in **Table 31** below:

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<sup>282</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, pages 16 and 18.

**Table 31:** Price Submissions of the Parties to MINDEF

	AGENDA EKSKLUSIF	STAR APAX	SPECTRON	NEKAD WAJA
PRICE SUBMISSION (RM)	[X]	[X]	[X]	[X]

*Evidence retrieved from recorded statements*

259. The evidence outlined above are supported further by the statements obtained from various individuals, including Dato' Rosdi of Agenda Eksklusif, Shamill of Nekad Waja, Raja Nurnaim of Star Apax, Ong Sue Bune of Spectron, Muzalifah of Spectron, and the employees of Agenda Eksklusif. The discussion regarding the subsequent evidence will be divided into three parts:

- (a) Prior Coordination between Agenda Eksklusif and Star Apax;
- (b) Prior Coordination between Agenda Eksklusif and Nekad Waja; and
- (c) Prior Coordination between Agenda Eksklusif and Spectron.

*(a) Prior Coordination between Agenda Eksklusif and Star Apax*

260. Dato' Rosdi, the Managing Director of Agenda Eksklusif, came across the Tender ELSA 2020 advertisement through the Government e-procurement system.<sup>283</sup> Shamill, the project manager for Agenda Eksklusif, was responsible for monitoring all tender

<sup>283</sup> Paragraph 55 of the Statement of Dato' Rosdi recorded on 24.11.2021.

notices released by MINDEF. He informed Dato' Rosdi about the tender advertisement.<sup>284</sup>

261. Dato' Rosdi, the Managing Director of Agenda Eksklusif, decided that both Agenda Eksklusif and Star Apax should participate in Tender ELSA 2020.<sup>285</sup> He explicitly instructed the employees of Agenda Eksklusif to purchase the tender documents.<sup>286</sup> The determination to participate in tenders associated with the Ministries, involving Agenda Eksklusif, Star Apax, and Nekad Waja, was collectively made by Dato' Rosdi and Shamill of Agenda Eksklusif/Nekad Waja.<sup>287</sup> It is worth noting that Shamill is also the sole proprietor of Nekad Waja. Dato' Rosdi informed Raja Nurnaim, the partner of Star Apax, about his intention to involve Star Apax in the participation process.<sup>288</sup>

262. For the purpose of establishing price submissions for Tender APAK 2020, Dato' Rosdi instructed Nur Ain of Agenda Eksklusif to collect supplier quotations and compile pricing information from previously awarded contracts.<sup>289</sup> Leveraging his industry expertise and the gathered supplier prices, Dato' Rosdi then proceeded to determine the pricing strategy for the Tender ELSA 2020.<sup>290</sup>

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<sup>284</sup> Paragraph 24 of the Statement of Shamill recorded on 24.11.2021.

<sup>285</sup> Paragraph 55 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>286</sup> Paragraph 21 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 56 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>287</sup> Paragraph 10 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>288</sup> Paragraph 55 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>289</sup> Paragraph 59 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>290</sup> Paragraphs 60, 61 and 62 of the Statement of Dato' Rosdi recorded on 24.11.2021.

263. During the preparation of the price submission, Dato' Rosdi engaged in consultations with Shamill, an employee of Agenda Eksklusif and the registered proprietor of Nekad Waja<sup>291</sup> Whilst suggestions on bid price were provided by Shamill, Dato' Rosdi of Agenda Eksklusif, maintained, the ultimate authority to make the final decision regarding the price submission for both Agenda Eksklusif, Star Apax and Nekad Waja in relation to Tender ELSA 2020.<sup>292</sup>
264. After Dato' Rosdi had determined the bid price submission for Agenda Eksklusif, he proceeded to provide Star Apax with mark-up price from the price set for Agenda Eksklusif.<sup>293</sup> Nur Ain of Agenda Eksklusif was tasked with managing price information, preparing necessary documentation, and completing paperwork on behalf of both Agenda Eksklusif and Star Apax for the tender process.<sup>294</sup>
265. Pursuant to receiving the price list from Dato' Rosdi, Nur Ain proceeded to enter the figures into the tender document for Agenda Eksklusif.<sup>295</sup> Nur Ain of Agenda Eksklusif calculated the itemised prices for Star Apax's participation, incorporating the comprehensive marked-up price provided by Rosdi.<sup>296</sup> After completing these

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<sup>291</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; Paragraph 8 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 18 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>292</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021; and Paragraph 8 of the Statement of Shamill recorded on 24.11.2021.

<sup>293</sup> Paragraph 62 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>294</sup> Paragraphs 31 until 34 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>295</sup> Paragraphs 32 and 33 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>296</sup> Paragraphs 32 and 33 of the Statement of Nur Ain recorded on 23.11.2021.

calculations, Dato' Rosdi reviewed and confirmed the final price submissions for Agenda Eksklusif and Star Apax.<sup>297</sup>

266. Nur Ain was assigned the responsibility of preparing the tender documents for Agenda Eksklusif, while Fetty was responsible for preparing the tender documents for Star Apax.<sup>298</sup> After completing the process of preparing the documents, Rosdi received the tender documents for Agenda Eksklusif for his signature, while Raja Nurnaim received the tender documents for Star Apax for her signature.<sup>299</sup>

267. Shamill assumed the responsibility of submitting the tender documents to MINDEF upon finalizing them for both Agenda Eksklusif and Star Apax.<sup>300</sup>

268. Dato Rosdi's active role in determining the price submissions for both Agenda Eksklusif and Star Apax resulted in a deceptive bidding process in Tender ELSA 2020. This occurred because both Parties when presenting their tenders, gave the impression that they were separate entities competing before MINDEF, whereas the truth is that these two Parties had colluded to perform an act of bid rigging.<sup>301</sup>

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<sup>297</sup> Paragraphs 32 and 34 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>298</sup> Paragraph 3 of the Statement of Fetty Faidura recorded on 23.11.2021; and Paragraph 63 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>299</sup> Paragraph 64 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraph 10 of the Statement of Fetty Faidura recorded on 23.11.2021.

<sup>300</sup> Paragraph 24 of the Statement of Shamill recorded on 24.11.2021.

<sup>301</sup> Ref. Case No. 03/2013 *Delhi Jal Board vs Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129.

(b) *Prior Coordination between Agenda Eksklusif and Nekad Waja*

269. Shamill, who serves as both the sole owner of Nekad Waja and an employee of Agenda Eksklusif, purchased the tender documents from MINDEF for Nekad Waja's participation in Tender ELSA 2020.<sup>302</sup> In his capacity as an employee of Agenda Eksklusif, Shamill also participated in discussions with Dato' Rosdi, the Managing Director of Agenda Eksklusif, regarding the pricing to be submitted for both Agenda Eksklusif and Star Apax in relation to their involvements in Tender ELSA 2020.<sup>303</sup> Despite being the Managing Director of Agenda Eksklusif, Dato' Rosdi made suggestions to Shamill regarding the tender pricing for Nekad Waja's participation.<sup>304</sup>

270. The price quotation suggested by Dato' Rosdi, would be based on the markup price derived from Agenda Eksklusif's price submission.<sup>305</sup> This finding supports the conclusion that Agenda Eksklusif and Nekad Waja coordinated and shared prices with the intention of engaging in bid rigging.

271. Moreover, Dato' Rosdi explained that Agenda Eksklusif applied the markup price exclusively to the total price submission in Tender ELSA 2020, rather than to each individual item.<sup>306</sup>

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<sup>302</sup> Paragraph 22 of the Statement of Shamill recorded on 24.11.2021.

<sup>303</sup> Paragraph 10 of the Statement of Shamill recorded on 25.3.2021.

<sup>304</sup> Paragraphs 7, 8, 9 and 10 of the Statement of Shamill recorded on 25.3.2021.

<sup>305</sup> Paragraph 68 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>306</sup> Paragraph 33 of the Statement of Dato' Rosdi recorded on 5.1.2022.



272. From the evidence, it is discovered that Shamill utilised the computer facilities located at Agenda Eksklusif's premises to prepare for Nekad Waja tender documents. Additionally, Shamill requested Auni, an employee of Agenda Eksklusif, to print brochures and technical data for the submission.<sup>307</sup>

273. Based on the abovementioned, both Dato' Rosdi and Shamill admitted in their recorded statements that they communicated the prices of Tender ELSA 2020 with each other. This demonstrates that the prices submitted for Tender ELSA 2020 by both Parties were influenced by the information exchanged, thereby affecting their conduct in the tendering process. The involvement of Shamill in discussions regarding price submissions for Agenda Eksklusif and Star Apax proves the existence of collusive practices aimed at coordinating bidding prices between the three Parties.

(c) *Prior Coordination between Agenda Eksklusif and Spectron*

274. Spectron discovered the advertisement for Tender ELSA 2020 through MINDEF's official website.<sup>308</sup> Opting to participate in the tender, Spectron conducted online research to identify suppliers that were trustworthy and reputable. However, Spectron encountered a scarcity of suppliers capable of providing comprehensive pricing information that met the requirements of the tender.<sup>309</sup>

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<sup>307</sup> Paragraph 22 of the Statement of Shamill recorded on 24.11.2021; and Paragraph 19 of the Statement of Auni recorded on 23.11.2021.

<sup>308</sup> Paragraph 14 of the Statement of Muzalifah recorded on 3.5.2021.

<sup>309</sup> Paragraph 2.4 of Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022.

275. As a result, Spectron requested a complete price list from Agenda Eksklusif, and Dato' Rosdi provided Spectron with the price quotation.<sup>310</sup> In addition to furnishing the pricing details, Dato' Rosdi expressed his intention to participate in the competitive bidding process of Tender ELSA 2020 to Spectron.<sup>311</sup>
276. Ong Sue Bune, the director of Spectron, communicated Spectron's interest in participating in the upcoming Tender ELSA 2020 to Dato' Rosdi.<sup>312</sup> During their discussions, they also explored the possibility of a collaboration between Spectron and Agenda Eksklusif in the event that Spectron is successful in securing the tender.<sup>313</sup>
277. Dato' Rosdi of Agenda Eksklusif, instructed Nur Ain, an employee of Agenda Eksklusif, to provide Spectron with a price quotation for Tender ELSA 2020.<sup>314</sup> The price quotation compiled by Nur Ain was derived from a markup applied to the Agenda Eksklusif's price for Tender ELSA 2020.<sup>315</sup> In addition to the price quotation, Muzalifah of Spectron acknowledged seeking and receiving advice and guidance from Dato' Rosdi of Agenda Eksklusif regarding the preparation of the tender documents.<sup>316</sup>

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<sup>310</sup> Paragraph 9 of the Statement of Ong Sue Bune recorded on 19.1.2022; and Paragraph 2.4 of Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022 and Paragraph 74 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>311</sup> Paragraph 76 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>312</sup> Paragraph 8 of the Statement of Ong Sue Bune recorded on 19.1.2022.

