



Malaysia Competition Commission

Case No. 700-1/1/109/2019

Competition Act 2010 [Act 712]

Decision of the Competition Commission

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

Competition Commission

v.

1. Dutamesra Bina Sdn. Bhd.
2. IDX Multi Resources Sdn. Bhd.
3. Kiara Kilat Sdn. Bhd.
4. Mangkubumi Sdn. Bhd.
5. Menang Idaman Sdn. Bhd.
6. Meranti Budiman Sdn. Bhd.
7. NYL Corporation Sdn. Bhd.
8. Pintas Utama Sdn. Bhd.

DATE: 25 FEBRUARY 2025

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

- (i) Tan Sri Dato' Sri Idrus Bin Harun (Chairman);
- (ii) Tuan Ahmad Fauzi Bin Sungip;
- (iii) Tuan Ir. Rusman Bin Abu Samah;
- (iv) Tuan Surrendren Sathasivam; and
- (v) Tuan Surya Putra Bin Dato' Mohamed Taulan.

GLOSSARY

NO.	MALAY TRANSLATION	ENGLISH TRANSLATION
1.	Bekalan	Supply
2.	Jabatan Kerja Raya	Public Works Department
3.	Jabatan Pengairan dan Saliran	Department of Irrigation and Drainage
4.	Kerja	Works
5.	Lantikan Terus	Direct Appointment
6.	Perkhidmatan	Service
7.	Permintaan	Requisition
8.	Rundingan Terus	Direct Negotiation
9.	Sebut Harga	Quotation
10.	Sijil Perolehan Kerja Kerajaan	Government Works Procurement Certificate
11.	Sijil Taraf Bumiputera	Bumiputera Status Certificate
12.	Tender Terbuka	Open Tender
13.	Tender Terbuka Pra-Kelayakan	Pre-Qualification Open Tender
14.	Sijil Pendaftaran Kontraktor	Contractor Registration Certificate
15.	Surat Setuju Terima	Letter of Acceptance

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PART 1: THE FACTS

A. INTRODUCTION

1. This Decision (“the Decision”) concludes the findings of an investigation undertaken by the Malaysia Competition Commission (“the Commission”) to establish whether infringements of section 4(1) read with section 4(2)(d) and section 4(3) of the Competition Act 2010 (“Act 712”) had been committed by the enterprises named in this Decision following the receipt of a complaint of alleged agreements among enterprises with the object to perform bid riggings. In this Decision, the named enterprises shall be individually referred to herein as “Party” and collectively referred to as “Parties”.
2. The Commission commenced an investigation pursuant to section 15 of the Act 712 upon receipt of the complaint. The complaint alleged the existence of anti-competitive arrangements in relation to the submissions of bids for two road construction projects procured by the Public Works Department (also known as *Jabatan Kerja Raya*) (“JKR”). The purpose of the investigation was to determine whether or not the alleged arrangements contravened section 4(1) read with section 4(2)(d) and section 4(3) of Act 712.
3. The Commission commenced its investigation on 6.11.2019. This investigation relates to two public procurement tenders, with the details set out below:

Table 1: Details of the Relevant Public Procurement Tenders

NO.	TENDER REFERENCE	PROCUREMENT AGENCY
1.	Central Spine Road Package 3B and 3C ("CSR 3B and 3C")	Public Works Department
2.	Central Spine Road Package 3J ("CSR 3J")	Public Works Department

4. During the investigation into Tenders CSR 3B and 3C, and CSR 3J ("CSR projects"), the Commission found that the same Parties involved in the CSR projects were also engaged in agreements and/or concerted practices to perform bid rigging in a different tender project, namely, a project known as the Rancangan Tebatan Banjir Sungai Buloh. The Department of Irrigation and Drainage (also known as *Jabatan Pengairan dan Saliran*) ("JPS") conducted a separate public procurement process for this project, Rancangan Tebatan Banjir Sungai Buloh. The project details are provided below:

Table 2: Details of Tender Rancangan Tebatan Banjir Sungai Buloh

NO.	TENDER REFERENCE	PROCUREMENT AGENCY
1.	Rancangan Tebatan Banjir Sungai Buloh ("Tender RTB Sungai Buloh")	Department of Drainage and Irrigation

5. Therefore, the Commission finds that the Parties have infringed the section 4 prohibition by participating in anti-competitive agreements and/or concerted practices to rig two road construction projects procured by the Public Works Department (also known as *Jabatan Kerja Raya*) ("JKR") and one flood mitigating project procured by Department of Irrigation and Drainage (also known as *Jabatan Pengairan dan Saliran*) ("JPS").

6. This Decision is addressed to the following Parties:
- (i) Dutamesra Bina Sdn. Bhd.;
 - (ii) IDX Multi Resources Sdn. Bhd.;
 - (iii) Kiara Kilat Sdn. Bhd.;
 - (iv) Mangkubumi Sdn. Bhd.;
 - (v) Menang Idaman Sdn. Bhd.;
 - (vi) Meranti Budiman Sdn. Bhd.;
 - (vii) NYL Corporation Sdn. Bhd.; and
 - (viii) Pintas Utama Sdn. Bhd.
7. By this Decision, the Commission hereby, pursuant to section 40 of Act 712, issues directions to the Parties as elaborated in **PART 4** of this Decision. In addition, the Commission imposes a financial penalty on each of the Parties for their respective Infringement, as set out in **Table 40**.

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B. THE PARTIES TO THE INFRINGEMENTS

B.1 DUTAMESRA BINA SDN. BHD.

8. Dutamesra Bina Sdn. Bhd. (464579-P)¹ (“Dutamesra”) is a private limited company incorporated on 24.6.1998 and having its principal address at No 8-23, Plaza Azalea, No.6 Persiaran Bandaraya, Seksyen 14, 40000 Shah Alam, Selangor.²
9. Dutamesra is engaged in the construction of roads, railways, motorways, streets, highways, bridges, tunnels, sewerage, and waste management activities.
10. Dutamesra is registered as an active G7 contractor³ (what is a “G7 contractor” will be explained in due course) with the *Lembaga Pembangunan Industri Pembinaan Malaysia* (also known as the “Construction Industry Development Board”) (also known by the acronym “CIDB”) and possesses the Government Works Procurement Certificate and Bumiputera Status Certificate, allow Dutamesra to bid for relevant Government tenders.
11. The list of directors and shareholders of Dutamesra is in **Table 3** below:

¹ Companies Commission of Malaysia search on Dutamesra dated 22.3.2024.

² Companies Commission of Malaysia search on Dutamesra dated 22.3.2024.

³ CIDB profile of Dutamesra Bina Sdn Bhd retrieved from Central Information Management System.

Table 3: List of directors and shareholders of Dutamesra

DUTAMESRA	
DIRECTOR	SHAREHOLDER
Siti Zalifah Umairah Binti Abdullah	Siti Zalifah Umairah Binti Abdullah (50%)
Mohammad Hariz Syafiq Bin Suhaimi	Mohammad Hariz Syafiq Bin Suhaimi (50%)

12. Siti Zalifah Umairah Binti Abdullah (“Siti Zalifah”), a director and a shareholder of Dutamesra in 2019, will be referred to in this Decision.

B.2 IDX MULTI RESOURCES SDN. BHD.

13. IDX Multi Resources Sdn. Bhd. (605712-U)⁴ (“IDX”) is a private limited company incorporated on 7.2.2003 and has its principal address at 12-13, Plaza Azalea, No. 6 Persiaran Bandaraya Shah Alam, 40000 Shah Alam, Selangor.⁵
14. IDX engages in construction works in building roads, railways, and other specialized infrastructure.
15. IDX is registered as an active G7 contractor with the CIDB.⁶ IDX possesses the Government Works Procurement Certification and Bumiputera Status Certificate which allows IDX to bid for relevant Government tenders.

⁴ Companies Commission of Malaysia search on IDX dated 22.3.2024.

⁵ Companies Commission of Malaysia search on IDX dated 22.3.2024.

⁶ CIDB profile of IDX Multi Resources Sdn Bhd retrieved from Central Information Management System.

16. The list of directors and shareholders of IDX is in **Table 4** below:

Table 4: List of Directors and Shareholders of IDX

IDX	
DIRECTOR	SHAREHOLDER
Hajar Arfah Binti Mohamed Zain	Hajar Arfah Binti Mohamed Zain (50%)
Rahmat Hidayat Bin Mohamed	Rahmat Hidayat Bin Mohamed (50%)

17. The following directors and/or officers of IDX in 2019 will be referred to in this Decision:

- (a) Hajar Arfah Binti Mohamed Zain (“Hajar Arfah”), director and shareholder; and
- (b) Rahmat Hidayat Bin Mohamed (“Rahmat Hidayat”), director and shareholder.

18. Hajar Arfah of IDX, as the Head of Human Resources administration at IDX, told the Commission that her responsibility was only confined to administrative and disciplinary matters and did not extend to matters pertaining to tenders.⁷

B.3 KIARA KILAT SDN. BHD.

19. Kiara Kilat Sdn. Bhd. (502401-X)⁸ (“Kiara Kilat”) is a private limited company incorporated on 29.12.1999 and having its principal

⁷ Paragraph 1 of the Statement of Datuk Hajar Arfah of IDX recorded on 15.2.2023.

⁸ Companies Commission of Malaysia search on Kiara Kilat dated 22.3.2024.

address at No. 24-2, Tingkat 2, Jalan Sungai Burung U32/U, Bukit Rimau, 40460 Shah Alam, Selangor.⁹

20. Kiara Kilat is engaged in general construction, such as the construction and repair of roads, highways, and infrastructures.
21. Kiara Kilat is registered as an active G7 contractor with the CIDB.¹⁰ Kiara Kilat possesses the Government Work Procurement Certificate and Bumiputera Status Certificate which allows Kiara Kilat to bid for relevant Government tenders.
22. The director and shareholder of Kiara Kilat is stated in **Table 5**:

Table 5: Director and Shareholder of Kiara Kilat

KIARA KILAT	
DIRECTOR	SHAREHOLDER
Muhammad Taqiyuddin Bin Abdullah Thaidi	Muhammad Taqiyuddin Bin Abdullah Thaidi (100%)

23. Muhammad Taqiyuddin bin Abdullah Thaidi ("Taqiyuddin"), the sole director and shareholder of Kiara Kilat in 2019, will be referred to in this Decision.

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⁹ Companies Commission of Malaysia search on Kiara Kilat dated 22.3.2024.

¹⁰ CIDB profile of Kiara Kilat Sdn Bhd retrieved from Central Information Management System.

B.4 MANGKUBUMI SDN. BHD.

24. Mangkubumi Sdn. Bhd. (546556-H)¹¹ ("Mangkubumi") is a private limited company incorporated on 2.5.2001 and having its principal address at No. 23, Jalan Sungai Jeluh 32/191, Nouvelle Kemuning Industrial Park, 40460 Shah Alam, Selangor.¹²
25. Mangkubumi engages in the construction of roads and railways and other specialised construction works. It also includes activities related to sewerage and similar activities, as well as the construction of motorways, streets, roads, bridges, and tunnels.
26. Mangkubumi is registered as an active G7 contractor with CIDB¹³ and possesses the Government Works Procurement Certificate and Bumiputera Status Certificate which allows Mangkubumi to bid for relevant Government tenders.
27. The list of directors and the sole shareholder of Mangkubumi is in **Table 6** below:

Table 6: List of Directors and Shareholder of Mangkubumi

MANGKUBUMI	
DIRECTOR	SHAREHOLDER
Tan Sri Zainudin Bin Karjan	Tan Sri Zainudin Bin Karjan (100%)
Mohamad Najib Bin Mohamed Daud	

¹¹ Companies Commission of Malaysia search on Mangkubumi dated 22.3.2024.

¹² Companies Commission of Malaysia search on Mangkubumi dated 22.3.2024.

¹³ CIDB profile of Mangkubumi Sdn Bhd dated retrieved from Central Information Management System.

28. The following directors and/or officers of Mangkubumi in 2019 will be referred to in this Decision:

- (a) Tan Sri Zainudin bin Karjan, director and the sole shareholder;
- (b) Wan Faiz Fikry bin Mohd Rusli (“Faiz Fikry”), Contract Manager/Quantity Surveyor; and
- (c) Sharifah Masytah binti Kamaruddin (“Masytah”), Head of Contract Unit/Quantity Surveyor Unit.

In 2019, Faiz Fikry also had his workstation placed at Pintas Utama Sdn. Bhd. Faiz Fikry informed the Commission that he was also a Contract Manager/Quantity Surveyor for Pintas Utama Sdn. Bhd.¹⁴

B.5 MENANG IDAMAN SDN. BHD.

29. Menang Idaman Sdn. Bhd. (639215-V)¹⁵ (“Menang Idaman”) is a private limited company incorporated on 10.1.2004 and has its principal address at SH-2-05, Block C, GEO Bukit Rimau, Jalan Sungai Burung 32/68, Seksyen 32, 40460 Shah Alam, Selangor.¹⁶

30. Menang Idaman engages in the construction of roads, railways, sewers, bridges, and activities related to surface works on roads and highways.

¹⁴ Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 15.2.2023.

¹⁵ Companies Commission of Malaysia search on Menang Idaman dated 22.3.2024.

¹⁶ Companies Commission of Malaysia search on Menang Idaman dated 22.3.2024.

31. Menang Idaman is registered as an active G7 contractor with the CIDB.¹⁷ Menang Idaman possesses the Government Works Procurement Certificate and Bumiputera Status Certificate which allows Menang Idaman to bid for relevant Government tenders.
32. The director and shareholder of Menang Idaman is stated in **Table 7**:

Table 7: Director and Shareholder of Menang Idaman

MENANG IDAMAN	
DIRECTOR	SHAREHOLDER
Mohd Tarmizi Bin Mohd Zuki	Mohd Tarmizi Bin Mohd Zuki (100%)

33. Mohd Tarmizi Bin Mohd Zuki ("Mohd Tarmizi"), the sole director and shareholder of Menang Idaman in 2019 will be referred to in this Decision.

B.6 MERANTI BUDIMAN SDN. BHD.

34. Meranti Budiman Sdn. Bhd. (674879-W)¹⁸ ("Meranti Budiman") is a private limited company incorporated on 11.12.2004 and having its principal address at No. 3-1, Jalan Flora 1/4, Taman Rimbayu, 42500 Telok Panglima Garang, Selangor.¹⁹

¹⁷ CIDB profile of Menang Idaman Sdn Bhd retrieved from Central Information Management System.

¹⁸ Companies Commission of Malaysia search on Meranti Budiman dated 22.3.2024.

¹⁹ Companies Commission of Malaysia search on Meranti Budiman dated 22.3.2024.

35. Meranti Budiman is engaged in the construction of roads, railways, motorways, streets, highways, bridges, tunnels, sewerage, and waste management activities.
36. Meranti Budiman is registered as an active G7 contractor with the CIDB.²⁰ Meranti Budiman possesses the Government Works Procurement Certificate and Bumiputera Status Certificate which allows Meranti Budiman to bid for relevant Government tenders.
37. The director and shareholder of Meranti Budiman is stated in **Table 8**:

Table 8: Director and Shareholder of Meranti Budiman

MERANTI BUDIMAN	
DIRECTOR	SHAREHOLDER
Mohammad Ishak Bin Hashim @ A Razak	Mohammad Ishak Bin Hashim @ A Razak (100%)

38. Mohammad Ishak bin Hashim @ A Razak ("Mohammad Ishak"), the sole director and shareholder of Meranti Budiman in 2019 will be referred to in this Decision.

B.7 NYL CORPORATION SDN. BHD.

39. NYL Corporation Sdn. Bhd. (150472-K)²¹ ("NYL") is a private limited company incorporated on 7.2.1986 and has its principal address at

²⁰ CIDB profile of Meranti Budiman Sdn Bhd retrieved from Central Information Management System.

²¹ Companies Commission of Malaysia search on NYL dated 22.3.2024.

161-3 A, Jalan Lancang, Taman Seri Bahtera, 56100 Cheras, W.P. Kuala Lumpur.²²

40. NYL is engaged in road repair and maintenance works.
41. NYL is registered as an active G7 contractor with the CIDB.²³ NYL possesses the Government Work Procurement Certificate and Bumiputera Status Certificate which allows NYL to bid for relevant Government tenders.
42. The list of directors and shareholders of NYL is in **Table 9** below:

Table 9: List of Directors and Shareholders of NYL

NYL	
DIRECTOR	SHAREHOLDER
Suhaida Binti Che Husin	Suhaida Binti Che Husin (50%)
Mohd Zainuri Bin Zaini	Mohd Zainuri Bin Zaini (50%)

43. The following directors and/or officers of NYL in 2019 will be referred to in this Decision:
- (a) Suhaida binti Che Husin, director and shareholder; and
 - (b) Mohd Zainuri bin Zaini, director and shareholder.

²² Companies Commission of Malaysia search on NYL dated 22.3.2024.

²³ CIDB Profile of NYL Corporation Sdn Bhd retrieved from Central Information Management System.

B.8 PINTAS UTAMA SDN. BHD.

44. Pintas Utama Sdn. Bhd. (301524-V)²⁴ ("Pintas Utama") is a private limited company incorporated on 7.2.2003 and has its principal address at No. 23, Jalan Sungai Burung, W32/W, Bukit Rimau, 40460 Shah Alam, Selangor.²⁵
45. Pintas Utama engages in the construction of roads, railways, and other specialised construction works, including activities related to sewerage systems, motorways, streets, bridges, tunnels, and elevated highways.
46. Pintas Utama is registered as an active G7 contractor with the CIDB²⁶ and it possesses the Government Works Procurement Certification and Bumiputera Status Certificate which allows Pintas Utama to bid for relevant Government tenders.
47. The list of directors and shareholders of Pintas Utama is in **Table 10** below:

Table 10: List of Directors and Shareholders of Pintas Utama

PINTAS UTAMA	
DIRECTOR	SHAREHOLDER
Fandi Bin Mohd Nafiah	Fandi Bin Mohd Nafiah (50%)
Zaquwan Arif Bin Zainudin	
Marhalim Bin Mohamed	Zaquwan Arif Bin Zainudin (50%)

²⁴ Companies Commission of Malaysia search on Pintas Utama dated 22.3.2024.

²⁵ Companies Commission of Malaysia search on Pintas Utama dated 22.3.2024.

²⁶ CIDB profile of Pintas Utama dated retrieved from Central Information Management System.

48. The following directors and/or officers of Pintas Utama in 2019 will be referred to in this Decision:

- (a) Fandi bin Mohd Nafiah (“Fandi Mohd Nafiah”), director and shareholder; and
- (b) Wan Faiz Fikry bin Mohd Rusli (“Faiz Fikry”), Contract Manager/Quantity Surveyor.

In 2019, Faiz Fikry was also formally employed with Mangkubumi as a Contract Manager/Quantity Surveyor.

C. NON-INFRINGEMENT PARTY TO THE INFRINGEMENTS

C.1 YCH SDN. BHD.

49. YCH Sdn. Bhd. (450699-T) (“YCH”) is a private limited company incorporated on 21.10.1997 and has its principal address at 171-2, Jalan Lancang, Taman Seri Bahtera, 56100 Cheras, Kuala Lumpur.²⁷

50. YCH is engaged in the transport agency business and undertakes contracts for construction and maintenance works on drainage systems.

51. YCH is registered as an active G7 contractor with the CIDB.²⁸

²⁷ Companies Commission of Malaysia search on YCH dated 22.3.2024.

²⁸ CIDB profile of YCH Sdn Bhd retrieved from Central Information Management System.

52. The list of directors and shareholders of YCH is in **Table 11** below:

Table 11: List of directors and shareholders of YCH

YCH	
DIRECTOR	SHAREHOLDER
Chan Yau	Chan Yau (17.5%)
Chan Wai Cheong	Chan Wai Cheong (17.5%)
Chan Wai Hong	Chan Wai Hong (35.5%)
Wong Sai Mooi	Wong Sai Mooi (29.5%)

53. The following directors and/or officers of YCH in 2019 will be referred to in this Decision:

- (a) Chan Wai Cheong, director and shareholder; and
- (b) Chan Wai Hong, director and shareholder.

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D. BUSINESS AND INDUSTRY LANDSCAPE

54. The Parties referred to in this Decision are G7 contractors registered with the CIDB. A G7 contractor is a contractor that satisfies the following criteria as prescribed by CIDB as shown in **Table 12** below:

Table 12: Registration Criteria for Grade G7 Contractors²⁹

Registration Criteria for Grade G7 Contractors	
Tender Limit	No limits
Paid-Up/Accumulated Capital	RM750,000.00
Minimum Technical Qualification	Diploma Holder & 1 Degree Holder in a related field one of whom has a minimum of 5 years' experience. Degree holders in a related field one of whom has a minimum of 5 years' experience

55. The CIDB is established under the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 ("Act 520") that regulates the construction industry in Malaysia. Section 25 of Act 520 requires any person who desires to undertake any construction work to be registered with the CIDB and holds a valid certificate of registration issued by the same.³⁰

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²⁹ *Keperluan Prosedur Pendaftaran Kontraktor & Manual Pengguna*, retrieved on 1.3.2024 from <https://www.cidb.gov.my/wp-content/uploads/2023/02/8.Keperluan-dan-Prosedur-Pendaftaran.pdf>.

³⁰ Section 25 of the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 (Act 520).

56. It is the Government policy that only contractors that hold a valid certificate of registration issued by the CIDB are eligible to place bids in a public tender issued by the Government of Malaysia.³¹

D.1 THE PUBLIC PROCUREMENT PROCESS

57. The definition of public procurement in Malaysia is prescribed under the Government procurement circular:

4. Definition of Public Procurement

4.1 Public procurement refers to the procurement of supplies, services or work or any combination thereof carried out by an Agency authorized by the Treasury, using Federal appropriations (in whole or in part) for the purposes of Agency operations, delivery of Government services or public interest.³²

58. Open competition is the main principle of the public procurement process in Malaysia as set out in the circular below:

5. Principles of Public Procurement

5.1 Agencies are required to ensure that all matters relating to public procurement are carried out based on good governance practices by complying with/practicing the principles of public procurement as follows:

(iv) Open Competition

Open competition, among other things, means giving opportunities to all qualified parties to participate in the open public procurements and compete based on merit subject to the principles, policies, rules and procedures currently in force.

Among the efforts to ensure the practice of this principle in public procurement is to ensure the advertising of procurement offers openly

³¹ Pages 10 to 12 of the *Perolehan Kerajaan (PK) 1.1 Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan*, issued by the Ministry of Finance, retrieved on 20.12.2022.

³² Page 4 of the *Perolehan Kerajaan (PK) 1.1 Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan*, issued by the Ministry of Finance, retrieved on 20.12.2022.

through platforms set by the Government and to avoid any setting of specifications that can only be directed to certain companies or brands.³³

59. The public procurement process is divided into three categories, namely,
- (i) the provision of supply;
 - (ii) the provision of service; and
 - (iii) the provision of works.³⁴
60. This Decision focuses on the public procurement process for the provision of works; specifically, the provision of construction works.
61. A provision of works can be carried out by the following methods³⁵:
- (i) Direct Appointment;
 - (ii) Requisition;
 - (iii) Quotations;
 - (iv) Pre-Qualification Open Tender;
 - (v) Open Tender; and
 - (vi) Direct Negotiation.

³³ Page 6 of the *Perolehan Kerajaan (PK) 1.1 Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan*, issued by the Ministry of Finance, retrieved on 20.12.2022.

³⁴ Page 8 of the *Perolehan Kerajaan (PK) 1.1 Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan*, issued by the Ministry of Finance, retrieved on 20.12.2022.

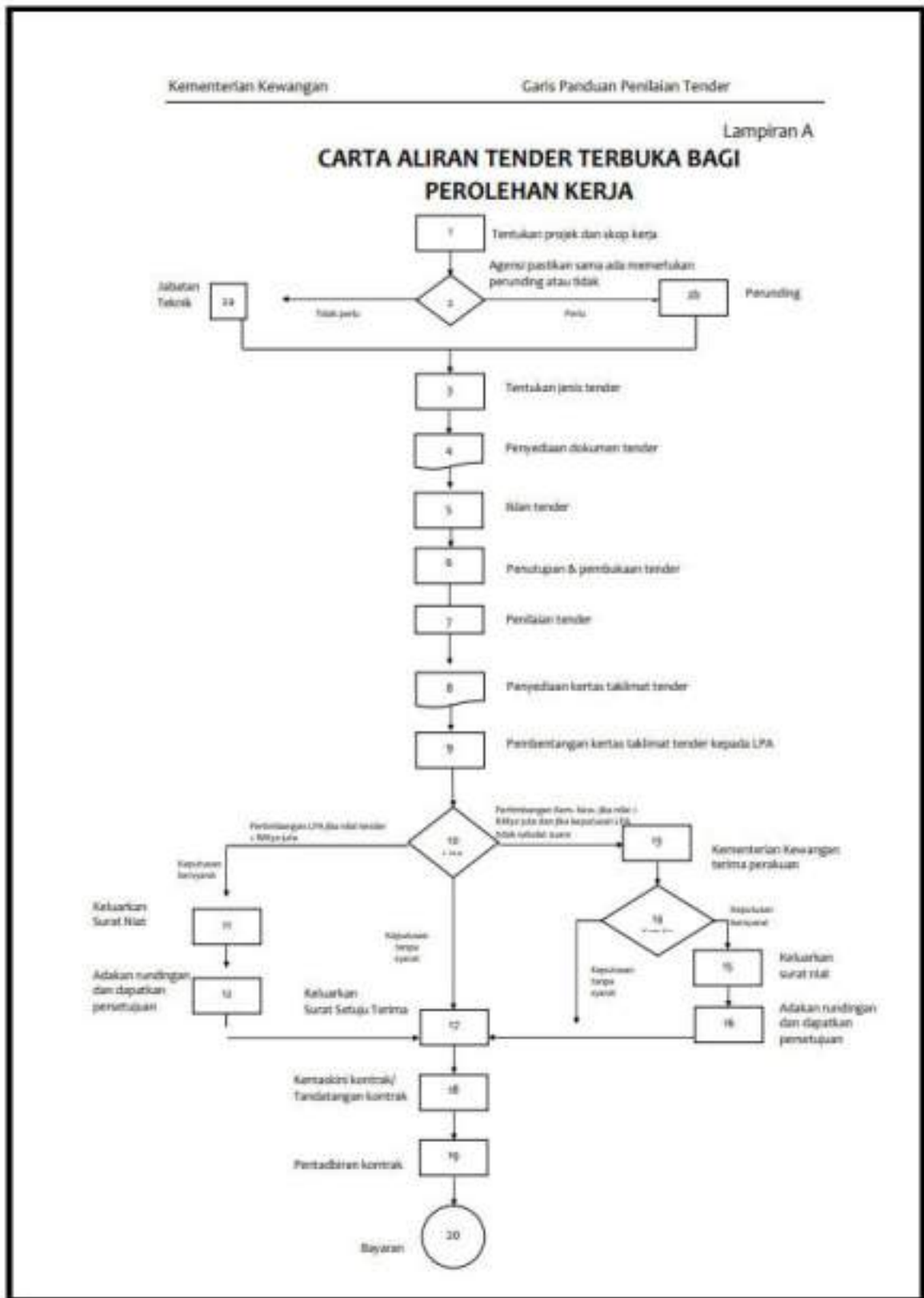
³⁵ Page 8 of the *Perolehan Kerajaan (PK) 1.1 Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan*, issued by the Ministry of Finance, retrieved on 20.12.2022.

62. It is crucial for any bidder to observe and comply with the above principles, which mandate open and fair competition in the tender process.
63. Any public procurement via an open tender with the value of over RM500,000.00 shall be carried out in accordance with the prescribed tendering process.³⁶ **Figure 1** below serves as a summary of the overall public procurement process:

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³⁶ Page 11 of the *Perolehan Kerajaan (PK) 1.1 Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan*, issued by the Ministry of Finance, retrieved on 20.12.2022.

Figure 1: Flowchart for the Process of Open Tender Works³⁷



³⁷ Page 67 of the *Garis Panduan Penilaian Tender Kementerian Kewangan Malaysia*, issued by the Ministry of Finance, retrieved 20.12.2022.

E. THE PROJECTS

E.1 THE CENTRAL SPINE ROAD PROJECT

64. The Central Spine Road ("CSR") project is the construction of a toll-free Federal Route highway in central of Peninsular Malaysia. The construction of the highway will connect Kuala Krai in Kelantan to Simpang Pelangai in Pahang, covering a total distance of approximately 346.9 kilometres. The highway will reduce travel time by road from Kuala Lumpur to Kota Bahru, Kelantan, from eight hours to four hours.
65. The CSR project is divided into six construction work packages as follows as shown in **Table 13**:

Table 13: Breakdown of the Central Spine Road project

PACKAGE	SECTION	DISTANCE (KM)
Package 1: Kuala Krai to Jambatan Sg. Lakit, Kelantan (47 km)	1A: Kg. Rahmat to Kg. Sg. Peria	11.05
	1B: Kg. Sg Peria to Kg. Laloh	14.75
	1C: Kg. Laloh to Exit D228	9.10
	1D: Exit D228 to Jambatan Sg. Lakit	12.10
Package 2: Jambatan Sg. Lakit to Gua Musang, Kelantan (59.6 km)	2A: Jambatan Sg. Lakit to Paloh 2	20.00
	2B: Paloh 2 to Bukit Sejuk	20.00
	2C: Bukit Sejuk to Gua Musang	19.60
Package 3: Gua Musang, Kelantan to Kg. Relong, Kuala Lipis, Pahang (93.8 km)	3A: West – East Link (Spur Road)	8.20
	3B and 3C: KM 180.5 FT08 to Bulatan Gua Musang	7.00

PACKAGE	SECTION	DISTANCE (KM)
	3D: Bulatan Gua Musang to Mentara	10.50
	3E1: Mentara to Merapoh	5.80
	3E2: Merapoh to Kg. Kubang Rusa	14.00
	3F1: Kg. Kubang Rusa to Sg. Yu	7.10
	3F2: Sg. Yu to Felda Chegar Perah 2	6.10
	3G: Felda Chegar Perah 2 to Felda Telang	12.40
	3H: Felda Telang to Kg. Seberang Jelai	15.65
	3J: Kg. Seberang Jelai to Kg. Relong	6.95

66. This Decision primarily focuses on two CSR tenders under Package 3, namely,

- (1) Tender CSR 3B and 3C; and
- (2) Tender CSR 3J.

Tender CSR 3B and 3C encompasses a distance of 7.00 kilometres, starting from KM180.5 FT08 to Bulatan Gua Musang, whilst Tender CSR 3J covers a distance of 6.95 kilometres from Kg. Seberang Jelai to Kg. Relong, Pahang.

67. The Jabatan Kerja Raya (“JKR”) is the agency responsible for these projects. JKR acts as a technical agency under the Ministry of Works. It is accountable for executing infrastructure development and maintenance projects for various ministries, departments,

statutory bodies and state governments such as roads, buildings, airports, ports and jetties.

68. To participate in Tenders CSR 3B and 3C, as well as Tender CSR 3J, prospective bidders must be registered under field codes CE01 (Road and Pavement Construction) and CE02 (Bridge Construction).

E.2 TENDER RANCANGAN TEBATAN BANJIR SUNGAI BULOH

69. The Tender Rancangan Tebatan Banjir Sungai Buloh (“Tender RTB Sungai Buloh”) constitutes a flood mitigation project situated in Sungai Buloh, Selangor.³⁸ The project was procured by the Jabatan Pengairan dan Saliran (“JPS”).
70. The JPS is an agency under the Ministry of Energy Transition and Water Transformation (formerly known as “the Ministry of Natural Resources, Environment and Climate Change and the Ministry of Environment and Water”), responsible for inviting and evaluating bids for this project. JPS manages water resources and hydrology, river management, coastal management, flood management and eco-friendly drainage.
71. For Tender RTB Sungai Buloh prospective bidders must register under field codes CE01 (Road and Pavement Construction), CE02 Bridge Construction), CE06 (Flood Control System) and CE21 (General Civil Engineering Works).

³⁸ Question 57, at pages 74 to 76 of the 1st Parliamentary Meeting of the 2nd Semester, 15th Parliamentary Meeting.

72. **Table 14** below shows the information concerning the infringements identified by the Commission. This Decision will provide further elaboration on the infringements. **Table 14** provides details on the relevant tender projects, the respective tender dates, the bidders for each tender, and the successful bidder of each tender.

