PUBLIC CONTRACTS REVIEW BOARD

Case 2213 – CT2141/2025 – Tender for the Supply of durvalumab 50mg/ml Concentrate for Solution for Infusion

16th March 2026

The Board,

Having noted the letter of objection filed by Dr Norval Desira acting for and on behalf of JV Healthcare Limited, (hereinafter referred to as the appellant) filed on the 10th October 2025;

Having also noted the joint letter of reply filed by Dr Alexia Farrugia Zrinzo, Dr Leon Camilleri acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) and by Audrey Marlene Buttigieg Vella for the Department of Contracts filed on the 20th October 2025;

Having also noted the joint letter of reply filed by Dr Joseph Camilleri acting for Pharmabart Limited (hereinafter referred to as the Recommended Bidder) filed on the 24th October 2025;

Having heard and evaluated the testimony of the witness Dr Helen Vella (Representative from the Medicines Licensing) as summoned by Dr Norval Desira acting for the Appellant;

Having heard and evaluated the testimony of the witness Ms Astrid Marie Sant (Member of the Evaluation Committee) as summoned by Dr Norval Desira acting for the Appellant;

Having heard and evaluated the testimony of the witness Mr Paul Camilleri (Representative for the Recommended bidder) as summoned by Dr Norval Desira acting for the Appellant;

Having heard and evaluated the testimony of the witness Mr Adrian Dalli (Director General – Department of Contracts) as summoned by Dr Norval Desira acting for the Appellant;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 4th December 2025 hereunder-reproduced.

Minutes

CT2141/2025 – Tender for the Supply of durvalumab 50mg/ml Concentrate for Solution for Infusion.

The tender was issued on the 6th of June 2025, and the closing date was 9th July 2025.

The estimated value of the tender, excluding VAT, was €6,646,448.00

On 10th October 2025, JV Healthcare Limited lodged an appeal against the Central Procurement and Supplies Unit (CPSU). – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 16th of February 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €33,232.00 was paid.

There were Four bids.

The attendance for this public hearing was as follows:

Appellant – JV Healthcare Ltd.
Dr Norval Desira – Legal Representative
Mr Damian Stellini—Company Representative

Contracting Authority – Central Procurement and Supplies Unit (CPSU)
Dr Alexia Farrugia Zrinzo– Legal Representative
Dr Leon Camilleri – Legal Representative
Ms Kristy Agius – Chairperson(online)
Ms Julia Pirotta – Secretary
Ms Astrid Marie Sant – Evaluator
Mr Liam Abela – Evaluator
Mr Aldo Sciberras – Evaluator

Preferred Bidder – Pharmabart Limited.
Dr Joseph Camilleri – Legal Representative
Dr Keith Cardona – Legal Representative
Dr Kyle Decelis - Legal Representative.

Interested Party – Associated Drug Company Ltd
Mr Marcel K Mifsud – Company Representative.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2213 in the records of the PCRB. The Chairman identified the Appellant as JV Healthcare Ltd., the Contracting Authority as Central Procurement and Supplies Unit (CPSU) and acknowledged the presence of representatives of the preferred bidder, Pharmabart Limited.

The Chairman invited the legal representative for the appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Dr Norval Desira (for the Appellant)

Dr Desira stated that he preferred to call the first witness. Since there was an agreement between all parties, the first witness was called.

Witness:
Dr Helen Vella (ID no. 77367M) summoned by Dr Desira.

Dr Vella is a Director for Medicines Licensing. Dr Desira stated that this tender was for the supply of Durvalumab 50mg/ml concentrate for solution for infusion. He asked Dr Vella whether she knew the licensed product for the medicine's supply. She knew the product name as 'Imfinzi', but did not know any further details, as they had only registered it.

Dr Vella could not answer whether this tender was for a specific product or for alternative products. Dr Desira said that all participants in the tender referred to 'Imfinzi' 500mg x 1 vial ref. 1/18/1322/001 and asked the witness whether the product was licensed with the Authority.

Dr Vella said that the product was registered with the European Medicines Agency and centrally authorised, and that they were not involved in the registration process.

Referring to Document F of AstraZeneca, indicating patent expiry of 6th February 2025, he showed her the 'Imfinzi' product and asked whether it was covered by patents.