<sup>313</sup> Paragraph 8 of the Statement of Ong Sue Bune recorded on 19.1.2022; and Paragraphs 23 until 26 of the Statement of Ong Sue Bune recorded on 10.11.2022.

<sup>314</sup> Paragraph 74 of the Statement of Dato' Rosdi recorded on 24.11.2021.

<sup>315</sup> Paragraph 35 of the Statement of Nur Ain recorded on 23.11.2021.

<sup>316</sup> Paragraph 76 of the Statement of Raja Nurnaim recorded on 24.11.2021; and Paragraphs 20 and 24 of the Statement of Muzalifah recorded on 3.5.2021.

278. Spectron also clarified that they sought and obtained quotations exclusively from Agenda Eksklusif. Spectron then submitted the price provided by Dato' Rosdi to MINDEF for their participation in Tender ELSA 2020 without making any alterations to the quoted amount. Spectron clarified that with this quoted price, they anticipated achieving a profit margin of 5% based on the potential value of the MINDEF work order that would be awarded to Agenda Eksklusif.<sup>317</sup>

279. The paragraphs above evidence a series of interactions between Agenda Eksklusif and Spectron, showing that the two parties exchanged sensitive pricing information and expressed their intentions regarding their participation in Tender ELSA 2020. This exchange of information demonstrates an agreement practice to rig the bid for Tender ELSA 2020.

***Evidence Analysis: Bid Rigging Agreements and/or Concerted Practices Between Agenda Eksklusif, Star Apax, Nekad Waja; As Well As Agenda Eksklusif and Spectron***

280. The Commission obtained evidence through the search and seizure operation with a warrant executed at Agenda Eksklusif's premises. Based on the evidence gathered at the premises, the Commission made the following findings:

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<sup>317</sup> Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022; and Paragraphs 29 and 40 of the Statement recorded of Ong Sue Bune on 10.11.2022.

- (i) Agenda Eksklusif's Possessed Star Apax, Nekad Waja and Spectron's Bid Price Submissions for Tender ELSA 2020 – **paragraphs 250 to 252;**
- (ii) Price Patterns in Bids Submitted by Agenda Eksklusif, Star Apax, Nekad Waja and Spectron to MINDEF – **paragraphs 253 to 257;** and
- (iii) Comparable Total Bid Price Submissions Among Agenda Eksklusif, Star Apax, Nekad Waja and Spectron – **paragraph 258.**

281. Based on the evidence outlined above and the findings from the recorded statements, as set out in **paragraphs 259 to 279**, the Commission concludes that the similarities in the tender specifics and pricing submitted by Agenda Eksklusif, Star Apax, Nekad Waja and Spectron for Tender ELSA 2020 are not coincidental but the result of an act of bid rigging among the four Parties. The participations of Agenda Eksklusif, Star Apax, Nekad Waja and Spectron in the bidding process were not bona fide but a cover bidding arrangement intended to enhance Agenda Eksklusif's prospects of winning the tender.<sup>318</sup>

282. Agenda Eksklusif's sharing of price information and communication with Star Apax, Nekad Waja and Spectron prior to their bid submissions for Tender ELSA 2020 undermined the competitive integrity of the tender process. This exchange of information among

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<sup>318</sup> Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; Judgment in Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41; CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.126; Spectron's Written Response pursuant to Section 18 Notice dated 18.5.2022; *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4; Paragraph 46 of the Statement of Dato' Rosdi recorded on 24.11.2021; and Paragraphs 29 and 40 of the Statement recorded of Ong Sue Bune on 10.11.2022.

the three Parties distorted the competitive nature of the tender process and eliminated diminished the unpredictability that true competition would have had, in respect of their behaviour towards each other on the market.<sup>319</sup>

283. Subject to our finding of bid riggings, the Commission considers Agenda Eksklusif, Star Apax, Nekad Waja, and Spectron as competitors in this tender based on their capability to participate in the bidding process. We note the following factors that establish their eligibility to partake in the tender:

- (i) All four parties registered with the relevant field code and submitted a copy of the MOF Registration Certification, as required by the tender advertisement. This step was essential for verifying eligibility when purchasing physical tender documents. MINDEF received physical tender documents from all parties, indicating their compliance with this requirement;<sup>320</sup>
- (ii) All four participating enterprises, namely Agenda Eksklusif, Nekad Waja, Spectron, and Star Apax, submitted separate bids for this tender. Each of these enterprises presented itself as an individual bidder during the tender process;<sup>321</sup> and
- (iii) However, all four parties, unbeknown to MINDEF, were Parties to bid riggings.

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<sup>319</sup> Case 50415 *Supply of Groundworks Products to the Construction Industry* at paragraphs 5.107 and 5.108; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, at paragraph 122; and Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, at paragraph 41.

<sup>320</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, page 16.

<sup>321</sup> Ref. Case No. 03/2013 *Delhi Jal Board v Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129

284. The discovery of tender documents belonging to competitors on the premises of another competitor and the subsequent act of notifying competitors to participate in the same tender constitute agreements and/or concerted practices with the object to rig the bidding process of Tender ELSA 2020.<sup>322</sup>
285. Based on the evidence, the Commission concludes that there is the existence of horizontal agreements and/or concerted practices with the object to perform bid rigging involving Agenda Eksklusif and Star Apax, Agenda Eksklusif and Nekad Waja, as well as Agenda Eksklusif and Spectron for Tender ELSA 2020.

**Agenda Eksklusif's as the instigator for the agreements and/or concerted practices with Nekad Waja and Star Apax that have the object to rig Tender ELSA 2020**

286. The Commission finds that Dato' Rosdi of Agenda Eksklusif, instigated the bid rigging agreement and/or concerted practices involving Star Apax and Nekad Waja for Tender ELSA 2020. This decision is supported by the findings in **paragraphs 280 to 285**, where Dato' Rosdi, as director of Agenda Eksklusif, colluded with Star Apax and Nekad Waja on tender details, influenced their participation in the tender, and coordinated their tender pricing based on Agenda Eksklusif's marked-up tender rates.

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<sup>322</sup> Case 50481 *Design, Construction, and Fit-out Services* at paragraph 5.95; CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.126; 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.

## F. ARGUMENT BY THE PARTIES

287. Agenda Eksklusif, Star Apax, Nekad Waja, Spectron and Teknokrat have raised issues in both their written and oral representations in response to the Proposed Decision. These arguments can be categorised into two parts:

- (i) Agenda Eksklusif, Star Apax and Nekad Waja are a Single Economic Unit; and
- (ii) Agenda Eksklusif have subcontracting agreements and/or concerted practices with Spectron and Teknokrat.

### F.1 AGENDA EKSKLUSIF, STAR APAX AND NEKAD WAJA ARE SINGLE ECONOMIC UNIT

288. Agenda Eksklusif, Star Apax and Nekad Waja contended that there is no horizontal agreement between Agenda Eksklusif, Star Apax and Nekad Waja because these entities constitute a Single Economic Unit (“SEU”) known as “Agenda Entities”. The Parties argued that based on the principle of decisive influence as applied in the *Langkawi Auto Express Sdn Bhd* (“Langkawi case”)<sup>323</sup> a relationship other than that between a parent company and a subsidiary could fall within the scope of the doctrine of SEU. As an SEU, there can be no horizontal agreement among the enterprises that are components of the SEU; and no exchange of commercially sensitive information among the Parties. Hence, there can be no infringement under section 4(2)(d) of the Act.

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<sup>323</sup> *Langkawi Auto Express Sdn Bhd and 4 other enterprises*, Case No. 700-1/3/1/2019.

289. The Commission rejects the contention that Agenda Eksklusif, Star Apax, and Nekad Waja form an SEU as defined under the term “enterprise” in section 2 of the Act. The definition of “enterprise” in section 2 states that a parent company and its subsidiaries are regarded as a single economic unit if, despite their separate legal entity, they form a single economic unit within which the subsidiaries lack real autonomy in the market. The Commission finds that the condition of a parent-subsidiary relationship between the Agenda Eksklusif with Star Apax and Nekad Waja is not met. Factually, Star Apax and Nekad Waja are not companies but are either sole proprietorship or partnership; hence, legally, they are incapable of being “subsidiaries” of Agenda Eksklusif, as defined by section 2 of the Act.
290. It is, however, conceded that in the *Langkawi case*, the Commission, relying on the principle of decisive influence and the EU case of *HFB Holding v Commission of the European Communities*, expanded the definition of “enterprise” in section 2 so as to include situations beyond those prescribed in the Act.<sup>324</sup> Thus, in the *Langkawi case*, applying the principle of decisive influence, the Commission had held that there may exist a relationship other than that of a parent-subsidiary relationship, that falls within the scope of the doctrine of SEU. Be that as it may, the Commission finds that the Parties failed to recognise that the nature of the infringement in the *Langkawi case* is different from the nature of the infringement in the current case. In the *Langkawi case* the nature of the infringement is that of price

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<sup>324</sup> *Langkawi Auto Express Sdn Bhd and 4 other enterprises*, Case No. 700-1/3/1/2019, at paragraphs 75 and 88 and TRP 1-2022; TRP2-2022 and TRP 3-2022 *Langkawi Ro-Ro ferry Services Sdn. Bhd. & Others v Competition Commission*, paragraph 33.



fixing; whereas the nature of the infringement in the present case is that of bid rigging.<sup>325</sup>

291. The whole intent of the tendering process is to ensure that the procurer received genuine, independent and competitive bid.<sup>326</sup> Therefore, when Agenda Eksklusif, Star Apax and Nekad Waja committed bid rigging by colluding and manipulating the tendering process, giving the procurer a false impression of the market's competitive nature, it would be a mockery of the section 4 prohibition of the Act if they were to be permitted to escape liability merely by invoking the decisive influence or the SEU principle. In this regard, for the position it takes, the Commission relies on the case of Ref. *Case Delhi Jal Board vs. Grasim Industries Ltd. & Others*<sup>327</sup> (“*Delhi Jal Board*”) supported this thinking and approach as quoted below:

*“The Commission notes that these two companies are separate legal entities and that they participated in these tenders individually and separately. **Where two or more entities of the same group decide to separately submit bids in the same tender, they have consciously decided to represent themselves to the procurer that they are independent decision making centres and independent options for***

<sup>325</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1; *Langkawi Auto Express Sdn Bhd and 4 other enterprises*, Case No. 700-1/3/1/2019, at paragraph 140; *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208, 209 and 248 to 251; CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.71; Case 50697 Competition Act 1998 Supply of demolition and related services, paragraph 3.29 and *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11, at paragraphs 13, 15, 103 and 104.