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Table 14: Details of Tender Projects, the subject-matter of this Decision

NO.	TENDER NAME	ADVERTISEMENT DATE	NUMBER OF BIDDERS	INFRINGING PARTIES	SUCCESSFUL BIDDER
1.	<p>Tender CSR 3B and 3C</p> <p>Central Spine Road Package 3: Gua Musang, Kelantan ke Kg. Relong, Pahang Seksyen 3B dan 3C: KM180.5 FT08 ke Bulatan Gua Musang, Kelantan</p>	12.2.2019	216 bidders	1. Mangkubumi 2. Pintas Utama 3. IDX 4. Menang Idaman 5. Meranti Budiman 6. Dutamesra 7. Klara Kilat 8. NYL	IDX
2.	<p>Tender CSR 3J</p> <p>Central Spine Road Package 3: Gua Musang, Kelantan ke Kg. Relong, Pahang Seksyen 3J: Kg Seberang Jelai ke Kg. Relong</p>	12.2.2019	200 bidders	1. Mangkubumi 2. Pintas Utama 3. IDX 4. Menang Idaman 5. Meranti Budiman 6. Dutamesra 7. NYL	Menang Idaman
3.	<p>Tender RTB Sungai Buloh</p> <p>Rancangan Tebatan Banjir Sungai Buloh, Selangor Darul Ehsan</p>	14.11.2019	163 bidders	1. Mangkubumi 2. Pintas Utama 3. IDX 4. Menang Idaman 5. Meranti Budiman 6. Dutamesra	IDX

F. INVESTIGATION PROCEDURES AND PROCESS

73. On 4.10.2019, the Commission received two letters, one from the Ministry of Domestic Trade and Consumer Affairs (now known as the Ministry of Domestic Trade and Cost of Living), and the other from the Ministry of Works. These letters raised complaints alleging that several enterprises were engaged in performing acts of bid rigging for Tenders CSR 3B and 3C, and 3J. Upon assessment, the Commission identified several red flags indicating bid rigging arrangements among the bidders in both of these tenders.
74. On 6.11.2019, the Commission commenced a formal investigation against several enterprises in relation to the alleged bid rigging conduct in Tenders CSR 3B and 3C, and 3J. As the investigation progressed, the Commission identified reasonable grounds that indicate that the Parties had engaged in the following:
- (a) an agreement and/or concerted practice to perform bid rigging in Tender CSR 3B and 3C;
 - (b) an agreement and/or concerted practice to perform bid rigging in Tender CSR 3J; and
 - (c) an agreement and/or concerted practice to perform bid rigging in Tender RTB Sungai Buloh.
75. During the investigation, the Commission issued a total of 46 notices pursuant to section 18(1)(a) and (b) of Act 712. These notices were issued to request the provision of information and/or documents, to record written statements of witnesses based on the provided

information and documents, or in response to inquiries made by the Commission's officers.

76. In accordance with section 18(1)(b) of Act 712, the Commission interviewed the following persons:

Table 15: Persons interviewed by the Commission

ENTITY/ AGENCY	NAME	DESIGNATION (IN 2019)	DATE OF INTERVIEW
Dutamesra	Siti Zalifah Umairah binti Abdullah	Director	13.4.2023
IDX	Rahmat Hidayat bin Mohamed	Director	5.4.2023
Kiara Kilat	Muhammad Taqiyuddin bin Abdullah Thaidi	Director	29.5.2023
Mangkubumi	Faiz Fikry	Contract Manager and Quantity Surveyor	15.2.2023 and 30.5.2023
Mangkubumi	Sharifah Masytah Binti Kamaruddin	Head of Contract Unit/Quantity Surveyor Unit	25.3.2024
Mangkubumi	Tan Sri Zainudin bin Karjan	Managing Director	15.2.2023 and 19.6.2023
Meranti Budiman	Mohammad Ishak bin Hashim @ A Razak	Director	13.4.2023
Meranti Budiman	Ahmad Munaim bin Kamarudin	Quantity Surveyor	21.3.2024
Menang Idaman	Mohd Tarmizi bin Mohd Zuki	Director	15.2.2023 and 12.4.2023
Ministry of Works	Dato Dr Syed Omar Sharifuddin bin Syed Ikhsan	Secretary General	24.6.2020

ENTITY/ AGENCY	NAME	DESIGNATION (IN 2019)	DATE OF INTERVIEW
Ministry of Works	Sharifah Nora Al-Idrus binti Syed Hussein	Principal Assistant Secretary	23.7.2020
Ministry of Works	Zakiman Nawaz bin S.H. Sahul Hamid	Special Officer to the Secretary General	2.7.2020
NYL	Suhaida binti Che Husin	Director	1.3.2023 and 12.4.2023
NYL	Mohd Zainuri Bin Zaini	Director	19.9.2023
Permai Prestij Sdn Bhd	Noor Aziemah binti Abdull Rahman	IT Executive	15.2.2023
Pintas Utama	Datuk Hajar Arfah binti Mohamed Zain	Head of Human Resource and Administration	15.2.2023
Pintas Utama	Fandi bin Mohd Nafiah	Director	13.6.2023
Pintas Utama	Shaipul Shahani bin Abdul Wahab	Head of GIS	15.2.2023
Pintas Utama	Faiz Fikry	Contract Manager and Quantity Surveyor	15.2.2023 and 30.5.2023
Public Works Department	Fariza binti Muslim	Quantity Material Surveyor	16.12.2020
Public Works Department	Siti Norasyimah binti Mohd Sallehudin	Quantity Material Surveyor	12.11.2020
YCH Sdn. Bhd.	Chan Wai Cheong	Director	1.3.2023 and 19.9.2023
YCH Sdn. Bhd.	Chan Wai Hong	Director	15.6.2023

77. Pursuant to section 25 of Act 712, the Commission executed search and seizure operations with a warrant at six premises, as set out in **Table 16** below:

Table 16: Summary of Search and Seizure Exercises Executed

NO.	NAME AND ADDRESS OF PREMISES	DATE	WARRANT NO. (COURT)
1	Permai Prestij Sdn Bhd SH-1-05, Block C, Geo Bukit Rimau, Jalan Sungai Burung 32/68, Seksyen 32, 40460 Shah Alam, Selangor	15.02.2023	177365 (Shah Alam Magistrates Court)
2	Menang Idaman SH-2-05, Block C, Geo Bukit Rimau, Jalan Sungai Burung 32/68, Seksyen 32, 40460 Shah Alam, Selangor	15.02.2023	177365 (Shah Alam Magistrates Court)
3	Mangkubumi No. 23, Jalan Sungai Jeluh 32/191, Nouvelle Kemuning Industrial Park, 40460 Shah Alam, Selangor	15.02.2023	177367 (Shah Alam Magistrates Court)
4	Pintas Utama No. 21 dan No. 23, Jalan Sungai Burung W32/W, Bukit Rimau, 40460 Shah Alam, Selangor.	15.02.2023	177366 (Shah Alam Magistrates Court)
5	NYL 161-3, Jalan Lancang, Taman Seri Bahtera, Cheras 56100, Kuala Lumpur	1.03.2023	A012212 (Kuala Lumpur Magistrates Court)
6	YCH Sdn Bhd 171-2, Jalan Lancang, Taman Seri Bahtera, 56100 Cheras, W.P. Kuala Lumpur	1.03.2023	A012213 (Kuala Lumpur Magistrates Court)

78. On 22.4.2024, the Commission served the Proposed Decision dated 16.4.2024 to the Parties.
79. As a part of the procedure, upon the issuance of the Proposed Decision to the Parties, the documents in the Commission's file were

made available to the Parties for inspection, scheduled on 29.4.2024 and 30.4.2024.

80. On 24.4.2024 and 25.4.2024, the Parties, via Enclosure 2, indicated that they wish to request access to the Commission's File in relation to the matters referred to in the Proposed Decision.
81. However, on 30.4.2024, only Pintas Utama exercised their right to access the Commission's File. The remaining seven (7) Parties did not do so.
82. Between 15.5.2024 and 21.5.2024, the Parties requested an extension of the deadline to submit their written representations and indication for the oral representations, which was scheduled on 31.5.2024. In response, the Commission granted an additional 14 days from the date of 31.5.2024, requiring the Parties to submit their written representations and indication for the oral representations by 14.6.2024. Accordingly, the Commission granted another opportunity to the Parties to exercise their right to access the Commission's File, which was scheduled on 30.5.2024 and 31.5.2024. However, none of the Parties exercised this right.
83. Between 5.6.2024 and 7.6.2024, the Parties further requested another extension of time to submit their written representations and indication for the oral representations, which was initially rescheduled to be submitted on 14.6.2024.

84. Between 2.5.2024 and 31.5.2024, the Parties filed applications for judicial review and a stay of proceedings at the Kuala Lumpur High Court in relation to the Proposed Decision by the Commission. On 17.5.2024, the Commission was made known of the judicial review application by one of the Parties namely Kiara Kilat via its cause papers which were served to the Commission. Subsequent to that, the Commission found that all eight Parties filed *ex-parte* applications to the High Court and were granted leave and stay of proceedings, firstly to Pintas Utama on 27.5.2024, followed by leave and interim stay to the remaining seven Parties on 10.6.2024. Thereafter, the Commission complied with the decision.
85. On 21.8.2024, the High Court dismissed the stay application by Pintas Utama. Following thereto, on 18.9.2024, the High Court dismissed the *inter-parte* stay application filed by the remaining seven Parties. In light of the High Court's decision to dismiss the Parties' stay application, the Commission issued letters to the Parties on 18.9.2024, granting them 30 days from the date of the letter to submit their written representations and indication for the oral representations by 18.10.2024.
86. Meanwhile, on 30.9.2024, the Parties filed an application for discovery with a certificate of urgency for two documents namely: the [X] (MOF) and the [X] (PETRA). Subsequently, the Parties sought an application to stay the proceedings pending the disposal of the discovery application.

87. On 2.10.2024, the Parties submitted their indication to make oral representations before the Commission via Enclosure 4, which was set to be convened on 24.10.2024.
88. On 14.10.2024, the High Court granted the Parties an interim stay of proceedings pending disposal of the discovery application to the Parties and fixed the hearing of the application on 12.12.2024. The decision was scheduled to be delivered on 2.1.2025.
89. On 24.12.2024, the Commission issued a letter to the Parties, notifying the dates for oral representations in response to Enclosure 4, submitted by the Parties on 2.10.2024. Notwithstanding Enclosure 4 was submitted, on 27.12.2024, the Parties informed the Commission through their Counsel of their decision not to make oral representations before the Commission but will file their written representations as part of the proceedings 14 days after the pronouncement of the decision of the discovery of the documents by the High Court on 2.1.12025.
90. On 2.1.2025, the High Court dismissed the discovery application filed by the Parties. On 3.1.2025, the Commission granted the request by the Parties to submit their written representations 14 days after the decision by the High Court.
91. On 16.1.2025, the eight Parties submitted their written representations pursuant to section 36 of Act 712, through their Counsel via email.

G. THE PARTIES' ALLEGATIONS AND/OR ARGUMENTS OF PROCEDURAL IMPROPRIETY AGAINST THE COMMISSION

Allegations and/or Arguments by the Parties

92. In their representations, the Parties collectively contended that there was no valid investigation for the following reasons:

- (a) The Commission did not include the complaint for Tender RTB Sungai Buloh³⁹; and
- (b) MyCC's investigation only led them to investigate and raid the premises of Pintas Utama and NYL Corporation Sdn Bhd. MyCC did not investigate other enterprises' premises.⁴⁰

93. Therefore, as there was no valid investigation, the Parties further contended that the Proposed Decision was illegal as MyCC had acted ultra vires to Act 712 and/or Act 713, on the ground that:

- (a) the Proposed Decision was issued in excess of jurisdiction as it was issued without a valid investigation that is required to

³⁹ Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 4.3; and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 4.3.

⁴⁰ Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i); and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 4.4(i).

produce the Proposed Decision under Section 36 (1) of the Act 712;

- (b) the Commission did not accord the Parties with a meaningful right to be heard; and
- (c) MyCC wrongfully made public the Proposed Decision and the Proposed Fine.⁴¹

94. The Parties also alleged that even if there was no illegality, MyCC had acted in breach of natural justice, on the ground that:

- (a) the Allegation in **paragraph 252** of the Proposed Decision was never put forth as a charge or allegation against the Parties in the section 18 Notice;
- (b) lack of the Commission's clear separation of power;
- (c) lack of safeguards to ensure the Commission is not using investigative and enforcement power for its own financial benefits; and
- (d) there is an indication of pre-determination by the Commission organising a press conference to *The Edge*.⁴²

⁴¹ Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c); and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 4.5(a), 4.5(b) and 4.5(c).

⁴² Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 4.7; and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 4.7.

95. [redacted].⁴³

The Commission's Findings

96. With reference to **paragraph 92(a)**, the Commission emphasises its role as a statutory body empowered to carry out its functions and powers to enact competition law provisions pursuant to Act 712 and Competition Commission Act 2010 ("Act 713"). The preamble of Act 712 states the objectives of the Act as follows:

"An Act to promote economic development by promoting and protecting the process of competition, thereby protecting the interests of consumers and to provide for matters connected therewith.

.....

AND WHEREAS in order to achieve these benefits, it is the purpose of this legislation to prohibit anti-competitive conduct"⁴⁴

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⁴³ Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 3.3; and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 3.3.

⁴⁴ Competition Act 2010.

97. On the other hand, Act 713 has been enacted by the Parliament of Malaysia to:

“... provide for the establishment of the Competition Commission, to set out the powers and functions of such Commission, and to provide for matters connected therewith or incidental thereto”⁴⁵

98. In relation to the Commission’s investigation power, section 17 of Act 712 states that a Commission officer shall have all the powers of investigation and enforcement under this Act. In addition, on matters pertaining to the investigation of a complaint, section 15 of Act 712 states that:

15. Complaint to the Commission

(1) The Commission may, upon a complaint by a person, conduct an investigation on any enterprise, agreement or conduct that has infringed or is infringing any prohibition under this Act or against any person who has committed or is committing any offence under this Act.

(2) The complaint shall specify the person against whom the complaint is made and details of the alleged infringement or offence under this Act.⁴⁶

99. Section 15 provides the Commission with the power to investigate any enterprise, agreement or conduct that has infringed or is infringing any prohibition under Act 712.

⁴⁵ Competition Commission Act 2010.

⁴⁶ Section 15(1) and 15(2) of the Competition Act 2010.

100. Pursuant to its investigation power, the Commission may carry out several methods to gather evidence such as a request for information via the issuance of section 18 Notice and conducting a search and seizure exercise with warrant under section 25 of Act 712.

101. In the current case, the Commission investigated the Parties in relation to their bid rigging conduct in the public procurement of civil engineering works. In this regard, section 18 Notices were issued to the Parties and clearly stipulated in their respective notice as follows:

“... in relation to investigation under section 15(1) of the Act where the Commission has reason to suspect that your enterprise has infringed section 4(1) read together with section 4(2)(d) of the Act in relation to the alleged bid-rigging in public procurement for civil engineering works.”⁴⁷

⁴⁷ Section 18 notice issued to Tan Sri Zainudin Karjan of Mangkubumi Sdn. Bhd. by the Commission dated 15.2.2023; Section 18 notice issued by the Commission to Mohd Tarmizi Mohd Zuki of Menang Idaman Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Shaipul Shahani bin Abdul Wahab of Pintas Utama Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Datuk Hajar Arfah binti Mohamed Zain of IDX Multi Resources Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Wan Faiz Fikry bin Mohd Rusli of Mangkubumi Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Suhaida binti Che Husin of NYL Corporation Sdn. Bhd. dated 1.3.2023; Section 18 notice issued by the Commission to Mohd Tarmizi Mohd Zuki of Menang Idaman Sdn. Bhd. dated 3.4.2023; Section 18 notice issued by the Commission to Rahmat Hidayat bin Mohamed of IDX Multi Resources Sdn. Bhd. dated 3.4.2023; Section 18 notice issued by the Commission to Suhaida binti Che Husin of NYL Corporation Sdn. Bhd. dated 7.4.2023; Section 18 notice issued by the Commission to Siti Zalifah Umairah binti Abdullah dated 7.4.2023; Section 18 notice issued by the Commission to Mohammad Ishak bin Hashim @ A Razak of Meranti Budiman Sdn. Bhd. dated 7.4.2023; Section 18 notice issued by the Commission to Wan Faiz Fikry bin Mohd Rusli of Mangkubumi Sdn. Bhd. dated 24.5.2023; Section 18 notice issued by the Commission to Muhammad Taqiyuddin bin Abdullah Thaidi of Kiara Kilat Sdn. Bhd. dated 24.5.2023; Section 18 notice issued by the Commission to Fandi bin Mohd Nafiah of Pintas Utama Sdn. Bhd. dated 7.6.2023; Section 18 notice issued by the Commission to Tan Sri Zainudin Karjan of Mangkubumi Sdn. Bhd. dated 7.6.2023; Section 18 notice issued by the Commission to Mohd Zainuri bin Zaini of NYL Corporation Sdn. Bhd. dated 13.9.2023; Section 18 notice issued by the Commission to Ahmad Munaim bin Kamarudin of Meranti Budiman Sdn. Bhd. dated 12.3.2024; Section 18 notice issued by the Commission to Sharifah Masytah binti Kamaruddin of Mangkubumi dated 19.3.2024; and Section 18 notice issued by the Commission to Sharifah Masytah binti Kamaruddin of Mangkubumi dated 25.3.2024.

102. In fact, during the course of the Commission's statement taking sessions with the Parties, the Commission required the Parties to provide information regarding Tender CSR 3B and 3C, Tender CSR 3J, and Tender RTB Sungai Buloh.⁴⁸
103. The Commission, in carrying out its investigation, has not in any way overstepped its powers and has adhered to the relevant statutory provisions by issuing notices to the Parties in writing. The Commission's Notices have expressly stated the relevant infringement provisions and general scope of the investigation allowing the Parties to be informed of the parameters of the investigation.
104. Upon completion of the investigation, the Commission then sets out its reasons for the Commission's Proposed Decision in sufficient detail. Hence, the Commission had endeavoured to further specify the infringement in its Proposed Decision by detailing out the relevant tenders including further specifying the relevant market, which in this case, involves the procurement field codes for Tender CSR 3B and 3C, Tender CSR 3J, and Tender RTB Sungai Buloh. In detailing out the field codes of the said tenders, the Commission

⁴⁸ Paragraph 7 of the Statement of Tan Sri Zainudin Karjan of Mangkubumi Sdn. Bhd. recorded on 15.2.2023; Paragraphs 8 and 9 of the Statement of Hajar Arfah binti Mohamed Zain of IDX Multi Resources Sdn. Bhd. recorded on 15.2.2023; Paragraphs 1 until 12, 15 until 16, and 18 until 20 of the Statement of Mohd Tarmizi bin Mohd Zuki of Menang Idaman Sdn. Bhd. recorded on 12.4.2023; Paragraphs 3 until 8, and 10 until 16 of the Statement of Rahmat Hidayat bin Mohamed of IDX Multi Resources Sdn. Bhd. recorded on 5.4.2023; Paragraphs 3 until 6, 8 until 11, 13 until 16, 18 until 19, 22 until 23 of the Statement of Siti Zalifah Umairah binti Abdullah of Dutamesra Bina Sdn. Bhd. recorded on 13.4.2023; Paragraphs 4 until 7, 9 until 12, 14 until 17 and 19 until 24 of the Statement of Mohammad Ishak bin Hashim @ A Razak of Meranti Budiman Sdn. Bhd. recorded on 13.4.2023; Paragraphs 6, 9, 11, 13 until 14, 17, 19 until 20, 23 until 25, 31 until 32, 37 until 39, 60 until 61, 66, 70 until 71, 78, 81, 84, and 89 of the Statement of Wan Faiz Fikry bin Mohd Rusli of Mangkubumi Sdn. Bhd. recorded on 30.5.2023; Paragraphs 4, 8 until 14, 17 until 24, 30 until 31, 36, and 48 until 51 of the Statement of Fandi bin Mohd Nafiah of Pintas Utama Sdn. Bhd. recorded on 13.6.2023; and Paragraphs 7 until 18 of the Statement of Tan Sri Zainudin Karjan of Mangkubumi Sdn. Bhd. recorded on 19.6.2023.

has in no way caused any prejudice to the Parties as the Parties had at all times been informed of the general parameters of the Commission's investigation, which is the alleged bid rigging in public procurement for civil engineering works. It is to be noted here that "civil engineering works" is a specialisation stipulated by the CIDB for the provision of services provided by the Parties in relation to the public procurement covered in this investigation.⁴⁹

105. In this regard, the Commission's authority to investigate additional suspected anti-competitive conduct discovered during an investigation was acknowledged by the Supreme Court of India in the case of *Excel Crop Care Limited v Competition Commission of India and Another*⁵⁰, where the Supreme Court held as follows:

"35) The CCI had entrusted the task to DG after it received representation/complaint from the FCI vide its communication dated February 04, 2011. Argument of the appellants is that since this communication did not mention about the 2011 tender of the FCI, which was in fact even floated after the aforesaid communication, there could not be any investigation in respect of this tender. It is more so when there was no specific direction in the CCI's order dated February 24, 2011 passed under Section 26(1) of the Act and, therefore, the 2011 tender could not be the subject matter of inquiry when it was not referred to in the communication of the FCI or order of the CCI.

...

⁴⁹ *Keperluan Prosedur Pendaftaran Kontraktor & Manual Pengguna*, retrieved on 1.3.2024 from <https://www.cidb.gov.my/wp-content/uploads/2023/02/8.Keperluan-dan-Prosedur-Pendaftaran.pdf>.

⁵⁰ *Excel Crop Care Limited v Competition Commission of India and Another (Civil Appeal No. 2480 of 2014)*, at paragraphs 35 to 36.

36) If the contention of the appellants is accepted, it would render the entire purpose of investigation nugatory. The entire purpose of such an investigation is to cover all necessary facts and evidence in order to see whether there are any anti-competitive practices adopted by the persons complained against. For this purpose, no doubt, the starting point of inquiry would be the allegations contained in the complaint. However, while carrying out this investigation, if other facts also get revealed and are brought to light, revealing that the 'persons' or 'enterprises' had entered into an agreement that is prohibited by Section 3 which had appreciable adverse effect on the competition, the DG would be well within his powers to include those as well in his report. Even when the CCI forms prima facie opinion on receipt of a complaint which is recorded in the order passed under Section 26(1) of the Act and directs the DG to conduct the investigation, at the said initial stage, it cannot foresee and predict whether any violation of the Act would be found upon investigation and what would be the nature of the violation revealed through investigation. If the investigation process is to be restricted in the manner projected by the appellants, it would defeat the very purpose of the Act which is to prevent practices having appreciable adverse effect on the competition. We, therefore, reject this argument of the appellants as well touching upon the jurisdiction of the DG."

106. Moreover, the Commission finds it necessary to emphasise that the modus operandi and the Parties involved in bid-rigging for Tender CSR 3B and CSR 3C, and Tender CSR 3J were found to be the same modus operandi used in Tender RTB Sungai Buloh. The Commission has established in its findings that the evidence has shown the deliberate coordination to rig bids by the Parties for both CSR project and Tender RTB Sungai Buloh. The coordination to rig the bids by the Parties was led by Mangkubumi through the active role of Tan Sri Zainudin Karjan. Furthermore, in conducting its investigation, the Commission did not limit its scope to the tender

projects but rather, the Commission had focused its investigation on bid rigging in public procurement for civil engineering works.

107. Based on the principle of *Selvarajan v Race Relations Board*⁵¹ and *Re Pergamon Press Ltd*⁵², the Commission as an investigating authority, retains the right to determine its own investigative procedures, provided that such procedures do not prejudice the Parties under investigation and are in compliance with the statutory provisions.⁵³
108. Based on the above, the Commission has duly carried out its duties to follow the statutory procedure outlined in Act 712. Hence, the Commission hereby dismisses the Parties' argument and reaffirms that there is a valid investigation.
109. With reference to **paragraph 92(b)**, the investigative power of the Commission as stipulated under Act 712, encompass a wide range of measures, including the power to require the provision of information under section 18, the power to retain documents under section 19, the power to access records and others under section 20, conducting search and seizure with a warrant under section 25 or without a warrant under section 26, and power to access to computerized data under section 27.

⁵¹ *Selvarajan v Race Relations Board* [1976], at page 19.

⁵² *Re Pergamon Press Ltd* [1970] 3 All ER 535, at page 539.

⁵³ *Selvarajan v Race Relations Board* [1976] page 19; *Re Pergamon Press Ltd* [1970] 3 All ER 535, page 539.

110. In this investigation, the Commission has issued a total of 46 notices pursuant to section 18(1)(a) and (b) of Act 712 and interviewed 22 individuals pursuant to section 18(1)(b) of Act 712. As stated in **paragraphs 101 and 102**, the Commission has informed the Parties that they are being investigated through a Section 18 Notice, even though their premises have not been subjected to search and seizure by the Commission.
111. Nevertheless, for the sake of clarity and accuracy, as stated in **paragraph 77**, the Commission did, in fact, conduct search and seizure exercises with warrant under section 25 of Act 712 with information suggesting that relevant documents, records, or other materials that may substantiate the alleged infringement are likely to be found at the premises of Mangkubumi, Pintas Utama, Menang Idaman, Permai Prestij, NYL, and YCH. Given the importance of securing and preserving evidence to ensure the integrity and effectiveness of the investigation, the exercise is deemed necessary to prevent the possible concealment, alteration, or destruction of such evidence.
112. Hence, the argument that there are no valid investigations due to the absence of the search and seizure exercises conducted at the premises is without merit and should be dismissed.
113. Based on the above assessment, the Commission has affirmed its findings in the Proposed Decision that there is a valid investigation made on the Parties. Therefore, the issues listed in **paragraph 93** cannot stand. However, for clarity, the Commission shall continue to address the issues raised by the Parties.

114. With reference to **paragraph 93(a)**, the Commission reiterates the explanation as stated in the above paragraph where there is a valid investigation against the Parties. Therefore, we hereby dismiss the argument.

115. In relation to the Parties' argument on the right to be heard as argued by the Parties in **paragraph 93(b)**, their assertion is baseless as the Commission has allowed them to exercise their right to be heard. Paragraph 5 of the Proposed Decision clearly informs the Parties of its purpose and the available avenues to exercise their right to be heard:

"5. This PD is issued pursuant to section 36 of the Act, setting out the reasons in sufficient detail to enable the enterprises to whom the notice (issued with this PD) is served:

- (a) to have a genuine and sufficient prospect of being able to comment to the PD on an informed basis;*
- (b) to be informed of the provisional findings of the infringements and of the penalties and/or remedial actions that the Commission proposes to impose;*
- (c) to submit within such reasonable period as may be specified in the notice, a written representation to the Commission; and*
- (d) to notify the Commission whether the enterprise wishes to make an oral representation before the Commission."⁵⁴*

116. In fact, section 36 of Act 712 empowers the Commission to serve the Proposed Decision to the Parties upon the completion of the investigation. This section also provides the right to be heard to the

⁵⁴ The Commission's Proposed Decision dated 16.4.2024 issued to the Parties on 22.4.2024, paragraph 5.

Parties to submit written representations within a specified period and indicate whether they wish to make oral representations before the Commission in response to the Commission's provisional findings. In actuality, the Parties may exercise their rights to be heard orally as stipulated under section 37 of Act 712.

117. As a matter of fact, the Commission has already granted the Parties multiple opportunities to submit their written representations and indication to make oral representations as per **paragraphs 82 to 83, 85, 87, and 89 to 91**. However, the Commission noted that the Parties have responded to the Commission to submit their representations via written representations only and did not intend to make oral representations before the Commission.

118. Therefore, the allegations regarding the denial of the right to be heard cannot be substantiated, as the necessary steps have been taken by the Commission to safeguard the Parties' rights to be heard.

119. In the case of *Langkawi Ro-Ro Ferry Services Sdn. Bhd. & Ors. v Competition Commission*, Competition Appeal Tribunal (CAT) deliberated that:

"[73] The Notice (in writing) under S.18 of the CA 2010 cannot be equated as a charge sheet simply because no alleged offence has been levelled against the recipient. Therefore, the principle of "natural justice requires a person be given adequate notice of the case against him or her clearly setting out the particulars or details of the alleged offence or matter so that he or she may have a fair opportunity of answering the same:" is irrelevant at this juncture.

...

[76] If there is any complaint of exculpatory information or information given during the investigation stage, and that information if taken into consideration may be favourable to the appellants which the Commission had concealed, the appellants could have raised such complaint during the oral and written representation stage. If the Commission did not consider the complaint raised during the oral and written representations before coming to its Final Decision, then in such circumstances the appellants may be able to raise legitimate complaint.

[77] If the appellants could explicitly point to any exculpatory information or information given during the investigation stage and that information if taken into consideration may be favourable to the appellants but has been ignored or concealed by the Commission, then this Tribunal could be persuaded that there is a cause for concern. However, there is nothing in the evidence that suggests this is the case here.

[78] based on the facts of this case, this Tribunal is not convinced that the appellants have been deprived of their opportunity to formulate their defences based on any specific exculpatory information or any information favourable to their defences which has been concealed by the Commission. Hence, this Tribunal could not find any procedural impropriety which tantamount to breach a natural justice.⁵⁵

120. In the above case, CAT confirmed that a party's right to be heard is preserved through oral and/or written representations before a final decision is rendered.

121. In the present case, the Commission has upheld procedural fairness and complied with Act 712 by providing multiple opportunities for the

⁵⁵ TRP 1-2022; TRP2-2022 and TRP 3-2022 *Langkawi Ro-Ro Ferry Services Sdn. Bhd. & Ors. v Competition Commission*, paragraphs 73, 76 and 77.

Parties to access the Commission's File and granting several extensions of time for them to submit their written and/or oral representations.

122. Therefore, the Commission dismisses this argument.

123. With reference to **paragraph 93(c)**, for the sake of clarity, a press statement is not a Proposed Decision as the Proposed Decision is a written notice under section 36 of Act 712. In this regard, the Commission did not make the Proposed Decision public. In addition, the Commission never made public the proposed fine as per its press statement dated 23 April 2024.⁵⁶ Therefore, these allegations are baseless and therefore dismissed.

124. Nevertheless, even if the Commission made public the gist of the Proposed Decision via its press statement, the Commission has clearly stated that the findings as stated in the Proposed Decision are provisional in the press statement as follows:

"It is important to highlight that MyCC's findings are provisional and it should not be assumed that any enterprise has conclusively infringed the Competition Act 2010 at this stage."⁵⁷

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

⁵⁶ News Release by MyCC dated 23.4.2024 titled "Eight Contractors Face Possible Fines for Bid Rigging".

⁵⁷ News Release by MyCC dated 23.4.2024 titled "Eight Contractors Face Possible Fines for Bid Rigging".

[70] On the issue of the press release, I am of the view that it was fair in that the press statements made it clear that the Proposed Decision itself is not final and that the Applicants may still make representations to challenge MyCC's Findings.⁵⁸

126. Therefore, this argument is dismissed.

127. As stated in **paragraph 94**, the Parties argued that, even if the investigation is not illegal, the Commission had allegedly acted in breach of natural justice.

128. With reference to **paragraph 94(a)**, the Commission reiterates the statement in paragraph 252 of the Proposed Decision as follows:

"252. In view of the nature of the infringements of the Act, and taking into consideration all of the evidence obtained throughout the investigations described above, the Commission hereby issues a proposed decision of infringements under section 36 of the Act against the Parties for engaging in conducts which amount to anti-competitive agreements and/or concerted practices in breach of section 4(1) read with section 4(2)(d) and section 4(3) of the Act."⁵⁹

129. Meanwhile, the section 18 Notice issued to the Parties laid down the following scope of investigation:

"... in relation to investigation under section 15(1) of the Act where the Commission has reason to suspect that your enterprise has infringed

⁵⁸ *MyTeksi Sdn Bhd & Ors. v Suruhanjaya Persaingan* [2023] 1 LNS 1921, paragraph 70.

⁵⁹ The Commission's Proposed Decision dated 16.4.2024 issued to the Parties on 22.4.2024, paragraph 252.

*section 4(1) read together with section 4(2)(d) of the Act in relation to the alleged bid-rigging in public procurement for civil engineering works.*⁶⁰

130. Based on **paragraphs 128 and 129**, the allegation underlined in paragraph 252 in Proposed Decision was consistent with the section 18 Notice issued to the Parties, whereby the Commission has determined the scope of the investigation in the section 18 Notice refers to suspicion of the infringement under section 4(1) read together with section 4(2)(d) against the Parties.

131. Upon completing the investigation, the Commission provided detailed reasoning in its Proposed Decision, specifying relevant tenders and procurement field codes. This did not prejudice the Parties, as they were always aware of the investigation's general parameters concerning alleged bid rigging in public procurement for civil engineering works. Therefore, this argument is dismissed.