Dr Vella said that this was what the documents showed until the year 2030.

Dr Desira asked her what 'patent' means, and she answered that there were various patents and it depends on what the patent covers, for example, how it is manufactured. There could be an alternative marketed product which is also patented.

Dr Desira asked whether the same specification of 'Imfinzi' requested in the tender, and patented, could have an alternative.

Dr Leon Camilleri intervened and said that the witness was not involved in the tender.

The Chairman reminded the witness that she had stated under oath that she was not involved in the tender.

The witness said that there could be a different product to 'Imfinzi', if it were registered in Europe.

Witness:
Ms Astrid Marie Sant (ID no. 393992M) summoned by Dr Desira.

Ms Sant was a senior pharmacist with CPSU and an evaluator. There were three members on the Evaluation Committee. The tender was for the follow-up supply of concentrate for solution for infusion. No particular brand or registration number was requested.

Dr Desira asked whether any bidder had submitted any product other than 'Imfinzi' 500mg x 1 vial. The witness answered that they first evaluate the technically compliant bids, starting from the cheapest. All bidders submitted the same product with the same registration number. She stated that they do not ask bidders for the ultimate beneficial owner (UBO) at the evaluation stage.

According to the General Rules issued by the DOC, the owner would be known after the signing of the award. She could not answer regarding the UBO status. If there is more than one participant with the same UBO, the Evaluation Committee sees the different companies but not the UBOs at the evaluation stage.

Dr Desira asked whether there was a representative from the DOC present. There was not, and Dr Desira requested a suspension of 20 minutes.

The Chairman stated that the appellant was suspending the testimony of Ms Astrid Marie Sant.
After some communications, the Director General of the DOC agreed to be a witness online, in lieu of Dr Buttigieg Vella, who did not attend the hearing due to illness. In the meantime, the next witness was called.

Witness:
Mr Paul Camilleri (ID no. 346972M) summoned by Dr Norval Desira.

Mr Paul Camilleri, Director of Pharmabart Ltd., owned 39% of the shares in the Company. He owned 51% at the time of the submission of the tender. He also owned 51% in Neofarma Pharmaceuticals Ltd.; however, there was a merger of three companies in 2023, and his shares became 39%. The system was still not updated in the MBR two years later, and during the submission of the tender his shares were listed as 51%.

He had seen the letter of rejection. The witness stated that Pharmabart Ltd. operates from 26/28 Mill Street, Qormi. This property is owned by Japa Estates Ltd., in which the witness owns 50% of the shares. Neofarma Ltd. operates from 42/46 Mill Street, Qormi, and that property also belongs to Japa Estates Ltd. All offices are not integrated.

Dr Desira asked whether the witness had declared in the offer that he was the Director of two companies that had submitted offers.

The witness said he had not been asked up to that point. Both Pharmabart Ltd. and Neofarma Ltd. submitted the same product, 'Imfinzi', but at different prices. The witness said that the suppliers of both companies were different, and since the product is imported from multiple EU countries, the prices vary accordingly. He was obliged to bid with the price given by the suppliers, who were from different EU countries. The companies in Malta have their own procurement personnel, with different entities and licences, who do not know each other's quotations. He knew about the tenders after the results were published. The prices are published before the awards.

Dr Desira asked whether the witness had rejected his highest bid, and he answered that this had never occurred to him.

Dr Desira asked whether the companies share the same data.

Mr Swain noted that Dr Desira had to ask questions related to the grievance in question.

Dr Joseph Camilleri intervened, stating that the questions were irrelevant to the appeal and concerned sensitive commercial matters.

Mr Swain asked the witness whether there was anything further to add regarding the different procurements of both companies.

Mr Camilleri insisted that the companies are two separate entities with different suppliers. He added that Pharmabart received a licence for the product from the European Medicines Agency. Neofarma did not have this licence, as it is costly. Pharmabart applied for the licence from Linea as soon as the results showed that they were the preferred bidder. The licence gives the right to import and market the product in Malta.

Cross-examination by Dr Leon Camilleri
Dr Camilleri agreed with the witness that the companies had different suppliers who were interested in this tender and participated separately.

Cross-examination by Dr Joseph Camilleri
Dr Joseph Camilleri clarified that both companies operate separately. The witness was Director of about 50 companies. He was not restricted by law but felt obliged to the suppliers.