<sup>326</sup> *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 250 until 253; Case COMP/38.543 – *International Removal Services*, at paragraphs 359 to 370; (Joined Cases T-208/08 and T-209/08) *Gosselin Group and Stichting Administratiekantoor Portielje v Commission*, at paragraph 67; CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph III.71; Case 50697 Competition Act 1998 Supply of demolition and related services, paragraph 3.29 and *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11, at paragraphs 13, 15, 103 and 104.

<sup>327</sup> Ref. Case No. 03/2013 *Delhi Jal Board vs. Grasim Industries Ltd. & Others*, 5 October 2017, at pages 125 and 129.

**procurement.** *They will, under such circumstances, have to comply with the provisions of the Act in letter and spirit. **Any argument by such entities to the effect that they decided to submit separate bids but the prices were decided by the same person, which fact is not known to the procurer, cannot be used to escape the provisions of law.** Such a behaviour, apart from manipulating the price discovery process of public procurement, is contrary to the objective of the Act and should be condemned. **Accordingly, ABCIL and GIL cannot avoid the responsibility cast under Section 3(3)(d) read with Section 3(1) of the Act under the garb of belonging to the same group.***

[Emphasis added]

292. The principle from the *Delhi Jal Board* case states that if the Parties consciously submitted their bids as separate bids despite being in the same group, they represented themselves to the procurer as independent decision-making centres. Therefore, they cannot later claim SEU status to evade liability under the Act, as this would defeat the purpose of the Act.
293. 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>328</sup> This includes securing lower prices and/or better-quality products, thereby conserving resources that can be allocated to other goods and services.<sup>329</sup>

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<sup>328</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1.

<sup>329</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1.

294. 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>330</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>331</sup>
295. In this case, three Parties admitted in their statements that they submitted individual bids for the relevant tenders.<sup>332</sup> The Commission also verified with MINDEF’s documents that all Parties submitted separate bids.<sup>333</sup> Furthermore, the Parties also admitted that they did not disclose to MINDEF their status as an SEU.<sup>334</sup>
296. In the present case Agenda Eksklusif, Star Apax, and Nekad Waja had presented themselves as independent entities when submitting the bids. Therefore, based on the principle established in the *Delhi Jal Board* case, they should be treated accordingly.<sup>335</sup> They cannot rely on the SEU principle to escape liability under the Act.

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<sup>330</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>331</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>332</sup> Paragraphs 13, 19, 24 and 30 of the Statement of Shamill recorded on 24.11.2021; Ref. Case No. 03/2013 *Delhi Jal Board v Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129.

<sup>333</sup> *Laporan Senarai Penghantaran Cadangan MINDEF* dated 13.12.2016, page 76; Agenda Eksklusif’s Tender ELSA 2016 documents submitted to MINDEF, page 53; Star Apax’s Tender ELSA 2016 documents submitted to MINDEF, page 72; Nekad Waja’s Tender ELSA 2016 documents submitted to MINDEF, page 29; *Kertas Taklimat Tender APAK 2020 No. Tender-KP/PERO1D/T024/2020/OE*, page 18 and *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, pages 16 to 18.

<sup>334</sup> Oral Representation Session in Relation to Proposed Decision dated 29.4.2024, pages 26 and 27.

<sup>335</sup> Ref. Case No. 03/2013 *Delhi Jal Board v Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129 and In Re: *Shri D. K. Shrivastava, Chief Material Manager Rail Coach*

297. Furthermore, the Commission finds that accepting the SEU argument would defeat the purpose of the Act. The purpose of the Act is to promote economic development by protecting the competition process.<sup>336</sup> By safeguarding this process, the Act encourages efficiency, innovation, and entrepreneurship, which in turn results in competitive prices, improvements in the quality of products and services, and broader choices for consumers.
298. The actions of Agenda Eksklusif, Star Apax, and Nekad distorted the competition process, leaving MINDEF with bid submissions that were influenced by collusion and coordinated strategies designed to eliminate the risks and unpredictability associated with competition, rather than by genuine competitive bids.
299. Considering the aforementioned 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 SEU argument is without merit and should be dismissed.
300. Nevertheless, even if the Commission were to consider Agenda Eksklusif, Star Apax, and Nekad Waja as an SEU, which the Commission has determined that they are not, the Parties would still be liable because their tender bids were submitted and prepared collusively and in bad faith. There was an element of deception. If

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*Factory Kapurthala Railway Officers Complex Tilak Bridge New Delhi- 110002 vs M/s Daulat Ram Engg & Services P. Ltd & Others*, Case No. 04 of 2014.

<sup>336</sup> Note: The preamble of an enacted law can be taken as an aid to interpret its provision when the meaning of the said provision is unclear or doubtful. See the decision of *Re Application of Tan Boon Liat & Ors Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & ORS* [1977] 2 MLJ 18, at page 19 and *Samat bin Yamin v Public Prosecutor* [2023] 4 MLJ 613, at paragraph 27.

the Parties had submitted their tenders independently, with clean hands and no exchange of information or documents between each other during the tender preparation process, each bid would have been competitive, and the procurer would have received genuine competitive bids. However, based on the findings in **paragraphs 84 to 123, 151 to 191, 196 to 243, 249 to 286**, this was not the case. To reiterate, the three parties shared commercially sensitive information and coordinated their strategy to rig all four tenders.

301. The Parties have also raised the following issues:

- (a) MyCC has exceeded its powers in taking into account non-competition concerns; and
- (b) MyCC as a competition regulator should promote competition and ensure widest possible participation by tenderers.

MyCC exceeding its powers in taking into account non-competition concerns

302. The Parties contended that the Commission should not decide on bid rigging in the tender process, as that is the responsibility of the contracting authority, MINDEF. They argued that it is up to MINDEF to take action on SEUs submitting more than one bid in the relevant tender. The Parties also referred to Article 101 of the Treaty on the Functioning of the European Union (TFEU) and EU Directive 2004/18 to support their claim.

303. “Bid rigging”, the specific infringement in this case, is explicitly mentioned as a prohibition under section 4(2)(d) of the Act, which

the Commission is mandated to regulate.<sup>337</sup> Therefore, unlike Article 101 of the TFEU, bid rigging is explicitly listed as one of the prohibitions under the Act.<sup>338</sup>

304. Therefore, the contention that the Commission is exceeding its authority in taking into account non-competition concerns, when in fact the Commission is addressing bid-rigging conduct prohibited under Section 4 of the Act, is clearly without merit and must be outrightly dismissed.

*MyCC as competition regulator should promote competition and ensure widest possible participation by tenderers*

305. The Parties contended that the Commission should encourage the widest possible participation in the tender process, including multiple tenders from a single SEU. They argued that this approach benefits the public interest by allowing MINDEF to select the most suitable Agenda Entity based on its own criteria and merit. Excluding other Agenda Entities from participating would limit MINDEF's options and reduce competition.

306. Such an argument is mind boggling. This case is about the Commission's action against the Parties for the infringements of the bid rigging prohibition under section 4 of the Act. Bid rigging conduct,

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<sup>337</sup> Section 4 of the Act.

<sup>338</sup> Note: Modern English authorities may be persuasive, but are not binding. In determining whether to accept their guidance the Courts will have regard to the circumstances of the states of Malaysia and will be careful to apply them only to the extent that the written law permits and no further as decided in Federal Court cases, *Jamil Bin Harun v Yang Kamsiah & Anor* [1984] 1 MLJ 217, page 219 and *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loong & Ors* [2006] 2 MLJ 389, paragraph 49.

as discussed in **paragraphs 56 to 69**, prevents, restricts, and distorts competition in the tendering process.<sup>339</sup> The contention that the Commission is limiting choices and hindering competition is clearly devoid of merit. The bid riggings by the Parties are not based on competitive merits, they neither expand choices nor promote competition.

## **F.2 AGENDA EKSKLUSIF HAVE SUBCONTRACTING AGREEMENT WITH SPECTRON AND TEKNOKRAT**

307. The Parties argued that the Agenda Eksklusif's arrangements with Spectron for Tender APAK 2020 and Tender ELSA 2020, and with Teknokrat for Tender APAK 2016, were merely sub-contracting co-operation agreements. Spectron and Teknokrat are not competitors to Agenda Eksklusif; and, hence, there were no horizontal agreement between them.

### *Agenda Eksklusif and Spectron*

308. Spectron and Agenda Eksklusif asserted that they have a subcontracting agreement. The subcontracting arrangement was made pursuant to the established understanding between Agenda Eksklusif and Spectron to increase the chance of winning the bid, as stated in **paragraphs 196 to 242 and 249 to 285**.

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<sup>339</sup> Case COMP/38.543 – *International Removal Services*, at paragraphs 359 to 370; *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 250 until 253; Case COMP/39125 *Carglass*, at paragraph 496; Case 50481 *Design, Construction, and Fit-out Services*, at paragraphs 590 and 591; *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11, at paragraphs 13, 14, 15, 103 and 104; and (Joined Cases CE/3123-03 and CE/3645-03) CA 98/01/2006 *Collusive Tendering for Flat Roof and Car Park Surfacing Contracts in England and Scotland* at paragraphs 68 to 71.



309. Based on the Commission findings there is only one subcontracting agreement that existed between Agenda Eksklusif and Spectron for Tender APAK 2020 dated 18.8.2020 and it does not include Tender ELSA.<sup>340</sup>
310. Based on that subcontracting agreement, the agreement was entered after Spectron won the tender and not before. Spectron won the tender on 17.8.2020; whereas the subcontracting agreement was entered into on 18.8.2020. Without a formal subcontracting agreement, there was no valid reason for Agenda Eksklusif and Spectron to discuss on Tender APAK 2020, let alone Tender ELSA 2020.<sup>341</sup>
311. Moreover, if the Parties were to discuss subcontracting, they should focus solely on its details, not the bid price.<sup>342</sup> Price information is sensitive, and its disclosure breaches anti-competitive rules, influencing market behavior.<sup>343</sup> Based on the Commission's findings in **paragraphs 192 to 242** and **249 to 285**, Spectron and Agenda Eksklusif discussed commercially sensitive information, including the prices submitted for Tenders APAK 2020 and ELSA 2020.