⁶⁰ Section 18 notice issued to Tan Sri Zainudin Karjan of Mangkubumi Sdn. Bhd. by the Commission dated 15.2.2023; Section 18 notice issued by the Commission to Mohd Tarmizi Mohd Zuki of Menang Idaman Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Shaipul Shahani bin Abdul Wahab of Pintas Utama Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Datuk Hajar Arfah binti Mohamed Zain of IDX Multi Resources Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Wan Faiz Fikry bin Mohd Rusli of Mangkubumi Sdn. Bhd. dated 15.2.2023; Section 18 notice issued by the Commission to Suhaida binti Che Husin of NYL Corporation Sdn. Bhd. dated 1.3.2023; Section 18 notice issued by the Commission to Mohd Tarmizi Mohd Zuki of Menang Idaman Sdn. Bhd. dated 3.4.2023; Section 18 notice issued by the Commission to Rahmat Hidayat bin Mohamed of IDX Multi Resources Sdn. Bhd. dated 3.4.2023; Section 18 notice issued by the Commission to Suhaida binti Che Husin of NYL Corporation Sdn. Bhd. dated 7.4.2023; Section 18 notice issued by the Commission to Siti Zalifah Umairah binti Abdullah dated 7.4.2023; Section 18 notice issued by the Commission to Mohammad Ishak bin Hashim @ A Razak of Meranti Budiman Sdn. Bhd. dated 7.4.2023; Section 18 notice issued by the Commission to Wan Faiz Fikry bin Mohd Rusli of Mangkubumi Sdn. Bhd. dated 24.5.2023; Section 18 notice issued by the Commission to Muhammad Taqiyuddin bin Abdullah Thaidi of Kiara Kilat Sdn. Bhd. dated 24.5.2023; Section 18 notice issued by the Commission to Fandi bin Mohd Nafiah of Pintas Utama Sdn. Bhd. dated 7.6.2023; Section 18 notice issued by the Commission to Tan Sri Zainudin Karjan of Mangkubumi Sdn. Bhd. dated 7.6.2023; Section 18 notice issued by the Commission to Mohd Zainuri bin Zaini of NYL Corporation Sdn. Bhd. dated 13.9.2023; Section 18 notice issued by the Commission to Ahmad Munaim bin Kamarudin of Meranti Budiman Sdn. Bhd. dated 12.3.2024; Section 18 notice issued by the Commission to Sharifah Masytah binti Kamaruddin of Mangkubumi dated 19.3.2024; and Section 18 notice issued by the Commission to Sharifah Masytah binti Kamaruddin of Mangkubumi dated 25.3.2024.

132. With reference to **paragraph 94(b)**, the Commission is guided by its own statute namely Act 712 and Act 713. In this regard, as the roles of the Commission are clearly defined by statutory law, CAT in *SAL Agencies Sdn. Bhd. & Ors. v Competition Commission* states that:

“[51] With regard to the complaint that the Commission had “usurped into the role as an investigator, prosecutor, judge and jury”, this Tribunal is of the considered view that the CA sets down the framework for the Commission. The CA allows the Commission to exercise those roles in order to enforce the anti-competition law. This Tribunal is not in the position to judge or comment on the wisdom of the legislature in laying down such framework. This Tribunal is of the considered view that this proceeding is not the right forum to question the legitimacy of the provisions in the CA.”⁶¹

133. With reference to **paragraph 94(c)**, the Commission is also guided by its own statute and this view is affirmed in the *SAL Agencies Sdn. Bhd. & Ors. v Competition Commission* whereby the CAT states that:

“[54] This Tribunal could not find anything that could suggest the Commission’s election of a financial penalty at the proposed decision stage was an act of mala fide or bad faith. The appellant’s counsel submitted that because the appellants had not yet made a written representation at that point in time, therefore, the Commission must first propose a remedial action in its Proposed Decision. The appellant’s counsel’s submission and proposition here is wrong in law because in the first place, a written representation is premature at that stage, as explained earlier. Secondly, the law does not require the Commission to first propose a remedial action in its Proposed Decision. Lastly, if in the

⁶¹ TRP 2-2021 *SAL Agencies Sdn. Bhd. & Ors. v Competition Commission*, paragraph 51.

*proposed decision a remedial action is proposed, but later in the final decision a financial penalty is imposed, the party concerned would surely in such circumstances be deprived of any opportunity to make any representation to the Commission in relation to the imposition of a financial penalty in the final decision.*⁶²

134. The power to impose a financial penalty is expressly granted under Section 17(2)(b) of the Competition Commission Act 2010, which authorises the Commission to impose remedial relief, including financial penalties, in cases of infringement. Furthermore, the Commission operates independently and impartially in accordance with the Act and does not have any vested financial interest in imposing such penalties. The primary purpose of financial penalties is to reflect the seriousness of the infringement and to deter anti-competitive practices, thereby ensuring a fair and competitive market. Therefore, the argument is hereby dismissed.
135. With reference to **paragraph 94(d)**, the Commission reiterates the argument in **paragraphs 123, 124 and 125**.
136. Based on the above assessment, the Commission dismisses the allegation of breach of natural justice by the Parties.
137. [X].

⁶² TRP 2-2021 SAL Agencies Sdn. Bhd. & Ors. v Competition Commission, paragraph 54.

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PART 2: LEGAL AND ECONOMIC ASSESSMENT

138. This section sets out the legal and economic framework that forms the basis for the Commission's evaluation of the evidence obtained in this case. This section also sets out the evidence of the horizontal agreements and/or concerted practices with the object to perform bid rigging, analysis of the evidence, inferences, findings, and provisional conclusions drawn by the Commission.

A. AGREEMENTS AND/OR CONCERTED PRACTICES

139. In section 2 of Act 712, 'agreement' is comprehensively defined as follows:

2. Interpretation

Any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices.⁶³

140. Consequently, the prohibition outlined in section 4 of Act 712 applies to all forms of agreement, irrespective of their enforceability, manifested 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.

⁶³ Section 2 of the Competition Act 2010.

141. The scope of the section 4 prohibition also encompasses concerted practices. In accordance with section 2 of Act 712, concerted practices include any form of direct or indirect contact or communication between enterprises.⁶⁴ 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.⁶⁵

B. SECTION 4(2)(d) OF ACT 712 – HORIZONTAL AGREEMENT WITH THE OBJECT TO PERFORM AN ACT OF BID RIGGING

142. Section 4(2)(d) of Act 712 prohibits any horizontal agreement between enterprises which has the object to perform an act of bid rigging. Bid rigging is an agreement and/or concerted practice among bidders that is deemed by law to have the object of preventing, restricting or distorting competition in a tender process.⁶⁶

143. A competitive tender process relies on independently formulated bids from tenderers, ensuring structured competition and promoting transparency and efficiency.⁶⁷ However, if tenders are influenced by knowledge of other participants' bids or collusion, it disrupts the

⁶⁴ Case 48/69 *ICI v Commission* [1972] ECR 619; *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206 (iii); CCS 600/008/06 *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at paragraphs 42 until 45.

⁶⁵ *Design, Construction, and Fit-out Services* (Case 50481), at paragraphs 5.64 until 5.74.

⁶⁶ Section 4(2)(d) of the Competition Act 2010.

⁶⁷ *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209.

competitive nature of the tender process, leading to abnormal market conditions.⁶⁸

144. In *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission*⁶⁹, the Competition Appeal Tribunal (“CAT”) of Malaysia summarises the features or characteristics of bid rigging as follows:

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

145. Based on the above, a pre-condition of an act of bid rigging is the communication or arrangement between at least two enterprises in relation to participation in any procurement projects. It should be noted that a competitive procurement process relies on independently formulated bids from tenderers, ensuring structured competition and promoting transparency and efficiency.⁷⁰ However, if the process of procurement is influenced by collusion among the

⁶⁸ *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209.

⁶⁹ Appeal Nos 4,5,6,and 7 Off 2022 *Caliber Interconnects Sdn. Bhd. & Three Others v Competition Commission*, at paragraph 14.

⁷⁰ *Apex Asphalt and Paving Co. Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209.

participants, it disrupts the competitive nature of the procurement process, leading to abnormal market conditions in the procurement.⁷¹

146. The Commission is of the view that procurement procedures are designed to ensure fair and healthy competitive bidding among the bidders. This notion corresponds with a fundamental principle in competition law whereby enterprises are expected to act independently when determining their conduct in the market. Therefore, an essential feature of a competitive tender process is that each interested bidder prepares and submits its bid independently of the other bidders. Tender bids submitted as a result of collusion or fraudulent cooperation between bidders who are competing for the tender will distort competition. We take the position that in law, such collusion or fraudulent cooperation amounts to performing an act of bid rigging.

147. The requirement for independent bids in the tender process is illustrated in two cases, namely, *Apex Asphalt and Paving Co Limited v Office of Fair Trading*⁷², and *Makers UK Limited v Office of Fair Trading*⁷³. In the case of *England and Scotland Roofing*⁷⁴, the Office of Fair Trade (“OFT”) (currently known as Competition and Markets Authority or CMA) outlined four types of bid rigging:

⁷¹ *Ibid*, at paragraphs 208 and 209.

⁷² *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4.

⁷³ *Makers UK Limited v Office of Fair Trading*, [2007] CAT 11.

⁷⁴ (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 Case*.

cover bidding or cover pricing, bid suppression, bid rotation, and market division.⁷⁵ The conduct in the present case concerns the coordination of bid prices for tender submissions by the Parties. Hence, it is bid rigging of the cover bidding type.

148. In *International Removal Services*⁷⁶, the European Commission (“EC”) made a finding that the enterprises had collaborated in the submission of cover quotes. The requesting firm informed its competitors of the specific price and the applicable rate for the storage expenses that they were expected to include in their quotes. The EC held that the act of submitting cover quotes, among other factors, created a deceptive illusion of choice for customers. As a result, all received prices were intentionally inflated, even surpassing the amount proposed by the entities considered as the “lowest bidder.”⁷⁷

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⁷⁵ (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 paragraph 68.

⁷⁶ Case COMP/38.543 – *International Removal Services* at paragraphs 359 to 370.

⁷⁷ 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.

Information Sharing

149. 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 a concerted practice.⁷⁸

150. 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.⁷⁹ 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.⁸⁰ It is pertinent to note that an essential feature of a competitive tendering process is that each interested bidder prepares and submits its bids independently. Any tenders submitted as a result of collusion or fraudulent cooperation between bidders competing for the same tender, by their very nature, have the ability to restrict competition.⁸¹ Such collusion or fraudulent cooperation amounts to bid rigging.

⁷⁸ Case C-8/08 *T-Mobile Netherlands BV v Raad van bestuur van de Nederlandse Mededingingsautoriteit*, at paragraphs 59, 60, 61 and 63; and CA98/02/2009 *Bid rigging in the Construction Industry*, OFT Decision of 21.9.2009, at pages 350 until 353.

⁷⁹ Case 50481 *Design, Construction, and Fit-out Services*.

⁸⁰ 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.

⁸¹ *Apex Asphalts and Paving Co Limited v Office of Fair Trading* [2005] CAT 4.

151. Information exchange can create mutually consistent expectations regarding the uncertainties present in the market. Enterprises can then reach a common understanding of the terms of coordination of their competitive behaviour, even without a formal written agreement on coordination.⁸²
152. In the instant case, the Commission makes an objective assessment of the agreements and/or concerted practices with the object of performing bid rigging. The Commission also relies on the sharing of sensitive commercial information, such as bidding prices, to prove collusion and concerted practice.
153. Additionally, the Commission observes that the Parties colluded in preparing bids for JKR and JPS, thereby depriving JKR and JPS of the benefits of the tender process, which aims to achieve optimal value and pricing for its procurement. Moreover, the Parties' presentation of these bids created a misleading perception for JKR and JPS, who unknowingly believed that the Parties were genuine bidders participating in a competitive bid process.
154. Due to the harmful effects of bid rigging, under section 4(2)(d) of Act 712, it is stated that a horizontal agreement 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.

⁸² Section 2 of the Competition Act 2010; and CA98/02/2009 *Bid rigging in the Construction Industry*, OFT Decision of 21 September 2009, at pages 349 and 350.

C. BURDEN AND STANDARD OF PROOF

155. The Commission needs to prove in accordance with the civil standard of proof that, on the balance of probabilities, an infringement under section 4 of Act 712 has been committed.

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

D. THE RELEVANT MARKET

157. The term 'market' is defined in section 2 of Act 712. The purpose of defining a market is to identify all of 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.

158. 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 and/or concerted practices have a significant anti-competitive effect in a market.⁸³ Second, it provides

⁸³ Malaysian Airline System BHD v Competition Commission & Another Appeal [2022] 1 CLJ [at Para 7] "The requirement to specify and identify the 'market' was embedded in the very 'deemed' provision, and, if this requirement was not met, the deemed effect could not be applied. Only after having identified the relevant market MyCC could assess whether particular conduct (or agreement) was anti-competitive in nature."

the basis for determining the relevant turnover for the purpose of calculating financial penalties.

Relevant product market

159. With reference to the field code registration requirements stated in **paragraphs 68 and 71** which are CE01 (Road and Pavement Construction), CE02 (Bridge Construction), CE06 (Flood Control System) and CE21 (General Civil Engineering Works), the Commission finds that the relevant product market in this case is the provision of works for constructing roads, pavements, bridges, flood control systems, and general civil engineering works for the Government.

Relevant geographic market

160. The relevant geographic market in this present case is Peninsular Malaysia.

Conclusion on the Relevant Markets

161. Based on the above, the Commission finds that the relevant market affected by the infringements, for the purpose of determining the relevant turnover of the Parties, is the provision of construction works for roads, pavements, bridges, and flood control systems in Peninsular Malaysia.

E. FACTS, EVIDENCE AND ANALYSIS OF THE EVIDENCE

E.1 OVERVIEW OF THE CSR PROJECTS: TENDER CSR 3B AND 3C, AND TENDER CSR 3J

162. This section presents the facts, evidence, and analysis of the evidence for the CSR projects, comprising two tender projects namely; Tender CSR 3B and 3C and Tender CSR 3J. JKR advertised these two CSR tender projects on 12.2.2019.

163. Based on the gathered facts, the Parties involved in the two CSR projects can be categorised into two groups, namely: -

- (a) the “Mangkubumi Group”; and
- (b) the “YCH – NYL” Group.

The “Mangkubumi Group” comprises of seven Parties, namely, -

- (a) Dutamesra;
- (b) IDX;
- (c) Kiara Kilat;
- (d) Mangkubumi;
- (e) Menang Idaman;
- (f) Meranti Budiman; and
- (g) Pintas Utama.

The “YCH-NYL Group” consists of two enterprises, namely –

- (a) YCH (which is not one of the Parties to this Decision); and

(b) NYL (which is a Party to this Decision).

Despite the Parties being categorised into two separate groups, namely, the “Mangkubumi Group” and the “YCH-NYL Group”, it must be emphasised here that the Parties throughout the entire decision, are strictly regarded as separate enterprises with their own separate directorship and shareholding as elaborated in **Part 1:B** above.

164. For both Tender CSR 3B and 3C, and Tender CSR 3J, in addition to being a CIDB registered G7 contractor, each bidder must also be a certified Bumiputera company, that is to say, having a Bumiputera Status Certificate.
165. In the present case, YCH did not bid for Tender CSR 3B and 3C and Tender CSR 3J because YCH did not possess the Bumiputera Status Certificate which was one of the conditions stipulated by JKR for participating in Tender CSR 3B and 3C and Tender CSR 3J. Despite the fact that YCH was not a bidder or a potential bidder (not being of Bumiputra Status), and thereby not an infringing party under section 4(1) read with section (4(2)(d) and section 4(3) of Act 712, nevertheless, the Commission finds that YCH’s involvements in the agreements and/or concerted practices with the infringing Parties are significant.
166. According to *Panduan Pengiktirafan Sijil Taraf Bumiputera bagi Perolehan Kerja Kerajaan*⁸⁴, in order to be certified as a Bumiputera

⁸⁴ Pages 3 to 5 of the *Panduan Pengiktirafan Sijil Taraf Bumiputera bagi Perolehan Kerja Kerajaan*, issued by the Ministry of Entrepreneur and Cooperatives Development.

enterprise, a minimum of 51% of the shareholders and the composition board of directors must be Bumiputera. Due to the composition of YCH's directorship and shareholding, it is not possible for the company to obtain the "Bumiputera" certificate. Therefore, it was not possible for YCH to be a bidder or a potential bidder. Be that as it may, the Commission does not disregard YCH's active involvement in the acts of bid rigging of the infringing parties.

167. Regarding the Parties' involvement in the two CSR projects, the Parties involved in Tender CSR 3B and 3C, and Tender CSR 3J are almost identical, except for the participation of Kiara Kilat, which only participated in Tender CSR 3B and 3C, but not in Tender CSR 3J.

E.2 TENDER CSR 3B AND 3C

168. This section will set out the facts, evidence, and analysis of the evidence for the first CSR project, that is to say, Tender CSR 3B and 3C, which covers a total distance of 7.00 kilometres.
169. Tender CSR 3B and 3C constitute one of the packages in the CSR Project for the construction works of roads, pavements and the construction of bridges. The tender was awarded by JKR to IDX for RM[~~8~~]. The tender advertisement took place on 12.2.2019 followed by the tender briefing which took place on 19.2.2019 at the Gua Musang District Council.

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170. On 15.6.2020, IDX was issued the Letter of Acceptance for Tender CSR 3B and 3C appointing them as the successful bidder.⁸⁵ The Letter of Acceptance was signed by one Rahmat Hidayat, a director of IDX and witnessed by an employee of IDX, one Mohd Faizal Omar.⁸⁶
171. Interested bidders were required to attend a tender briefing at Gua Musang District Council on 29.2.2019 to be eligible to purchase the tender documents for Tender CSR 3B and 3C. The representative of the bidding enterprise attending the tender briefing must be the nominee that is listed in the enterprise's Contractor Registration Certificate issued by CIDB or, alternatively, appointed by way of a Letter of Authorisation by the enterprise concerned. A total of 274 companies attended the tender briefing and subsequently 216 bid submissions were submitted to JKR for Tender CSR 3B and 3C.
172. The list of tender briefing attendees for the respective Parties is shown in **Table 17** below:

Table 17: Parties' Attendance at the Tender Briefing for Tender CSR 3B and 3C⁸⁷

PARTY	REPRESENTATIVE NAME
Dutamesra	Ihsan Bin Asnawi Sabri
IDX	Rahmat Hidayat Mohamed
Kiara Kilat	Mohd Sabri Mat Ail
Mangkubumi	Mohd Faiz Ahlan
Menang Idaman	Mohammad Syafiq Azim Bin Zulkfli
Meranti Budiman	Mohammad Ishak Bin Hashim @ A Razak
NYL	Lokman Hakim Bin Abdul Wahid

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

⁸⁷ [REDACTED]

PARTY	REPRESENTATIVE NAME
Pintas Utama	Fandi Mohd Nafiah

173. Based on the information provided, the Commission finds that each of the Parties had a different representative attending the briefing. Additionally, it should be noted that the individual who purchased the tender documents differed for each Party. The assignment of personnel responsible for purchasing the tender documents for each Party is shown in **Table 18** below:

Table 18: Purchasers for Parties' Tender Documents for CSR 3B and 3C⁸⁸

PARTY	PURCHASER OF PARTIES' TENDER DOCUMENTS	DATE OF PURCHASE
Dutamesra	Naqib Nor Azman	22.2.2019
IDX	Rahmat Hidayat Mohamed	22.2.2019
Kiara Kilat	Pawn Chee Beng	1.3.2019
Mangkubumi	Faiz Fikry	22.2.2019
Menang Idaman	Affendi Ibrahim	22.2.2019
Meranti Budiman	Nur Emiliyana Binti Mat Hassan	22.2.2019
NYL	Fairuliza Binti Razli	26.2.2019
Pintas Utama	Fandi Mohd Nafiah	22.2.2019

174. The signees for the tender documents submitted by the Parties are listed in **Table 19** below:

Table 19: The Signees of Parties' Tender Documents for Tender CSR 3B and 3C⁸⁹

PARTY	SIGNING DIRECTOR	WITNESS
Dutamesra	Siti Zalifah Umairah Binti Abdullah	Ihsan Bin Asnawi Sabri
IDX	Rahmat Hidayat Bin Mohamed	Norfaezah Binti Nasaruddin
Kiara Kilat	Rahim Bin Ariffin	Nurasiah Ariffin

⁸⁸ [x]

⁸⁹ [x]

PARTY	SIGNING DIRECTOR	WITNESS
Mangkubumi	Mohd Zulkefli Bin Hj Abdullah	Adninooraize Binti Abu Bakar
Menang Idaman	Mohd Tarmizi Bin Mohd Zuki	Norhayati Binti Che Amat
Meranti Budiman	Mohammad Ishak Hashim @ A Razak	Nur Emiliyana Binti Mat Hassan
NYL	Suhaida Binti Che Husin	Fairuliza Binti Razli
Pintas Utama	Fandi Mohd Nafiah	Nurul Ainul Hidayah Soha

175. The Commission's assessment of the pertinent evidence concerning Tender CSR 3B and 3C is hereby set out in the following paragraphs. **Table 20** provides an overview of the chronology of events for Tender CSR 3B and 3C and the participation of the relevant Parties in the tendering process.

Table 20: Chronology of Tender CSR 3B and 3C

DATE	RELEVANT FACTS
12.2.2019	Tender CSR 3B and 3C were advertised to the public through the public procurement process.
19.2.2019	Site visit for CSR 3B and 3C was held at Gua Musang District Council.
13.3.2019	Original closing date
20.3.2019	Revised closing date (revised via Addendum issued by JKR).
15.6.2020	JKR issued a Letter of Acceptance to IDX as the successful bidder.
Awarded Bid	Tender CSR 3B and 3C awarded to IDX for RM[><] for a period of 36 months.

176. The Commission finds that the bid submission prices by the Parties show a striking similarity in the Bill of Quantities prices with little variation, if any. The similarity in prices strongly indicates that the bidding process had been rigged by the eight Parties due to the Parties' tender documents containing almost identical prices.

Overview of the Preparation of Tender Documents Process

177. The Commission finds that Mangkubumi, under the instruction of its director, Tan Sri Zainudin Karjan, prepared technical documents for Dutamesra, IDX, Kiara Kilat, Mangkubumi, Menang Idaman, Meranti Budiman, and Pintas Utama. Mangkubumi requested quotations from YCH for tender submissions and YCH then provided its quotation prices to Mangkubumi.⁹⁰ Thereafter, Mangkubumi referred to the quotations prices that were provided by YCH for determining the prices of the Bill of Quantities.
178. The Contract Unit/Quantity Surveyor Unit of Mangkubumi, led by Masytah, coordinated and finalised the pricing for the Bill of Quantities and Summary of Tender after receiving approval from Tan Sri Zainudin Karjan of Mangkubumi.⁹¹ According to Masytah, Tan Sri Zainudin Karjan of Mangkubumi ultimately determined the final tender submission prices for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi and Pintas Utama.⁹²
179. The submission of the tender documents belonging to Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi and Pintas

⁹⁰ Paragraphs 9 until 20, 23 until 31, 48 until 51, 63 until 68 and 74 until 79 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024; Paragraph 41, 53, 90 of the Statement of Faiz Fikry recorded on 30.5.2023; Paragraphs 21 and 28 of the Statement of Tan Sri Zainudin Karjan recorded on 19.6.2023; Paragraphs 11 until 13 and 68 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

⁹¹ Paragraphs 4, 9 until 20, 23 until 31, 48 until 51, 63 until 68 and 74 until 79 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024; Paragraphs 11 until 13, 68 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024

⁹² Paragraph 16 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

Utama to JKR was arranged by Fandi Mohd Nafiah of Pintas Utama.⁹³

Discovery of a Physical Document Showing Coordination Between the Parties in Tender CSR 3B and 3C

180. On 15.2.2023, a physical document titled "Tender Exercise"⁹⁴ was discovered during the search and seizure operation at Pintas Utama's premises. This document contains a matrix compiling bid submission prices for Tender CSR 3B and 3C from all bidding Parties, namely, Mangkubumi, Kiara Kilat, Dutamesra, Meranti Budiman, Menang Idaman, Pintas Utama, IDX, and NYL. The Commission retrieved this physical document, depicted in **Image 1** below.

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⁹³ Paragraph 18 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

⁹⁴ Seizure List of Pintas Utama on 15.2.2023.

Image 1: "Tender Exercise" document seized from Pintas Utama on 15.2.2023⁹⁵

<p>5 CENTRAL SPINE ROAD PAKAJ 3: GUA MUSANG, KELANTAN KE KG RELONG, PAHANG SEKSYEN 3B DAN 3C: KM 180.5 FT 08 KE BULATAN GUA MUSANG, KELANTAN</p> <p>CLIENT: JABATAN KERJA RAYA MALAYSIA</p> <p>NO TENDER: JKR/IP/CJ/T/2019/13</p>	<p>20/3/2019</p> <p>PDA:</p> <p>██████████</p> <p>Al:</p> <p>██████████</p>	<p>1. MANGKUBUMI SDN BHD</p> <p>2. MYL CORPORATION SDN BHD</p> <p>3. DUTAMESRA BINA SDN BHD</p> <p>4. KIARA KILAT SDN BHD</p> <p>5. PINTAS UTAMA SDN BHD</p> <p>6. IDX MULTI RESOURCES SDN BHD</p> <p>7. MENANG IDAMAN SDN BHD</p> <p>8. MERANTI BUDIMAN SDN BHD</p>	<p>██████████</p>	<p>ADD NO.1: Ganti mukasurat table of content, summary of tender, BQ, lukisan, lampiran A&B</p> <p>Tarikh: 6/3/2019</p> <p>ADD NO.2: Lanjutan tarikh tutup tender</p> <p>Tarikh: 7/3/2019</p> <p>ADD NO.3: Ganti mukasurat table of content, summary of tender, BQ, lukisan, lampiran A&B</p> <p>Tarikh: 11/3/2019</p>	<ul style="list-style-type: none"> • MANGKUBUMI SDN BHD • MYL CORPORATION SDN BHD • DUTAMESRA BINA SDN BHD • KIARA KILAT SDN BHD • PINTAS UTAMA SDN BHD • IDX MULTI RESOURCES SDN BHD • MENANG IDAMAN SDN BHD • MERANTI BUDIMAN SDN BHD <p>(16 syarikat)</p> <p>██████████</p> <p>BERIAYA: IDX MULTI RESOURCES SDN BHD - SST OTW</p>
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The Parties and their respective bids for Tender CSR 3B and 3C

⁹⁵ Seizure List of Pintas Utama on 15.2.2023.

181. This physical document is crucial to the Commission's findings. It provides compelling evidence of collusion between the Parties to enter into agreements and/or concerted practices to rig bids for Tender CSR 3B and 3C. This document outlines the bid submission prices of all the Parties for Tender CSR 3B and 3C and thus establishes that the bidding process was compromised. The Commission finds that the Parties had not acted independently when preparing and submitting their respective tender documents.

ASSESSMENT OF THE PARTIES' BID SUBMISSION PRICES

182. Upon the discovery of the aforesaid physical document at Pintas Utama, the Commission examines the price figures submitted by all of the Parties for Tender CSR 3B and 3C.

183. A comparison of the bid submission prices among the Parties is depicted in **Image 2**, **Image 3**, and **Image 4** as shown below.

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Image 2: Breakdown of Summary of Tender Price for CSR 3B and 3C (Bill of Quantities)⁹⁶