Re-cross-examination by Dr Norval Desira
The witness said that both companies share their accounts.

Witness (online):
Mr Adrian Dalli (ID no. 480479M) summoned by Dr Desira.

Mr Dalli, Director General of the DOC, excused the absence of the DOC member. He stated that the issue of UBOs was addressed in Clause 8, Article 24.1, and in the joint reasoned reply by CPSU and the DOC they mentioned Articles 7, 8, 9 and 11. Article 24.1 is in the General Rules, and he quoted:
'As maybe applicable, a filled in ultimately beneficiary owner information sheet and/or any support documentation will be requested, to be provided by the tenderer once the tender has been awarded".
Dr Desira noted that in this case, the Evaluation Committee did not ask about the ultimate beneficial owner because they had no direction from the DOC.

The witness explained that the DOC does not intervene before the award, this falls within the remit of the Evaluation Committee. The full process consists of the report and the recommendation for award, which is then approved by the GCC, after which letters of award are issued.

The GCC is a committee appointed by law, where the Chairman is the Director General of Contracts. The witness had agreed to award the contract.

Dr Desira asked what their position was when two bidders had the same ultimate beneficial owner, with the same Director and shareholder.

The witness said he would check later regarding this specific case.

Dr Camilleri objected, stating that the issue raised by the appellant should be decided by the Board. The decision of the DOC was reflected in the answer confirmed by CPSU and DOC. Dr Desira could not ask the witness for his personal views. The decision had to be taken by the Board.

The Chairman said that the DOC, in his testimony, stated that the decision of the Evaluation Board is taken to the GCC, where the letter stating the preferred bidder is issued — in this case Pharmabart Ltd. Rejection letters are given subject to appeal. Article 24.1 states 'once the tender has been awarded'. The process is pending a decision.

Dr Camilleri said it was recommended, whereas Dr Desira said it was awarded.

The Chairman stated that the contract is not signed before the hearing of the Board.

Dr Desira explained the process from the Evaluation Committee to the Contracts Committee, which takes the decision on the award. Therefore, the matter is not at the recommendation stage but between the award and the contract; the contract was not signed because of the appeal. He asked Mr Dalli, and confirmed, that the General Government Rules are issued by the DOC to strengthen the Public Procurement Regulations. The General Governing Rules were updated in July 2023 and August 2024.

Dr Desira asked why the decision to request the UBO after the award had been taken. The witness said that the UBO process was introduced to promote transparency in public procurement. The UBO should be endorsed by the Contracting Authority before the contract. The purpose of the UBO is to identify the ultimate source of the tender. Mr Dalli said he was responsible for procurement and was not prepared to answer questions relating to competition law.

Dr Desira asked whether it was permissible, under the General Contracts Committee, for two bidders with the same UBO to submit bids for the same product at different prices in the same tender.

The role of the Chairman of the GCC is to review the recommendation of the Evaluation Report and abide by it. The Director General of Contracts said that UBOs were not checked at that stage but later, as long as the awarded winner had submitted the UBO form. The General Rules state that it 'will be requested to be provided by the recommended tenderer', and only the recommended tenderer is checked; no comparison is made.

Dr Camilleri objected, stating that the witness had already explained the applicable regulations and that the answer was in the testimony.

Dr Desira said this was a direct question: 'What was the position of the Director General of Contracts in these circumstances".

Dr Camilleri objected, stating that this concerned the merits of the appeal and that the Board had to decide.

The Chairman upheld the objection and agreed that the Board had to decide.

Dr Desira verbalised:
'f'dan il-kaz, jiena qeghed nirriserva li niehu l-posizzjoni tieghi,in vista tal-fatt, li dan it-tribunal ma ippermettilix naghmel din id-domanda'.

Cross-examination by Dr Zrinzo for CPSU
The witness confirmed that Clause 24.1 had already been updated when the tender was published.

Dr Desira said that Mr Dalli was referring to something previously asked, namely that once he had the information, he had to regulate according to the case. There appears to be a serious defect in the law, especially if the Board says that its decision can only be taken regarding the award, without knowing what the Director General's direction would be now that he has full information. If the Board rejects the appeal, this could be premature because the Director General does not yet have adequate information, and it is still unknown what he would do before signing the contract.