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<sup>340</sup> *Perjanjian Kontrak antara Agenda Eksklusif dan Spectron*, dated 18.8.2020.

<sup>341</sup> CA 98/01/2005 *Collusive tendering for Mastic Asphalt Flat-Roofing Contracts in Scotland*, at paragraph 42; CA 98012006 (Joined Cases CE3123-03 and CE3645-03) *England and Scotland Roofing*, at paragraph 73 and Case 50415 *Supply of Groundworks Products to the Construction Industry*, paragraph 5.109.

<sup>342</sup> *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore* CCS 600/008/06, paragraph 24.

<sup>343</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, paragraph III.81; Case 50415 *Supply of Groundworks Products to the Construction Industry*, at paragraphs 5.107 and 5.108; and Case No: C3/2017/3539 *Balmoral Tanks Ltd v Competition and Markets Authority* [2019] EWCA Civ 162, paragraphs 28 and 35.



312. In the CAT Case *Caliber Interconnects Sdn. Bhd. & Three Others v Competition Commission* (“ASWARA CAT”)<sup>344</sup> decision, the respondent’s counsel argued, and CAT concurred, that if the appellants were truly in a subcontracting relationship, they would have submitted a joint bid as a consortium, leveraging their synergy and expertise. However, in the *ASWARA CAT* case, each appellant submitted a separate bid, prepared by one person.
313. Similarly, if Agenda Eksklusif and Spectron were in a subcontracting relationship, they would have submitted a joint bid, leveraging their combined expertise. Instead, both parties submitted separate bids, a deceptive strategy designed to manifest a façade of competitive bids to MINDEF.
314. Based on abovementioned, the Commission finds that the subcontracting arrangement between Agenda Eksklusif with Spectron is not a genuine subcontracting agreement. Hence, the argument is rejected.

#### *Agenda Eksklusif and Teknokrat*

315. Agenda Eksklusif and Teknokrat argued that there was an oral subcontracting agreement between them. However, no evidence was adduced to the Commission to support the existence of such an oral agreement. A bare assertion that there is an “oral” agreement is insufficient. Without a formal subcontracting agreement, there was no valid reason for Agenda Eksklusif and Teknokrat to discuss on

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<sup>344</sup> Case Nos. 4, 5, 6, and 7 of 2022 *between Caliber Interconnects Sdn. Bhd. & Three Others and the Competition Commission*, paragraph 44.

Tender APAK 2016.<sup>345</sup>The Commission considers this argument to be an afterthought and, accordingly, rejects it.

316. The Parties also raised four further arguments below:

- (i) Spectron and Teknokrat are not competitors as they lack capacity to compete;
- (ii) No evidence that Agenda Eksklusif influenced the bid price submitted by Spectron and Teknokrat to MINDEF;
- (iii) The agreement has no anti-competitive purposes; and
- (iv) Section 5 of the Competition Act – Net Economic Benefits.

**Spectron and Teknokrat Are Not Competitors of Agenda Eksklusif as They Lack Capacity to Compete in The Relevant Tender**

317. The Parties argued that Spectron and Teknokrat are not competitors to Agenda Eksklusif, asserting that there is no horizontal relationship between Agenda and Spectron or Teknokrat.

318. This argument is baseless. The Parties failed to acknowledge that all three entities have the field codes to submit and compete for the relevant tenders. The Parties seeking government contracts must be registered with the Ministry of Finance (“MOF”) and the relevant ministry associated with the project. These ministries ensure that the enterprises possess the necessary skills and expertise. Therefore, when Spectron bid for Tender APAK 2020 and Tender ELSA 2020,

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<sup>345</sup> No. CA98/01/2005 *Collusive tendering for mastic asphalt flat-roofing contracts in Scotland* (Case CE/1925-02), paragraph 42; and Case 50415 *Supply of Groundworks Products to the Construction Industry*, paragraph 5.109.

and Teknokrat bid for Tender APAK 2016, the two Parties have met these requirements.<sup>346</sup> Thus, the argument that Spectron and Teknokrat lack the necessary expertise is implausible.

319. Even if Agenda Eksklusif, Spectron, and Teknokrat genuinely believed they lacked technical requirements, this does not justify substituting cooperation for competition risks. In *Richard W Price (Roofing Contractors) Limited v Office of Fair Trading* (“OFT”) [2005] CAT 5 (“Roofing Contractor”), the OFT rejected similar reasoning, emphasising independent market strategy over collusion.<sup>347</sup>
320. Agenda Eksklusif, Spectron, and Teknokrat should have competed based on their competitive merits, but they chose to avoid the risks of competition by cooperating and colluding with one another. Accordingly, the Commission dismisses their argument.

**Other arguments:**

**The Alleged Subcontracting Agreement Was Not to Eliminate Competition**

321. The Parties argued that MINDEF's role as a major purchaser in Malaysia could force losing bidders out of the market. The alleged subcontracting agreements were for the purpose of keeping

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<sup>346</sup> *Kertas Taklimat Tender ELSA 2020 No. Tender KP/PERO1D/T311/2019/OE*, page 16; *Kertas Taklimat Tender APAK 2020 No. Tender-KP/PERO1D/T024/2020/OE*, page 18; Letter of Acceptance for Tender APAK 2020, page 4; *Kertas Taklimat Tender APAK 2016 No. Tender: KP/PER1OD/T228/2016/OE*, pages 53; and Teknokrat's Tender APAK 2016 documents submitted to MINDEF.

<sup>347</sup> *Richard W Price (Roofing Contractors) Limited v Office of Fair Trading* [2005] CAT 5, Paragraphs 46 to 52.

Spectron and Teknokrat suppliers in the market during MINDEF's infrequent procurement periods. These agreements were not meant to eliminate competition or to guarantee bid success. Agenda Eksklusif further contended that if it had aimed to benefit from the alleged subcontracting agreements, it would not have submitted independent and competitive bids for Tender APAK 2016, APAK 2020, and ELSA 2020.

322. The purpose of competition policy and enforcement is to ensure that the process of competition remains healthy, not to artificially prop up failing entities that may probably exit due to natural market forces. Therefore, the Commission's assessment of agreements and/or concerted practices does not depend on bidders' subjective intentions.<sup>348</sup> Motives such as maintaining tender inquiries or remaining on a selective tender list are irrelevant to the finding of infringement.<sup>349</sup>
323. Furthermore, the lack of consideration for the anti-competitive nature of the conduct, or the unawareness of its effects, does not exonerate the Parties of infringement.<sup>350</sup> Therefore, the Commission dismiss the argument.

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<sup>348</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, paragraph III.68; and Case 50481 *Design, Construction, and Fit-out Services*, at paragraph 5.89.

<sup>349</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, paragraph III.95; *Richard W Price (Roofing Contractors) Limited v Office of Fair Trading* [2005] CAT 5, paragraph 54, and Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.28.

<sup>350</sup> Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.31 and *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 253.

**No Evidence that Agenda Eksklusif Influenced the Bid Price Submitted by Spectron and Teknokrat to MINDEF**

324. The Parties contended that there was no evidence showing that Agenda Eksklusif influenced Spectron's and Teknokrat's submitted bid prices. The Excel file found at Agenda Eksklusif's premises indicates that Agenda Eksklusif provided the subcontractor supply price to both Spectron and Teknokrat.
325. This argument is baseless, as the Commission considered extensive evidence, including evidence retrieved from the Parties' premises and statements recorded from the Parties' key personnel, in determining that Agenda Eksklusif, Spectron, and Teknokrat engaged in bid rigging as stated in **paragraphs 192 to 286**.<sup>351</sup>
326. Furthermore, an inference could be drawn from the information exchanges between the Parties that the submitted bid prices were products of collusions.<sup>352</sup> For instance, Ong Sue Bune requested and received bid prices from Agenda Eksklusif for Tender APAK 2020 and ELSA 2020, which Spectron used as the basis for their bid.<sup>353</sup> Spectron admitted in a written statement that prices were

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<sup>351</sup> *Gold Chic Poultry Supply Pte. Ltd. and Anor & Ors v CCCS and Other Appeals* [2020] SGCAB 1, at paragraphs 67 to 73; *Case 48/69 Imperial Chemical Industries Ltd v European Commission* [1972] ECR 619, at paragraph 68; and *In Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, JFE Engineering*, at paragraphs 179 and 180.

<sup>352</sup> *Richard W Price (Roofing Contractors) Limited v Office of Fair Trading* [2005] CAT 5, CA98/02/2009 *Bid rigging in the Construction Industry*, paragraphs III.92 to II.98 and *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, at paragraphs 248 to 251.

<sup>353</sup> Paragraph 8 of the Statement of Ong Sue Bune recorded on 19.1.2022 and Paragraph 14 of the Statement of Ong Sue Bune recorded on 19.1.2022.

shared between them and Agenda Eksklusif.<sup>354</sup> This is further supported by a Microsoft Excel worksheet found at Agenda Eksklusif's premises that matched Spectron's submitted prices to MINDEF.

327. Similarly, a Microsoft Excel spreadsheet found at Agenda Eksklusif's premises corresponded with Teknokrat's tender price submission.<sup>355</sup> Additionally, Dato' Rosdi admitted to providing tender prices to Teknokrat.<sup>356</sup>
328. Even if there were deviations between the proposed and final submitted bid prices, it still constitutes bid rigging due to the exchange of pricing information.<sup>357</sup> Therefore, the Commission rejects the Parties' argument.

### **The Agreement Has No Anti-Competitive Purposes**

329. Agenda Eksklusif, Teknokrat and Spectron submitted that on the basis of *Malaysian Airline System Berhad & Anor v Competition Commission* (TRP 1-2014, TRP 2-2014) and *Malaysian Airline System Bhd v Competition Commission* ("MAS/AirAsia COA"), the Commission have failed to prove that the object of the

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<sup>354</sup> Written Representation of Agenda Eksklusif dated 29.3.2024, page 37 and Written Representation of Spectron dated 29.3.2024, page 13.

<sup>355</sup> Written Representation of Agenda Eksklusif dated 29.3.2024, page 37 and Written Representation of Teknokrat dated 29.3.2024, page 11.

<sup>356</sup> Paragraph 52 and 53 of the Statement recorded of Dato' Rosdi recorded on 24.11.2021; and Paragraph 31 of the Statement of Dato' Rosdi recorded on 5.1.2022.

