



Malaysia Competition Commission
Case No.700-1/3/1/2019

Competition Act 2010 [Act 712]

Addendum to the Decision of the Competition Commission of
17.12.2021

Pursuant to the Decision of the Competition Appeal Tribunal of
17.11.2022

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

Competition Commission

v.

- (i) Langkawi Auto Express Sdn. Bhd.
- (ii) Langkawi Ro-Ro Ferry Services
Sdn. Bhd.
- (iii) Dibuk Cargo Services Sdn. Bhd.
- (iv) Dibuk Sdn. Bhd.
- (v) Langkawi Ferry Services Sdn. Bhd.

Addendum to the Decision of the Commission under Section 40 of the
Competition Act
2010

Deliberated before and decided by the following Members of the
Commission:

- (i) Dato' Seri Mohd Hishamudin Bin Md Yunus (Chairman);
- (ii) Datuk Tay Lee Ly;
- (iii) Dr. Nor Mazny Binti Abdul Majid;
- (iv) Dato' Ir. Haji Mohd Jamal Bin Sulaiman;
- (v) Dr. Nasarudin Bin Abdul Rahman;
- (vi) Puan Siti Juriani Binti Jalaluddin;
- (vii) Encik Arunan A/L K.Kumaran;
- (viii) Ir. Rusman Bin Abu Samah; and
- (ix) Encik Surya Putra Bin Dato Mohamed Taulan

DATED: 26 JUNE 2023

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INTRODUCTION

1. This Addendum is issued pursuant to the Decision of the Competition Appeal Tribunal (“the Tribunal”)¹ dated 17.11.2022. In its decision, the Tribunal confirmed the finding of liability by the Competition Commission in the latter’s Decision of 17.12.2021 in relation to Langkawi Auto Express Sdn. Bhd (“LAE”), Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd., all three entities constituting a single economic unit.

2. The Tribunal’s Decision issued pursuant to section 58 of the Competition Act 2010 (“the Act”) in relation to the appeal filed by LAE and Langkawi Ferry Services Sdn. Bhd. (Appeal No. TRP 2 – 2002) against the Commission’s Decision states as follows:
 - (a) with regard to the finding of financial penalty imposed on the appellants, the Tribunal confirmed the overall finding, except the deductible amount(s) in relation to the vehicle and passenger ticket refunds;

 - (b) the Tribunal ordered the issue of the deductible amount(s) for the deductible items, i.e., vehicle ticket refunds (RM278,684.53) and passenger ticket refunds (RM31,483.20), be remitted to the Commission to re-assess the supporting documents for both the amounts of the deductible items (vehicle and passenger);

¹ The Competition Appeal Tribunal’s Decision dated 17.11.22 in the Matter of Appeal Nos: TRP 1 – 2022, TRP 2 – 2022, and TRP 3 - 2022

- (c) it is further ordered that the supporting documents are to be provided by the appellants to the Commission within 14 working days (excluding Saturday, Sunday and public holidays) from the Tribunal's Decision herein; and
 - (d) upon determination of the same, the Commission shall apply the same methodology used in the Commission's Decision for the re-assessment of the financial penalty.
3. At paragraphs 85 and 86 of the Tribunal's Decision, the Tribunal is of the view that it would be just and fair to remit the issue of the deductible items to the Commission on the basis that the mere fact that the Commission was unable to identify the exact amount of refunds does not mean that it could "ignore" the same for the computation of the turnover figure for the relevant period. The relevant paragraphs are reproduced below:

*[85] With regard to the vehicle ticket refunds amounting to RM278,684.53, the respondent's counsel submitted that the appellants did not provide sufficient supporting documents and information on the ticket refund amount. This item is a deductible item for the computation of the turnover figure for the relevant period. **The mere fact that the Commission is unable to identify the exact amount of refunds does not mean it could ignore the same for the computation of the total turnover figure for the relevant period.***

*[86] This Tribunal, after having examined the documents submitted by the appellants, is satisfied that there is evidence of ticket refunds. **Hence, this Tribunal is of the considered view that it would be just and fair that on this issue of deductible item (vehicle ticket refunds [RM278,684.53] and passenger ticket refunds***

[RM31,483.20]) be remitted to the Commission for re-assessment of the supporting documents to be provided by the appellants. (The emphasis is ours)