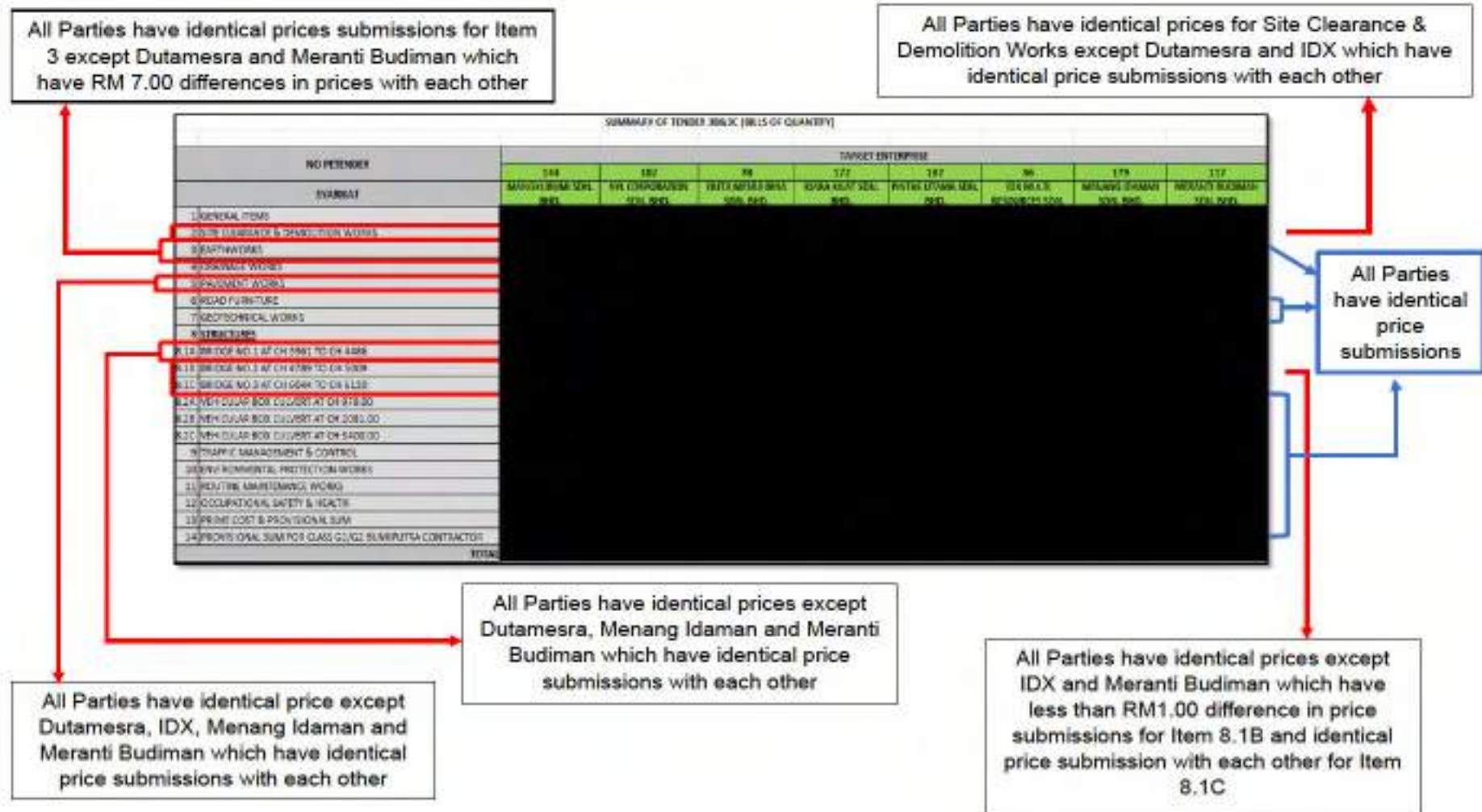
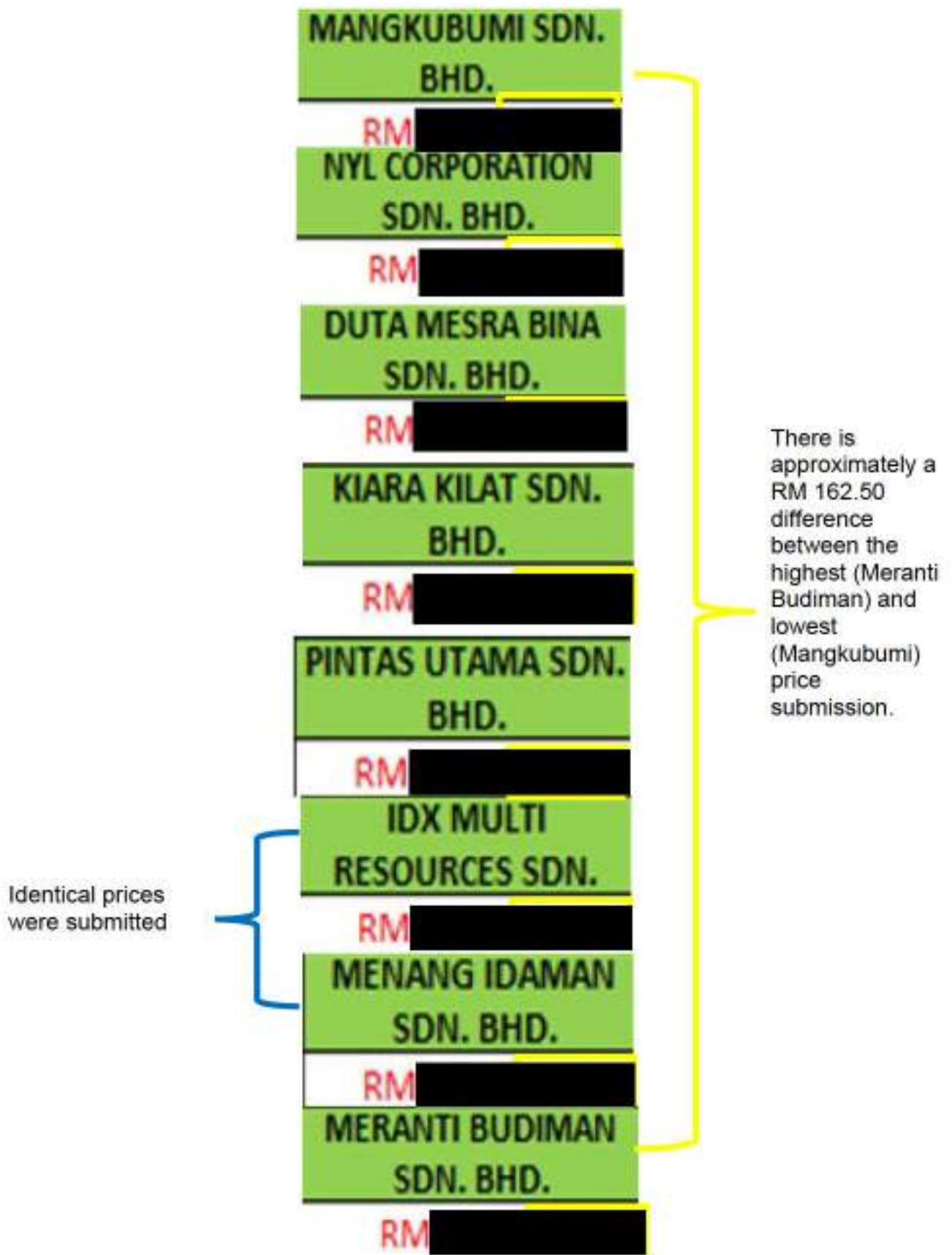
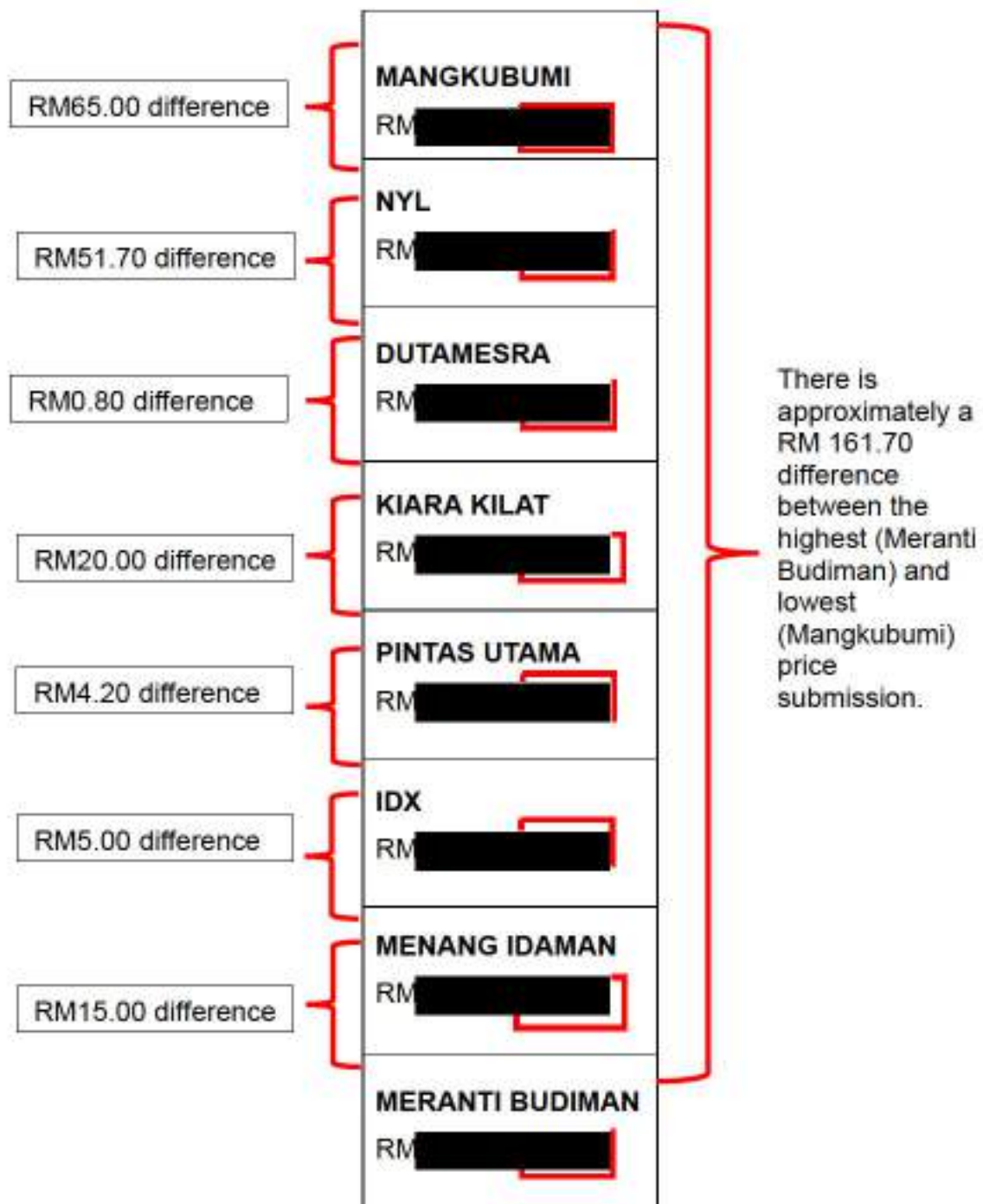


Image 3: Breakdown of Summary of Tender CSR 3B and 3C for General Items⁹⁷



⁹⁷ [3<]

Image 4: Total Prices Comparison for Summary of Tender 3B and 3C⁹⁸



⁹⁸ [x]

184. Based on the price comparisons above, the Commission observes that the Parties' figures in their Bill of Quantities are almost similar to one another. With regard to the particulars in "General Items", there exists a difference of less than RM200 between the highest and lowest submission price among the eight bidding Parties. Similarly, when comparing the total prices, a mere difference of RM161.70 is observed between the highest and lowest price submissions. There appears to be no logical explanation other than price coordination by the Parties.
185. Apart from the minimal difference in tender prices, the Commission identifies multiple instances when two or more Parties have quoted identical prices. The presence of these overlapping prices evidences the existence of agreements and/or concerted practices with the object to perform bid rigging for Tender CSR 3B and 3C.
186. Given the analysis above, the Commission takes the position that judging from the almost similarity in prices an inference could fairly be made that the Parties had exchanged confidential price information in drawing up the Bill of Quantities prices for Tender CSR 3B and 3C.

Exchange of Pricing Information through the Preparation of the Bill of Quantities

187. In assessing the Parties' bid submissions, the Commission finds that the Bill of Quantities plays a vital role in the tender process. The Bill of Quantities is a crucial part of the tender documentation issued to potential suppliers to obtain pricing information. The Bill of

Quantities serves as the primary document for calculating construction costs and enables the procurement agency, in this case JKR, to compare tenders effectively.

188. Usually, a cost consultant, such as a quantity surveyor, prepares the Bill of Quantities by providing project specifications and measured quantities for each tender item. Suppliers then quote their prices for the prescribed items. The priced Bill of Quantities becomes a crucial part of a bidder's tender documents. Since the listed items are identical for all bidders, JKR can directly compare the overall price and individual items with other offers, enabling a thorough evaluation of the value provided by each bidder.
189. In relation to Tender CSR 3B and 3C, the Commission analyses the facts and evidence gathered from the investigation such as tender documents, email communications, and statement evidence in relation to the pricing of the Bill of Quantities which revolves around the process of obtaining prices from YCH, a consultant and subcontractor of Mangkubumi.

Email Correspondences Involving Mangkubumi, YCH, Pintas Utama and Meranti Budiman

190. In addition to the above, the Commission retrieved emails from Faiz Fikry's personal computer, revealing an exchange of emails among the four Parties, namely, Mangkubumi, YCH, Pintas Utama and Meranti Budiman. The exchange of emails between the four Parties is set out below in **Table 21**:

Table 21: Exchange of Emails between Parties for Tender CSR 3B and 3C

EMAIL	PARTIES INVOLVED	DETAILS
Email A ⁹⁹	<ul style="list-style-type: none"> • Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama (Sender), YCH company email at [redacted]@live.com (Recipient); • Hakeem at [redacted]@gmail.com, Quantity Surveyor of Pintas Utama; Munaim¹⁰⁰ at [redacted]@gmail.com, Quantity Surveyor of Meranti Budiman (carbon copy recipients) 	<ul style="list-style-type: none"> • Email A dated 6.3.2019, and at 12:40 PM, states "Softcopy BQ Pakej 3B and 3C as requested by Bryan" in the body of the email. The email was sent by the email account [redacted]@gmail.com to [redacted]@live.com. It also contains an attachment in the form of an Excel spreadsheet document, which includes the Blank Bill of Quantities for Tender CSR 3B and 3C. • Faiz Fikry, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama since 2015, owns the email account [redacted]@gmail.com.¹⁰¹ Faiz Fikry clarified that YCH is their Strategic Partner and Subcontractor and he normally will request prices from them to prepare for tender submissions. The email is therefore sent to obtain a quotation from YCH.¹⁰² • The recipient ([redacted]@live.com) is an email account which belongs to YCH. The email accounts [redacted]@gmail.com and [redacted]@gmail.com belong to the quantity surveyors of Pintas

⁹⁹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com, dated 6.3.2019 at 12:40pm, with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3B DA 3C: KM 180.5 FT08 KE BULATAN GUA MUSANG").

¹⁰⁰ Paragraphs 32, 41 and 43 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

¹⁰¹ Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 15.2.2023; Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁰² Paragraphs 3 and 5 of the Statement of Faiz Fikry recorded on 30.5.2023.

EMAIL	PARTIES INVOLVED	DETAILS
		<p>Utama and Meranti Budiman, respectively, at the material time.</p> <ul style="list-style-type: none"> • According to Chan Wai Hong of YCH, Mangkubumi typically sent these emails to request quotations for the purchasing price of construction materials. These requests were usually made after phone calls or in-person meetings.¹⁰³
Email B ¹⁰⁴	<ul style="list-style-type: none"> • Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH¹⁰⁵ to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama 	<ul style="list-style-type: none"> • Email B dated 8.3.2019 at 11:58 AM, sent two attachments from [redacted]@live.com to [redacted]@gmail.com. • Chan Wai Hong (Bryan), director of YCH wrote "Attn: Faiz Please find the attachment. Thanks" in the body of the email. • Faiz Fikry of Mangkubumi/Pintas Utama explained that Email B was a response to Email A and further informed that the attachment pertained to CSR 3B and 3C with the price given by YCH.¹⁰⁶ • Chan Wai Hong of YCH stated he sent this email as a regular response to the quotation requested by Faiz Fikry in Email A.¹⁰⁷

¹⁰³ Paragraphs 10 until 13 of the Statement of Chan Wai Hong of YCH recorded on 15.6.2023.

¹⁰⁴ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9); Email from [redacted]@live.com to [redacted]@gmail.com dated 8.3.2019 at 11:57am, with the subject line "BQ - GUA MUSANG (3B&3C & 3J)".

¹⁰⁵ Paragraph 26 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁰⁶ Paragraphs 12 and 13 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁰⁷ Paragraphs 18, 19 and 21 of the Statement of Chan Wai Hong of YCH recorded on 15.6.2023.

EMAIL	PARTIES INVOLVED	DETAILS
Email C ¹⁰⁸	<ul style="list-style-type: none"> Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama 	<ul style="list-style-type: none"> On 8.3.2019, at 4:08 PM, Chan Wai Hong (Bryan) sent Email C to Faiz Fikry of Mangkubumi. Changes were made to the figures contained in the attachment of Email B for items Bill No. 8.1A to 8.1C.
Email D ¹⁰⁹	<ul style="list-style-type: none"> Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama 	<ul style="list-style-type: none"> Following Email C, Chan Wai Hong (Bryan) sent Email D dated 8.3.2019, at 5:52 PM demonstrating a second round of changes made to items Bill No. 8.1A to 8.1C. Due to these changes, the total amount of the Bill of Quantities changed from RM[redacted] to RM[redacted].
Email E ¹¹⁰	<ul style="list-style-type: none"> Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama; carbon copied to Munaim at [redacted]@gmail.com, Quantity Surveyor of Meranti Budiman 	<ul style="list-style-type: none"> Email E dated 15.3.2019 at 12:31 PM contains a revised version of Summary of Tender with a completed Bill of Quantities. Munaim of Meranti Budiman is carbon copied on this email.
Email F ¹¹¹	<ul style="list-style-type: none"> Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity 	<ul style="list-style-type: none"> Email F dated 15.3.2019 at 12:35 PM, reflects revisions made to the prices in Email E for item Bill No. 8.1A, No.10, resulting

¹⁰⁸ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 8.3.2019 at 4:08pm with the subject line "UPDATED - BQ (GUA MUSANG - 3B&3C & 3J)"].

¹⁰⁹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 8.3.2019 at 5:52pm with the subject line "BQ GUA MUSANG (3B & 3C) & (3J)"].

¹¹⁰ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 15.3.2019 at 12:31pm with the subject line "TENDER BQ FOR GUA MUSANG 3B & 3C, 3J & SG MABUK"].

¹¹¹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 15.3.2019 at 12:35pm with the subject line "LATEST - TENDER BQ FOR GUA MUSANG 3B & 3C, 3J & SG MABUK"].

EMAIL	PARTIES INVOLVED	DETAILS
	Surveyor of Mangkubumi/Pintas Utama; and Munaim ¹¹² at [redacted]@gmail.com Quantity Surveyor of Meranti Budiman/Pintas Utama	in a change in the total amount of the Bill of Quantities changed from RM[redacted] to RM[redacted]. <ul style="list-style-type: none"> • Similar to Email E, Email F was also carbon copied to Munaim.
Email G ¹¹³	<ul style="list-style-type: none"> • Munaim at [redacted]@gmail.com, Quantity Surveyor of Meranti Budiman to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama; and Masytah Kamaruddin at [redacted]@gmail.com, Head of Contract Unit/Quantity Surveyor Unit of Mangkubumi 	<ul style="list-style-type: none"> • Email G, dated 9.3.2019 at 11:01am, contained an Excel spreadsheet that included a completed Bill of Quantities for Tender CSR 3B and 3C. • The attached Excel spreadsheet serves as a working document for Meranti Budiman's tender submission for CSR 3B and 3C, with a column labelled "Meranti Budiman" for the Summary of Tender.

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¹¹² Paragraphs 32, 41 and 43 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

¹¹³ Digital Forensic Report Pintas Utama Sdn. Bhd, MyCC (IED) 700-2/7(9) [Email from [redacted]@gmail.com to [redacted]@gmail.com dated 9.3.2019 at 11:01am with the subject line "PAKEJ 3B & 3C"].

191. During the search and seizure exercise at Pintas Utama on 15.2.2023, the Commission discovered several emails seized from Faiz Fikry's computer. These emails involved personnel from Mangkubumi, Pintas Utama, Meranti Budiman, and YCH, and pertained to the preparation of bids for Tender CSR 3B and 3C. Email A¹¹⁴ sent from the email account [redacted]@gmail.com to [redacted]@live.com, containing an attachment titled "Bill of Quantities for Tender CSR 3B and 3C". Faiz Fikry of Mangkubumi/Pintas Utama worked as a Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama since 2015 and owned the email account [redacted]@gmail.com. The recipient ([redacted]@live.com), is an email account belonging to YCH. Moreover, the email accounts [redacted]@gmail.com and [redacted]@gmail.com belong to Quantity Surveyor of Pintas Utama and Meranti Budiman, respectively, at the material time.¹¹⁵

Image 5: Screenshot of Email A¹¹⁶



¹¹⁴ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com, dated 6.3.2019 at 12:40pm, with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3B DA 3C: KM 180.5 FT08 KE BULATAN GUA MUSANG").

¹¹⁵ [redacted]

¹¹⁶ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com, dated 6.3.2019 at 12:40pm, with the subject line "Latest - Tender BQ for Gua Musang 3B & 3C, 3J & Sg Mabuk").

192. Email A included the Quantity Surveyors from Pintas Utama and Meranti Budiman as carbon copy recipients in addition to Faiz Fikry of Mangkubumi/Pintas Utama, therefore Email A involved three quantity surveyors from three different bidding Parties. As a result of the exchange of emails, the Commission finds that confidential information was exchanged during the tender process.
193. Based on the aforementioned facts, the Commission finds that Mangkubumi, Pintas Utama, and Meranti Budiman closely coordinated the tender preparation process.
194. Faiz Fikry informed the Commission that YCH was both Mangkubumi's strategic partner and subcontractor. He added that it was a common practice for Mangkubumi to request quotation prices from YCH via email to obtain figures for use in the tender documents.¹¹⁷
195. Faiz Fikry further stated the email attachment was a soft copy version of the hard-copy tender documents that Mangkubumi had already prepared internally. The purpose of converting the hard copy "Summary of Tender" into a soft copy version was to simplify the process of obtaining prices and rates from a subcontractor.¹¹⁸
196. Pertaining to the same email, Chan Wai Hong, the director of YCH informed the Commission that Mangkubumi typically sent these emails to request quotations for the purchasing price of construction

¹¹⁷ Paragraphs 3 and 5 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹¹⁸ Paragraphs 6 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

materials. These requests usually followed a phone call or in-person meeting.¹¹⁹

197. Faiz Fikry further added that there was a need to revise quotation prices with YCH when some items initially quoted by YCH were incorrectly priced. The revision of quotations was said to be a common occurrence when obtaining quotations from subcontractors.¹²⁰ The Commission also discovered that personnel from Meranti Budiman were once again included in the email communications through being a carbon copy recipient as stated in Email E.

198. Based on the chain of emails between the personnel of Mangkubumi, Pintas Utama, Meranti Budiman and YCH, the Commission infers that Mangkubumi, Pintas Utama and Meranti Budiman actively collaborated in preparing the tender documents for Tender CSR 3B and 3C. Although Tender CSR 3B and 3C were awarded to IDX by JKR, Mangkubumi took the role of the principal contractor and appointed YCH as their subcontractor to carry out all of the works under the project except the provisional sum and prime cost sum.¹²¹

199. Based on the attachments found in Email A through Email F, the Excel spreadsheet containing the Bill of Quantities had undergone

¹¹⁹ Paragraphs 10 to 13 of the Statement of Chan Wai Hong of YCH recorded on 15.6.2023.

¹²⁰ Paragraphs 17 and 18 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹²¹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Excel spreadsheet titled 'Status Project Mangkubumi Group' dated 29.12.2022).

multiple pricing changes. As evidenced by the chain of emails, the Commission finds that the personnel from Mangkubumi, Pintas Utama, and Meranti Budiman collaborated in preparing the tender documents.

200. Moreover, the Commission finds that the Excel spreadsheet attachment titled “PAKEJ 3B 3C.xls” in Email G¹²² is a working document for Meranti Budiman’s tender submission for Tender CSR 3B and 3C. **Image 6** below shows that Meranti Budiman’s company name is labelled above the right-hand side column which sets out the price amounts in the Summary of Tender in the Excel spreadsheet attachment.

[the remainder of this page is intentionally left blank]

¹²² Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@gmail.com dated 9.3.2019 at 11:01am with the subject line “PAKEJ 3B & 3C”).

Image 6: Excel Spreadsheet Attachment in Email G Between Meranti Budiman and Mangkubumi¹²³

CENTRAL SPINE ROAD PAKEJ 3: GUA MUSANG, KELANTAN KE KG. RELONG, PAHANG SEKSYEN 3B DA 3C: KM 180.5 FT08 KE BULATAN GUA MUSANG, KELANTAN			
SUMMARY OF TENDER			MERANTI BUDIMAN
Item	DESCRIPTION OF WORKS	FROM PAGE	AMOUNT (RM)
1	GENERAL ITEMS	BQ 1 - 5/5	
2	SITE CLEARANCE & DEMOLITION WORKS	BQ 2 - 2/2	
3	EARTHWORKS	BQ 3 - 3/3	
4	DRAINAGE WORKS	BQ 4 - 9/9	
5	PAVEMENT WORKS	BQ 5 - 4/4	
6	ROAD FURNITURE	BQ 6 - 3/3	
7	GEOTECHNICAL WORKS	BQ 7 - 7/7	
8	STRUCTURES		
8.1 A	BRIDGE NO.1 AT CH 3961 TO CH 4486	BQ 8.1 A - 12/12	
8.1 B	BRIDGE NO.2 AT CH 4789 TO CH 5009	BQ8.1B-10/10	
8.1C	BRIDGE NO.3 AT CH 6044 TO CH 6120	BQ 8.1C - 8/8	
8.2A	VEHICULAR BOX CULVERT AT CH 978.00	BQ 8.2A - 3/3	
8.2B	VEHICULAR BOX CULVERT AT CH 2081.00	BQ8.2B-3/3	
8.2C	VEHICULAR BOX CULVERT AT CH 3400.00	BQ8.2C-3/3	
9	TRAFFIC MANAGEMENT & CONTROL	BQ 9 - 4/4	
10	ENVIRONMENTAL PROTECTION WORKS	BQ 10 - 8/8	
11	ROUTINE MAINTENANCE WORKS	BQ 11 - 7/7	
12	OCCUPATIONAL SAFETY & HEALTH	BQ 12-3/3	
13	PRIME COST SUM & PROVISIONAL SUM	BQ 13 - 3/3	
14	PROVISIONAL SUM FOR CLASS 01/02 BUKAPUTRA CONTRACTOR	BQ 14-2/2	
TOTAL AMOUNT CARRIED TO FORM OF TENDER			

201. Faiz Fikry informed the Commission that Munaim, the Quantity Surveyor of Meranti Budiman, prepared the document in *Image 6*. Munaim followed a similar method as Faiz Fikry in obtaining quotations from Bina Bersama, which is also their subcontractor, as demonstrated in the email exchanges above.¹²⁴

¹²³ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@gmail.com dated 9.3.2019 at 11.01 a.m. that contained an Excel spreadsheet that included a completed Bill of Quantities for Tender CSR 3B and 3C).

¹²⁴ Paragraphs 52 to 54 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

202. Faiz Fikry further added that the rate obtained from the subcontractor was adjusted based on the yearly index of construction materials and the project location. Ultimately, Faiz Fikry revealed that the Contract Unit of Mangkubumi prepared the tender documents for the companies comprising the "Mangkubumi Group," following the advice of the management.¹²⁵

203. The Commission therefore finds that Email G strengthens the Commission's finding of agreements and/or concerted practices between Mangkubumi and Pintas Utama to prepare their respective tender documents for Tender CSR 3B and 3C.

Financial Benefits Obtained by the "Mangkubumi Group" in relation to Tender CSR 3B and 3C

204. As discussed in the preceding paragraphs, the Commission finds that the "Mangkubumi Group" obtained financial benefits from engaging in the agreements and/or concerted practices to rig Tender CSR 3B and 3C.

205. In assessing the tender prices, the Commission examines three distinct stages namely; (1) the pre-award stage of the contract, (2) the awarding stage of the contract, and (3) the post-award stage of the contract, namely the subcontracting stage. **Table 22** and **Table 23** sets out the assessment on the tender prices:

¹²⁵ Paragraphs 52 to 54 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

Table 22: Comparison of Prices Between YCH Quotation Rate, Contract Value and Subcontract Value

TENDER	(1)	(2)	(3)	(4)
	Quoted Rate by YCH ¹²⁶	Contract Value Awarded ¹²⁷	Provisional Sum & Prime Cost Sum ¹²⁸	Subcontract Rate awarded to YCH ¹²⁹
CSR 3B & 3C	RM[><]	RM[><]	RM[><]	RM[><]

206. The Commission identifies the following processes regarding the determination of Tender CSR 3B and 3C prices:

- (a) YCH initially provided its price of RM[><] (stated in Column 1 of **Table 22**) to Mangkubumi;
- (b) Tender CSR 3B and 3C was then awarded to IDX for the contract value of RM[><] (stated in Column 2 of **Table 22**);
- (c) The sum of RM[><] in Column 3 of **Table 22** refers to the provisional sum¹³⁰ plus the prime cost sum¹³¹ which constitute elements in the contract value awarded to IDX;
- (d) After being selected as the successful bidder, IDX subcontracted the entire works of Tender CSR 3B and 3C to

¹²⁶ Excel spreadsheet attachment in Email F dated 15.3.2019.

¹²⁷ [><].

¹²⁸ [><]

¹²⁹ Letter of Award issued by IDX to YCH for Tender CSR 3B and 3C dated 23.7.2020.

¹³⁰ Note: A provisional sum is a sum provided in a contract for work to be executed or for the supply of any equipment, materials or goods which cannot be entirely foreseen, defined, or detailed at the date of submission of the tender.

¹³¹ Note: A prime cost sum is a sum provided in the contract for works or services to be executed by a nominated sub-contractor; or a sum provided in the contract for any equipment, materials, or goods to be supplied by a nominated supplier.

Mangkubumi.¹³² Mangkubumi then sub-subcontracted the said works to YCH with the value of RM[><] as stipulated in Column 4 of **Table 22**, without the provisional sum and prime cost sum of RM[><] as stated in Column 3 of **Table 22**.

Table 23: Calculation of the Percentage of Inflation of Tender Prices for Tender CSR 3B and 3C

TENDER	A	B	C
	(2) - (3) ¹³³	(A) - (4) ¹³⁴	B/A
CSR 3B and 3C	RM[><]	RM[><]	9%

207. In relation to the bid rigging act, the Commission finds that the inflated price is derived by using the tender prices of the successful bidder for the tender. We presume that the price agreed between IDX, Mangkubumi, and YCH, along with the provisional sum and prime cost sum, represents the actual value of Tender CSR 3B and 3C. The inflated price by IDX, Mangkubumi, and YCH for Tender CSR 3B and 3C can be derived using the following formula:

- (a) RM[><] (Value A) is derived by subtracting the provisional sum and prime cost sum from the contract value awarded to IDX.
- (b) RM[><] (Value B) represents the difference between Value A (RM[><]) and the agreed subcontracting value between IDX

¹³² Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Excel spreadsheet titled 'Status Project Mangkubumi Group' dated 29.12.2022).

¹³³ Figures derived from Table 22.

¹³⁴ Figures derived from Table 22.

and Mangkubumi and Mangkubumi and YCH (RM[~~xxx~~]) as in Column 4 of **Table 22**).

- (c) Value C (9%) is the percentage of inflation of the contract value by calculating the percentage of Value B (RM[~~xxx~~]) in relation to Value A (RM[~~xxx~~]).

208. The Commission finds that IDX and Mangkubumi gained a 9% increase in mark-up percentage in Tender CSR 3B and 3C after sub-subcontracting the entire project to YCH.

209. With regard to Tender CSR 3B and 3C, based on the above analysis, the award of the tender in the sum of RM[~~xxx~~] to the successful bidder, IDX, as a result of bid riggings by the Parties, had caused loss to the Government. This loss is in the sum of RM[~~xxx~~] which is equivalent to the profit accrued by IDX as explained in **paragraphs 207 and 208** above. In other words, the Government would have saved the sum of RM[~~xxx~~] had there been no bid riggings.

210. Based on the above, the Commission finds that Dutamesra, IDX, Kiara Kilat, Mangkubumi, Menang Idaman, Meranti Budiman, NYL, and Pintas Utama engaged in agreements and/or concerted practices to perform bid rigging in the tendering process for Tender CSR 3B and 3C.

E.3 TENDER CSR 3J

211. This section will set out the facts, evidence, and analysis of the evidence for the second CSR project, that is to say, Tender CSR 3J, which covers a total distance of 6.95 kilometres.
212. Tender CSR 3J constitutes one of the packages in the CSR Project for the construction works of roads, pavements and the construction of bridges. The tender was awarded by JKR to Menang Idaman for RM[REDACTED]. The tender advertisement took place on 12.2.2019 followed by the tender briefing which took place on 18.2.2019.
213. On 15.6.2020, Menang Idaman was issued the Letter of Acceptance for Tender CSR 3J, appointing them as the successful bidder.¹³⁵ The Letter of Acceptance was acknowledged by one Mohd Tarmizi, as a director of Menang Idaman and witnessed by an employee of Menang Idaman, one Mohd Syafiq.¹³⁶
214. Interested bidders were required to attend a tender briefing at *Dewan Cempaka, Bahagian Setor, JKR Daerah Lipis* on 18.2.2019 to be eligible to purchase the tender documents for Tender CSR 3J. The representative of the bidding enterprise attending the tender briefing must be the nominee that is listed in the enterprise's Contractor Registration Certificate issued by CIDB. A total of 238 enterprises attended the tender briefing and subsequently 200 tender submissions were submitted to JKR for Tender CSR 3J.

¹³⁵ [REDACTED]

¹³⁶ [REDACTED]

215. The tender briefing attendees for the respective Parties is as shown in **Table 24** below:

Table 24: Parties' Attendance to the Tender Briefing for Tender CSR 3J¹³⁷

PARTY	REPRESENTATIVE NAME
Dutamesra	Ihsan Bin Asnawi Sabri
IDX	Rahmat Hidayat Mohamed
Mangkubumi	Mohd Faiz Ahlan
Menang Idaman	Mohammad Syafiq Azim Zulkfli
Meranti Budiman	Mohammad Ishak Hashim @ A Razak
NYL	Lokman Hakim Bin Abdul Wahid
Pintas Utama	Fandi Mohd Nafiah

216. Based on the information provided, the Commission finds that each Party had a different representative attending the briefing. Additionally, it should be noted that the individual who purchased the tender documents differed for each Party. The assignment of personnel responsible for purchasing the tender documents for each Party is shown in **Table 25** below:

Table 25: Purchaser for Parties' Tender Documents for Tender CSR 3J¹³⁸

PARTY	REPRESENTATIVE NAME	DATE OF PURCHASE
Dutamesra	Naqib Bin Nor Azman	22.2.2019
IDX	Rahmat Hidayat Mohamed	22.2.2019
Mangkubumi	Faiz Fikry	22.2.2019
Menang Idaman	Affendi Ibrahim	22.2.2019
Meranti Budiman	Nur Emillyana Mat Hassan	22.2.2019
NYL	Fairuliza Binti Razli	26.2.2019
Pintas Utama	Fandi Mohd Nafiah	22.2.2019

¹³⁷ [3<]

¹³⁸ [3<]

217. The signees for the tender documents submitted by the Parties are listed in **Table 26** below:

Table 26: The Signees of Parties' Tender Documents for Tender CSR 3J¹³⁹

PARTY	DIRECTOR SIGNATURE	WITNESS
Dutamesra	Siti Zalifah Umairah Binti Abdullah	Ihsan Bin Asnawi Sabri
IDX	Rahmat Hidayat Bin Mohamed	Norfaezah Binti Nasaruddin
Mangkubumi	Mohd Zulkefli Bin Hj Abdullah	Adninooraize Binti Abu Bakar
Menang Idaman	Mohd Tarmizi Bin Mohd Zuki	Norhayati Binti Che Amat
Meranti Budiman	Mohammad Ishak Hashim @ A Razak	Nur Emillyana Binti Mat Hassan
NYL	Suhaida Binti Che Husin	Fairuliza Binti Razli
Pintas Utama	Fandi Mohd Nafiah	Nurul Ainul Hidayah Soha

218. The Commission's assessment of the pertinent evidence concerning Tender CSR 3J is hereby set out in the following paragraphs. **Table 27** provides an overview of the chronology of events for Tender CSR 3J and the participation of the relevant Parties in the tendering process.

Table 27: Chronology of Tender CSR 3J

DATE	RELEVANT FACTS
12.2.2019	Tender CSR 3J was advertised to the public through the public procurement process.
19.2.2019	Site visit for CSR 3J was held at Pejabat Majlis Daerah Gua Musang
13.3.2019	Original closing date
20.3.2019	Revised Closing date (revised via Addendum)
15.6.2021	JKR issues a Letter of Acceptance to Menang Idaman as the successful bidder
Winning Bid	Tender CSR 3J awarded to Menang Idaman for RM[><] for a period of 36 months

¹³⁹ [><]

219. The nearly identical bid submission prices by each of the eight Parties show a remarkable similarity in the Bill of Quantities prices which had little variation, if any. The similarity in prices strongly indicates that the bidding process had been rigged.