<sup>357</sup> Case C-291/98 P *Sarrjo v Commission* [2000] ECR I-9991, at paragraph 50; and Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at paragraph 90.

subcontracting agreement was to perform an act of bid rigging under the Act. They asserted that since only Agenda Eksklusif could independently satisfy the relevant tender, such agreements could not significantly harm competition.

330. The Commission decided that the alleged subcontracting agreements were not genuine and cannot justify the Parties' sharing of sensitive tender prices and details. Each of the parties entered an agreement to fix directly or indirectly the bid prices and by submitting those bids performed an act of bid rigging.<sup>358</sup> Equally those purported subcontracting parties could have simply not have submitted a bid and awaited the outcome of the tender process but failed to do so because of the bid rigging agreement they had entered into. Based on this and the findings in **paragraphs 192 to 286**, the Commission concluded that Agenda Eksklusif, Spectron, and Teknokrat engaged in agreements and/or concerted practices to bid rig.

331. Further, based on the *MAS/AirAsia COA Decision*, the object cum deeming provision in section 4(2) is sufficient to determine an infringement unless the intention of the anti-competitive conduct is unclear.<sup>359</sup> But in the present case the object to perform bid rigging is clear from the conduct of the Parties. The very moment the object to perform bid rigging is established, and in the present case we find that it has clearly been established, the deeming section 4(2) is

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<sup>358</sup> Case COMP/38.543 – *International Removal Services*, at paragraphs 359 to 370.

<sup>359</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”.

triggered. Even without reliance on the automatic deeming provision, bid rigging is, by its very nature, inherently prevents, restricts or distorts competition.<sup>360</sup> Bid rigging reduces the number of competitive bids, deprive the tenderer of genuine competitive bids, prevents other contractors from submitting competitive bids, and gives the tenderer a false impression of market competition, potentially impairing future tender processes.<sup>361</sup> Based on all these the Commission dismisses the Parties' argument.

### **Section 5 of the Competition Act – Net Economic Benefits**

332. Agenda Eksklusif, Spectron and Teknokrat also wished to rely on section 5 of the Act. However, Agenda Eksklusif, Spectron, and Teknokrat failed to provide sufficient evidence and reasonable grounds to qualify for relief from liability as required under Section 5 of the Act. The three Parties did not fulfil and demonstrate the following requirements:

*Relief of liability*

*5. Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 4 based on the following reasons:*

*(a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;*

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<sup>360</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>361</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.



- (b) *the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;*
- (c) *the detrimental effect of the agreement on competition is proportionate to the benefits provided; and*
- (d) *the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services.*

333. Hence, the application under Section 5 of the Act is dismissed.

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

## **PART 3: THE COMMISSION'S DECISION**

### **A. DIRECTIONS UPON A FINDING OF AN INFRINGEMENT**

334. In view of the nature of the infringement of the Act, and taking into consideration all evidence obtained throughout the investigations described above, the Commission hereby issues a Decision of infringement under section 40 of the Act against the Parties for performing acts of bid-riggings that amount to breaches of section 4(1) read with section 4(2)(d) and section 4(3) of the Act.

### **B. GENERAL POINTS ON FINANCIAL PENALTIES**

335. Under section 40(1)(c) of the Act, where the Commission finds that an infringement of the section 4 prohibition had been committed by an enterprise, the Commission may impose a financial penalty on the said enterprise who is a party to that agreement.

336. The principal object of imposing a financial penalty is deterrence; both the need to deter repetition of the contravening conduct by the contravener (specific deterrence) and to deter 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 contravener or others as an acceptable cost of doing business.<sup>362</sup>

337. Based on the Commission's *Guidelines on Financial Penalties*, in

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<sup>362</sup> *Australian Competition and Consumer Commission v TPG Internet Ltd* [2013] HCA 54 at paragraphs 65 and 66.

determining the amount of financial penalty in a specific case, the Commission may consider some or all of the following factors<sup>363</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);
- (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.

338. Furthermore, the Commission emphasised that bid rigging in public procurement is highly egregious. Since public procurement involves the use of taxpayer money and impacts consumer welfare, such bid rigging should be viewed as one of the most pernicious forms of anti-competitive conduct, warranting serious penalties to serve as a deterrent.<sup>364</sup>

339. When determining the financial penalty for each of the Parties, the Commission begins the process by establishing a “base figure.” This figure is calculated by proportionally considering the “relevant turnover” during the period of infringement. Upon the calculation of the base figure, the Commission proceeds to make adjustments,

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<sup>363</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.2.

<sup>364</sup> *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1; MyCC Handbook, *Help Us Detect Bid Rigging*, at page 1; and Ref. Case No. 03/2013 *Delhi Jal Board v Grasim Industries Ltd. & Others*, 5 October, 2017, at paragraphs 124, 125 and 129.

taking into account various factors, which encompass both aggravating circumstances and mitigating considerations. These adjustments culminate in the determination of the final amount of the financial penalty.<sup>365</sup>

340. For the purpose of calculating 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 20.4.2021 to 20.10.2023.

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

341. 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.

342. The Commission identifies the relevant product market affected by the infringing conduct as defined in **paragraphs 72 to 78**.

343. The Commission relies on the financial data provided by the Parties to determine their respective relevant turnovers in respect of the relevant product market. However, the Commission observes that four Parties, namely, Prospectrum, Teknokrat, Nekad Waja, and NK Panorama, based on their respective submissions of financial data, did not generate any turnover for the respective relevant product market.

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<sup>365</sup> MyCC Guidelines on Financial Penalties, at paragraph 3.2.

344. In order to calculate the financial penalty, the Commission must first determine the relevant turnovers of all the Parties. However, when determining the relevant turnovers of the Parties that did not generate any revenue within the respective relevant product market, the Commission takes the position that employing a proxy figure is justified. In this regard, the Commission draws guidance from the methodology applied in the OFT case of *Bid Rigging in the Construction Industry in England* (“Construction Industry case”) pertaining to bid rigging in the construction industry.<sup>366</sup>

**“Parties that were unable to provide any relevant turnover figures**

*Three Parties, Frudd, Thorndyke and William Sapcote/Sapcote Holdings, informed the OFT that all their records had been destroyed or were impossible to access and that they were unable to ascertain what turnover they had generated in each of the relevant markets. The OFT is therefore using a proxy figure for these Parties’ relevant turnover figures, which is based on the median percentage of the total turnover represented by all of the Parties’ relevant turnover, for all Infringements (regardless of the market in which they occurred) where relevant turnover is more than nil.”<sup>367</sup>*

[Emphasis added]

345. The Commission adopts the approach taken by the OFT in the Construction Industry case.<sup>368</sup> Accordingly, the proxy figure was derived from the median percentage of the respective relevant turnovers out of the respective worldwide turnovers represented by

<sup>366</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph VI.98, at page 1648.

<sup>367</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph VI.98, at page 1648.

<sup>368</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph VI.98, at page 1648.

all of the Parties' relevant turnover, for all Infringements which is more than zero.<sup>369</sup> In this case, the Commission determines the proxy figure, which is derived from the median percentage of relevant turnovers out of the worldwide turnovers of Agenda Eksklusif, Star Apax and Spectron, as 19.40% as shown in **Table 32** below. The Commission considers this value of 19.40% as an appropriate proxy figure for deriving the relevant turnover figure of the enterprises that do not have any relevant turnover.

**Table 32:** Calculation of the Median Percentage of Relevant Turnovers for All Parties with Turnover More Than Zero.

	A	B	C	D
PARTY	RELEVANT TURNOVER (RM)	WORLDWIDE TURNOVER (RM)	PERCENTAGE OF RELEVANT TURNOVER OUT OF WORLDWIDE TURNOVER (%)	MEDIAN PERCENTAGE
Agenda Eksklusif	[X]	[X]	9.59	19.40
Spectron	[X]	[X]	19.40	
Star Apax	[X]	[X]	30.82	
Prospectrum	NIL	[X]	0	
Teknokrat	NIL	[X]	0	
Nekad Waja	NIL	NIL	0	
NK Panorama	NIL	NIL	0	
<b>TOTAL</b>	[X]	[X]	-	

346. After evaluating the seriousness of the infringement, the

<sup>369</sup> CA98/02/2009 *Bid rigging in the Construction Industry*, at paragraph VI.98, at page 1648.

Commission determines that the base figure for calculating the financial penalty for each Party should be established at 10% of that Party's relevant turnover.

## B.2 DURATION OF THE INFRINGEMENTS

347. The Commission finds that the periods of the infringements are as follows:

**Table 33:** Infringement Periods

<b>PROCUREMENT</b>	<b>PERIODS OF INFRINGEMENTS</b>	<b>PARTIES</b>
Tender APAK 2016	<p><b>Advertisement Date:</b> 22.11.2016</p> <p><b>Closing Date:</b> 13.12.2016</p> <p>Period of Infringement is 22 days (from 22.11.2016 until 13.12.2016)</p>	<ul style="list-style-type: none"> <li>▪ <b>Agenda Eksklusif</b></li> <li>▪ <b>Nekad Waja</b></li> <li>▪ <b>Star Apax</b></li> <li>▪ <b>Teknokrat</b></li> <li>▪ <b>Prospectrum</b></li> <li>▪ <b>NK Panorama</b></li> </ul>
Tender ELSA 2016	<p><b>Advertisement Date:</b> 14.10.2016</p> <p><b>Closing Date:</b> 8.11.2016</p> <p>Period of Infringement is 26 days (from 14.10.2016 until 8.11.2016)</p>	<ul style="list-style-type: none"> <li>▪ <b>Agenda Eksklusif</b></li> <li>▪ <b>Star Apax</b></li> <li>▪ <b>Nekad Waja</b></li> </ul>
Tender APAK 2020	<p><b>Advertisement Date:</b> 7.3.2020</p> <p><b>Closing Date:</b> 30.4.2020</p> <p>Period of Infringement is 55 days (from 7.3.2020 until 30.4.2020)</p>	<ul style="list-style-type: none"> <li>▪ <b>Agenda Eksklusif</b></li> <li>▪ <b>Nekad Waja</b></li> <li>▪ <b>Star Apax</b></li> <li>▪ <b>Spectron</b></li> </ul>

PROCUREMENT	PERIODS OF INFRINGEMENTS	PARTIES
Tender ELSA 2020	<p><b>Advertisement Date:</b> 13.3.2020</p> <p><b>Closing Date:</b> 4.6.2020</p> <p>Period of Infringement is 84 days (from 13.3.2020 until 4.6.2020)</p>	<ul style="list-style-type: none"> <li>▪ <b>Agenda Eksklusif</b></li> <li>▪ <b>Nekad Waja</b></li> <li>▪ <b>Star Apax</b></li> <li>▪ <b>Spectron</b></li> </ul>

348. As shown in **Table 33**, it is important to highlight the Commission's reliance on the advertisement dates and the closing dates to approximate the infringement periods. This method is adopted because the Commission opines that the anti-competitive agreement among the Parties to manipulate tender submissions to the procuring agency occurred within these timeframes.