Dr Desira said that his remedy would be exhausted at that stage.
Dr Joseph Camilleri noted that it was nowhere stated that the objection was premature. Dr Desira insisted that this information was known today, which is not accurate. There have been situations where the DOC needed to reconsider its position or conduct another evaluation. This could have been done, but it was not necessary.

The Chairman stated that the Evaluation Board took its time to evaluate and that the GCC fulfilled its role. The decision now rests with the Board, within the parameters imposed by the Public Procurement Regulations and the laws applicable to EU Member States. He reminded the parties that the testimony of Ms Astrid Sant had been suspended.

Witness:
Ms Astrid Marie Sant (ID no. 393992M) — Cross-examined by Dr Zrinzo

As an evaluator, they first check whether the tender is eligible and then verify that it complies with the specifications in the dossier. They then recommend the cheapest offer. The report is passed to the Chairperson and the Contracting Authority. The GCC then issues the recommendation for award.

Final Submissions

Final Submissions by Dr Norval Desira (for the Appellant)
This case leaves no doubt that it raises a crucial issue concerning UBOs and EU competition rules, where disclosure is done after the award and before the signing of the contract. This law must be properly addressed in relation to such issues. He cited cases of the EU Courts stating that there cannot be multiple bidding without observance of the principle of proportionality and a finding of influence. The reason is that if a single bidder submits bids through two different companies, with the same UBO and the same Director, and the difference in price is half a million for the same product, that bidder can withdraw the cheapest bid. We cannot allow things to happen this way.

Based on the information before the tribunal, and the unequivocal evidence of two companies situated on the same street, there was no proof justifying why the prices were so different.

Dr Desira asked whether the UBO should have disclosed that he had submitted two separate bids. The legal representative of the preferred bidder said that he became aware when he saw the price publication. He had every interest in seeing where he ranked between the two companies. It was then that he knew the price difference. Dr Desira asked whether he felt obliged to disclose that he was a UBO and shareholder.

This is where the principles of the EU Court apply. He referred to a local case 350 and quoted:
"Case No. 350 MRRA/W/428/2011 Tender for the Supply Fruit Trees, Rootstock and other Propagation Material to St Vincent de Paul Fruit Tree Nursery, the Board had agreed with the recommended

tenderer that, generally speaking, one could not preclude two separate and distinct companies from competing in a tendering process".

"Whilst fully aware of the different persona that each company is vested with, yet it is also undeniable that, in this particular instance, the conflict of interest that, separately, the components of the respective companies had formally denied from being present, went beyond being dubious".

"Blatant manifestation of conflict of interest which went against the formal declarations made by two affiliated bidders in the said tender".

The tribunal can conclude that a bidder had to disclose his position of two of four — being both first awarded and third ranked.

Did he go against the regulation or not?

Final Submissions by Dr Alessia Farrugia Zrinzo (for the Contracting Authority)
Dr Zrinzo stressed that the regulations must be adhered to. The Evaluation Committee provided clear evaluation reports. She referred to Clause 24.1 of the General Rules, which states that the declaration is to be made after the award of the tender. The role of the Evaluation Committee was carried out in accordance with the Public Procurement Regulations and the DOC rules.

She referred to Clause 3, which provides that the same bidder may submit more than one bid, as long as they are not identical technically and financially.

In this case, the companies were separate and submitted different bids.

Final Submissions by Dr Joseph Camilleri (for the Recommended Bidder)
Dr Camilleri stated that certain arguments oversimplified how the market operates. His colleague referred to a difference of half a million between Neofarma and Pharmabart. This represents 10% of the value of the tender. There would have been no competitive offer if every bidder submitted the same price for the same product. In fact, the four bidders submitted different prices. The reason was the arrangements with different suppliers offering different prices.

Mr Camilleri felt obliged to bid even if it was not the cheapest, as he was committed to the supplier interested in the offer.

Two concepts were mentioned: competition law and conflict of interest. An allegation of distortion of competition is distinct from conflict of interest. Distortion of competition would imply that two or more operators agreed together to influence the market or the competitive element of the offer.
There is a distinction between a conflict of interest — for example, between an operator and an evaluator, or between a participant in an appeal and a member of the Board. This distinction is important because, in cases of general conflict of interest, the decision must be taken correctly even without proof of abuse. However, where the allegation is clearly one of 'distortion of competition', implying connection or conspiracy, this requires proof.