Overview of the Preparation of Tender Documents Process

220. The Commission finds that Mangkubumi, under the instruction of Tan Sri Zainudin Karjan, prepared technical documents for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi, Kiara Kilat and Pintas Utama. Mangkubumi requested quotations from YCH for the tender submissions and YCH then provided its quotation prices to Mangkubumi.¹⁴⁰ Thereafter, Mangkubumi used the quotations prices from YCH as reference figures for the pricing of the Bill of Quantities for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi, and Pintas Utama.

221. The Contract Unit/Quantity Surveyor Unit of Mangkubumi, led by Masytah, coordinated and finalised the pricing for the Bill of Quantities and Summary of Tender after receiving approval from Tan Sri Zainudin Karjan of Mangkubumi.¹⁴¹ According to Masytah, Tan Sri Zainudin Karjan of Mangkubumi ultimately determines the

¹⁴⁰ Paragraphs 9 until 20, 23 until 31, 48 until 51, 63 until 68 and 74 until 79 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024; Paragraph 41, 53, 90 of the Statement of Faiz Fikry recorded on 30.5.2023; Paragraphs 21 and 28 of the Statement of Tan Sri Zainudin Karjan recorded on 19.6.2023; Paragraphs 11 until 13 and 68 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

¹⁴¹ Paragraphs 4, 9 until 20, 23 until 31, 48 until 51, 63 until 68 and 74 until 79 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024; Paragraphs 11 until 13, 68 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

final tender submission prices for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi, and Pintas Utama.¹⁴²

222. The submission of the tender documents belonging to Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi, and Pintas Utama to JKR was arranged by Fandi Mohd Nafiah of Pintas Utama.¹⁴³

Discovery of a Physical Document showing Coordination between the Parties in Tender CSR 3J

223. On 15.2.2023, during the course of the search and seizure exercise at the premises of Pintas Utama, a physical document titled “Tender Exercise”¹⁴⁴ was discovered. This document reveals a matrix that compiles the bid submission prices for Tender CSR 3J from all Parties, namely, Mangkubumi, Dutamesra, Meranti Budiman, Menang Idaman, Pintas Utama, IDX, and NYL. The Commission retrieved this physical document, which is shown in **Image 7** below.

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¹⁴² Paragraph 16 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

¹⁴³ Paragraph 18 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

¹⁴⁴ Seizure List of Pintas Utama on 15.2.2023.

Image 7: "Tender Exercise" document seized from Pintas Utama on 15.2.2023¹⁴⁵

The Parties and their respective bids for Tender CSR 3J

BIL	NAMA TENDER & NO. TENDER	DATE SUBMISSION /CLOSING	PDA / ANGGARAN JABATAN (AJ)	PARTICIPANT / TENDERER	AMOUNT SUBMISSION	REMARK	CUT OFF
	<p>CENTRAL SPINE ROAD PAKEJ 3: GUA MUSANG, KELANTAN KE KG. RELONG, PAHANG SEKSYEN 3: KG SEBERANG JELAI KE KG RELONG, PAHANG</p> <p>CLIENT: JABATAN KERJA RAYA MALAYSIA</p> <p>NO TENDER: JKR/JP/CI/T/2019/14</p>	20/3/2019	<p>PDA: [REDACTED]</p> <p>AJ: [REDACTED]</p>	<p>1. MENANG IDAMAN SDN BHD</p> <p>2. IDX MULTI RESOURCES SDN BHD</p> <p>3. MERANTI BUDIMAN SDN BHD</p> <p>4. DUTAMESRA BINA SDN BHD</p> <p>5. PINTAS UTAMA SDN BHD</p> <p>6. NYL CORPORATION SDN BHD</p> <p>7. MANGKUBUMI SDN BHD</p>	[REDACTED]	<p>ADD NO.1: Ganti mukasurat table of content, summary of tender, BQ, lukisan, lampiran A&B, keluarkan borang CA Tarikh: 6/3/2019</p> <p>ADD NO.2: Lanjutkan tarikh tutup tender Tarikh: 7/3/2019</p> <p>ADD NO.3: Ganti mukasurat table of content, summary of tender, BQ, lukisan, lampiran A&B Tarikh: 11/3/2019</p> <p>LANJUTAN TEMPOH SAHLAKU TENDER Tarikh surat: 11/7/2019</p> <p>LANJUTAN TEMPOH SAHLAKU TENDER Tarikh surat: 23/9/2019</p> <p>*Overall length : 6.95 km</p>	<ul style="list-style-type: none"> • YUSRI MAJU SDN BHD • GP AMZ CONSTRUCTION SDN BHD • SYIFA BINA SDN BHD <p>[REDACTED]</p> <ul style="list-style-type: none"> • MENANG IDAMAN SDN BHD • IDX MULTI RESOURCES SDN BHD • MERANTI BUDIMAN SDN BHD • DUTAMESRA BINA SDN BHD • PINTAS UTAMA SDN BHD • MANGKUBUMI SDN BHD <p>*Turutan syarikat bermula selepas cut off line</p> <p>BERIAYA: MENANG IDAMAN SDN BHD</p> <p>- SST OTW</p>

¹⁴⁵ Seizure List of Pintas Utama on 15.2.2023.

224. This physical document is crucial to the Commission's findings as it evidences the presence of agreements and/or concerted practices to perform bid rigging by coordinating prices in respect of Tender CSR 3J. This document outlines the bid submission prices of all the Parties for Tender CSR 3J and thus establishes that the bidding process was compromised. The Commission finds that the Parties had not acted independently when preparing their tender documents.

ASSESSMENT OF THE PARTIES' BID SUBMISSION PRICES

225. Upon the discovery of the aforesaid physical document at Pintas Utama, the Commission examines the price figures submitted by all of the Parties in relation to Tender CSR 3J.

226. A comparison of the bid submission prices between the Parties is depicted in **Image 8**, **Image 9**, and **Image 10** as shown below.

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Image 8: Price Comparison for Summary of Tender CSR 3J (Bill of Quantities)¹⁴⁶

All Parties have different price submissions with an approximate difference of less than RM 150.00 from one another.

SUMMARY OF TENDER 3J (BILLS OF QUANTITY)							
NO PETENDER	TARGET ENTERPRISE						
	45	18	17	76	152	182	25
SYARIKAT	MEWANG IDAMAN SON. BHD.	IDK MULTI RESOURCES SON. BHD.	MERANTI BUDIMAN SON. BHD.	DITANESRA BINA SON. BHD.	PINTAS UTAMA SON. BHD.	NYL CORPORATION SON. BHD.	MANGKUBUM SON. BHD.
1	GENERAL ITEMS						
2	SITE CLEARANCE & DEMOLITION WORKS						
3	EARTHWORKS						
4	DRAINAGE WORKS						
5	PAVEMENT WORKS						
6	ROAD FURNITURE						
7	GEOTECHNICAL WORKS						
8	STRUCTURES						
8.1A	BRIDGE NO.1 AT CH 742.818 TO CH 781.521						
8.1B	BRIDGE NO.2 AT CH 1071.971 TO CH 1714.672						
8.1C	BRIDGE NO.3 AT CH 2049.808 TO CH 2091.123						
8.1D	BRIDGE NO.4 AT CH 4805 TO CH 5070						
8.1E	BRIDGE NO.5 AT CH 5325.00 TO CH 5290.00						
8.2A	VEHICULAR BOX CULVERT AT CH 3668						
8.2B	VEHICULAR BOX CULVERT AT CH 6505						
9	TRAFFIC MANAGEMENT & CONTROL						
10	ENVIRONMENTAL PROTECTION WORKS						
11	ROUTINE MAINTENANCE WORKS						
12	OCCUPATIONAL SAFETY & HEALTH						
13	PRIME COST & PROVISIONAL SUM						
14	PROVISIONAL SUM FOR CLASS 6L/G2 BUMIPUTRA CONTRACTOR						
	TOTAL						

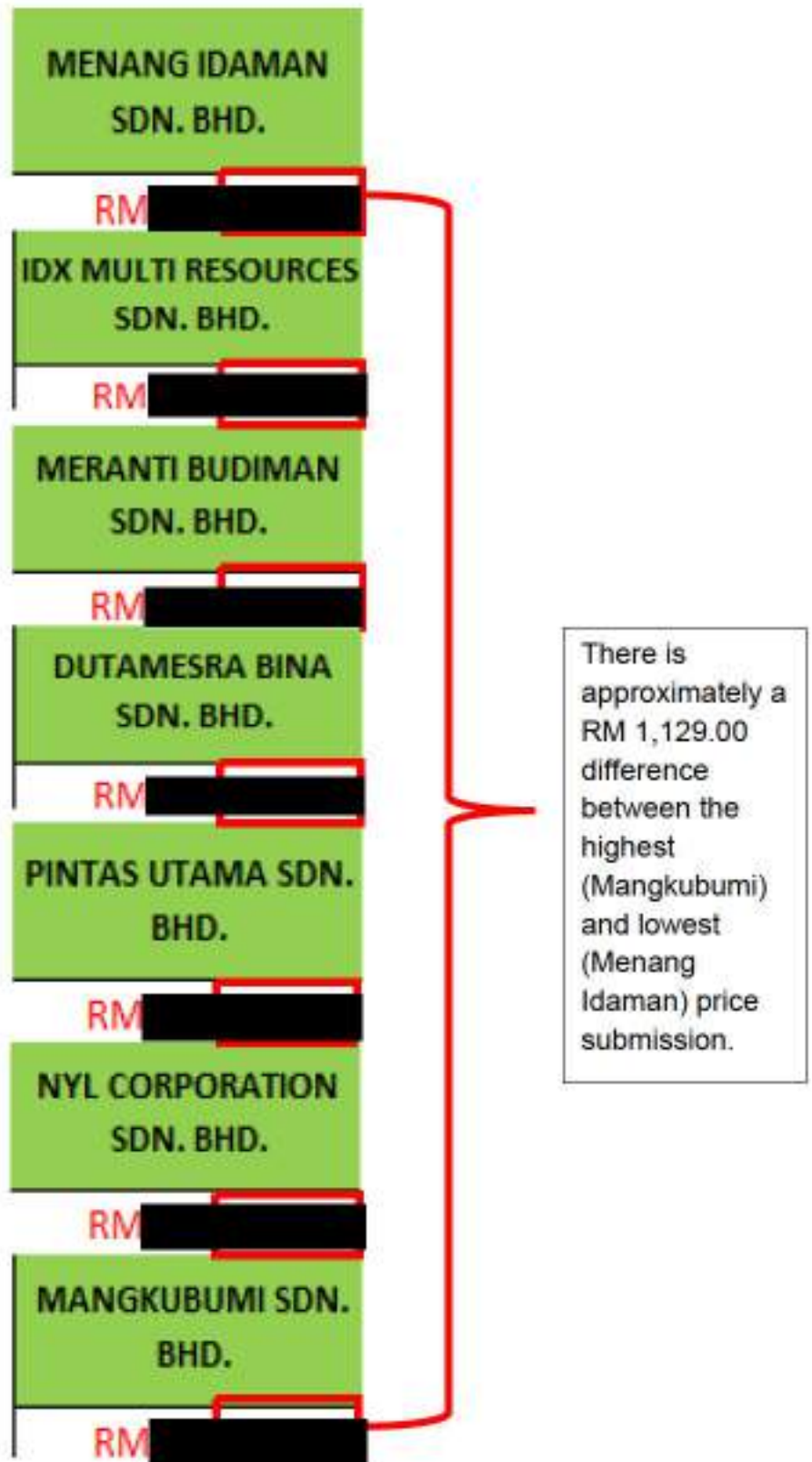
All Parties have identical price except NYL and Mangkubumi which have identical price submissions.

All Parties have different total price submissions with an approximate difference of less than RM250.00 from one another.

All Parties have identical price submissions.

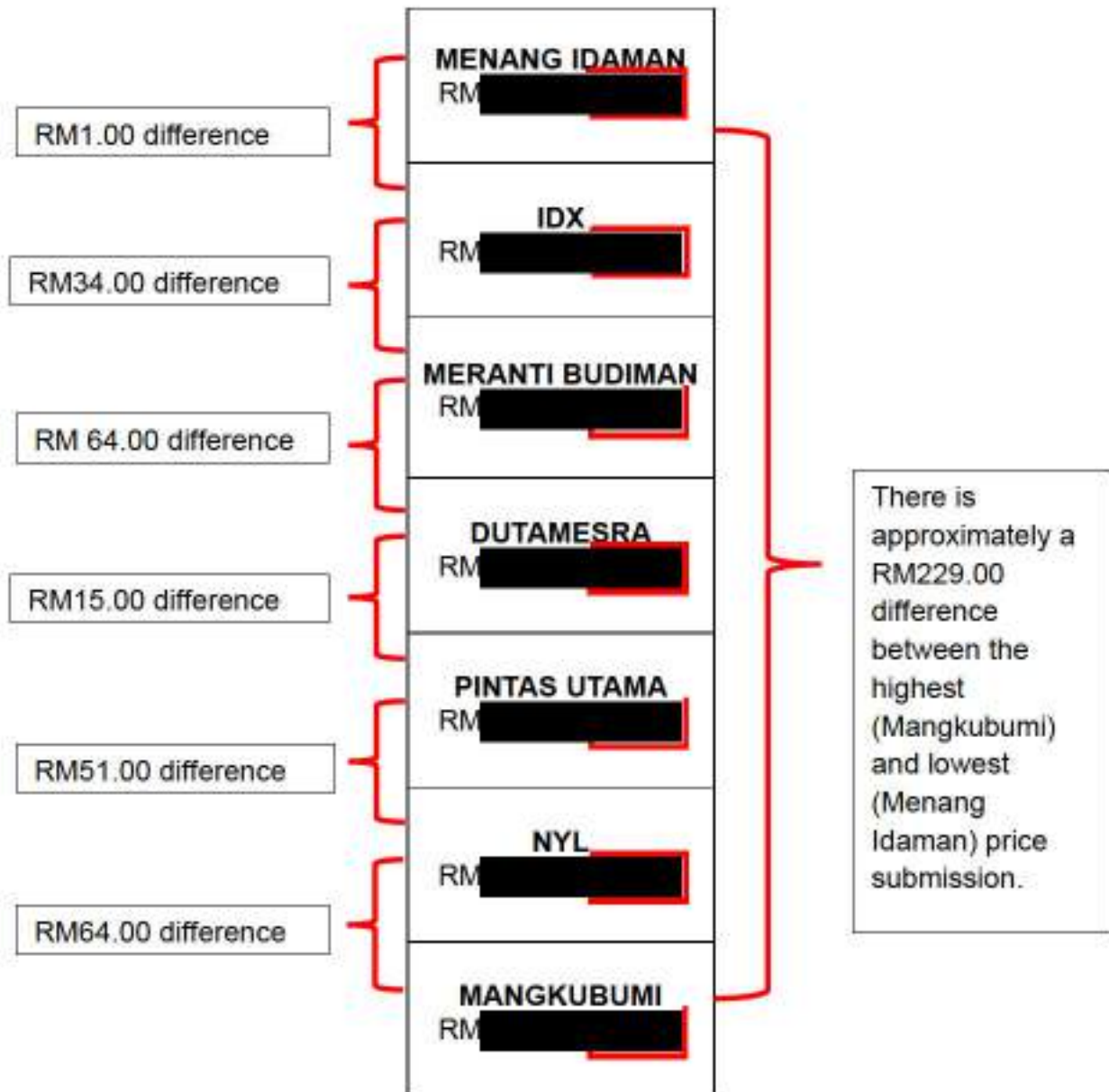
¹⁴⁶ [3<]

Image 9: Price Comparison for Summary of Tender CSR 3J for General Items¹⁴⁷



¹⁴⁷ [x]

Image 10: Total Price Comparison for Summary of Tender CSR 3J¹⁴⁸



¹⁴⁸ [3<]

227. Based on the price comparisons above, the figures quoted by the Parties in their Bill of Quantities are almost similar to one another. In relation to the particulars in “General Items”, there exists a difference of less than RM1,200 between the highest and lowest submission price among the seven bidding Parties. Similarly, when comparing the total prices, a mere difference of RM229.00 is observed between the highest and lowest price submissions. There appears to be no logical explanation other than price coordination by the Parties.
228. Apart from the minimal difference in tender prices, the Commission identifies multiple instances when two or more Parties have quoted identical price. The presence of these overlapping prices suggests the existence of agreements and/or concerted practices with the object to perform bid rigging for Tender CSR 3J.
229. Given the analysis above, the Commission takes the position that judging from the almost similarity in prices an inference could fairly be made that the Parties had exchanged confidential price information in drawing up the Bill of Quantity prices for Tender CSR 3J.

Exchange of Pricing Information through the Preparation of the Bill of Quantities

230. In assessing the Parties’ bid submissions, the Commission finds that the Bill of Quantities plays a vital role in the tender process. The Bill of Quantities is a crucial element of the tender documentation issued to potential suppliers to obtain pricing information. The Bill of Quantities serves as the primary document for calculating

construction costs and ensures a fair and accurate system for tendering. This transparent and useful approach allows the procurement agency, in this case JKR, to compare bid submissions effectively.

231. Usually, a cost consultant, such as a quantity surveyor, prepares the Bill of Quantities by providing project specifications and measured quantities for each tender item. Suppliers then quote their prices for the prescribed items. The priced Bill of Quantities becomes a crucial part of a bidder's tender document. Since the listed items are identical for all bidders, JKR can directly compare the overall price and individual items with other offers, enabling a thorough evaluation of the value provided by each bidder.
232. In relation to Tender CSR 3J, the Commission analyses the facts and evidence gathered from the investigation such as tender documents, email communications, and statement evidence in relation to the pricing of the Bill of Quantities which revolves around the process of obtaining prices from YCH, a consultant and subcontractor of Mangkubumi.

Email Correspondences Involving Mangkubumi, YCH, Pintas Utama and Meranti Budiman

233. In addition to the above, the Commission retrieved emails from Faiz Fikry's personal computer, revealing an exchange of emails among four Parties, namely, Mangkubumi, YCH, Pintas Utama and Meranti Budiman. The exchange of emails between the four Parties are set out below in **Table 28**:

Table 28: Exchange of Emails between Parties for Tender CSR 3J

EMAIL	PARTIES INVOLVED	DETAILS
Email H ¹⁴⁹	Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama (Sender) and YCH at [redacted]@live.com (Recipient)	<ul style="list-style-type: none"> • Email H dated 6.3.2019 at 9:06am, states "Softcopy BQ Pakej 3J as requested by Bryan" in the body of the email. The email was sent by the email account [redacted]@gmail.com to [redacted]@live.com. It also contains an attachment in the form of an Excel spreadsheet document, which includes the Blank Bill of Quantities for Tender CSR 3J. • Faiz Fikry, Quantity Surveyor of Mangkubumi/Pintas Utama since 2015, owns the email account [redacted]@gmail.com¹⁵⁰ • The recipient ([redacted]@live.com) is an email account which belongs to YCH.
Email B ¹⁵¹	Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama	<ul style="list-style-type: none"> • Email B dated 8.3.2019 at 11:58 AM, sent two attachments from [redacted]@live.com to [redacted]@gmail.com. • Faiz Fikry of Mangkubumi explained that Email B was a response to Email A, and further informed that the attachment pertained to CSR 3J.¹⁵²

¹⁴⁹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com dated 6.3.2019 at 9.06 a.m. with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3J: KG. SEBERANG JELAI KE KG. RELONG, PAHANG").

¹⁵⁰ Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 15.2.2023; Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁵¹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@live.com to [redacted]@gmail.com dated 8.3.2019 at 11.58 a.m. with the subject line "BQ – GUA MUSANG (3B3C & 3J)."

¹⁵² Paragraphs 12 and 13 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

EMAIL	PARTIES INVOLVED	DETAILS
		<ul style="list-style-type: none"> Chan Wai Hong of YCH stated he sent this email as a regular response to the quotation requested by Faiz Fikry in Email A.¹⁵³
Email C ¹⁵⁴	Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama	<ul style="list-style-type: none"> On 8.3.2019, at 4:08 PM, Chan Wai Hong (Bryan) sent Email C to Mangkubumi. Changes were made to the figures contained in the attachment of Email B for items Bill No. 8.1A to 8.1C.
Email D ¹⁵⁵	Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama	<ul style="list-style-type: none"> Following Email C, YCH sent Email D dated 8.3.2019, at 5:52 PM demonstrating a second round of changes made to items Bill No. 8.1A to 8.1C. Due to these changes, the total amount of the Bill of Quantities changed from RM[redacted] to RM[redacted].
Email E ¹⁵⁶	Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama; carbon copied to Munaim at [redacted]@gmail.com, Quantity Surveyor of Meranti Budiman	<ul style="list-style-type: none"> Email E dated 15.3.2019 at 12:31 PM included a revised version of Summary of Tender with a completed Bill of Quantities. Munaim of Meranti Budiman is carbon copied on this email.

¹⁵³ Paragraphs 18, 19 and 21 of the Statement of Chan Wai Hong of YCH recorded on 15.6.2023.

¹⁵⁴ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 8.3.2019 at 4.08 p.m. with the subject line "UPDATED – BQ (GUA MUSANG – 3B3C & 3J)].

¹⁵⁵ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 8.3.2019 at 5.52 p.m. with the subject line "BQ GUA MUSANG (3B & 3C) & (3J)].

¹⁵⁶ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 15.3.2019 at 12.31 p.m. with the subject line "TENDER BQ FOR GUA MUSANG 3B & 3C, 3J & SG MABUK].

EMAIL	PARTIES INVOLVED	DETAILS
Email F ¹⁵⁷	Chan Wai Hong (Bryan) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama; carbon copied to Quantity Surveyor of Meranti Budiman/Pintas Utama	<ul style="list-style-type: none"> Email F dated 15.3.2019 at 12:35 PM, reflects revisions made to the prices in Email E for item Bill No. 8.1A, No.10, resulting in a change in the total amount of the Bill of Quantities changed from RM[redacted] to RM[redacted]. Similar to Email E, Email F was also carbon copied to Munaim.
Email I ¹⁵⁸	Masytah at [redacted]@gmail.com, Head of Contract Unit/Quantity Surveyor of Mangkubumi to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama	<ul style="list-style-type: none"> Email I dated 22.3.2019 at 9:03 AM, contains an Excel spreadsheet attachment titled "BQ – Gua Musang 3J_20.3.2019" which includes a filled-out Bill of Quantities for Tender CSR 3J for Mangkubumi, Menang Idaman, IDX, Dutamesra, Pintas Utama, Meranti Budiman, and NYL.

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¹⁵⁷ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@live.com to [redacted]@gmail.com dated 15.3.2019 at 12.35 p.m. with the subject line "LATEST- TENDER BQ FOR GUA MUSANG 3B & 3C, 3J & SG MABUK].

¹⁵⁸ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@gmail.com to [redacted]@gmail.com dated 22.3.2019 at 9.04 a.m. with the subject line "TENDER: GUA MUSANG SEK 3J"].

234. During the search and seizure exercise at Pintas Utama on 15.2.2023, the Commission discovered several emails seized from Faiz Fikry's computer. These emails involved personnel from Mangkubumi, Pintas Utama, Meranti Budiman, and YCH, and pertained to the preparation of bids for Tender CSR 3J. Email H¹⁵⁹ sent from the email account [X]@gmail.com to [X]@live.com,¹⁶⁰ contained an attachment titled "PAKEJ 3J GUA MUSANG.xls". Faiz Fikry of Mangkubumi/Pintas Utama who worked as a Quantity Surveyor of Mangkubumi since 2015 owned the email account [X]@gmail.com.¹⁶¹ The recipient ([X]@live.com), is the company email account belonging to YCH.¹⁶²

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¹⁵⁹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [X]@gmail.com to [X]@live.com dated 6.3.2019 at 9.06 a.m. with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3J: KG. SEBERANG JELAI KE KG. RELONG, PAHANG").

¹⁶⁰ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [X]@gmail.com to [X]@live.com dated 6.3.2019 at 12.41 p.m. with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3B DA 3C: KM 180.5 FT08 KE BULATAN GUA MUSANG]

¹⁶¹ Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 15.2.2023; Paragraph 1 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁶² Paragraph 9 of the Statement of Chan Wai Hong recorded on 15.6.2023.

Image 11: Screenshot of Email H¹⁶³



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¹⁶³ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com dated 6.3.2019 at 9.05 a.m. with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3J: KG. SEBERANG JELAI KE KG. RELONG, PAHANG").

Image 11A: Excel Spreadsheet Attachment to Email H¹⁶⁴

PAKEJ 3: GUA MUSANG, SELATAN KE KG. RELONG, PAHANG SUKSESMAI - NO. 10788888, 21.04 KE KG. RELONG, PAHANG			
SUMMARY OF TENDER			
Item	DESCRIPTION OF WORKS	FROM PAGE	AMOUNT (RM)
1	GENERAL ITEMS	00 1 - 55	--
2	SITE CLEARANCE & DEMOLITION WORKS	00 2 - 02	--
3	EARTHWORKS	00 3 - 32	--
4	DRAINAGE WORKS	00 4 - 08	--
5	PAVEMENT WORKS	00 5 - 44	--
6	ROAD FURNITURE	00 6 - 30	--
7	GEOTECHNICAL WORKS	00 7 - 55	--
8	STRUCTURES		
8.1 A	BRIDGE NO. 1 AT CH 222.98 TO CH 221.021	00 8.1 A - 66	--
8.1 B	BRIDGE NO. 2 AT CH 1371.871 TO CH 1374.872	00 8.1 B - 173	--
8.1 C	BRIDGE NO. 3 AT CH 2045.585 TO CH 2051.122	00 8.1 C - 177	--
8.1 D	BRIDGE NO. 4 AT CH 4386 TO CH 4393	00 8.1 D - 177	--
8.1 E	BRIDGE NO. 5 AT CH 428.38 TO CH 428.38	00 8.1 E - 177	--
8.2 A	VEHICULAR BOX CULVERT AT CH 3600	00 8.2 A - 23	--
8.2 B	VEHICULAR BOX CULVERT AT CH 8000	00 8.2 B - 23	--
9	TRAFFIC MANAGEMENT & CONTROL	00 9 - 43	--
10	ENVIRONMENTAL PROTECTION WORKS	00 10 - 99	--
11	WATER SUPPLY SERVICE WORKS	00 11 - 44	--
12	CONSTRUCTION SAFETY & HEALTH	00 12 - 33	--
13	PRIME COST SUM & PROVISIONAL SUM	00 13 - 22	--
14	PROVISIONAL SUM FOR CLASS 0 USD QUANTITY CONTRACTOR	00 14 - 52	--
TOTAL AMOUNT CARRIED TO FORM OF TENDER			
Contractor:		Address:	
Signature:		Signature:	
SUMM B01.1 B01.2 B01.3 B01.4 B01.5 B01.6 B01.7 B01.8 B01.9 B01.10 B01.11 B01.12 B01.13			

235. As shown in **Image 11** and **Image 11A**, Email H was sent by Faiz Fikry of Mangkubumi/Pintas Utama to YCH in order to obtain a price quotation from YCH.¹⁶⁵ Chan Wai Hong of YCH also confirmed that the exchange of emails regarding obtaining price quotations was a normal occurrence between Mangkubumi/Pintas Utama and YCH.¹⁶⁶ Based on Email H, the Commission finds that confidential information regarding the Bill of Quantities prices was shared between Mangkubumi and Pintas Utama through the role of Faiz Fikry who assumed the role of Contract Manager in both Mangkubumi and Pintas Utama during the tender preparation process.

¹⁶⁴ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com dated 6.3.2019 at 9.05 a.m. with the subject line "PAKEJ 3: GUA MUSANG, SEKSYEN 3J: KG. SEBERANG JELAI KE KG. RELONG, PAHANG").

¹⁶⁵ Paragraphs 8 and 9 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁶⁶ Paragraphs 14 until 16 of the Statement of Chan Wai Hong of YCH recorded on 15.6.2023.

236. Similar to Tender CSR 3B and 3C, Faiz Fikry clarified that there was a need to revise quotation prices with YCH when some items initially quoted by YCH were incorrectly priced. The revision of quotations was said to be a common occurrence when obtaining quotations from subcontractors.¹⁶⁷ The Commission also discovered that personnel from Meranti Budiman were once again included in the chain of communications through being a carbon copy recipient as stated in Email E.
237. Based on the chain of emails between the personnel of Mangkubumi, Pintas Utama, Meranti Budiman and YCH, the Commission infers that Mangkubumi, Pintas Utama and Meranti Budiman actively collaborated in preparing the tender documents for Tender CSR 3J. Although Tender CSR 3J was awarded to IDX by JKR, Mangkubumi took the role of the principal contractor and appointed YCH as their subcontractor to carry out all the works under the project except the provisional sum and prime cost sum.¹⁶⁸
238. With reference to the attachments found in Email A through Email F, the Excel spreadsheet containing the Bill of Quantities had undergone multiple pricing changes. As evidenced by the chain of emails, the Commission finds that the personnel from Mangkubumi, Pintas Utama, and Meranti Budiman collaborated in preparing the tender documents.

¹⁶⁷ Paragraphs 17 and 18 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023; Paragraph 27 of the Statement of Chan Wai Hong of YCH recorded on 15.6.2023.

¹⁶⁸ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Excel spreadsheet titled 'Status Project Mangkubumi Group' dated 29.12.2022).

239. The Commission is of the view that YCH and the enterprises of the “Mangkubumi Group,” namely Mangkubumi, Pintas Utama, and Meranti Budiman, closely collaborated in the preparation of the tender documents for Tender CSR 3J.

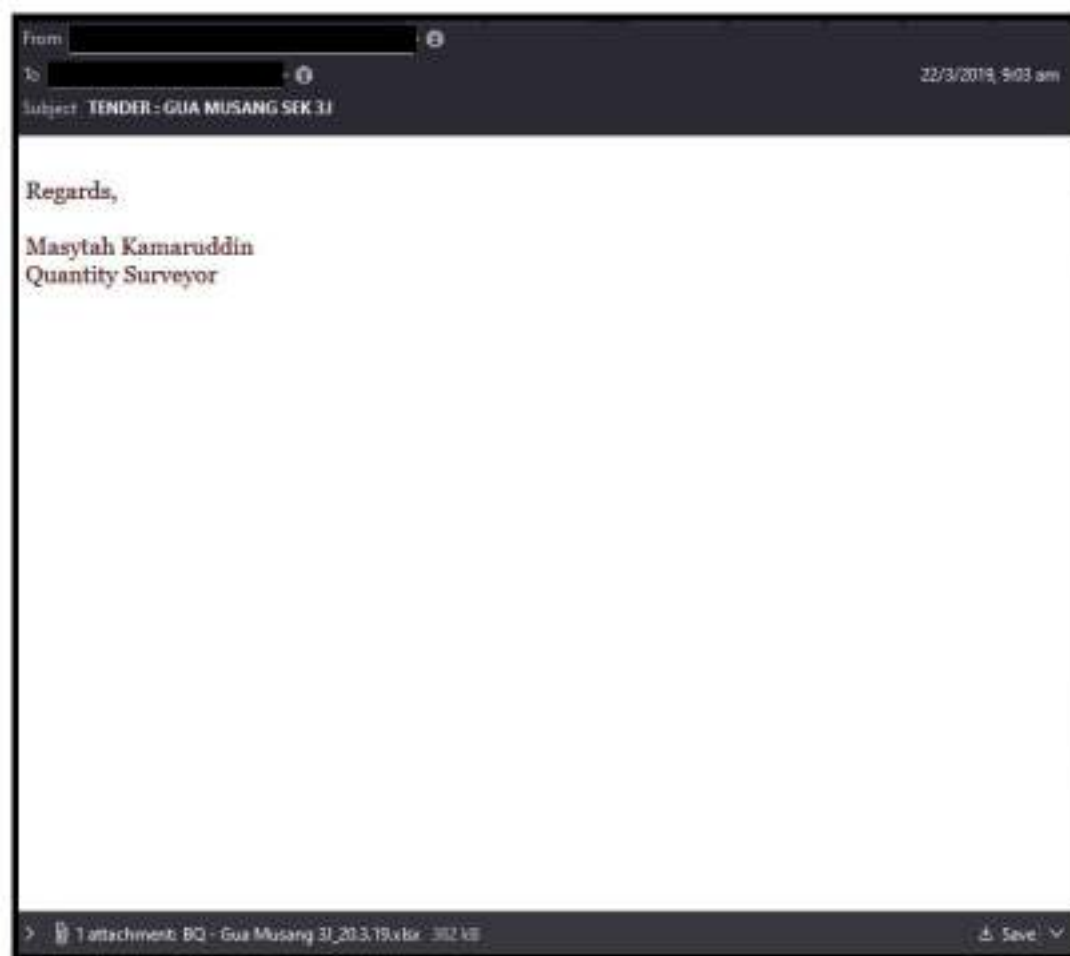
Exchange of Bill of Quantities Prices Between the Parties in Tender CSR 3J

240. The Commission also discovered “Email I” dated 22.3.2019 at 9:04AM. This email sent from [✂]@gmail.com to [✂]@gmail.com, includes an Excel spreadsheet attachment titled BQ – Gua Musang 3J_20.3.2019¹⁶⁹, providing further evidence to establish the exchange of Bill of Quantities prices between the Parties in Tender CSR 3J.