4. It must be emphasised that the Commission did not in any way “ignore” the ticket refunds as deductible items for the computation of the financial penalty. The supporting documents and information on the ticket refund amount had not been provided to the Commission by the appellants at any point in time prior to the issuance of the Commission’s Decision.
5. Thus, the Commission respectfully is of the view that the directions issued in the Tribunal’s Decision in relation to the re-assessment of the deductible amounts for the appellants (that is to say, LAE and Langkawi Ferry Services Sdn. Bhd.) have caused injustice to the Commission.
6. Counsel for the appellants attempted to explain before the Tribunal during the hearing the reasons as to why the documents were only provided by LAE at a belated stage, that is to say, they were tendered only during the hearing before the Tribunal. The documents were never tendered before the Commission, be it during the Oral Representation Session or at any time before the Decision. Counsel for appellants purported to justify the omission on the appellants’ part to the failure on the part of their clients to understand the requirements and lack of legal representation were the reasons behind this.
7. Before the Tribunal Counsel for the Commission strenuously objected to the aforesaid “reasons” on the grounds that they were

weak excuses and should not be accepted by the Tribunal. However, with due respect and regrettably, the Tribunal dismissed the Commission's counsel's protests instead of upholding them. Indeed, the Tribunal failed to request additional clarification from the appellant's counsel regarding its failure to adduce the so-called "additional evidence" when by law the Tribunal should have done so. It is trite that ignorance of the law is no defence. Be that as it may, the Commission for the sake of expediency hereby complies with the Tribunal's directions.

8. The Commission reiterates that there was no error on the part of the Commission in the computation of the original financial penalty in the Commission's Decision. The Commission had computed the financial penalty based on the documents provided by the appellants at the material time in substantiating their turnover data.
9. The background facts leading up to the issuance of the Tribunal's Decision are set out in **Part A** below.

A. CHRONOLOGY OF THE INVESTIGATION PERIOD UP TO THE ISSUANCE OF THE COMMISSION'S DECISION PERTAINING TO THE APPELLANTS

10. The chronology of the investigation period up to the issuance of the Commission's Decision pertaining to LAE is set out in **Table 1** below:

Table 1: Chronology of Investigation Period up to the Issuance of the Commission’s Decision Pertaining to the Appellants

NO.	DATE	MATTER
1.	11.3.2019	The Commission issued section 18 and section 20 Notices (pursuant to the Act) to LAE
2.	12.3.2019	LAE responded to the Notices by the Commission by providing the requested information
3.	22.3.2019	The Commission issued a section 18 Notice to LAE requesting statements from Ooi Cheng Choon and Tan Toh Eng
4.	24.4.2019 – 17.7.2020	Several email correspondences were made between the Commission and LAE for the request of LAE’s revenue information
5.	30.6.2019	The Commission issued a section 18 Notice to LAE requesting statements from Marzukhi
6.	25.10.2019	The Commission issued a request for further information to Langkawi Ferry Services Sdn. Bhd. via email
7.	30.6.2020	The Commission issued a section 18 Notice to Langkawi Ferry Services Sdn. Bhd. requesting statements from Lau Ban Hoo
8.	14.9.2020	The Commission issued its Proposed Decision
9.	6.4.2021- 7.4.2021	LAE made its Oral Representation to the Commission wherein LAE provided an extracted summary of its deductibles without additional supporting documents
10.	17.12.2021	The Commission issued its Decision against the relevant parties, where it was noted that LAE did not submit information or documents to substantiate its calculation pertaining to the deductible expenses and failed to satisfy the Commission on this issue

B. COMPUTATION OF THE FINANCIAL PENALTY TO BE IMPOSED ON THE SINGLE ECONOMIC UNIT

11. With reference to the Commission’s Decision, a financial penalty amounting to **RM1,130,876.87** was imposed on LAE, Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd., jointly and severally, with a 50% discount for Covid-19 consideration.

12. Following the Tribunal's Decision dated 17.11.2022 and pursuant to the Tribunal's exercise of power under section 58(2)(a) of the Act, the Commission is required to re-assess the financial penalty by taking into account the refunds of the tickets for the Langkawi Ro-Ro services. The assessment was made by referring to the Supplementary Bundles of Documents provided by LAE to the Commission on 7.12.2022.

13. The summary of ticket refunds provided by LAE in its Supplementary Bundles of Documents is reproduced in **Figure 1** below.