349. The Commission observes that the infringements were committed discretely, spanning from November 2016 until April 2020, with each instance lasting for a relatively brief period, ranging from 22 days to 84 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>370</sup> the Commission recognises that bid-rigging effects are typically irreversible, challenging to rectify, and persistently impact stakeholders well beyond the actual duration of the infringements.<sup>371</sup>

<sup>370</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 December 2020.

<sup>371</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 December 2020, at paragraph 178.



350. 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>372</sup>

### B.3 AGGRAVATING FACTOR

351. 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 each of the Parties.

352. Further, the Commission also considers the frequency of participation in the infringements as an aggravating factor as follows:

**Table 34:** Frequency of Infringements

FREQUENCY	UPWARD ADJUSTMENT OF THE BASE FIGURE
2	10%
3	20%
4	30%

### B.4 MITIGATING FACTOR

353. The Commission will evaluate the presence of mitigating factors and will make downward adjustments to the base figure where the mitigating factors are applicable. However, in the present case, we find no valid mitigation factor to be considered.

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<sup>372</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 December 2020, at paragraph 178.

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

354. 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.

## **C. PENALTY FOR AGENDA EKSKLUSIF**

355. Agenda Eksklusif was involved in four infringements, namely, Tender APAK 2016, Tender ELSA 2016, Tender APAK 2020, and Tender ELSA 2020. Based on the Commission's aforesaid analysis and fortified by the deeming provision of section 4(2) of the Act, Agenda Eksklusif engaged in bid riggings with the object of significantly preventing, distorting or restricting competition in the Relevant Market, as prescribed in **paragraphs 78 (i) to (iv)**.

356. The Commission calculates the financial penalty based on the financial information submitted by Agenda Eksklusif in response to the section 18 notice dated 20.4.2021.<sup>373</sup> It should be noted that the data submitted pertains to the company's revenue for the period from 2016 to 2020.

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<sup>373</sup> Revenue information provided by Agenda Eksklusif dated 27.4.2021 pursuant to the Section 18 Notice issued by the Commission dated 20.4.2021.

357. Based on the available data, the relevant turnovers for the years 2016 (RM[~~xxx~~]) and 2020 (RM[~~xxx~~]) amount RM[~~xxx~~] (RM[~~xxx~~]+ RM[~~xxx~~]). Simultaneously, the worldwide turnover value for the years 2016 (RM[~~xxx~~]) and 2020 (RM[~~xxx~~]) amounts to RM[~~xxx~~] (RM[~~xxx~~]+ RM[~~xxx~~]). The Commission determines that RM[~~xxx~~] (10% x RM[~~xxx~~]) represents 10% of Agenda Eksklusif's worldwide turnover.
358. Based on the relevant turnover, the base figure for calculating the financial penalty for Agenda Eksklusif is fixed at 10% of the relevant turnover which amounts to *RM[~~xxx~~]* (10% x *RM[~~xxx~~]*).
359. As stated above, the Commission considers multiple infringements as an aggravating factor. Agenda Eksklusif engaged in bid-rigging in relation to four separate infringements. The base figure for the first infringement remains unchanged, that is to say, it remains at *RM[~~xxx~~]*. However, for the subsequent three Infringements, each will be subject to an upward adjustment of 10%. Consequently, the Commission increases the financial penalty value by 30% from the base figure of *RM[~~xxx~~]* (10% x 3 infringements) amounting to *RM[~~xxx~~]* (30% x *RM[~~xxx~~]*).
360. In addition, the Commission identifies Agenda Eksklusif as an instigator in four infringements, specifically in Tender APAK 2016, Tender ELSA 2016, Tender APAK 2020, and Tender ELSA 2020. For the four infringements, each will be subject to an upward adjustment of 50%. Accordingly, the Commission imposes an increase of 200% from the base figure of *RM[~~xxx~~]* (50% x 4 infringements) which amounts to *RM[~~xxx~~]* (200% x *RM[~~xxx~~]*).

361. The Commission finds that there are no mitigating factors available to Agenda Eksklusif that warrant any reduction in the level of financial penalty.
362. The final amount of financial penalty to be imposed on Agenda Eksklusif is **RM272,129.52** (RM[ ~~]~~ (base figure) + RM[ ~~]~~ (aggravating factor) + RM[ ~~]~~ (aggravating factor)).
363. The financial penalty of **RM272,132.52** does not exceed the maximum financial penalty of RM[ ~~]~~ that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, the penalty shall not exceed 10% of Agenda Eksklusif's worldwide turnover.

*Arguments by Agenda Eksklusif in relation to Financial Penalty*

364. Agenda Eksklusif argues that it has cooperated during the investigation, which should be considered as a mitigating factor. The Commission takes the position that the threshold is high when it comes to considering cooperation as a mitigating factor. To meet this requirement, the Party must have voluntarily provided information that could not have been obtained through a simple request for information. This approach aligns with the stance taken in the case of *Design, Construction, and Fit-out Services*.<sup>374</sup> Based on the aforesaid, the Commission concludes that Agenda Eksklusif did not provide information that is beyond what was requested via legal notices. The Commission hereby dismisses the argument by

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<sup>374</sup> 50481 *Design, Construction and Fit-out Services*, at paragraph 6.34.

Agenda Eksklusif.

365. Agenda Eksklusif also contended that they had been transparent with MINDEF, making all relevant facts and information regarding the Agenda SEU entities available to the public and/or submitting them directly to MINDEF. Nevertheless, during oral representation, Agenda Eksklusif admitted that they did not provide a declaration to MINDEF regarding their alleged SEU status. Hence, the mitigation for the said reason is hereby dismissed.<sup>375</sup>

366. Further, Agenda Eksklusif contended that Agenda Eksklusif via Dato' Rosdi is not an instigator because Dato' Rosdi exercised decisive influence over Agenda Entities and it was therefore his role to do so. His role was not to engage the alleged Agenda Entities in illegal conduct. This contention is devoid of merit. This issue was considered and addressed by the Commission in **paragraphs 123, 191, 243 and 286**. Based on the findings, the Commission verily dismissed the argument.

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<sup>375</sup> Oral Representation Session in Relation to Proposed Decision dated 29.4.2024, pages 26 and 27.

## D. PENALTY FOR STAR APAX

367. Star Apax was involved in four Infringements, specifically, Tender APAK 2016, Tender ELSA 2016, Tender APAK 2020 and Tender ELSA 2020. Star Apax engaged in bid rigging with the object of significantly preventing, distorting or restricting competition in the Relevant Market, as prescribed in **paragraphs 78 (i) to (iv)**.
368. The Commission relies on the financial information submitted by Star Apax pursuant to the section 18 notice dated 20.4.2021 for the purpose of calculating the financial penalty.<sup>376</sup>
369. Based on the available data, Star Apax's relevant turnover for 2016 is nil and the relevant turnover for 2020 amounts to RM[~~xxx~~]. The worldwide turnovers for the years 2016 and 2020 totals RM[~~xxx~~] (RM[~~xxx~~] (2016) + RM[~~xxx~~] (2020)). The Commission determines that 10% of Star Apax's worldwide turnover is RM[~~xxx~~] (10% x RM[~~xxx~~]).
370. Based on the relevant turnover, the base figure for calculating the financial penalty for Star Apax is fixed at 10% of the relevant turnover which amounts to RM[~~xxx~~] (10% x RM[~~xxx~~]).
371. The Commission considers multiple infringements as an aggravating factor, as shown in **Table 34**. Star Apax engaged in bid-rigging in relation to four tenders; hence, there were four separate infringements. While no adjustments are applied to the base figure of RM[~~xxx~~] for the first Infringement, each of the subsequent three

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<sup>376</sup> Revenue information provided by Star Apax dated 27.4.2021 pursuant to the Section 18 Notice issued by the Commission dated 20.4.2021.

infringements will be subject to an upward adjustment of 10%. Accordingly, the Commission increases the financial penalty value by 30% from the base of figure  $RM[\text{X}]$  ( $10\% \times 3$  infringements), resulting in an amount of  $RM[\text{X}]$  ( $30\% \times RM[\text{X}]$ ).

372. The Commission finds that there are no mitigating factors available to Star Apax that warrant any reduction in the level of financial penalty.

373. As final amount of financial penalty to be imposed on Star Apax is **RM109,701.11** ( $RM[\text{X}]$  (base figure) +  $RM[\text{X}]$  (aggravating factor)).

374. The financial penalty of **RM109,701.11** does not exceed the maximum financial penalty of  $RM[\text{X}]$  that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, the penalty shall not exceed 10% of Star Apax's worldwide turnover.

#### *Arguments by Star Apax in relation to Financial Penalty*

375. Star Apax contends that its cooperation during the investigation should be considered as a mitigating factor. However, the Commission takes the position that the threshold is high when it comes to considering cooperation as a mitigating factor. To meet this requirement, the Party must have voluntarily provided information that could not have been obtained through a simple

request for information.<sup>377</sup> Based on the aforesaid, the Commission finds that Star Apax did not furnish information beyond what was requested via legal notices and thus dismisses Star Apax 's argument.

376. Star Apax also contended that they had been transparent with MINDEF, making all relevant facts and information regarding Agenda Entities SEU available to the public and/or submitting them directly to MINDEF. Nevertheless, during oral representation, Star Apax admitted that they did not provide a declaration to MINDEF regarding their alleged SEU status. Hence, the mitigation for the said reason is hereby dismissed.<sup>378</sup>

## **E. PENALTY FOR SPECTRON**

377. Spectron participated in two infringements, namely, Tender APAK 2020 and Tender ELSA 2020. The acts of bid rigging in the infringements had the object of significantly preventing, distorting, or restricting competition in the Relevant Market, as prescribed in **paragraphs 78 (iii) and (iv)**.

378. For the purpose of computing the financial penalty, the Commission relies on the financial information submitted by Spectron pursuant to the section 18 notice dated 29.4.2022.<sup>379</sup> The Commission notes that the submitted revenue data pertains to the period of 2020.