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¹⁶⁹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [✂]@gmail.com to [✂]@gmail.com dated 22.3.2019 at 9.04 a.m. with the subject line “TENDER: GUA MUSANG SEK 3J].

Image 12: Screenshot of Email I¹⁷⁰



241. In the Excel spreadsheet attachment in Email I, there was a completed Bill of Quantities related to Tender CSR 3J for Meranti Budiman, Menang Idaman, IDX, Dutamesra, Pintas Utama, Mangkubumi and NYL.

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¹⁷⁰ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@gmail.com to [redacted]@gmail.com dated 22.3.2019 at 9.04 a.m. with the subject line "TENDER: GUA MUSANG SEK 3J].

Image 12A: Screenshot of the Bill of Quantities in Email 1¹⁷¹

CENTRAL SPINE ROAD PAKEJ 3: GUA MUSANG KELANTAN KE KG RELONG, PAHANG - SEKSYEN 3J : KG. SEBERANG JELAI KE KG. RELONG										
SUMMARY OF TENDER										
BILL NO.	DESCRIPTION OF WORKS	FROM PAGE	MY	MBSR 1	MISR	IVK	DARSR	BISR	MYGM	ML
			AMOUNT (RM)	AMOUNT (RM)	AMOUNT (RM)	AMOUNT (RM)	AMOUNT (RM)	AMOUNT (RM)	AMOUNT (RM)	AMOUNT (RM)
1	GENERAL ITEMS	BQ 1 - 5/5								
2	SITE CLEARANCE & DEMOLITION WORKS	BQ 2 - 2/2								
3	EARTHWORKS	BQ 3 - 3/3								
4	DRAINAGE WORKS	BQ 4 - 9/9								
5	PAVEMENT WORKS	BQ 5 - 4/4								
6	ROAD FURNITURE	BQ 6 - 3/3								
7	GEOTECHNICAL WORKS	BQ 7 - 5/5								
8	STRUCTURES									
8.1A	BRIDGE NO.1 AT CH 742.318 TO CH 781.521	BQ 8.1A - 6/6								
8.1B	BRIDGE NO.2 AT CH 1671.971 TO CH 1714.472	BQ 8.1B - 13/13								
8.1C	BRIDGE NO.3 AT CH 2649.609 TO CH 2991.123	BQ 8.1C - 7/7								
8.1D	BRIDGE NO.4 AT CH 4805 TO CH 5079	BQ 8.1D - 7/7								
8.1E	BRIDGE NO.5 AT CH 5325.00 TO CH 5592.00	BQ 8.1E - 7/7								
8.2A	VEHICULAR BOX CULVERT AT CH 3865	BQ 8.2A - 3/3								
8.2B	VEHICULAR BOX CULVERT AT CH 6595	BQ 8.2B - 3/3								
9	TRAFFIC MANAGEMENT & CONTROL	BQ 9 - 4/4								
10	ENVIRONMENTAL PROTECTION WORKS	BQ 10 - 9/9								
11	ROUTINE MAINTENANCE WORKS	BQ 11 - 4/4								
12	OCCUPATIONAL SAFETY & HEALTH	BQ 12 - 3/3								
13	PRIME COST SUM & PROVISIONAL SUM	BQ 13 - 3/3								
14	PROVISIONAL SUM FOR CLASS 0102 BUMPUTRA CONTRACTOR	BQ 14 - 2/2								
TOTAL AMOUNT CARRIED TO FORM OF TENDER										

¹⁷¹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@gmail.com to [redacted]@gmail.com dated 22.3.2019 at 9.04 a.m. with the subject line "TENDER: GUA MUSANG SEK 3J].

242. Despite being listed as an employee of Mangkubumi, Faiz Fikry prepared the tender documents for the Parties under the “Mangkubumi Group” for Tender CSR 3J.¹⁷² However, Faiz Fikry informed the Commission that he was not assigned or responsible for preparing the tender documents for NYL.¹⁷³

243. The Commission analysed the figures stated in the Excel spreadsheet attachments in Email I and Email F to assess the involvement of NYL in the bid rigging arrangements. The attachments are shown in **Image 13** and **Image 14** as follows:

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¹⁷² Paragraphs 89 to 92 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

¹⁷³ Paragraph 91 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

Image 13: Screenshot of Excel Spreadsheet Attachment in Email F¹⁷⁴

CENTRAL SPINE ROAD PAKEJ 3: GUA MUSANG KELANTAN KE KG RELONG, PAHANG *SEKSYEN 3J : KG. SEBERANG JELAI KE KG. RELONG			
SUMMARY OF TENDER			
BILL NO.	DESCRIPTION OF WORKS	FROM PAGE	AMOUNT (RM)
1	GENERAL ITEMS	BQ 1 - 5/5	
2	SITE CLEARANCE & DEMOLITION WORKS	BQ 2 - 2/2	
3	EARTHWORKS	BQ 3 - 3/3	
4	DRAINAGE WORKS	BQ 4 - 3/3	
5	PAVEMENT WORKS	BQ 5 - 4/4	
6	ROAD FURNITURE	BQ 6 - 3/3	
7	GEOTECHNICAL WORKS	BQ 7 - 5/5	
8	STRUCTURES		
8.1A	BRIDGE NO.1 AT CH 742.318 TO CH 781.521	BQ 8.1A - 6/6	
8.1B	BRIDGE NO.2 AT CH 1071.971 TO CH 1714.472	BQ 8.1B - 13/13	
8.1C	BRIDGE NO.3 AT CH 2049.608 TO CH 2091.123	BQ 8.1C - 7/7	
8.1D	BRIDGE NO.4 AT CH 4805 TO CH 5070	BQ 8.1D - 7/7	
8.1E	BRIDGE NO.5 AT CH 5325.00 TO CH 5530.00	BQ 8.1E - 7/7	
8.2A	VEHICULAR BOX CULVERT AT CH 3668	BQ 8.2A - 3/3	
8.2B	VEHICULAR BOX CULVERT AT CH 6505	BQ 8.2B - 3/3	
9	TRAFFIC MANAGEMENT & CONTROL	BQ 9 - 4/4	
10	ENVIRONMENTAL PROTECTION WORKS	BQ 10 - 9/9	
11	ROUTINE MAINTENANCE WORKS	BQ 11 - 4/4	
12	OCCUPATIONAL SAFETY & HEALTH	BQ 12 - 3/3	
13	PRIME COST SUM & PROVISIONAL SUM	BQ 13 - 3/3	
14	PROVISIONAL SUM FOR CLASS G1/G2 BUMIPUTRA CONTRACTOR	BQ 14 - 2/2	
TOTAL AMOUNT CARRIED TO FORM OF TENDER :			

¹⁷⁴ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@gmail.com to [redacted]@gmail.com dated 22.3.2019 at 9.04 a.m. with the subject line "TENDER: GUA MUSANG SEK 3J].

Image 14: Screenshot of Excel Spreadsheet Attachment in Email ¹⁷⁵

CENTRAL SPINE ROAD PAKEJ 3: GUA MUSANG KELANTAN KE KG RELONG, PAHANG -SEKSYEN 3J : KG. SEBERANG JELAI KE KG. RELONG										
SUMMARY OF TENDER										
BILL NO.	DESCRIPTION OF WORKS	FROM PAGE	NYL AMOUNT (RM)	MIBS 1 AMOUNT (RM)	MIBS AMOUNT (RM)	IOX AMOUNT (RM)	DMBS AMOUNT (RM)	PUSD AMOUNT (RM)	MKBM AMOUNT (RM)	NYL AMOUNT (RM)
1	GENERAL ITEMS	BQ 1 - 5/5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	SITE CLEARANCE & DEMOLITION WORKS	BQ 2 - 2/2								
3	EARTHWORKS	BQ 3 - 3/3								
4	DRAINAGE WORKS	BQ 4 - 9/9								
5	PAVEMENT WORKS	BQ 5 - 4/4								
6	ROAD FURNITURE	BQ 6 - 3/3								
7	GEOTECHNICAL WORKS	BQ 7 - 5/5								
8	STRUCTURES									
8.1A	BRIDGE NO.1 AT CH 742.318 TO CH 781.521	BQ 8.1A - 6/6								
8.1B	BRIDGE NO.2 AT CH 1071.971 TO CH 1714.472	BQ 8.1B - 13/13								
8.1C	BRIDGE NO.3 AT CH 2049.608 TO CH 2091.123	BQ 8.1C - 7/7								
8.1D	BRIDGE NO.4 AT CH 4825 TO CH 5070	BQ 8.1D - 7/7								
8.1E	BRIDGE NO.5 AT CH 5325.00 TO CH 5590.00	BQ 8.1E - 7/7								
8.2A	VEHICULAR BOX CULVERT AT CH 3888	BQ 8.2A - 3/3								
8.2B	VEHICULAR BOX CULVERT AT CH 8505	BQ 8.2B - 3/3								
9	TRAFFIC MANAGEMENT & CONTROL	BQ 9 - 4/4								
10	ENVIRONMENTAL PROTECTION WORKS	BQ 10 - 9/9								
11	ROUTINE MAINTENANCE WORKS	BQ 11 - 4/4								
12	OCCUPATIONAL SAFETY & HEALTH	BQ 12 - 3/3								
13	PRIME COST SUM & PROVISIONAL SUM	BQ 13 - 3/3								
14	PROVISIONAL SUM FOR CLASS G1/G2 BUMPUTRA CONTRACTOR	BQ 14 - 2/2								
TOTAL AMOUNT CARRIED TO FORM OF TENDER :										

¹⁷⁵ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) [Email from [redacted]@gmail.com to [redacted]@gmail.com dated 22.3.2019 at 9.04 a.m. with the subject line "TENDER: GUA MUSANG SEK 3J].

244. Referring to **Image 14** and Email I, the spreadsheet exhibits an anomaly where the company name "NYL" appears twice, with two sets of figures presented in separate columns. When shown Email I which was sent by an email address belonging to Masytah, Masytah clarified to the Commission that a possibility why NYL was included in the Excel spreadsheet was that NYL was a company affiliated with YCH. Further, Masytah explained that one of the reasons why NYL's prices were similar to the "Mangkubumi Group" companies is possibly due to the fact that NYL/YCH cooperated with Tan Sri Zainudin Karjan of Mangkubumi for Tender CSR 3J.¹⁷⁶ Upon careful examination of the figures, the Commission observes that the figures on the left-hand side of the NYL column match the set of figures transmitted by YCH to Faiz Fikry in **Image 13** and Email F.
245. The Commission finds that the involvement of NYL in this arrangement is possible based on the active communications between the personnel of Mangkubumi/Pintas Utama and the personnel of YCH.
246. The Commission also infers that the figures submitted by YCH as depicted in **Image 13** and Email F were employed as reference price figures for the tender submissions of Mangkubumi, Menang Idaman, IDX, Pintas Utama, Dutamesra, Meranti Budiman and NYL for Tender CSR 3J.
247. The Commission takes the position that an arrangement exists between Mangkubumi and Meranti Budiman to coordinate in

¹⁷⁶ Paragraphs 89 and 90 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

preparing their Tender CSR 3J documents. This arrangement is evident from the email communications between Mangkubumi and Meranti Budiman in Email H and Email B through Email F. Although Tender CSR 3J was awarded to Menang Idaman by JKR, Mangkubumi took the role of the principal contractor and appointed YCH as their subcontractor to carry out all of the works under the project except the provisional sum and prime cost sum.

Financial Benefits Obtained by the “Mangkubumi Group” in Relation to Tender CSR 3J

248. As discussed in the preceding paragraphs, the Commission finds that the “Mangkubumi Group” obtained financial benefits from engaging in the agreements and/or concerted practices to rig Tender CSR 3J.

249. In evaluating the tender prices, the Commission examines three distinct stages: (1) the pre-award stage of the contract, (2) the awarding stage of the contract, and (3) the post-award stage of the contract, namely, the subcontracting stage.

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Table 29: Comparison of Prices Between YCH Quotation Rate, Contract Value and Subcontract Value

TENDER	(1)	(2)	(3)	(4)
	Quoted Rate by YCH ¹⁷⁷	Contract Value Won ¹⁷⁸	Provisional Sum & Prime Cost Sum ¹⁷⁹	Subcontract Rate awarded to YCH ¹⁸⁰
CSR 3J	RM[><]	RM[><]	RM[><]	RM[><]

250. The Commission identifies the following processes regarding the determination of Tender CSR 3J prices, as illustrated by the above **Table 29**:

- (a) YCH initially provided its price of RM[><] to Mangkubumi (stated in Column 1 of **Table 29**).
- (b) Tender CSR 3J was then awarded to Menang Idaman for the contract value of RM[><] (stated in Column 2 of **Table 29**).
- (c) The sum of RM[><] as stated in Column 3 of **Table 29** refers to the provisional sum¹⁸¹ and prime cost sum¹⁸², which constitutes one of the elements in the contract value awarded to Menang Idaman;
- (d) After being selected as the successful bidder, Menang Idaman subcontracted the entire works of Tender CSR 3J to

¹⁷⁷ Excel spreadsheet in Email F dated 15.3.2019.

¹⁷⁸ [><]

¹⁷⁹ [><]

¹⁸⁰ Letter of Award issued by Menang Idaman to YCH for Tender CSR 3J dated 23.7.2020.

¹⁸¹ Note: A provisional sum is a sum provided in a contract for work to be executed or for the supply of any equipment, materials or goods which cannot be entirely foreseen, defined, or detailed at the date of submission of the tender.

¹⁸² Note: A prime cost sum is a sum provided in the contract for works or services to be executed by a nominated sub-contractor or for any equipment, materials, or goods to be supplied by a nominated supplier.

Mangkubumi¹⁸³ and thereafter, Mangkubumi sub-subcontracted the said works to YCH with the value of RM[><] as stated in Column 4 of **Table 29**, which is the amount excluding the provisional sum and prime cost sum amounting to RM[><] as stated in Column 3 of **Table 29**.

Table 30: Calculation of the Percentage of Inflation of Tender Prices for Tender CSR 3J

TENDER	A	B	C
	(2) - (3) ¹⁸⁴	(A) - (4) ¹⁸⁵	B/A
CSR 3J	RM[><]	RM[><]	24%

251. In relation to the bid rigging conduct, the Commission finds that the inflated price is derived by using the tender prices of the successful bidder of the tender. We presume that the price agreed between Menang Idaman, Mangkubumi, and YCH, along with the provisional sum and prime cost sum, represents the actual value of Tender CSR 3J. The inflated price by Menang Idaman, Mangkubumi, and YCH for Tender CSR 3J can be derived using the following formula:

- (a) RM[><] (Value A of **Table 30**) is derived by subtracting the provisional sum and prime cost sum (RM[><]) from the contract value awarded to Menang Idaman (RM[><]).
- (b) RM[><] (Value B of **Table 30**) represents the difference between Value A of **Table 30** (RM[><]) and the agreed

¹⁸³ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Excel spreadsheet titled 'Status Project Mangkubumi Group' dated 29.12.2022).

¹⁸⁴ Figures derived from Table 29.

¹⁸⁵ Figures derived from Table 29.

subcontracting value between Menang Idaman, Mangkubumi and YCH (RM[~~×~~]) [Column 4 of **Table 30**].

- (c) Value C of **Table 30** (24%) is the percentage of inflation of the contract value derived by calculating Value B (RM[~~×~~]) as a percentage in relation to Value A (RM[~~×~~]).

252. The Commission finds that Menang Idaman and Mangkubumi gained a 24% increase in mark-up percentage in Tender CSR 3J after subcontracting the entire project to YCH.

253. With regard to Tender CSR 3J, based on the above analysis, the award of the tender in the sum of RM[~~×~~] to the successful bidder, Menang Idaman, as a result of bid riggings by the Parties, had caused loss to the Government. This loss is in the sum of RM[~~×~~] which is equivalent to the profit accrued by Menang Idaman as explained in **paragraphs 251 and 252** above. In other words, the Government would have saved the sum of RM[~~×~~] had there been no bid riggings.

254. Based on the above, the Commission finds that Dutamesra, IDX, Mangkubumi, Menang Idaman, Meranti Budiman, NYL, and Pintas Utama had engaged in agreements and/or concerted practices to perform bid rigging in the tendering process for Tender CSR 3J.

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E.4 TENDER RTB SUNGAI BULOH

255. This section will set out the facts, evidence, and analysis of the evidence for Tender RTB Sungai Buloh. Tender RTB Sungai Buloh was advertised on 14.11.2019 through the public procurement process by JPS in relation to the supply of construction works and a flood control system for a Sungai Buloh flood mitigation project.

256. Based on the facts gathered, the Parties for Tender RTB Sungai Buloh involves the “Mangkubumi Group” and YCH. The Mangkubumi group consists of six Parties, namely: -

- (i) Dutamesra;
- (ii) IDX;
- (iii) Mangkubumi;
- (iv) Menang Idaman;
- (v) Meranti Budiman; and
- (vi) Pintas Utama.

Similar to the CSR Projects, YCH is involved in the bid rigging scheme by facilitating the “Mangkubumi Group” by supplying tender quotation prices for the purpose of preparing the tender document prices.

257. Based on Tender RTB Sungai Buloh documents, a bidder is required to provide the supply of construction works and flood control system. The tender was awarded to IDX for RM[~~8~~]. The tender was advertised by Jabatan Pengairan dan Saliran (“JPS”) on 12.2.2019 and a tender briefing was held on 28.11.2019.

258. On 13.10.2020, the Letter of Acceptance for Tender RTB Sungai Buloh was issued to IDX.¹⁸⁶ Rahmat Hidayat, the director of IDX, acknowledged the Letter of Acceptance, with the presence of Mohd Faizal Omar, an employee of IDX, acting as a witness.¹⁸⁷
259. Interested bidders were required to attend a tender briefing at the JPS office, Kuala Selangor on 28.11.2019 to be eligible for purchasing the tender documents for Tender RTB Sungai Buloh. The representative of the bidding enterprise eligible to attend must be required to be listed as a nominee in the enterprise's Contractor Registration Certificate, issued by the CIDB. A total of 197 enterprises attended the tender briefing and 163 tender submissions were submitted to JPS.
260. The tender briefing attendees for the respective Parties are as follows:

Table 31: Parties' Attendance to the Tender Briefing for Tender RTB Sungai Buloh¹⁸⁸

PARTY	NAME
Dutamesra	Ihsan Bin Asnawi Sabri
IDX	Rahmat Hidayat Mohamed
Mangkubumi	Mohd Zulkefli Hj Abdullah
Menang Idaman	Mohammad Syafiq Azim Bin Zulkfli
Meranti Budiman	Mohd Hairul Azeem Hairuddin
Pintas Utama	Fandi Mohd Nafiah

¹⁸⁶ [redacted]

¹⁸⁷ [redacted]

¹⁸⁸ [redacted]

261. Based on the information provided, the Commission observes that each Party had a different representative attending the briefing. Additionally, it should be noted that the individual who purchased the tender documents varied for each Party. The assignment of personnel responsible for purchasing the tender documents for each Party is listed in **Table 32** below:

Table 32: Purchaser for Parties' Tender Documents for Tender RTB Sungai Buloh¹⁸⁹

PARTY	NAME	DATE OF PURCHASE
Dutamesra	Naqib Nor Azman	4.12.2019
IDX	Mohamad Amirul Zakwan Bin Zahari	4.12.2019
Mangkubumi	Mohd Faiz Ahlan	4.12.2019
Menang Idaman	Affendi Ibrahim	4.12.2019
Meranti Budiman	Ahmad Muhaim Kamarudin	4.12.2019
Pintas Utama	Fandi Mohd Nafiah	4.12.2019

262. The signees for the tender documents submitted by the Parties are listed as follows:

Table 33: The Signees of Parties' Tender Documents for Tender RTB Sungai Buloh¹⁹⁰

PARTY	SIGNING SIGNATURE	WITNESS
Dutamesra	Siti Zalifah Umairah Binti Abdullah	Ihsan Asnawi Sabri
IDX	Rahmat Hidayat Mohamed	Norfaezah Nasaruddin
Mangkubumi	Mohd Zulkefli Hj Abdullah	Adninooraize Abu Bakar
Menang Idaman	Mohd Tarmizi Bin Mohd Zuki	Norhayati Che Amat
Meranti Budiman	Mohammad Ishak Hashim @ A Razak	Nur Emillyana Mat Hassan
Pintas Utama	Fandi Mohd Nafiah	Nurul Ainul Hidayah Soha

¹⁸⁹ [3<]

¹⁹⁰ [3<]

263. The Commission's assessment of the pertinent evidence concerning Tender RTB Sungai Buloh is hereby set out in the following paragraphs. **Table 34** provides the chronology of events of Tender RTB Sungai Buloh and the participation of the relevant Parties in the tendering process.

Table 34: Chronology of Tender RTB Sungai Buloh

DATE	RELEVANT FACTS
14.11.2019	Tender RTB Sungai Buloh was advertised to the public through the public procurement process.
28.11.2019	Site visit for Tender RTB Sungai Buloh was held at Pejabat Jabatan Pengairan dan Saliran
19.12.2019	Closing date
Winning Bid Value	Tender RTB Sungai Buloh was awarded to IDX for RM RM[><] for a period of 40 months.

Overview of the Preparation of Tender Documents Process

264. The Commission finds that Mangkubumi, under the instruction of Tan Sri Zainudin Karjan, prepared technical documents for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi and Pintas Utama. Mangkubumi requested quotations from YCH for the tender submissions and YCH then provided its quotation prices to Mangkubumi.¹⁹¹ Thereafter, Mangkubumi used the quotations prices from YCH as reference figures for the pricing of the Bill of Quantities for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi and Pintas Utama.

¹⁹¹ Paragraphs 9 until 20, 23 until 31, 48 until 51, 63 until 68 and 74 until 79 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024; Paragraphs 41, 53, 90 of the Statement of Faiz Fikry recorded on 30.5.2023; Paragraphs 21 and 28 of the Statement of Tan Sri Zainudin Karjan recorded on 19.6.2023; Paragraphs 11 until 13 and 68 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

265. The Contract Unit/Quantity Surveyor Unit of Mangkubumi, led by Masytah, coordinated and finalised the pricing for the Bill of Quantities and Summary of Tender after receiving approval from Tan Sri Zainudin Karjan of Mangkubumi.¹⁹² According to Masytah, Tan Sri Zainudin Karjan of Mangkubumi ultimately determines the final tender submission prices for Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi and Pintas Utama.¹⁹³
266. The submission of the tender documents belonging to Dutamesra, IDX, Menang Idaman, Meranti Budiman, Mangkubumi and Pintas Utama to JPS was arranged by Fandi Mohd Nafiah of Pintas Utama.¹⁹⁴

ASSESSMENT OF THE PARTIES' BID SUBMISSION PRICES

267. Having analysed the bid prices submitted for Tender RTB Sungai Buloh, the Commission identifies a striking similarity among the bid submission prices of the six Parties, namely, Mangkubumi, Pintas Utama, IDX, Menang Idaman, Meranti Budiman, and Dutamesra.
268. The bid submission prices of the Parties are compared in ***Image 15*** and ***Image 16***.

¹⁹² Paragraphs 4, 9 until 20, 23 until 31, 48 until 51, 63 until 68 and 74 until 79 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024; Paragraphs 11 until 13, 68 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

¹⁹³ Paragraph 16 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

¹⁹⁴ Paragraph 18 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

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Image 15: Breakdown of Summary of Tender Prices for Tender RTB Sungai Buloh (Bill of Quantities)¹⁹⁵

All Parties have different price submissions except Dutamesra and Pintas Utama which have identical price submission.

SUMMARY OF TENDER TEBATAN SG BULOH (BILLS OF QUANTITY)

NO PETENDER	67	73	68	51	45	97
SYARIKAT	MERANTI BUDIMAN S/B	DUTAMESRA BINA S/B	IDX MULTIRESOURCE S/B	PINTAS UTAMA S/B	MENANG IDAMAN S/B	MANGKUBUMI S/B
1 GENERAL ITEMS AND PRELIMINARIES						
2 ENVIRONMENTAL PROTECTION AND ENHANCEMENT						
3 TRAFFIC MANAGEMENT						
4 DEMOLITION AND SITE CLEARANCE						
5 RIVER DEEPENING WORKS						
6 BUND						
7 BRIDGE AND ASSOCIATED WORKS						
8 STAFF QUARTERS						
9 DRAINAGE WORKS						
10 COMPARTMENT D1 WORKS						
11 STRUCTURE FOR LOG BOOM						
12 PUMP SUMP						
13 COMPACT SUB-STATION (CSU) TNB AND MSB OUTDOOR						
14 INSTRUMENTATIONS						
15 PROVISIONAL AND PRIME COST SUMS						
TOTAL						
TOTAL WRITTEN IN DOCS						

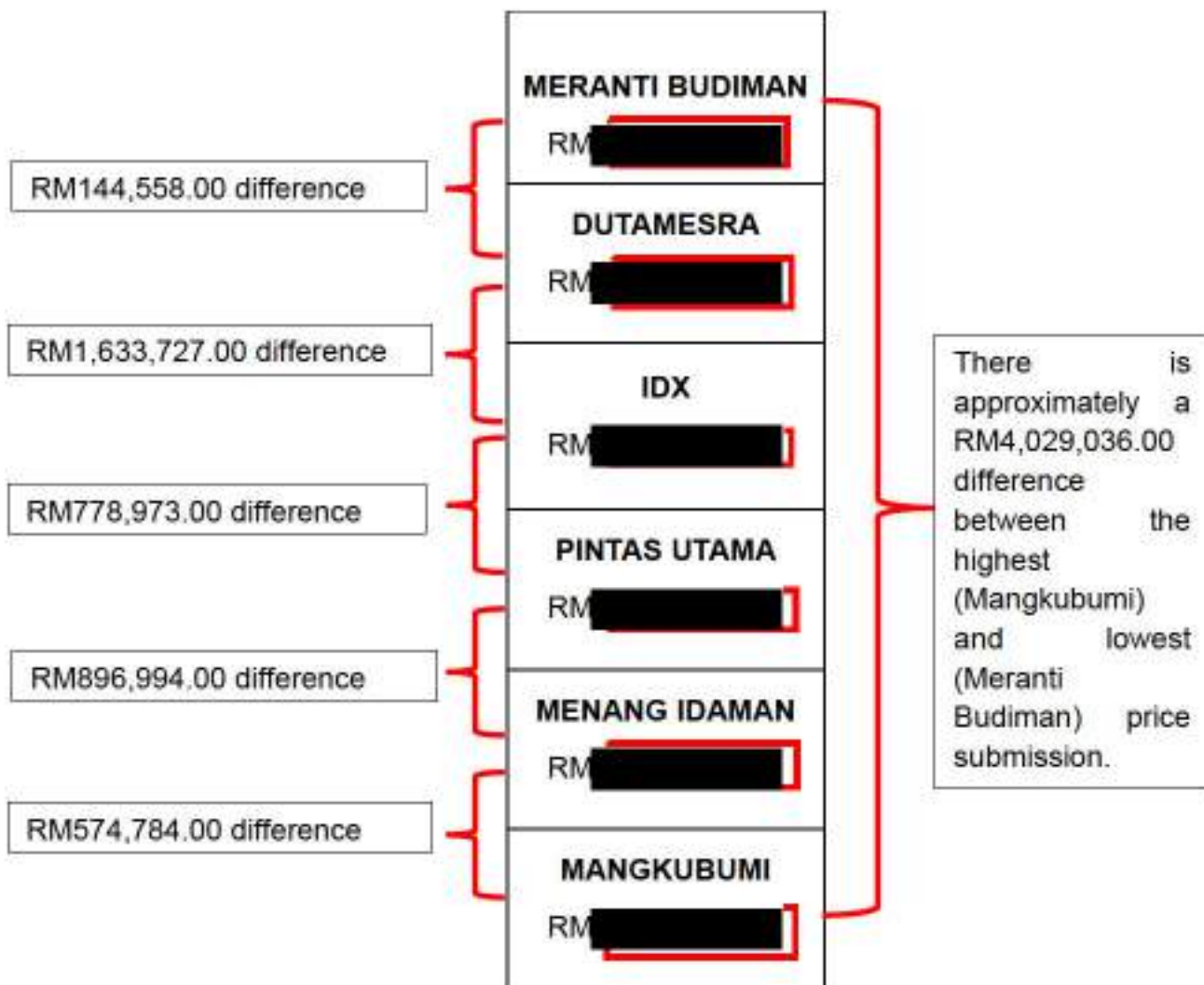
Meranti Budiman's price submission identical to Mangkubumi's, Dutamesra's price submission identical to Menang Idaman, IDX price submission identical to Pintas Utama.

All Parties have different total price submissions with less than RM4,500,000.00 difference from one another.

All Parties have different price submission except Pintas Utama and Menang Idaman which have identical price submission.

¹⁹⁵ [x]

Image 16: Total Price Comparisons for Summary of Tender for Tender RTB Sungai Buloh¹⁹⁶



269. Based on the price comparisons made above, the Commission observes that the figures quoted by the Parties in their Bill of Quantities are close in proximity, with an approximate difference of RM[><] between the highest and lowest price submissions.

¹⁹⁶ [><]

270. Apart from the close proximity in the tender prices among the six Parties, the Commission also identifies multiple instances of significantly identical prices quoted by two or more Parties. The presence of these identical prices indicates that the six Parties have engaged in agreements and/or concerted practices to rig Tender RTB Sungai Buloh.

271. Based on the aforesaid analysis above, it is evident that the similarity in the figures provided by the Parties in their Bill of Quantities, along with the multiple instances of significantly identical prices quoted by the six Parties, strongly indicate the exchange of sensitive information among the Parties for Tender RTB Sungai Buloh.

Exchange of Pricing Information through the Preparation of the Bill of Quantities

272. In assessing the Parties' bid submissions, the Commission finds that the Bill of Quantities plays a vital role in the tender process. The Bill of Quantities is a crucial part of the tender documentation issued to potential suppliers to obtain pricing information. The Bill of Quantities serves as the primary document for calculating construction costs and ensures a fair and accurate system for tendering. This transparent and useful approach allows the procurement agency, in this case JPS, to compare tenders effectively.

273. The Bill of Quantities is typically prepared by a cost consultant, such as a quantity surveyor, who provides project specifications and measured quantities for tender items. Suppliers then quote their prices for the prescribed items. The priced Bill of Quantities becomes a crucial part of a bidder's tender document. Since the listed items are identical for all bidders, JPS can directly compare the overall price and individual items with other offers, enabling a thorough evaluation of the value provided by each tender.

274. In relation to Tender RTB Sungai Buloh, the Commission analyses the facts and evidence gathered from the investigation such as tender documents, email communications, and statements of relevant individuals in relation to the pricing of the Bill of Quantities which revolves around the process of obtaining prices from YCH, a consultant and subcontractor of Mangkubumi.

Email Correspondences Between the Six Parties

275. The Commission retrieved emails on Faiz Fikry's personal computer. The Parties' exchanges of emails are described in detail in **Table 35** below.

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Table 35: Exchange of Emails between Parties for Tender RTB Sungai Buloh

NO.	EMAIL	PARTIES INVOLVED	EVIDENCE GATHERED FROM THE EMAILS
1.	EMAIL J ¹⁹⁷	Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama (Sender), YCH at [redacted]@live.com (Recipient), Masytah ¹⁹⁸ at [redacted]@gmail.com as the carbon copy recipient.	<ul style="list-style-type: none"> Email J dated 6.12.2019 at 10:35 AM, includes an Excel spreadsheet attachment titled "Summary of Tender and Bill of Quantities". The sender [redacted]@gmail.com sent Email J to [redacted]@live.com in order to request a price quotation for Tender RTB Sungai Buloh.
2.	Email K ¹⁹⁹	Chan Wai Cheong (Steven) at [redacted]@live.com, director of YCH to Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama	<ul style="list-style-type: none"> Email K, dated 16.12.2019, at 9:35 AM, contains an Excel spreadsheet attachment that provides a detailed Bill of Quantities. YCH responded to Mangkubumi's request for quotation by supplying the quotation prices in an Excel spreadsheet

¹⁹⁷ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com dated 6.12.2019 at 10.35 a.m. with the subject line "BQ & DRAWING TENDER SUNGAI BULOH).

¹⁹⁸ Paragraphs 52, 61, and 62 of the Statement of Masytah recorded on 25.3.2024.

¹⁹⁹ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@live.com to [redacted]@gmail.com dated 16.12.2019 at 9.36 a.m. with the subject line "TENDER – JPS SG BULOH).