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Figure 1: Summary of Ticket Refunds Provided by LAE²

LANGKAWI AUTO EXPRESS SDN. BHD.
Summary of ticket refunds (January 2018 to September 2020)

2018			
MONTH	PASSENGER REFUNDS	VEHICLE TICKET REFUNDS	TOTAL (RM)
January 2018			
February 2018			
March 2018			
April 2018			
May 2018			
June 2018			
July 2018			
August 2018			
September 2018			
October 2018			
November 2018			
December 2018			
Total			
2019			
January 2019			
February 2019			
March 2019			
April 2019			
May 2019			
June 2019			
July 2019			
August 2019			
September 2019			
October 2019			
November 2019			
December 2019			
Total			
2020			
January 2020			
February 2020			
March 2020			
April 2020			
April 2020			
May 2020			
June 2020			
July 2020			
August 2020			
September 2020			
Total			
Grand total			

14. Having received the supporting documents from LAE on the deductibles, the Commission has re-assessed the computation of the financial penalty for LAE, Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd. using the supporting documents provided by LAE in supporting its claims on the amount of vehicle ticket refunds and passenger ticket refunds. Further, the Commission has applied the same methodology used in its Decision for the re-assessment of the appellants' financial penalty. The re-assessment of the financial penalty using the supporting documents provided by LAE is set out in **Part C** below.

² Supplementary Bundles of Documents provided by LAE on 7.12.22.

C. RE-ASSESSMENT OF THE SINGLE ECONOMIC UNIT'S FINANCIAL PENALTY BY THE COMMISSION

15. In the Commission's Decision, the Commission found that the three enterprises constituting the SEU (that is to say, LAE, Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd.,) were involved in a single continuous infringement with the object of significantly preventing, distorting or restricting competition in the market for the provision of vehicle transportation via ro-ro vessels in Langkawi.

16. For the purpose of calculating the penalty in respect of the infringement by the three enterprises (that is to say, LAE, Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd.,) as a single economic unit, the Commission has the discretion to choose the appropriate entity out of the three entities as the basis for calculating the penalty.³ In the present case, the Commission has chosen the joint venture entity, namely, LAE. Therefore, LAE's turnover will be used as the basis to calculate the penalty to be imposed on the single economic unit. This is given that LAE is the operator in the provision of vehicle transportation via ro-ro vessels in Langkawi for the purpose of the joint venture between Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd.

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³ Case T-541/08 *Sasol v Commission* at paragraph 182.

17. Accordingly, the Commission relies on the data submitted by LAE on 12.3.2019⁴ and 17.7.2019⁵ respectively, pursuant to the section 18 Notice dated 11.3.2019. The Commission will then revise the data based on the data submitted by LAE on the ticket refunds on 7.12.2022 pursuant to the Tribunal's Decision dated 17.11.2022.
18. Similar to the methodology employed in the Commission's Decision, the Commission has segregated and summarised the turnover submitted by LAE on 12.3.2019⁶ and 17.7.2019⁷ into 3 different markets, namely, (1) the vehicle transportation via ro-ro vessels in Langkawi ("Relevant Market"), (2) the Passengers Market, and (3) the Others Market.
19. Taking into consideration the additional information on the ticket refunds, the Commission has revised the turnover data submitted by LAE for the calculation of the original financial penalty based on the ticket refunds. It is important to note that for the original financial penalty, LAE had submitted turnover data that only cover the period from January 2018 until March 2019 for the Relevant Market and Passengers Market. As for the Others Market, LAE submitted turnover data that only cover the period from January 2018 until January 2019. This revised turnover data is shown in **Table 2** and **Table 3** below:

⁴ Revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

⁵ Revenue information provided by LAE dated 17.7.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

⁶ Revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

⁷ Revenue information provided by LAE dated 17.7.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

Table 2: Turnover of LAE for the Relevant Market and Passengers Market

MARKET	2018 (RM)	2019 UP TO 31 MARCH 2019 (RM)
Relevant Market ⁸ (Exclude passengers)	[X] ⁹	[X] ¹⁰
Passengers Market ¹¹	[X] ¹²	[X] ¹³

Table 3: Turnover of LAE for the Others Market

MARKET	2018 (RM)	2019 UP TO 31 JANUARY 2019 (RM)
Others Market ¹⁴	[X]	[X]

20. The Commission notes that the revised turnover for the Relevant Market from 1.1.2018 to 31.3.2019 is RM[X] (RM[X] + [X]); and the turnover for Passengers Market for the same period is RM[X]

⁸ "Relevant Market" refers to the market for vehicle transportation via ro-ro vessels for Bicycles, Motorcycles, Cars: Sedan, Cars: SUV/MPV/Pick Up/Van/4x4/Luxury Car, Buses/Coaches, Lorries (without cargo), Other Vehicles, and Vehicle Insurance; as shown in the Revenue information provided by LAE dated 17.7.2019; pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

⁹ The sum of RM[X] has been deducted as vehicle ticket refund for the period of year 2018.