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<sup>377</sup> 50481 *Design, Construction and Fit-out Services*, at paragraph 6.34.

<sup>378</sup> Oral Representation Session in Relation to Proposed Decision dated 29.4.2024, pages 26 and 27.

<sup>379</sup> Revenue information provided by Spectron dated 18.5.2021 via counsel pursuant to the Section 18 Notice issued by the Commission dated 29.4.2021.



379. According to the available data, Spectron's relevant turnover for the year 2020 is RM[~~xxx~~] , and its worldwide turnover for the same year is RM[~~xxx~~]. The Commission determines that 10% of Spectron's worldwide turnover is RM[~~xxx~~] (10% x RM[~~xxx~~]).
380. Based on the relevant turnover, the base figure in calculating the financial penalty for Spectron is fixed at 10% of the relevant turnover which amounts to *RM[~~xxx~~]* (10% x RM[~~xxx~~]).
381. As stated above, the Commission views multiple infringements as an aggravating factor. Spectron engaged in bid-rigging in relation to two infringements. No adjustment will be made to the base figure for the first infringement; however, the base figure will be adjusted upwards by 10% for the second infringement. Accordingly, the Commission increases the financial penalty value by 10% from the base figure of *RM[~~xxx~~]* (10% x 1 infringement) resulting in an amount of *RM[~~xxx~~]* (10% x *RM[~~xxx~~]*).
382. The Commission finds that there are no mitigating factors available to Spectron that warrant any reduction in the level of financial penalty.
383. The final amount of financial penalty to be imposed on Spectron is **RM43,889.92** (*RM[~~xxx~~]* (base figure) + RM[~~xxx~~] (aggravating factor)).
384. The financial penalty of **RM43,889.92** does not exceed the maximum financial penalty of RM[~~xxx~~] that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, the penalty shall not exceed 10% of Spectron's worldwide

turnover.

### *Arguments by Spectron in relation to Financial Penalty*

385. Spectron contends that its cooperation during the investigation should be considered as a mitigating factor. However, the Commission takes the position that the threshold is high when it comes to considering cooperation as a mitigating factor. To meet this requirement, the Party must have voluntarily provided information that could not have been obtained through a simple request for information.<sup>380</sup> Based on the aforesaid, the Commission finds that Spectron did not furnish information beyond what was requested via legal notices and thus dismisses Spectron's argument.

## **F. PENALTY FOR TEKNOKRAT**

386. Teknokrat engaged in bid-rigging for Tender APAK 2016 which has the object of significantly preventing, distorting, or restricting competition in the market for the supply of spare parts and maintenance services for fire control equipment, including of small fire extinguisher for TDM and TLDM in Malaysia.

387. The Commission relies on the financial information submitted by Teknokrat pursuant to the section 18 notice dated 16.11.2022 to compute the financial penalty.<sup>381</sup> The Commission notes that the

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<sup>380</sup> 50481 *Design, Construction and Fit-out Services*, at paragraph 6.34.

<sup>381</sup> Revenue information provided by Teknokrat dated 17.11.2022 via letter pursuant to the Section 18 Notice issued by the Commission dated 16.11.2022.

submitted revenue data pertains to the period of 2016.

388. Based on the available data, Teknokrat had a nil relevant turnover for 2016. However, the worldwide turnover for the year 2016 is RM[~~xxx~~]. The Commission finds that 10% of Teknokrat's worldwide turnover is RM[~~xxx~~] (10% x RM[~~xxx~~]).
389. Since Teknokrat had a nil relevant turnover for 2016, the Commission utilizes a proxy figure of 19.40% of the worldwide turnover, being the only turnover sum that is available, to derive the relevant turnover for 2016. How this median percentage of 19.40% is derived is explained in **paragraphs 344 to 346** and **Table 32** above. As a result, the proxy-derived relevant turnover is RM[~~xxx~~] (19.40% x RM[~~xxx~~]).
390. Based on the proxy-derived relevant turnover, the base figure in calculating the financial penalty for Teknokrat is fixed at 10% of the adjusted relevant turnover which amounts to RM[~~xxx~~] (10% x RM[~~xxx~~]).
391. The Commission finds that there are no aggravating and mitigating factors available to Teknokrat that warrant any adjustment in the level of financial penalty.
392. Applying the aforesaid methodology in computing the amount of financial penalty to be imposed on Teknokrat, the base figure arrived at appears to be a mere paltry sum of RM[~~xxx~~]. The Commission is of the view that cartels, including bid rigging, are the supreme evil of competition law infringement. As such, RM[~~xxx~~] is grossly insufficient

as a penalty as it will not serve as a specific deterrence and general deterrence to others, and hence fails to do justice to the case. It will be just a slap on the wrist.

393. Accordingly, guided by section 40(4) of the Act that stipulates that the penalty to be imposed on an enterprise shall not exceed 10% of the worldwide turnover, the Commission decides to increase the penalty of RM[~~500,000~~] to 10% of Teknokrat's worldwide turnover as the penalty. This will result in the penalty being imposed as **RM3,379.90** (10% x RM[~~500,000~~]).

394. The financial penalty of **RM3,379.90** does not exceed the maximum financial penalty of RM[~~500,000~~] that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, the penalty shall not exceed 10% of Teknokrat's worldwide turnover.

#### *Arguments by Teknokrat in relation to Financial Penalty*

395. Teknokrat contends that its cooperation during the investigation should be considered as a mitigating factor. However, the Commission takes the position that the threshold is high when it comes to considering cooperation as a mitigating factor. To meet this requirement, the Party must have voluntarily provided information that could not have been obtained through a simple request for information.<sup>382</sup> Based on the aforesaid, the Commission finds that Teknokrat did not furnish information beyond what was requested via legal notices and thus dismisses Teknokrat's argument.

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<sup>382</sup> 50481 *Design, Construction and Fit-out Services*, at paragraph 6.34.

**G. PENALTY FOR PROSPECTRUM**

396. Prospectrum engaged in bid-rigging for Tender APAK 2016 which had the object of significantly preventing, distorting, and restricting competition in the market for the supply of spare parts and maintenance services of fire control equipment, including of small fire extinguisher for TDM and TLDM in Malaysia.
397. The Commission relies on the financial information submitted by Prospectrum pursuant to the section 18 notice dated 8.12.2022 to compute the financial penalty.<sup>383</sup> The submitted data on turnover was for the period of 2016.
398. Based on the available data, Prospectrum had a nil relevant turnover for 2016. However, the value for the worldwide turnover for 2016 is RM[~~xxx~~]. The Commission finds that 10% of Prospectrum's worldwide turnover is RM[~~xxx~~] (10% x RM[~~xxx~~]).
399. Since Prospectrum had a nil relevant turnover for 2016, the Commission utilises a proxy figure of 19.40% to derive the relevant turnover for 2016. As a result, the adjusted relevant turnover is RM[~~xxx~~] (19.40% x RM[~~xxx~~]).
400. Based on the adjusted relevant turnover, the base figure in calculating the financial penalty for Prospectrum is fixed at 10% of the relevant turnover which amounts to RM[~~xxx~~] (10% x RM[~~xxx~~]).

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<sup>383</sup> Revenue information provided by Prospectrum dated 28.12.2022 via courier pursuant to the Section 18 Notice issued by the Commission dated 8.12.2022.

401. The Commission finds that there are no aggravating and mitigating factors available to Prospectrum that warrant any adjustment in the level of financial penalty.
402. The final amount of financial penalty to be imposed on Prospectrum is **RM14,992.50**.
403. The penalty of **RM14,992.50** does not exceed the maximum financial penalty of RM[~~∞~~] that the Commission may legally impose as prescribed by section 40(4) of the Act, that is to say, the penalty shall not exceed 10% of Prospectrum's worldwide turnover.

*Arguments by Prospectrum in relation to Financial Penalty*

404. Prospectrum seeks mitigation, claiming it was unaware its conduct infringed the Act. It also cites full cooperation during the investigation, Noradzmi's personal health, and financial issues, arguing the financial penalty is burdensome. The Commission rejects these grounds. The Competition Act 2010 has been in existence for approximately 14 years and demonstrates an ignorance of those in business in not acquainting themselves with the object and provisions of the Act. Ignorance of the anti-competitive nature of their conduct is irrelevant in determining the existence of an infringement, hence, it is not a mitigation factor.<sup>384</sup> Furthermore, while the financial position of the Parties is considered when determining penalties, economic difficulties alone are not

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<sup>384</sup> Case 50697 *Competition Act 1998 Supply of demolition and related services*, paragraph 3.31 and *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 253.

sufficient grounds for penalty reduction. Mere assertion of financial hardship by Prospectrum is insufficient, they must provide comprehensive information and documentation to support claims for financial mitigation.<sup>385</sup> Therefore, the Commission dismisses the mitigation grounds.

## H. PENALTY FOR NEKAD WAJA

405. Nekad Waja engaged in four infringements, specifically in Tender APAK 2016, Tender ELSA 2016, Tender APAK 2020 and Tender ELSA 2020. The acts of bid riggings in the infringements had the object of significantly preventing, distorting or restricting competition in the Relevant Market, as prescribed in **paragraphs 78 (i) to (iv)**.
406. Nekad Waja had a nil relevant turnover and a nil worldwide turnover for 2016 and 2020 during the infringement periods. Hence, applying the normal methodology in determining penalty would result in the Commission imposing a zero financial penalty on Nekad Waja.
407. However, The Commission is of the view that the Act should not be interpreted literally, especially where such an interpretation results in absurdity and injustice. An enterprise that had violated the Act by committing infringements, and in this case performing multiple acts of bid riggings that harm competition, should not be allowed to get away with impunity merely because it has a nil turnover (relevant and worldwide). Therefore, a purposive approach must be adopted here instead of a literal approach. There has to be some sort of a

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<sup>385</sup> CCS 500/001/09 Collusive Tendering (Bid-Rigging) in Electrical and Building Works, paragraph 316.

sanction imposed. Therefore, in accordance with section 40(1)(d) of the Act, the Commission imposes a symbolic fine of **RM1000.00** to Nekad Waja.<sup>386</sup>

*Arguments by Nekad Waja in relation to Financial Penalty*

408. Nekad Waja contends that its cooperation during the investigation should be considered as a mitigating factor. However, the Commission takes the position that the threshold is high when it comes to considering cooperation as a mitigating factor. To meet this requirement, the Party must have voluntarily provided information that could not have been obtained through a simple request for information. Based on the aforesaid, the Commission finds that Nekad Waja did not furnish information beyond what was requested via legal notices and thus dismisses Nekad Waja 's argument.