NO.	EMAIL	PARTIES INVOLVED	EVIDENCE GATHERED FROM THE EMAILS
3.	Email L ²⁰⁰	Masytah at [redacted]@gmail.com, Head of Contract Manager of Mangkubumi to [redacted]@gmail.com, Munaim at [redacted]@gmail.com, Quantity Surveyor of Meranti Budiman, Hakeem at [redacted]@gmail.com, Quantity Surveyor of Pintas Utama, Faiz Fikry at [redacted]@gmail.com, Contract Manager/Quantity Surveyor of Mangkubumi/Pintas Utama, [redacted]@yahoo.com, Salwana binti Kamarudin at [redacted]@gmail.com of IDX and Wan Nurul Izzati binti Wan Ibrahim at [redacted]@gmail.com, of Mangkubumi	<ul style="list-style-type: none"> • Email L dated 16.12.2019, at 2:24 PM was sent by the Head of the Contract Unit of Mangkubumi containing several attachments. • The recipients of the email were personnel of Meranti Budiman (Ahmad Munaim bin Kamarudin, Che Zul Hakeem bin Che Omar)²⁰¹, IDX (Salwana binti Kamarudin)²⁰² and Mangkubumi (Wan Nurul 'Izzati binti Wan Ibrahim), respectively.²⁰³ • In the chain of emails, the original email was sent by a personnel from JPS ([redacted]@water.gov.my) to the bidders of Tender RTB Sungai Buloh. • The email was regarding an addendum for RTB Sungai Buloh tender document sent on 14.12.2019, at 1:45 PM. • The email was subsequently received by Mangkubumi and Mangkubumi later forwarded the email on 16.12.2019, 9:35 am to [redacted]@yahoo.com, [redacted]@yahoo.com, [redacted]@gmail.com, [redacted]@yahoo.com and [redacted]@yahoo.com. • The recipients of the email forwarded by Mangkubumi belonged to the directors of Pintas Utama ([redacted]@yahoo.com) and IDX ([redacted]@yahoo.com) • Faiz Fikry informed that the addendum was sent to the bidders to notify them changes made to the tender specifications within the tendering period. • Furthermore, Faiz Fikry stated that the email was also sent to other staff members of the Contract Unit. This confirms that the tender document for

²⁰⁰ Digital Forensic Report Pintas Utama Sdn. Bhd. MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@gmail.com, [redacted]@gmail.com, [redacted]@gmail.com, [redacted]@gmail.com, [redacted]@gmail.com, [redacted]@yahoo.com, [redacted]@gmail.com, and [redacted]@gmail.com dated 16.12.2019 at 2.24 p.m. with the subject line "FWD: FW: RANCANGAN TEBATAN BANJIR SUNGAI BULOH, SELANGOR DARUL EHSAN (JPS/IP/PB/10/2019) – ADDENDUM NO.1).

²⁰¹ [redacted]

²⁰² [redacted]

²⁰³ [redacted]

NO.	EMAIL	PARTIES INVOLVED	EVIDENCE GATHERED FROM THE EMAILS
			Mangkubumi, Pintas Utama, Meranti Budiman, and IDX for Tender RTB Sungai Buloh tender was coordinated by the Parties.

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COMMUNICATION BETWEEN THE “MANGKUBUMI GROUP” AND YCH

276. The Commission discovered several emails seized from the premises of Pintas Utama, specifically retrieved from the computer of Faiz Fikry, which shows communication between the personnel of the Parties in relation to the preparation of the tender documents for Tender RTB Sungai Buloh.

277. In line with the Commission’s findings in the Tender CSR 3B and 3C, and 3J, Faiz Fikry sent Email J to request for tender price quotations from YCH. The email was sent from Faiz Fikry at [X]@gmail.com to YCH at the following email address, [X]@live.com.²⁰⁴ The attached Excel spreadsheet, known as the Bill of Quantities, is depicted in **Image 17**.

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²⁰⁴ Paragraph 7 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

Image 17: Screenshot of Excel Spreadsheet Attachment in Email J²⁰⁵

RANCANGAN TEBATAN BANJIR SUNGAI BULOH, SELANGOR DARUL EHSAN		
NO. TENDER: JPS/IP/PB/10/2019		
SUMMARY OF TENDER		
BILL NO.	BILL DESCRIPTION	AMOUNT
BILL NO. A1	GENERAL ITEMS AND PRELIMNARIES	[REDACTED]
BILL NO. A2	ENVIRONMENTAL PROTECTION AND ENHANCEMENT	
BILL NO. A3	TRAFFIC MANAGEMENT	
BILL NO. A4	DEMOLITION AND SITE CLEARANCE	
BILL NO. A5	RIVER DEEPENING WORKS	
BILL NO. A6	BUND	
BILL NO. A7	BRIDGE AND ASSOCIATED WORKS	
BILL NO. A8	STAFF QUARTERS	
BILL NO. A9	DRAINAGE WORK	
BILL NO. A10	COMPARTMENT D1 WORKS	
BILL NO. A11	STRUCTURE FOR LOG BOOM	
BILL NO. A12	PUMP SUMP	
BILL NO. A13	COMPACT SUB-STATION (CSU) TNB AND M58 OUTDOOR	
BILL NO. A14	INSTRUMENTATIONS	
BILL NO. A15	PROVISIONAL AND PRME COST SUMS	
TOTAL		

²⁰⁵ Digital Forensic Report Pintas Utama Sdn Bhd MyCC (IED) 700-2/7(9) (Email from [redacted]@gmail.com to [redacted]@live.com dated 6.12.2019 at 10.35 a.m. with the subject line "BQ & DRAWING TENDER SUNGAI BULOH).

278. YCH then reverted the request for quotation as shown in the email with the subject line “TENDER – JPS SG BULOH” (“Email K”), dated 16.12.2019 at 9:35 AM. The email was sent by Steven (Chan Wai Cheong) of YCH at [✂]@live.com to Faiz Fikry at [✂]@gmail.com and contained an attachment titled “TENDER (BQ) – JPS SG BULOH.xlsx”.²⁰⁶
279. The Commission finds that the coordination pattern among the Parties resembles the previous two CSR tenders discussed above, where Mangkubumi’s Quantity Surveyor engaged with YCH to request a quotation to be filled in the tender documents.
280. Additionally, in line with the evidence given by the directors of Dutamesra, IDX, Mangkubumi, Menang Idaman, Meranti Budiman, and Pintas Utama, Faiz Fikry confirmed to the Commission that, similar to Tender CSR 3B & 3C, and Tender CSR 3J, the six Parties also actively coordinated the process of preparing the tender documents for Tender RTB Sungai Buloh.²⁰⁷ As a result, in Tender RTB Sungai Buloh, the agreements and/or concerted practices with the object to perform bid rigging occurred through the modus operandi of relying on the Contract Unit/Quantity Surveyor Unit of Mangkubumi to retrieve quotations from their subcontractor, YCH.

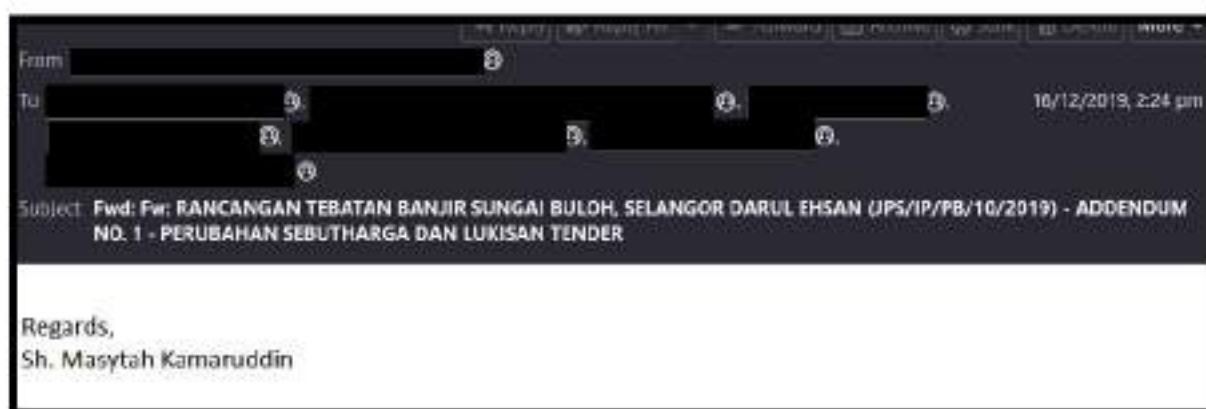
²⁰⁶ Digital Forensic Report Pintas Utama Sdn Bhd MyCC (IED) 700-2/7(9) (Email from [✂]@live.com to [✂]@gmail.com dated 16.12.2019 at 9.36 a.m. with the subject line “TENDER – JPS SG BULOH).

²⁰⁷ Paragraph 2 of the Statement of Mohd Tarmizi of Menang Idaman recorded on 12.4.2023; Paragraph 4 of the Statement of Mohd Ishak of Meranti Budiman recorded on 13.4.2023; Paragraph 10 of the Statement of Siti Zalifah of Dutamesra recorded on 13.4.2023; Paragraph 8 of the Statement of Mohammad Taqiyuddin of Kiara Kilat recorded on 29.5.2023; Paragraph 4 of the Statement of Rahmat of IDX recorded on 5.4.2023; Paragraphs 41 and 53 of the statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023; Paragraph 64 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

Communication Between Mangkubumi, Pintas Utama, Meranti Budiman and IDX In Relation to Tender RTB Sungai Buloh

281. Regarding Email L, the Commission finds that the email was sent by Masytah of Mangkubumi on 16.12.2019 at 2:24pm and received by personnel from Meranti Budiman (Munaim²⁰⁸ and Che Zul Hakeem bin Che Omar)²⁰⁹, IDX (Salwana binti Kamarudin)²¹⁰ and Mangkubumi (Wan Nurul 'Izzati binti Wan Ibrahim). **Image 18** below displays an excerpt from the email.²¹¹

Image 18: Screenshot of Email L



282. Masytah received a forwarded email dated 16.12.2019, at 9:35a.m. from Mangkubumi²¹², shown in **Image 20**, which originally came from a personnel at JPS, shown in **Image 19**. The original email dated 14.12.2019, at 1:45pm contains a copy of an addendum for

²⁰⁸ Paragraphs 57 until 67 of the Statement of Munaim of Meranti Budiman recorded on 21.3.2024.

²⁰⁹ [redacted]

²¹⁰ [redacted]

²¹¹ [redacted]

²¹² Paragraphs 80 until 82 of the Statement of Masytah of Mangkubumi recorded on 25.3.2024.

the RTB Sungai Buloh tender documents, which was sent by JPS to the bidders involved in RTB Sungai Buloh, including Mangkubumi.

Image 19: Screenshot of the Original Email from JPS



283. Subsequently, Mangkubumi, on 16.12.2019 at 9:35 AM, forwarded the email to the directors of the other Parties. The Commission observes that the recipients of the email forwarded by Mangkubumi were the directors of Pintas Utama and IDX. The email address of [REDACTED]@yahoo.com belonged to the Director of IDX, named Hajar Arfah binti Mohd Zain²¹³ and [REDACTED]@yahoo.com belonged to the Director of Pintas Utama, Fandi Mohd Nafiah²¹⁴.

²¹³ Seizure List of Pintas Utama Sdn Bhd dated 15.2.2023.

²¹⁴ Seizure List of Mangkubumi Sdn Bhd dated 15.2.2023.

Image 20: Screenshot of the Forwarded Email by Mangkubumi to Masytah



284. According to Faiz Fikry, this email containing the addendum was sent by JPS in order to inform the bidders of any changes in the tender specifications within the tendering period.²¹⁵
285. Moreover, Masytah sent the email to other personnel of the Contract Unit of Mangkubumi. Based on the above, the Commission thereby finds that the respective Parties coordinated and prepared the tender documents for Mangkubumi, Pintas Utama, Meranti Budiman, and IDX for Tender RTB Sungai Buloh collectively.

Financial Benefit Obtained by the "Mangkubumi Group" in Relation to Tender RTB Sungai Buloh

286. As discussed in the preceding paragraphs, the Commission finds that the "Mangkubumi Group" obtained financial benefits from

²¹⁵ Paragraphs 80 to 82 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

engaging in the agreements and/or concerted practices to rig Tender RTB Sungai Buloh.

287. In assessing the tender prices, the Commission examines three distinct stages: (1) the pre-award stage of the contract, (2) the awarding stage of the contract, and (3) the post-award stage of the contract, namely the subcontracting stage.

Table 36: Comparison of Prices Between YCH Quotation Rate, Contract Value and Subcontract Value

TENDER	(1)	(2)	(3)	(4)
	Quoted Rate by YCH ²¹⁶	Contract Value Won ²¹⁷	Provisional Sum & Prime Cost Sum ²¹⁸	Subcontract Rate awarded to YCH ²¹⁹
RTB Sungai Buloh	RM[><]	RM[><]	RM[><]	RM[><]

288. With reference to **Table 36** above, the Commission identifies the following processes regarding the determination of Tender RTB Sungai Buloh prices:

- (a) YCH initially provided its price of RM[><] to Mangkubumi (stated in Column 1 of **Table 36**).
- (b) Tender RTB Sungai Buloh was then awarded to IDX for the contract value of RM[><] (stated in Column 2 of **Table 36**).

²¹⁶ Excel spreadsheet attachment in Email K dated 16.12.2019.

²¹⁷ SPU-B-35 dated 13.10.2020.

²¹⁸ [><]

²¹⁹ Letter of Award issued by IDX to YCH for Tender RTB Sungai Buloh dated 12.11.2020.

- (c) RM[><] (as stated in Column 3 of **Table 36**) refers to the provisional sum²²⁰ and prime cost sum²²¹, which constitute elements in the contract value awarded to IDX.
- (d) After being selected as the successful bidder, IDX subcontracted the entire works of Tender RTB Sungai Buloh to YCH with the value of RM[><] as stated in Column 4 of **Table 36**, which is the amount excluding the provisional sum and prime cost sum RM[><] (stated in Column 3 of **Table 36**).

Table 37: Calculation of the Percentage of Inflation of Tender Prices for Tender RTB Sungai Buloh

TENDER	A	B	C
	(2) - (3) ²²²	(A) - (4) ²²³	B/A
RTB Sungai Buloh	RM[><]	RM[><]	25%

289. In relation to the bid rigging conduct, the inflated price is derived by using the tender prices of the successful bidder for each tender. It appears that the price agreed between IDX, Mangkubumi, and YCH, along with the provisional sum and prime cost sum, represents the actual value of the tender. The inflated price by IDX, Mangkubumi, and YCH for Tender RTB Sungai Buloh can be derived using the following formula:

²²⁰ Note: A provisional sum is a sum provided in a contract for work to be executed or for the supply of any equipment, materials or goods which cannot be entirely foreseen, defined, or detailed at the date of submission of the tender.

²²¹ Note: A prime cost sum is a sum provided in the contract for works or services to be executed by a nominated sub-contractor or for any equipment, materials, or goods to be supplied by a nominated supplier.

²²² Figures derived from Table 35.

²²³ Figures derived from Table 35.

- (a) RM[X] (Value A) is derived by subtracting the provisional sum and prime cost sum (RM[X]) from the contract value awarded to IDX (RM[X]).
- (b) RM[X] (Value B) represents the difference between Value A (RM[X]) and the agreed subcontracting value between IDX and YCH (RM[X]) (stated in Column 4 of **Table 36**).
- (c) Value C (25%) is the percentage of inflation of the contract value by calculating the percentage of Value B (RM[X]) in relation to Value A (RM[X]).

290. The Commission finds that IDX gained a 25% increase in mark-up percentage in Tender RTB Sungai Buloh after subcontracting the entire project to YCH.

291. Based on the above, the Commission finds that Dutamesra, IDX, Mangkubumi, Menang Idaman, Meranti Budiman, and Pintas Utama had engaged in agreements and/or concerted practices to perform bid rigging in the tendering process for Tender RTB Sungai Buloh.

292. In **Image 21** below, the profit earned by IDX by the subsequent appointment of YCH as the subcontractor for Tender RTB Sungai Buloh was calculated to amount to 25% of the awarded contract amount.

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THE COMMISSION'S CUMULATIVE FINDINGS ON THE THREE BID RIGGING AGREEMENTS AND/OR CONCERTED PRACTICES

Centralisation of The Preparation of Tender Documents for Tender CSR 3B and 3C, Tender CSR 3J, And Tender RTB Sungai Buloh

294. With reference to **paragraphs 177 to 179, 220 to 222 and 264 to 266**, the Commission finds that the Parties, namely, Dutamesra, IDX, Kiara Kilat, Mangkubumi, Menang Idaman, Meranti Budiman, and Pintas Utama, had coordinated the preparation of technical documents, the request for price quotations, and the pricing of the Bill of Quantities and Summary of Tender prices. The coordination was carried out by entrusting the Contract Unit of Mangkubumi with the responsibility for the tender documentation including the drafting of tender prices.²²⁵

295. Mangkubumi assumed the role of coordinator for the tender preparation process for the Parties within the "Mangkubumi Group." The Parties include Mangkubumi, Kiara Kilat, Dutamesra, Meranti Budiman, Menang Idaman, Pintas Utama, and IDX.

296. Rahmat Hidayat bin Mohamed, the co-director of IDX, told the Commission that the "Mangkubumi Group" shared quantity surveyor expertise. This explains the similarities in the bids for Tender CSR 3B and 3C, as well as Tender CSR 3J. The Contract Unit completed

²²⁵ Paragraphs 53, 91 of the Statement of Faiz Fikry of Mangkubumi/Pintas Utama recorded on 30.5.2023.

the tender document specifications and sought the final approval of Tan Sri Zainudin Karjan.²²⁶

297. Mohd Tarmizi of Menang Idaman stated that he shared an employer-employee relationship with Tan Sri Zainudin Karjan. He emphasised that all of the important decisions were made by Tan Sri Zainudin Karjan. He stated that in the event that Menang Idaman were to win a tender, he would only sign the Letter of Acceptance and the Tender Contract. However, all price matters and tender document preparation were under the purview of the Contract Unit of Mangkubumi or Tan Sri Zainudin Karjan himself.²²⁷ He further said that the nominees for Contractor Registration Certificate or CIDB, would attend the tender briefing and the purchase of tender documents and that such tender matters were ultimately decided by Tan Sri Zainudin Karjan.²²⁸

298. During the Commission's inquiry into Menang Idaman's possession of documents from companies at the premises of Menang Idaman, Mohd Tarmizi admitted his role as a reference point and active participant in survey work, underground utility mapping, and land investigations for all companies under the "Mangkubumi Group". It is important to note that Mohd Tarmizi was not involved in any tender-related pricing matters but instead focused on activities

²²⁶ Paragraph 14 of the Statement of Rahmat Hidayat of IDX recorded on 5.4.2023.

²²⁷ Paragraphs 4 to 5 of the statement of Mohd Tarmizi of Menang Idaman recorded on 15.2.2023.

²²⁸ Paragraph 6 of the Statement of Mohd Tarmizi of Menang Idaman recorded on 15.2.2023.

related to survey drawings, soil investigation, and geographical mapping (utility mapping).²²⁹

299. Mohd Tarmizi further stated that tenders typically included a Bill of Quantities and the Bill of Quantities would be submitted to the Contract Unit/Quantity Surveyor Unit located in Pintas Utama. Masytah was the Head of the Contract Unit/Quantity Surveyor Unit which was the unit that was in charge of obtaining quotation prices from suppliers.²³⁰

300. According to Mohd Tarmizi, in determining the price, the Quantity Surveyor contacted suppliers through various means such as email, phone calls, or fax. The Quantity Surveyor Unit collated the prices and prepared a preliminary draft to be presented to Tan Sri Zainudin Karjan. If Tan Sri Zainudin Karjan were to disagree with the price, it would be revised accordingly.²³¹ Masytah, an employee at Mangkubumi, served as the Head of the Contract Unit/Quantity Surveyor Unit in 2019. All companies within the “Mangkubumi Group” referred to Masytah for price information to be included in the tender documents.²³²

301. Siti Zalifah, the Director of Dutamesra, stated that Tan Sri Zainudin Karjan was the decision maker for Dutamesra's participation in tenders. Tan Sri Zainudin Karjan appointed her as the Director of

²²⁹ Paragraph 7 of the Statement of Mohd Tarmizi of Menang Idaman recorded on 15.2.2023.

²³⁰ Paragraph 2 of the Statement of Mohd Tarmizi of Menang Idaman recorded on 12.4.2023.

²³¹ Paragraph 2 of the Statement of Mohd Tarmizi of Menang Idaman recorded on 12.4.2023.

²³² Paragraph 2 of the Statement of Mohd Tarmizi of Menang Idaman recorded on 12.4.2023.

Dutamesra in 2017, and she previously worked at Mangkubumi.²³³ Despite being the Director of Dutamesra, her primary responsibilities were limited to administering tasks, designing posters for Dutamesra as well as Pintas Utama, and managing social media accounts. Regarding tender preparation, Nur Hasyati, the Quantity Surveyor of Dutamesra, was responsible for preparing Dutamesra's tender documents. Whenever instructed by Tan Sri Zainudin Karjan to participate in a tender, Dutamesra sought consultation with Masytah of Mangkubumi, for the tender price figures.²³⁴

302. Mohammad Ishak of Meranti Budiman told the Commission that Tan Sri Zainudin Karjan appointed him as the Director of Meranti Budiman.²³⁵ Mohammad Ishak's primary responsibility was limited to handling financial matters for entities not associated with any construction companies engaged in procurement projects.²³⁶

303. According to Mohammad Ishak, Tan Sri Zainudin Karjan instructed the attendance to a site visit and signing of official documents for Meranti Budiman. He told the Commission that he was not involved in the preparation of Meranti Budiman's tender documents. He said it was the Quantity Surveyor unit of another enterprise under the "Mangkubumi Group" that prepared the cost calculations in the

²³³ Paragraph 3 of the Statement of Siti Zalifah of Dutamesra recorded on 13.4.2023.

²³⁴ Paragraph 3 of the Statement of Siti Zalifah of Dutamesra recorded on 13.4.2023.

²³⁵ Paragraphs 2 and 3 of the Statement of Mohammad Ishak of Meranti Budiman recorded on 13.4.2023.

²³⁶ Paragraphs 2 and 3 of the Statement of Mohammad Ishak of Meranti Budiman recorded on 13.4.2023.

tender documents. Thereafter, Tan Sri Zainudin Karjan determined the finalisation of prices inserted in the tender documents²³⁷, and the decision for Meranti Budiman's participation in Tender CSR 3B and 3C, Tender CSR 3J, and Tender RTB Sungai Buloh.²³⁸

304. Taqiyuddin, the Director of Kiara Kilat stated that he was appointed by Tan Sri Zainudin Karjan to be the Director of Kiara Kilat around 2021. He also stated that he was unsure of the chain of command in Kiara Kilat despite being the Director of Kiara Kilat.²³⁹ He admitted to the Commission that his role as a Director of Kiara Kilat is limited to the signing of official documents such as tender submission documents.²⁴⁰ In relation to the preparation of bid prices, Taqiyuddin stated that he was not involved in the preparation of tender documents. He stated that it was Masytah who usually prepared the tender documents.²⁴¹

305. According to Fandi Mohd Nafiah of Pintas Utama, the decision for Pintas Utama to bid on any tender would be made by Tan Sri Zainudin Karjan.²⁴² Fandi Mohd Nafiah was appointed as the Director for Pintas Utama by Tan Sri Zainudin Karjan in 2013.²⁴³ In our judgement this reflects that Tan Sri Zainudin Karjan had the

²³⁷ Paragraph 5 of the Statement of Mohammad Ishak of Meranti Budiman recorded on 13.4.2023.

²³⁸ Paragraphs 4, 9 and 14 of the Statement of Mohammad Ishak of Meranti Budiman recorded on 13.4.2023.

²³⁹ Paragraphs 1 to 3, Paragraph 2 of the Statement of Taqiyuddin of Kiara Kilat recorded on 29.5.2023.

²⁴⁰ Paragraph 8, Paragraphs 1 to 3 of the Statement of Taqiyuddin of Kiara Kilat recorded on 29.5.2023.

²⁴¹ Paragraph 8 of the Statement of Taqiyuddin of Kiara Kilat recorded on 29.5.2023.

²⁴² Paragraph 48 of the Statement of Fandi Mohd Nafiah of Pintas Utama recorded on 13.6.2023

²⁴³ Paragraph 2 of the Statement of Fandi Mohd Nafiah of Pintas Utama recorded on 13.6.2023.

authority to make decisions regarding tenders or regarding significant matters in Pintas Utama.

306. In relation to NYL's participation in Tender CSR 3B and 3C, as well as Tender CSR 3J, the Commission finds that the instruction to bid in these tenders was given by Tan Sri Zainudin Karjan.²⁴⁴ However, the Commission finds that the documentation process for the tender documents was overseen by the "Mangkubumi Group" and assisted by the directors of YCH. Based on the Bill of Quantities exchanged via email between the "Mangkubumi Group" and YCH, and the pattern in the tender prices, we make an inference that NYL had entered into agreements and/or concerted practices to perform bid rigging in the CSR projects. In other words, NYL was also found to be involved in the bid rigging agreement with the "Mangkubumi Group".

307. Tan Sri Zainudin Karjan claimed that he had control over Dutamesra, IDX, Kiara Kilat, Menang Idaman, Meranti Budiman, and Pintas Utama, in addition to Mangkubumi.²⁴⁵ However, apart from being listed as a director of Mangkubumi, there is no official record of Tan Sri Zainudin Karjan holding any directorship or shareholding in Dutamesra, IDX, Kiara Kilat, Menang Idaman, Meranti Budiman, and Pintas Utama.²⁴⁶

²⁴⁴ Paragraph 17 of the Statement of Tan Sri Zainudin bin Karjan of Mangkubumi recorded on 19.6.2023.

²⁴⁵ Paragraph 2 of the Statement of Tan Sri Zainudin Karjan of Mangkubumi recorded on 15.2.2023; Paragraph 3 of the Statement of Tan Sri Zainudin Karjan of Mangkubumi recorded on 19.6.2023.

²⁴⁶ Companies Commission Search on Menang Idaman, Pintas Utama, IDX, Dutamesra, Kiara Kilat and Meranti Budiman dated 12.11.2019.

308. When asked about the process of preparing and finalising the bid price, Tan Sri Zainudin Karjan said that he instructed his staff to participate in the tenders and personally approved the tender bid prices submitted by Dutamesra, IDX, Kiara Kilat, Mangkubumi, Menang Idaman, Meranti Budiman, and Pintas Utama.²⁴⁷

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²⁴⁷ Paragraphs 18 and 28 of the Statement of Tan Sri Zainudin Karjan of Mangkubumi recorded on 19.6.2023.

CONCLUSION ON THE COMMISSION'S FINDINGS OF BID RIGGING AGREEMENTS AND/OR CONCERTED PRACTICES FOR TENDER CSR 3B AND 3C, TENDER CSR 3J AND TENDER RTB SUNGAI BULOH

309. Based on the totality of the Commission's findings above, despite being separate registered contractor companies with official registration certifications, the Parties deceived the procurement agencies by giving a false and misleading impression of market competition in the tender bidding process for Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.
310. Given that the Parties had submitted their tender prices and tender documents based on the close coordination between the Parties in the preparation of their tender documents, the Commission finds that the Parties' conduct had tarnished the sanctity of a competitive bidding process, resulting in a false impression of market competition in the tendering process.
311. The Commission finds that the conduct of the Parties had indeed led to higher costs being incurred by the respective procurement agencies for all of the three tenders.
312. The bid rigging arrangements by the Parties had enabled the Parties to skew the bidding outcomes to their favor. The manipulations of the bidding process were further corroborated by the admission made by Mangkubumi's Director, namely, Tan Sri Zainudin Karjan,

who stated that the arrangements were necessary “to increase the group’s chance to win the tender”.²⁴⁸ The Commission finds that this admission highlights the motive of the arrangement to enter into agreements and/or concerted practices to rig the bidding outcome for Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh to their favour, which unfairly deprived their competitors of the opportunity to compete on fair terms in a similar market.

313. Further, the Commission's investigations revealed that even after the closure of the tender, Mangkubumi entered into sub-subcontract agreements with YCH for the two CSR projects. Although Mangkubumi was not selected as the winner for these CSR projects procured by JKR, the Commission finds that Mangkubumi was the party that had entered into sub-subcontract agreements with YCH on behalf of the respective winning parties. These contracts were entered by Mangkubumi with YCH on behalf of IDX for Tender CSR 3B and 3C²⁴⁹, as well as on behalf of Menang Idaman for Tender CSR 3J²⁵⁰.

314. Considering the comprehensive evidence gathered, including physical and digital documents obtained through search and seizure operations, as well as recorded statements from relevant employees

²⁴⁸ Paragraph 6 of the Statement of Tan Sri Zainudin Karjan of Mangkubumi recorded on 19.6.2023.

²⁴⁹ Subcontract Agreement between Mangkubumi and YCH for Project Central Spine Road 3B and 3C dated 23 July 2020.

²⁵⁰ Subcontract Agreement between Mangkubumi and YCH for Project Central Spine Road 3J dated 23 July 2020.

of the Parties, the Commission makes a finding that, on the balance of probabilities, the Parties entered into agreements and/or concerted practices to rig Tender CSR 3B and 3C, Tender CSR 3J, and Tender RTB Sungai Buloh, and thereby infringing section 4(1) read with section 4(2)(d) and section 4(3) of the Act 712.

315. Through the rigged tendering processes, whereby the Parties defied the requirement of independently preparing and submitting bid submissions to the procurement agencies, the Parties' conduct was aggravated by the fact that the Bill of Quantities prices were inflated and marked-up by a range of 9% to 25%. The Commission is of the view that had there been no bid riggings, the costs incurred for the procurements of the public works would have been significantly reduced, and the public works would have been awarded to the genuine and best bidder.

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F. ARGUMENTS BY THE PARTIES IN RELATION TO THE FINDINGS OF THE COMMISSION

Arguments By the Parties

316. All Parties, excluding IDX and Menang Idaman have made the following primary point of contention:

- (a) No Monetary Benefit Derived: The Parties did not receive any monetary or financial benefit from the alleged agreements and/or concerted practices to perform bid rigging.²⁵¹

317. Further, the Parties collectively in their written representations made another two primary points of contention:

- (b) No Influence on Tender Results: Neither the Parties nor the other seven (7) enterprises possessed the capability to influence the outcome of the tendering process or gain any undue advantage during the tendering process; and
- (c) Award Based Merit: The decisions to award the tenders by the Ministry of Finance (MOF) and *Kementerian Peralihan Tenaga*

²⁵¹ Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 2.6.

*dan Transformasi Air (PETRA) were made based on merit, independent of any alleged bid rigging activity.*²⁵²

The Commission's Findings

318. The Commission reiterates the provision of section 4(2) of Act 712 as follows:

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

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

...

(d) perform an act of bid rigging,

*is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.”*²⁵³

²⁵² Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 2.6; and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 2.6.

²⁵³ Section 4(2)(d) of the Competition Commission Act 2010.

319. Section 4(2)(d) of Act 712 states that a horizontal agreement between enterprises which has an object to perform an act of bid rigging is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods and services. In this regard, this is considered as a deeming provision whereby the Commission only needs to prove the existence of a horizontal agreement between enterprises, unless the contrary is proved as stated in *Public Prosecutor v Yuvaraj*²⁵⁴. The Privy Council held:

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

320. In *Triple Zest Trading & Suppliers v. Applied Business Technologies*,²⁵⁵ the Federal Court ruled that,

"[56] To successfully rebut the presumption under s 100A of the MA51, the respondent must prove on the balance of probabilities that by entering into the loan agreement with the appellants, it was not engaging in an act of 'lending of money at interest, with or without security, by a moneylender to a borrower', which is the meaning ascribed to the word 'moneylending' by s 2 of the MA51."

²⁵⁴ *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89.

²⁵⁵ *Triple Zest Trading & Suppliers & Ors. v Applied Business Technologies Sdn. Bhd.* [2023] 6 MLJ 818, paragraph 56.

321. Additionally, in *Malaysia Maritim Enforcement Agency v. Nyuyen Van Dai*,²⁵⁶ the Session Court has further explained that the prosecution must be very certain about which burden of proof they are relying on against the accused persons so that they can meet the correct standard i.e. whether to rebut the presumption on the balance of probabilities or to cast a reasonable doubt, which is lesser burden.²⁵⁷
322. In the Commission's present case, as mentioned in **paragraph 155**, the Commission only needs to prove in accordance with the civil standard of proof which is on the balance of probabilities in determining whether the infringement under section 4 of the Act has been committed or not. In fact, the Commission, via the deeming provision, needs to prove whether there is a horizontal agreement between enterprises that have an object to perform an act of bid rigging.
323. The Commission has explained in great detail the findings of its investigation that led to the Proposed Decision. In issuing the Proposed Decision against the Parties, the Commission has assessed the evidence received and obtained through searches, statement-taking, and requests for information from the Parties.