¹⁰ The sum of RM[X] has been deducted as vehicle ticket refund for the period from 1.1.2019 to 31.3.2019.

¹¹ "Passengers Market" refers to the market for Passengers as shown in the Revenue information provided by LAE dated 17.7.2019; pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

¹² The sum of RM[X] has been deducted as passenger ticket refund for the period of year 2018.

¹³ The sum of RM[X] has been deducted as passenger ticket refund for the period from 1.1.2019 to 31.3.2019.

¹⁴ "Others Market" refers to the market for Canteen Sales, "Other Income", and "Others" as shown in the revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019.

(RM[✂] + RM[✂]). Meanwhile, the turnover of LAE for the Others Market for the period from 1.1.2018 until 31.1.2019 is RM[✂] (RM[✂] + RM[✂]).¹⁵

21. Considering that LAE was involved in a single continuous infringement from 31.12.2017 until 14.9.2020, there is a gap of turnover information from 1.4.2019 until 14.9.2020 (“gap period 1”) for the Relevant Market and Passengers Market. Similarly, there is a gap of turnover information for the Others Market from 1.2.2019 to 14.9.2020 (“gap period 2”). Due to the unavailability of data for gap period 1 and gap period 2, the Commission uses proxy turnover figures in the computation of the turnovers for both gap periods.¹⁶
22. In order to determine the value of the proxy turnover figures for the gap periods for the Relevant Market and the Passengers Market, the Commission first divides the total turnover values of each market with the number of days from 1.1.2018 to 31.3.2019 (a period of 455 days) to arrive at a daily turnover figure of RM[✂] for the Relevant Market (RM[✂] ÷ 455 days) and a daily turnover figure of RM[✂] (RM[✂] ÷ 455 days) for the Passengers Market.
23. Similarly, in determining the value of the proxy turnover figure for the gap period for Others Market, where data are only available from 1.1.2018 to 31.1.2019, the Commission first divides the total turnover values of the market with the number of days from 1.1.2018

¹⁵ Revenue information provided by LAE dated 12.3.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019; and Revenue information provided by LAE dated 17.7.2019 pursuant to the section 18 Notice issued by the Commission dated 11.3.2019, respectively.

¹⁶ Paragraph 3.2(b) of the Commission’s Guidelines on Financial Penalties.

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

24. The daily turnover figures for each market are summarised in **Table 4** and **Table 5** below:

Table 4: Daily Turnover Figures for the Relevant Market and Passengers Market

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

Table 5: Daily Turnover Figure for the Others Market

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

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

26. Subsequently, the Commission deducts the amount of ticket refunds from 1.4.2019 to 14.9.2020 amounting to RM[~~xxx~~]¹⁷ for vehicle ticket refunds and RM[~~xxx~~]¹⁸ for passenger ticket refunds from the proxy turnover figure for LAE from 1.4.2019 to 14.9.2020 for the Relevant Market and Passengers Market. The final proxy figure for LAE from 1.4.2019 to 14.9.2020 for the Relevant Market is RM[~~xxx~~] (RM[~~xxx~~] minus RM[~~xxx~~]) and the proxy figure for LAE from 1.4.2019 to 14.9.2020 for the Passengers Market is RM[~~xxx~~] (RM[~~xxx~~] minus RM[~~xxx~~]).
27. The daily turnover figure for the Others Market is also multiplied by the number of days from 1.2.2019 to 14.9.2020 (592 days) to derive the proxy figure of RM[~~xxx~~] (RM[~~xxx~~] x 592 days) for the Others Market for the said period of 592 days.
28. The total turnover calculation (turnover figure + proxy turnover figure) for LAE throughout the Infringement Period for the Relevant Market, Passengers Market and Others Market is illustrated in **Table 6** and **Table 7** whereas the total worldwide turnover for LAE throughout the Infringement Period is illustrated in **Table 8**.

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¹⁷ Supplementary Bundles of Documents provided by LAE on 7.12.2022.

¹⁸ Supplementary Bundles of Documents provided by LAE on 7.12.2022.