409. Nekad Waja also contended that they had been transparent with MINDEF, making all relevant facts and information regarding Agenda Entities SEU available to the public and/or submitting them directly to MINDEF. Nevertheless, during oral representation, Nekad Waja admitted that they did not provide a declaration to MINDEF regarding their alleged SEU status. Therefore, they were not transparent with MINDEF. Hence, the argument for mitigation for the said reason is hereby dismissed.<sup>387</sup>

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<sup>386</sup> Case No.41 of 2019, *GAIL (India) Limited v PMP Infratech Private Ltd & Rati Engineering*, at paragraph 52.

<sup>387</sup> Oral Representation Session in Relation to Proposed Decision dated 29.4.2024, pages 26 and 27.



410. Nekad Waja also applies for mitigation on the grounds that it did not win any of the relevant tenders. The Commission holds that it is not a valid mitigating factor, as it does not change the fact that Nekad Waja still committed the bid-rigging infringements. Therefore, the Commission dismisses this mitigation ground.

## I. PENALTY FOR NK PANORAMA

411. NK Panorama was involved in the conduct of bid-rigging for Tender APAK 2016 which had the object of significantly preventing, distorting, or restricting competition in the market for the supply of spare parts and maintenance service of fire control equipment, including of small fire extinguishers for TDM and TLDM in Malaysia.

412. NK Panorama had a nil relevant turnover and worldwide turnover for 2016 and 2020 during the infringement period. Hence, applying the normal methodology in determining penalty would result in the Commission imposing a zero financial penalty on NK Panorama.

413. However, the Commission is of the view that the Act should not be interpreted literally, especially where such an interpretation results in absurdity and injustice. An enterprise that had violated the Act by committing an infringement, and in this case performing an act of bid rigging that harms competition, should not be allowed to get away with impunity merely because it has a nil turnover (relevant and worldwide). Therefore, a purposive approach must be adopted here instead of a literal approach. There has to be some sort of a sanction imposed. Accordingly, pursuant to section 40(1)(d) of the Act, the Commission imposes a symbolic fine of **RM1000.00** to NK

Panorama.<sup>388</sup>

*Arguments by NK Panorama in relation to Financial Penalty*

414. NK Panorama seeks mitigation, claiming it was unaware its conduct infringed the Act. It also cites full cooperation during the investigation and financial issues, arguing the financial penalty is burdensome. The Competition Act 2010 has been in existence for approximately 14 years and demonstrates an ignorance of those in business in not acquainting themselves with the object and provisions of the Act. The Commission rejects these grounds, as ignorance of the anti-competitive nature of their conduct is irrelevant in determining the existence of an infringement, hence, it is not a mitigation factor.<sup>389</sup> Furthermore, while the financial position of the Parties is considered when determining penalties, economic difficulties alone are not sufficient grounds for penalty reduction. Mere assertion of financial hardship by NK Panorama is insufficient, they must provide comprehensive information and documentation to support claims for financial mitigation.<sup>390</sup> Therefore, the Commission dismisses the mitigation grounds.

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<sup>388</sup> Case No.41 of 2019, *GAIL (India) Limited v PMP Infratech Private Ltd & Rati Engineering*, at paragraph 52.

<sup>389</sup> Case 50697 Competition Act 1998 Supply of demolition and related services, paragraph 3.31 and *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 253.

<sup>390</sup> CCS 500/001/09 Collusive Tendering (Bid-Rigging) in Electrical and Building Works, paragraph 316.

**J. DIRECTION BY THE COMMISSION**

415. Pursuant to section 40(1)(d) of the Act, if the Commission determines that there is an infringement of a prohibition, it may give any other direction as it deems appropriate. Therefore, the Commission hereby directs the following:

- (a) NK Panorama and Prospectrum to execute in the manner as directed by the Commission, a Bond of Good Behaviour by depositing a bond sum of RM5,000.00 with the Commission, which sum shall be held for three years by the Commission; and such sum shall be returned at the end of the three-year period if the Commission is satisfied that there is no involvement by the Party in question in any bid rigging conduct, within the three-year period; and
- (b) Agenda Eksklusif, Star Apax, Nekad Waja, Spectron, Teknokrat, NK Panorama and Prospectrum to enrol every owner (in a case of sole proprietorship), every partner (in a case of partnership) and every director (in the case of a company) in a competition law compliance program and training (which program and training shall be approved by the Commission) at its own expense within three months of the issuance of the decision. The Parties are required to submit monthly progress reports regarding the enrolment, program and training.

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**K. SUMMARY OF FINANCIAL PENALTY**

416. The summary of computation methodology of the financial penalty is provided below:

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Image 5: Summary of computation methodology of the financial penalty<sup>391</sup>

No	Target enterprise	Year	Total Worldwide Turnover (RM)	Relevant Turnover (RM)				TOTAL RELEVANT TURNOVER (RM)	80% FROM TOTAL WORLDWIDE TURNOVER (RM)	PERCENTAGE OF RELEVANT TURNOVER OUT OF TOTAL WORLDWIDE TURNOVER (%)	ADJUSTED RELEVANT TURNOVER (PROXY FIGURE OF 19.40%) (RM)	PROPOSED FINANCIAL PENALTY								PROPOSED FINANCIAL PENALTY ADJUSTED WITH FREQUENCY & INSTIGATOR (RM)	
				Perkhidmatan penggantian pengisian semula, bekalan dan pemastimbasan gas untuk pemadam api kecil (APAK) untuk Tindakan Darat dan Tindakan Laut Diraja Malaysia untuk tempoh 1 tahun (SPAK 2014)	Perkhidmatan penggantian dan pemastimbasan gas untuk pemadam api kecil, bekalan dan pemastimbasan gas untuk pemadam api kecil untuk Tindakan Darat dan Tindakan Laut Diraja Malaysia untuk tempoh 2 tahun (SLA 2014)	Perkhidmatan penggantian pengisian semula, bekalan dan pemastimbasan gas untuk pemadam api kecil untuk Tindakan Darat dan Tindakan Laut Diraja Malaysia bagi tempoh 3 tahun (SPAK 2016)	Perkhidmatan penggantian dan pemastimbasan gas untuk pemadam api kecil dan pemastimbasan gas untuk pemadam api kecil untuk Tindakan Darat dan Tindakan Laut Diraja Malaysia bagi tempoh 3 tahun (SLA 2020)					BASE FIGURE				AGGRAVATING					
												STARTING POINT	INVOLVEMENT OF ENTERPRISE IN BID RIGGING				INSTIGATOR				
													10% FROM ADJUSTED RELEVANT TURNOVER	1	2	3	4	1	2		3
				Contract Value: RM4,000,000.00	Contract Value: RM4,700,000.00	Contract Value: RM4,000,000.00	Contract Value: RM7,321,214.70				None	10%	10%	10%	50%	50%	50%	50%			
1	Agenda Ekshumasi sdn. bhd.	2016 & 2020		NA		NA			9.59											272,128.52	
2	Star Apex Enterprise	2016 & 2020		NA	NA		NA		30.82											109,701.11	
3	spection sdn. bhd.	2020					NA		19.40											43,889.92	
4	Teknikret Mekmur Enterprise	2016		NA					0.00											3,379.90	
5	Nekad Waja Resources	2016 & 2020	NA		NA				0.00											1,000.00*	
6	Prospectrum Sdn Bhd	2016		NA					0.00											14,992.50	
7	NK Panorama Enterprise	2016	NA	NA					0.00											1,000.00**	
TOTAL																					

<sup>391</sup> Microsoft Excel spreadsheet on financial penalty computation by the Commission.

## PART 4: CONCLUSION ON THE FINANCIAL PENALTY AND DIRECTION

417. In conclusion, the Commission pursuant to section 40(4) of the Act, imposes the following financial penalties on the Parties as shown in **Table 35** and **Table 36** below:

**Table 35:** Financial Penalty and Direction for Agenda Eksklusif, Star Apax, Spectron, Prospectrum and Teknokrat

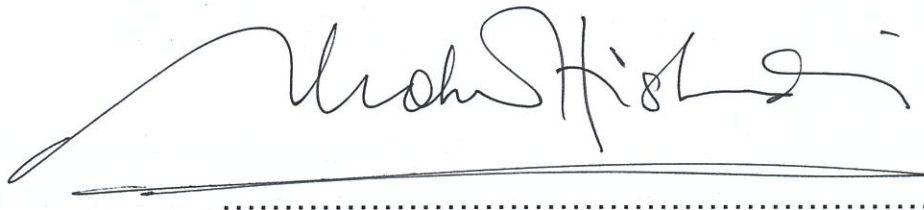
PARTY	FINANCIAL PENALTY	DIRECTION
<b>Agenda Eksklusif</b>	<b>RM272,129.52</b>	To enrol every owner (in a case of sole proprietorship), every partner (in a case of partnership) and every director (in the case of a company) in a competition law compliance program and training (which program and training shall be approved by the Commission) at its own expense within three months of the issuance of the decision. The Parties are required to submit monthly progress reports regarding the enrolment, program and training.
<b>Star Apax</b>	<b>RM109,701.11</b>	
<b>Spectron</b>	<b>RM43,889.92</b>	
<b>Prospectrum</b>	<b>RM14,992.50</b>	
<b>Teknokrat</b>	<b>RM3,379.90</b>	

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**Table 36:** Direction for Nekad Waja and NK Panorama

PARTY	DIRECTION
Nekad Waja	(i) Symbolic fine of <b>RM1000.00</b> ; (ii) To execute in the manner as directed by the Commission, a Bond of Good Behaviour by depositing a bond sum of RM5,000.00 with the Commission, which sum shall be held for three years by the Commission; and such sum shall be returned at the end of the three-year period if the Commission is satisfied that there is no involvement by the Party in question in any bid rigging conduct, within the three-year period; and (iii) To enrol every owner (in a case of sole proprietorship), every partner (in a case of partnership) and every director (in the case of a company) in a competition law compliance program and training (which program and training shall be approved by the Commission) at its own expense within three months of the issuance of the decision. The Parties are required to submit monthly progress reports regarding the enrolment, program and training.
NK Panorama	

**DATED: 30 AUGUST 2024**



**CHAIRMAN**  
**DATO' SERI MOHD HISHAMUDIN BIN**  
**MD YUNUS**