²⁵⁶ *Malaysia Maritim Enforcement Agency v Nyuyen Van Dai & Ors* [2020] MLJU 410.

²⁵⁷ *Malaysia Maritim Enforcement Agency v Nyuyen Van Dai & Ors* [2020] MLJU 410, paragraph 49.

324. For the Parties to disregard the findings and merely argue that all of them except IDX and Menang Idaman did not receive monetary benefits from the infringing conduct, that they had no influence over the tendering process, and that the tenders awarded by MOF and PETRA were based on merit is baseless, as this assertion does not negate the findings made by the Commission.

325. In fact, the Commission emphasises that Parties, in their written representations to the Commission, did not even deny the evidence and findings that were put against them regarding their infringement of section 4 of the Act 712. Instead, they went so far as to construct their own definition of "bid-rigging," claiming that it:

*"commonly refers to a cartel in tender processes, which does not apply to our client's situation. For bid-rigging or cartel behavior to occur, the companies participating in the two public procurement tenders would need to exert control over the JKR/JPS cut-off system. However, in this case, no such control existed, and the Procurement Board retained its discretion to select companies within the predetermined cut-off range."*²⁵⁸

²⁵⁸ Written representation by Dutamesra Bina Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; Written representation by IDX Multi Resources Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; Written representation by Kiara Kilat Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; Written representation by Mangkubumi Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; Written representation by Menang Idaman Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; Written representation by Meranti Budiman Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; Written representation by NYL Corporation Sdn. Bhd. dated 16.1.2025 at paragraph 3.2; and Written representation by Pintas Utama Sdn. Bhd. dated 16.1.2025 at paragraph 3.2.

326. The Parties' interpretation of bid-rigging or cartel behavior is unfounded as it does not align with the necessary legal elements provided in the Act. The Proposed Decision in **paragraphs 78 to 88** has clearly pointed out that bid-rigging is an anti-competitive agreement that falls under one of the prohibitions in the Competition Act 2010. It has been explained that bid-rigging is an agreement and/or concerted practice among bidders that is deemed by law to have the object of significantly preventing, restricting, or distorting competition the relevant market. The Commission's Proposed Decision has also set out that a competitive tender process relies on independently formulated bids from tenderers, ensuring structured competition and promoting transparency and efficiency.²⁵⁹

327. In fact, the Commission in its Proposed Decision has stated that the entire intent of the tendering process is to ensure that the procurer receives genuine, independent, and competitive bids.²⁶⁰ 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.²⁶¹

²⁵⁹ *Apex Asphalt and Paving Co Limited v Office of Fair Trading*, [2005] CAT 4, at paragraphs 208 and 209.

²⁶⁰ *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 Administratiekantor 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.

²⁶¹ *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1.

328. Moreover, both the *Garis Panduan Tipuan Bida* and the MyCC Guidelines on “*Help Us Detect Bid Rigging*” emphasize that bid-rigging, particularly in public procurement, can be highly detrimental.²⁶² Such practices waste resources for buyers and taxpayers, diminish public confidence in the competitive process and undermine the benefits of a competitive market. The Competition Appeal Tribunal in the case of *Caliber Interconnects Sdn. Bhd. & Ors. v Competition Commission*,²⁶³ referring to Section 4 of Act 712 and MyCC’s guidelines, identified key characteristics of bid rigging, including the involvement of multiple enterprises in a tender process, an agreement—whether enforceable or not—intended to distort competition, and collusion to predetermine the tender winner. The Tribunal held that while these elements are indicative of bid rigging, not all must be present for a finding of infringement.²⁶⁴

329. When Dutamesra, IDX, Kiara Kilat, Mangkubumi, Menang Idaman, Meranti Budiman, NYL and Pintas Utama committed bid-rigging, the Parties have collectively infringed section 4 prohibition of Act 712 by colluding and manipulating the tendering process, giving the procurer a false impression of the market's competitive nature. This is because the Parties’ actions distorted the competition process,

²⁶² *Garis Panduan untuk Menentang Tipuan Bida dalam Perolehan Awam*, at page 1; and MyCC Handbook, *Help Us Detect Bid Rigging*, at page 1.

²⁶³ Appeal Nos 4,5,6, and 7 Off 2022 *Caliber Interconnects Sdn. Bhd. & Three Others v Competition Commission*, at paragraph 14.

²⁶⁴ Appeal Nos 4,5,6, and 7 Off 2022 *Caliber Interconnects Sdn. Bhd. & Three Others v Competition Commission*, at paragraph 14.

leaving the procurer with bid submissions that were influenced by collusion and coordinated strategies designed to eliminate the risks and unpredictability associated with competition, rather than genuine competitive bids. This is the finding that the Commission consistently made in its Proposed Decision and reaffirmed in the Infringement Decision. The Commission's findings did not involve any allegation of "exerting control over the JKR/JPS cut-off system" as alleged and falsely defined by the Parties as bid rigging conduct in the present case.

330. Therefore, the Commission must remind the Parties that the finding of infringement is based on the evidence in **paragraphs 162 to 308** in this Decision, which include the preparation of tender documents by Mangkubumi for all Parties, Mangkubumi acting as the ultimate decision-maker for all Parties, submission arrangements by Pintas Utama, the discovery of physical documentary proof, the exchange of pricing information, email correspondences between the Parties, and financial benefits received by the Mangkubumi Group—none of which were not denied by the Parties in their written representation. The Commission relied on the body of evidence to prove the coordination and sharing of confidential information between the Parties to rig Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.

331. The Commission hereby finds that based on the legal principles adduced in the above-cited cases, the burden is on the Parties to rebut the deeming provision invoked by the Commission. The

burden for the Parties to rebut the deeming provision is on the balance of probabilities and not on the threshold of merely casting a reasonable doubt. Hence, the Commission finds that the Parties have failed to adduce any substantial evidence to rebut the Commission's deeming provision.

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PART 3: THE COMMISSION'S DECISION

A. DIRECTIONS UPON A FINDING OF AN INFRINGEMENT

332. In view of the nature of the infringements of Act 712, and taking into consideration all of the evidence obtained throughout the investigations described above, the Commission hereby issues a decision of infringements under section 40 of Act 712 against the Parties for engaging in conducts which amount to anti-competitive agreements and/or concerted practices in breach of section 4(1) read with section 4(2)(d) and section 4(3) of Act 712.

B. GENERAL POINTS ON FINANCIAL PENALTIES

333. Under section 40(1)(c) of Act 712, where the Commission determines that there is an infringement of a prohibition under Part II of Act 712, the Commission may impose a financial penalty on the Parties.

334. Based on the Commission's Guidelines on Financial Penalties, in determining the amount of financial penalty in a specific case, the Commission may consider some or all of the following factors²⁶⁵:

- (a) the seriousness (gravity) of the infringement;
- (b) turnover of the market involved;
- (c) duration of the infringement;

²⁶⁵ MyCC Guidelines on Financial Penalties, at paragraph 3.2.

- (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.

335. When determining the financial penalty for each of the Parties, the Commission initiates the process by establishing a 'base figure.' This figure is calculated by taking into account the 'relevant turnover' for the duration of the infringement and the seriousness of the infringement, as elucidated below.

336. Upon the calculation of the base figure, the Commission proceeds to make adjustments, 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 proposed financial penalty.²⁶⁶

337. For the purpose of computing the financial penalty, the Commission relies on the financial information provided by the Parties in accordance with the section 18 notice issued by the Commission dated 9.8.2023 and the financial statements obtained from the Companies Commission of Malaysia.

²⁶⁶ MyCC Guidelines on Financial Penalties, at paragraph 3.2.

B.1 RELEVANT TURNOVER AND THE BASE FIGURE

338. The relevant turnover used to determine the base figure is based on the Party's turnover in the relevant market affected by the infringements.
339. The Commission identifies the relevant market affected by the infringing conduct as defined in **PART 2**.
340. The value of the projects according to the relevant market as provided in **PART 2**, ranges from RM[~~8~~] to RM[~~8~~].
341. Thereafter, the Commission determines the base figure, taking into account, the Parties' relevant turnover during the infringement period and the seriousness of the infringement.
342. In order to calculate the financial penalty, the Commission relies on the financial data provided by the Parties to determine their respective relevant turnovers.
343. After evaluating the seriousness of the infringement, the Commission takes the position that the base figure for the financial penalty for each Party should be established at 10% of its relevant turnover.

B.2 DURATION OF THE INFRINGEMENT

344. The Commission determines that the periods of the infringement are as follows:

Table 38: Infringement Periods

PROCUREMENT	PERIODS OF INFRINGEMENT	PARTIES
Tender CSR 3B and 3C (KM 180.5 FT08 ke Bulatan Gua Musang)	<p>Advertisement Date: 12.2.2019</p> <p>Closing Date: 20.3.2019</p> <p>The period of Infringement is 37 days (from 12.2.2019 until 20.3.2019)</p>	<ul style="list-style-type: none"> • Mangkubumi • Pintas Utama • IDX • Menang Idaman • Dutamesra • Meranti Budiman • Kiara Kilat • NYL
Tender CSR 3J (Kg. Seberang Jelai ke Kg. Relong)	<p>Advertisement Date: 12.2.2019</p> <p>Closing Date: 20.3.2019</p> <p>The period of Infringement is 37 days (from 12.2.2019 until 20.3.2019)</p>	<ul style="list-style-type: none"> • Mangkubumi • Pintas Utama • IDX • Menang Idaman • Dutamesra • Meranti Budiman • NYL
Tender RTB Sungai Buloh	<p>Advertisement Date: 14.11.2019</p> <p>Closing Date: 19.12.2019</p> <p>The period of Infringement is 36 days (from 14.11.2019 until 19.12.2019)</p>	<ul style="list-style-type: none"> • Mangkubumi • Pintas Utama • IDX • Menang Idaman • Dutamesra • Meranti Budiman

345. As shown in **Table 38**, it is important to highlight the advertisement date and the closing date is for the purpose of determining the infringement period. This method is adopted because the

Commission is of the view that the anti-competitive agreements and/or concerted practices among the Parties to manipulate tender submissions to the procuring agencies occurred within these time frames. The Commission is of the opinion that the Parties engaged in anti-competitive agreements and/or concerted practices to perform bid rigging within these time frames.

346. The Commission observes that the infringements were committed discreetly, spanning from February 2019 until December 2019, with each instance lasting for a relatively brief period, ranging from 36 days to 38 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*,²⁶⁷ the Commission recognizes that bid rigging effects are typically irreversible, challenging to rectify, and persistently impact stakeholders well beyond the actual duration of the infringements.²⁶⁸

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²⁶⁷ 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.

²⁶⁸ 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.

347. 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.²⁶⁹

B.3 AGGRAVATING FACTOR

348. 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.

349. The Commission also considers the frequency of participation in the infringements as an aggravating factor. There shall be an upward adjustment of 10% for every subsequent infringement. If there are three infringements, the upward adjustments to the base figure shall be as follows:

Table 39: Frequency of Infringements

INVOLVEMENT IN INFRINGEMENT	UPWARD ADJUSTMENTS OF THE BASE FIGURE
1	None
2	10%
3	20%

350. The Commission considers the role of the instigator or leader of the bid rigging in respect of an infringement to be an aggravating factor.

²⁶⁹ 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.

There shall be a 50% upward adjustment of the base figure for any act of instigation in respect of any infringement.

B.4 MITIGATING FACTOR

351. The Commission shall consider the presence of mitigating factors. In the event that the Commission is of the view that there exists a mitigating factor, the Commission shall implement a downward adjustment to the base figure when calculating the financial penalty of the Party in question.

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

352. Section 40(4) of Act 712 prescribes a statutory limit on the final amount of the financial penalty that the Commission could impose on a Party found to have infringed a prohibition under section 4(1) read together with sections 4(2)(d) and 4(3) of Act 712. The statutory limit stipulates that the financial penalty shall not exceed 10% of the Party's worldwide turnover during the period of the infringement.

C. ARGUMENTS BY THE PARTIES ON THE FINANCIAL PENALTY AND THE FINDINGS OF THE COMMISSION

353. The Parties did not raise any mitigating factors in their written representations, and in fact, the Parties requested the Commission to quash the financial penalty imposed on them.

354. In their representations, the Parties collectively made the following arguments:

- (a) The Parties were not involved in any bid-rigging activities, nor did they exert any influence over the awarding to the winners namely IDX and Menang Idaman; and
- (b) The Parties have not derived any monetary or financial benefit from the public procurement tenders in question and yet have been subjected to a substantial penalty.

355. The Commission finds that argument (a) shall be dismissed as the Commission reiterates the findings on the existence of a horizontal bid-rigging agreement between Parties as discussed in Part 2.

356. In relation to the imposition of a substantial penalty even though there is an absence of any monetary or financial benefit by the Parties from the public procurement, the Commission is of the view that 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.

357. Furthermore, the Commission emphasized 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.

358. Besides that, the Commission, in imposing financial penalties, is guided by its own Guidelines and the financial data submitted by the Parties. Therefore, based on the above arguments by the Commission, the allegation of the substantial financial penalty imposed by the Commission to the Parties is dismissed.

D. PENALTY FOR DUTAMESRA

359. It is the finding of the Commission that Dutamesra was engaged in performing the acts of bid rigging in the construction of works of roads and pavements and the construction of bridges and flood control systems in Peninsular Malaysia. In this regard, Dutamesra was involved in infringements in respect of three tenders, namely, Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.

360. The Commission calculates the financial penalty based on the financial information submitted by Dutamesra in response to the section 18 notice dated 9.8.2023.²⁷⁰ It should be noted that the data

²⁷⁰ Revenue information provided by Dutamesra dated 11.9.2023 via email pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

submitted pertains to the company's revenue for the period from 2018 to 2023.

361. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~3~~]. Based on the rule that we have prescribed above, for determining the base figure, the base figure for calculating the financial penalty for Dutamesra is fixed at 10% of the relevant turnover. This amounts to $RM[~~3~~] (10\% \times RM[~~3~~])$.
362. As stated above, the Commission considers involvement in multiple infringements as an aggravating factor in this case. Dutamesra had performed the acts of bid rigging in relation to three infringements. There shall be no upward adjustment to the base figure for the first infringement. However, for the subsequent two infringements, the base figure will be subjected to an upward adjustment of 10% for each infringement. Accordingly, the Commission increases the financial penalty value by 20% of the base figure (10% upward adjustment for each of the 2 infringements) amounting to $RM[~~3~~] (20\% \times RM[~~3~~])$.
363. The Commission finds that there are no mitigating factors available to Dutamesra that warrant any reduction in the level of financial penalty.
364. The financial penalty to be imposed on Dutamesra is $RM[~~3~~] (RM[~~3~~] + RM[~~3~~])$.

365. The Commission finds that the relevant turnover for Dutamesra is similar to its worldwide turnover due to the same nature of business activities.
366. The Commission determines that RM[<] (10% x RM[<]) represents 10% of Dutamesra's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on Dutamesra shall not exceed 10% of its worldwide turnover.
367. The Commission finds that the financial penalty of RM[<] exceeds the maximum 10% of worldwide turnover amounting to RM6,627,658.75. The Commission thus imposes 10% of the worldwide turnover amounting to **RM6,627,658.75** as a financial penalty for Dutamesra.

E. PENALTY FOR IDX

368. It is the finding of the Commission that IDX had performed the acts of bid rigging in the construction of works of roads and pavements and the construction of bridges and flood control systems in Peninsular Malaysia. In this regard, IDX was involved in infringements in respect of three tenders, namely, Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.
369. The Commission calculates the financial penalty based on the financial information submitted by IDX in response to the section 18

notice dated 9.8.2023.²⁷¹ It should be noted that the data submitted pertains to the company's revenue for the period from 2018 to 2023.

370. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~xxx~~]. Based on the rule that we have prescribed above, for determining the base figure, the base figure for calculating the financial penalty for IDX is fixed at 10% of the relevant turnover which amounts to $RM[~~xxx~~] (10\% \times RM[~~xxx~~])$.

371. As stated above, the Commission considers involvement in multiple infringements as an aggravating factor in this case. IDX had performed the acts of bid rigging in relation to three infringements. There shall be no upward adjustment to the base figure for the first infringement. However, for the subsequent two infringements, each base figure will be subjected to an upward adjustment of 10%. Consequently, the Commission increases the financial penalty value by 20% of the base figure (10% upward adjustment for each of the 2 infringements) amounting to $RM[~~xxx~~] (20\% \times RM[~~xxx~~])$.

372. The Commission finds that there are no mitigating factors available to IDX that warrant any reduction in the level of financial penalty.

373. The final amount of financial penalty to be imposed on IDX is $RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~])$.

²⁷¹ Revenue information provided by IDX dated 11.9.2023 via email pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

374. The Commission finds that the relevant turnover for IDX is similar to its worldwide turnover due to the same nature of business activities.
375. The Commission determines that RM[~~xxx~~] (10% x RM[~~xxx~~]) represents 10% of IDX's worldwide turnover. By reason of section 40(4) of the Act 712, any penalty imposed on IDX shall not exceed 10% of its worldwide turnover.
376. The Commission finds that the financial penalty of RM[~~xxx~~] exceeds the maximum 10% of worldwide turnover amounting to *RM6,053,100.33*. The Commission thus imposes 10% of the worldwide turnover amounting to **RM6,053,100.33** as a financial penalty for IDX.

F. PENALTY FOR KIARA KILAT

377. It is the finding of the Commission that Kiara Kilat was engaged in performing the acts of bid rigging in the construction of works of roads in Peninsular Malaysia. In this regard, Kiara Kilat was involved in infringements in respect of one tender, namely, Tender CSR 3B and 3C.
378. Based on the financial statements retrieved from the Companies Commission of Malaysia, the relevant turnover for Kiara Kilat for the year 2019 amounts to RM[~~xxx~~].²⁷² Based on the rule that we have

²⁷² Financial statements of Kiara Kilat retrieved from the Companies Commission of Malaysia.

prescribed above, for determining the base figure, the base figure for calculating the financial penalty for Kiara Kilat is fixed at 10% of the relevant turnover. This amounts to $RM[\text{X}] (10\% \times RM[\text{X}])$.

379. The Commission finds that there are no aggravating and mitigating factors available to Kiara Kilat that warrant any adjustment in the level of financial penalty. Therefore, the final amount of financial penalty to be imposed on Kiara Kilat is RM3,389,392.10.
380. The Commission finds that the relevant turnover for Kiara Kilat is similar to its worldwide turnover due to the same nature of business activities.
381. The Commission determines that RM3,389,392.10 (10% x RM33,893,921.00) represents 10% of Kiara Kilat's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on Kiara Kilat shall not exceed 10% of its worldwide turnover.
382. The financial penalty of **RM3,389,392.10** is the same as the maximum financial penalty of RM3,389,392.10 that the Commission may legally impose as prescribed by section 40(4) of Act 712, that is to say the penalty shall not exceed 10% of Kiara Kilat's worldwide turnover.

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G. PENALTY FOR MANGKUBUMI

383. It is the finding of the Commission that Mangkubumi was engaged in performing the acts of bid rigging in the construction of works of roads and pavements and the construction of bridges and flood control systems in Peninsular Malaysia. In this regard, Mangkubumi was involved in infringements in respect of three tenders, namely, Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.

384. The Commission calculates the financial penalty based on the financial information that Mangkubumi submitted in response to the section 18 notice dated 9.8.2023.²⁷³ It should be noted that the submitted data pertains to the company's revenue for the period from 2018 to 2023.

385. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~3~~]. Based on the rule that we have prescribed above, for determining the base figure, the Commission fixes the base figure for calculating the financial penalty for Mangkubumi at 10% of the relevant turnover. In this case, this amounts to *RM[~~3~~]* ($10\% \times RM[~~3~~]$).

386. As stated above, the Commission considers involvement in multiple infringements as an aggravating factor. Mangkubumi had performed

²⁷³ Revenue information provided by Mangkubumi dated 11.9.2023 via email pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

the acts of bid rigging in relation to three infringements. There shall be no upward adjustment to the base figure for the first infringement. However, for the subsequent two infringements, the base figure will be subjected to an upward adjustment of 10% for each infringement. Accordingly, the Commission increases the financial penalty value by 20% of the base figure (10% upward adjustment for each of the 2 infringements) amounting to RM[~~3~~] (20% x RM[~~3~~]).

The role of Mangkubumi as the instigator in the bid rigging agreements and/or concerted practices

387. In the context of the bid rigging agreements and/or concerted practices in Tender CSR 3B and 3C, Tender CSR 3J, and Tender RTB Sungai Buloh, it is imperative to highlight the significant role of Mangkubumi.
388. Mangkubumi played an active role in coordinating the bid rigging agreements and/or concerted practices through the role of the Contract Unit of Mangkubumi. This Division was in charge of preparing the tender documents for the “Mangkubumi Group” and submitting them to Tan Sri Zainuddin Karjan for his approval on the tender prices. Only after the latter had approved the tender prices, would the tender documents be finalised.
389. Mangkubumi also played an active role in the preparation of Bill of Quantities prices for the “Mangkubumi Group” Parties, which are in close similarity with NYL’s Bill of Quantities prices (for Tender CSR

3B and 3C and Tender CSR 3J). The Commission infers that this close similarity was also due to the involvement of YCH who exercised influence over NYL's decision making and preparation of tender documents.

390. Mangkubumi also subcontracted both Tender CSR 3B and 3C and Tender CSR 3J to its strategic partner and subcontractor, YCH.

391. YCH was the entity to whom Mangkubumi requested for price quotations when preparing the tender prices for the tender documents belonging to the "Mangkubumi Group".

392. The Commission therefore identifies Mangkubumi as an instigator in three infringements, that is to say, in Tender CSR 3B and 3C, in Tender CSR 3J, and in Tender RTB Sungai Buloh. Accordingly, the Commission imposes an increase of 150% of the base figure (50% upward adjustment for each of the 3 infringements) resulting in an amount of RM[~~xxx~~] (150% x RM[~~xxx~~]).

393. The Commission finds that there are no mitigating factors available to Mangkubumi that warrant any reduction in the level of financial penalty.

394. The final amount of financial penalty to be imposed on Mangkubumi is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~] + RM[~~xxx~~]).

395. The Commission finds that the relevant turnover for Mangkubumi is similar to its worldwide turnover due to the same nature of business activities.
396. The Commission determines that RM[<] (10% x RM[<]) represents 10% of Mangkubumi's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on Mangkubumi shall not exceed 10% of its worldwide turnover.
397. The Commission finds that the financial penalty of RM[<] exceeds the maximum 10% of worldwide turnover amounting to *RM21,860,697.39*. Accordingly, the Commission imposes 10% of the worldwide turnover amounting to **RM21,860,697.39** as a financial penalty for Mangkubumi.

H. PENALTY FOR MENANG IDAMAN

398. It is the finding of the Commission that Menang Idaman had performed the acts of bid rigging in the construction of works of roads and pavements and the construction of bridges and flood control systems in Peninsular Malaysia. In this regard, Menang Idaman was involved in infringements in respect of three tenders, namely, Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.
399. The Commission calculates the financial penalty based on the financial information submitted by Menang Idaman in response to

the section 18 notice dated 9.8.2023.²⁷⁴ It should be noted that the data submitted pertains to the company's revenue for the period from 2018 to 2023.

400. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~3~~]. Based on the rule that we have prescribed above, for determining the base figure, the base figure for calculating the financial penalty for Menang Idaman is fixed at 10% of the relevant turnover. This amounts to *RM[~~3~~] (10% x RM[~~3~~])*.
401. As stated above, the Commission considers involvement in multiple infringements as an aggravating factor in this case. Menang Idaman had performed the acts of bid rigging in relation to three infringements. There shall be no upward adjustment to the base figure for the first infringement. However, for the subsequent two infringements, each base figure will be subjected to an upward adjustment of 10%. Consequently, the Commission increases the financial penalty value by 20% of the base figure (10% upward adjustment for each of the 2 infringements) amounting to *RM[~~3~~] (20% x RM[~~3~~])*.
402. The Commission finds that there are no mitigating factors available to Menang Idaman that warrant any reduction in the level of financial penalty.

²⁷⁴ Revenue information provided by Menang Idaman dated 11.9.2023 via email pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

403. The final amount of financial penalty to be imposed on Menang Idaman is RM[<] (*RM[<]+ RM[<]*).
404. The Commission finds that the relevant turnover for Menang Idaman is similar to its worldwide turnover due to the same nature of business activities.
405. The Commission determines that RM[<] ($10\% \times \text{RM[<]}$) represents 10% of Menang Idaman's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on Menang Idaman shall not exceed 10% of its worldwide turnover.
406. The Commission finds that the financial penalty of RM[<] exceeds the maximum 10% of worldwide turnover amounting to *RM2,668,261.30*. Accordingly, the Commission imposes 10% of the worldwide turnover amounting to **RM2,668,261.30** as a financial penalty for Menang Idaman.

I. PENALTY FOR MERANTI BUDIMAN

407. It is the finding of the Commission that Meranti Budiman was engaged in performing the acts of bid rigging in the construction of works of roads and pavements and the construction of bridges and flood control systems in Peninsular Malaysia. In this regard, Meranti Budiman was involved in infringements in respect of three tenders, namely, Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.

408. The Commission calculates the financial penalty based on the financial information submitted by Meranti Budiman in response to the section 18 notice dated 9.8.2023.²⁷⁵ It should be noted that the data submitted pertains to the company's revenue for the period from 2018 to 2023.

409. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~3~~]. Based on the rule that we have prescribed above, for determining the base figure, the base figure for calculating the financial penalty for Meranti Budiman is fixed at 10% of the relevant turnover. This amounts to *RM[~~3~~] (10% x RM[~~3~~])*.

410. As stated above, the Commission considers involvement in multiple infringements as an aggravating factor. In this case, Meranti Budiman had performed the acts of bid rigging in relation to three infringements. There shall be no upward adjustment to the base figure for the first infringement. However, for the subsequent two infringements, the base figure will be subjected to an upward adjustment of 10% for each infringement. Accordingly, the Commission increases the financial penalty value by 20% of the base figure (10% upward adjustment for each of the 2 infringements) amounting to *RM[~~3~~] (20% x RM[~~3~~])*.

411. The Commission finds that there are no mitigating factors available

²⁷⁵ Revenue information provided by Meranti Budiman dated 11.9.2023 via email pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

to Meranti Budiman that warrant any reduction in the level of financial penalty.

412. The final amount of financial penalty to be imposed on Meranti Budiman is RM[<] ($RM[<] + RM[<]$).

413. The Commission finds that the relevant turnover for Meranti Budiman is similar to its worldwide turnover due to the same nature of business activities.

414. The Commission determines that RM[<] ($10\% \times RM[<]$) represents 10% of Meranti Budiman's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on Meranti Budiman shall not exceed 10% of its worldwide turnover.

415. The Commission finds that the financial penalty of RM[<] exceeds the maximum 10% of worldwide turnover amounting to RM3,528,292.70. Accordingly, the Commission imposes 10% of the worldwide turnover amounting to **RM3,528,292.70** as a financial penalty for Meranti Budiman.

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J. PENALTY FOR NYL

416. It is the finding of the Commission that NYL was engaged in performing the acts of bid rigging in the construction of works of roads in Peninsular Malaysia. In this regard, NYL was involved in infringement in respect of two tenders, namely, Tender CSR 3B and 3C and Tender CSR 3J.

417. The Commission calculates the financial penalty based on the financial information submitted by NYL in response to the section 18 notice dated 9.8.2023.²⁷⁶ It should be noted that the data submitted pertains to the company's revenue for the period from 2018 to 2023.

418. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~xxx~~]. Based on the rule that we have prescribed above, for determining the base figure, the base figure in calculating the financial penalty for NYL is fixed at 10% of the relevant turnover. This amounts to *RM[~~xxx~~] (10% x RM[~~xxx~~])*. Simultaneously, the worldwide turnover for the year 2019 amounts to RM[~~xxx~~]. The Commission determines that *RM[~~xxx~~] (10% x RM[~~xxx~~])* represents 10% of NYL's worldwide turnover.

419. As stated above, the Commission considers involvement in multiple infringements as an aggravating factor. In this case, NYL had performed the acts of bid rigging in relation to two infringements.

²⁷⁶ Revenue information provided by NYL Corporation dated 29.8.2023 via courier pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

There shall be no upward adjustment to the base figure for the first infringement. However, for the second infringement, the base figure will be subjected to an upward adjustment of 10%. Accordingly, the Commission increases the financial penalty value by 10% from the base figure (10% of the upward adjustment for 1 infringement) amounting to RM[~~xxx~~] (10% x RM[~~xxx~~]).

420. The Commission finds that there are no mitigating factors available to NYL that warrant any reduction in the level of financial penalty.

421. The amount of financial penalty to be imposed on NYL Corporation is RM[~~xxx~~] (RM[~~xxx~~] + RM[~~xxx~~]).

422. The Commission determines that RM[~~xxx~~] (10% x RM[~~xxx~~]) represents 10% of NYL's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on NYL shall not exceed 10% of its worldwide turnover.

423. The financial penalty of **RM113,087.91** does not exceed the maximum financial penalty of RM[~~xxx~~] that the Commission may legally impose as prescribed by section 40(4) of Act 712, that is to say, the penalty shall not exceed NYL's worldwide turnover.

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K. PENALTY FOR PINTAS UTAMA

424. It is the finding of the Commission that Pintas Utama had performed the acts of bid rigging in the construction of works of roads and pavements and the construction of bridges and flood control systems in Peninsular Malaysia. In this regard, Pintas Utama was involved in infringements in respect of three tenders, namely, Tender CSR 3B and 3C, Tender CSR 3J and Tender RTB Sungai Buloh.
425. The Commission calculates the financial penalty based on the financial information submitted by Pintas Utama in response to the section 18 notice dated 9.8.2023.²⁷⁷ It should be noted that the data submitted pertains to the company's revenue for the period from 2018 to 2023.
426. Based on the available data, the relevant turnover for the year 2019 amounts to RM[~~3~~]. Based on the rule that we have prescribed above, for determining the base figure, the base figure for calculating the financial penalty for Pintas Utama is fixed at 10% of the relevant turnover. This amounts to *RM[~~3~~] (10% x RM[~~3~~])*.
427. As stated above, the Commission considers multiple infringements as an aggravating factor. In this case, we find that Pintas Utama had performed the acts of bid rigging in relation to three infringements.

²⁷⁷ Revenue information provided by Pintas Utama dated 11.9.2023 via email pursuant to the Section 18 notice issued by the Commission dated 9.8.2023.

There shall be no upward adjustment to the base figure for the first infringement. However, for the subsequent two infringements, the base figure will be subjected to an upward adjustment of 10% for each infringement. Accordingly, the Commission increases the financial penalty value by 20% of the base figure (10% upward adjustment for each of the 2 infringements) amounting to RM[~~3~~] ($20\% \times RM[~~3~~]$).

428. The Commission finds that there are no mitigating factors available to Pintas Utama that warrant any reduction in the level of financial penalty.
429. The final amount of financial penalty to be imposed on Pintas Utama is RM[~~3~~] ($RM[~~3~~] + RM[~~3~~]$).
430. The Commission finds that the relevant turnover for Pintas Utama is similar to its worldwide turnover due to the same nature of business activities.
431. The Commission determines that RM[~~3~~] ($10\% \times RM[~~3~~]$) represents 10% of Pintas Utama's worldwide turnover. By reason of section 40(4) of Act 712, any penalty imposed on Pintas Utama shall not exceed 10% of its worldwide turnover.
432. The Commission finds that the financial penalty of RM[~~3~~] exceeds the maximum 10% of worldwide turnover amounting to RM48,635,588.42. Accordingly, the Commission imposes 10% of

the worldwide turnover amounting to **RM48,635,588.42** as a financial penalty for Pintas Utama.

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PART 4: CONCLUSION ON THE FINANCIAL PENALTY

433. In conclusion, the Commission pursuant to section 40(1)(c) of Act 712, imposes the following financial penalties on the Parties as shown in *Table 40* below:

Table 40: Financial Penalty

PARTY	FINANCIAL PENALTY
Dutamesra	RM6,627,658.75
IDX	RM6,053,100.33
Kiara Kilat	RM3,389,392.10
Mangkubumi	RM21,860,697.39
Menang Idaman	RM2,668,261.30
Meranti Budiman	RM3,528,292.70
NYL	RM113,087.91
Pintas Utama	RM48,635,588.42

DATED: 25 FEBRUARY 2025



CHAIRMAN
TAN SRI DATO' SRI IDRUS BIN HARUN