Table 6: Total Turnover Calculation for the Relevant Market and Passengers Market

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

Table 7: Total Turnover Calculation for the Others Market

MARKET	TURNOVER FROM 1.1.2018 TO 31.1.2019 (RM)	PROXY TURNOVER FIGURE FROM 1.2.2019 TO 14.9.2020 (RM)	TOTAL TURNOVER (RM)
Others Market	[X]	[X]	[X]

Table 8: Total Worldwide Turnover Calculation

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

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

30. The Commission has determined that the base figure in calculating the financial penalty for a Party found guilty of an infringement shall be fixed at 10% of the relevant turnover. In the case of LAE, this amounts to RM[~~¥~~] (10% x RM[~~¥~~]).

31. As there are no aggravating or mitigating factors to be considered, the revised financial penalty to be imposed on LAE shall be RM2,225,016.42.

D. REVISED PENALTY SUM IMPOSED FOLLOWING THE RE-ASSESSMENT OF FINANCIAL PENALTY BY THE COMMISSION

32. Accordingly, the Commission concludes that a financial penalty of RM2,225,016.42 be imposed jointly and severally on LAE, Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd.

33. This financial penalty of RM2,225,016.42 does not exceed the maximum financial penalty of RM[~~¥~~] that the Commission may legally impose as prescribed by section 40(4) of the Act, i.e., not exceeding 10% of LAE's worldwide turnover.

34. The revised penalty sum is outlined in **Table 9** below after taking into account the 50% discount as a Covid-19 consideration:

Table 9: Comparison of Financial Penalty Amount in the Commission’s Decision and Revised Penalty

	COMMISSION’S DECISION	REVISED PENALTY	DIFFERENCE
Financial Penalty Amount	RM2,261,753.75	RM2,225,016.42	RM36,737.33
50% Covid-19 Consideration	RM1,130,876.87	RM1,112,508.21	RM18,368.66

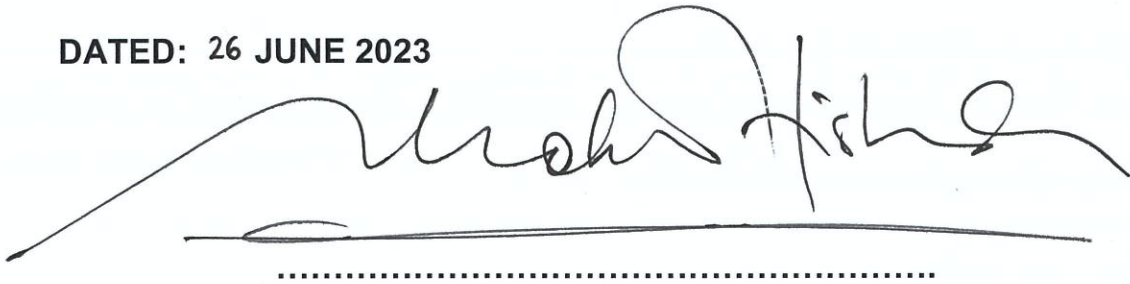
CONCLUSION

35. Based on the Commission’s re-assessment on the computation of the financial penalty for LAE using the supporting documents provided by LAE in supporting LAE’s claims on the amount of vehicle ticket refunds and passenger ticket refunds, the revised financial penalty to be imposed jointly and severally on LAE, Langkawi Ferry Services Sdn. Bhd. and Dibuk Sdn. Bhd., after the 50% discount Covid-19 consideration is **RM1,112,508.21**. As such, the difference in amount from the initial financial penalty of RM1,130,876.87 is **RM18,368.66** (RM1,130,876.87 – RM1,112,508.21). This surplus amount should be refunded to the appellants in TRP 2 - 2022, that is to say, LAE and Langkawi Ferry Services Sdn. Bhd (Dibuk Sdn. Bhd. is not a party to Appeal TRP 2 – 2022).

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36. However, the Commission is advised that the party that had actually paid the fine is LAE. Accordingly, the Commission will be remitting the surplus amount of **RM18,368.66** to LAE within 14 days from the date of the Commission's section 40 Notice to LAE.

DATED: 26 JUNE 2023

A handwritten signature in black ink, appearing to read 'Mohd Hisham', is written over a solid horizontal line. Below this line is a dotted horizontal line.

CHAIRMAN

**DATO' SERI MOHD HISHAMUDIN BIN
MD YUNUS**