The appellant had to demonstrate this distortion — what was the impact on the market and on this offer. It was never shown how Neofarma and Pharmabart benefited from this offer. It was suggested that Pharmabart could withdraw its offer to favour Neofarma. This was not the case, and the Board

knows that an operator cannot withdraw the cheapest offer without paying the difference between his offer and the second offer. This would make no sense.

The appellant's lawyer said he hoped the issue would be addressed, if not by the Board, then by the legislator. The law may not satisfy the appellant, but there is no regulation supporting his argument. Pharmabart submitted the cheapest compliant offer, and the recommended award should be confirmed.

Conclusion of the Hearing

The Chairman thanked the parties for their submissions and informed them that they would receive the Board's decision shortly.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 16th February 2026.

Having noted the objection filed by JV Healthcare Limited (hereinafter referred to as the Appellant) on 10th October 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT2141/2025 listed as case No. 2213 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Noval Desira
Appearing for the Contracting Authority:	Dr Leon Camilleri and Alexia Farrugia Zrinzo
Appearing for the Recommended Bidder:	Dr Joseph Camilleri

Whereby, the Appellant contends that:

a) Following investigations carried out, it has resulted to the appellant that the ultimate beneficial ownership in the recommended bidder Pharmabart Limited [TID 229795], is indeed identical to the ultimate beneficial ownership in the other competing tenderer Neofarma Pharmaceuticals Limited [TID 229802]. In order to outline better such identical beneficial ownership, the appellant is hereby exhibiting the following documentation:

i. Document 'A' evidences that Pharmabart Limited i s wholly owned by JP Global Holdings Limited (C 64851) and its sole director and legal representative being Paul Camilleri (110 East, Triq Birguma, Naxxar);

ii. Document 'B' shows that J P Global Holdings Limited (C 64851) is wholly owned by Elka Investments Limited (C 93626) and JLMX Investments Limited (C 93632), i n equal shares between the said two companies, with the directors and legal representatives of JP Global Holdings Limited being the same Paul Camilleri (110 East, Triq Birguma, Naxxar) and Jean-Pierre Miceli ("Bridge Val", Triq il-Mensija, San Gwann);

iii. Document 'C' demonstrates that: Elka Investments Limited (C 93626) is wholly owned by the same Paul Camilleri (110 East, Triq Birguma, Naxxar), who is also the sole director and legal representative of the said company; whereas Document 'D' reveals that JLMX Investments Limited (C 93632) is wholly owned by the same Jean-Pierre Miceli ("Bridge Val", Triq il-Mensija, San Gwann), who is also the sole director and legal representative.

b) All the above documentation therefore establishes that the ultimate beneficial owners of the recommended bidder, Pharmabart Limited [TID 229795] are the above-mentioned Paul Camilleri (110 East, Trig Birguma, Naxxar) and Jean-Pierre Miceli ("Bridge Val", Triq il-Mensija, San Gwann), in equal shares between. The appellant is also exhibiting Document 'E' to prove that the other competing tenderer Neofarma Pharmaceuticals Limited [TID 229802] is wholly owned by the same above-mentioned Paul Camilleri (110 East, Triq Birguma, Naxxar) and Jean-Pierre Miceli ("Bridge Val", Triq il-Mensija, San Gwann), with Paul Camilleri being, as in the case of the recommended bidder, Pharmabart Limited, also the sole director and legal representative of the competing tenderer Neofarma Pharmaceuticals Limited [TID 229802]. It may also be pertinent to add that all the above companies share the same premises in Mill Street (or Triq il-Mithna) Qormi, as well as the same firm of auditors, namely Fact Audit ('Cornerline', Dun Karm Street, Birkirkara). In conclusion, it should manifestly b e clear to this Tribunal that both the recommended bidder Pharmabart Limited [TID 229795), and the other competing tenderer Neofarma Pharmaceuticals Limited [TID 229802], are wholly owned by the same ultimate beneficial owners and also managed by the same director and legal representative (hereinafter collectively referred to as the "affiliated bidders").

c) In the Tender under review, the above-identified companies submitted separate bids, with the recommended bidder Pharmabart Limited [TID 229795] submitting a n offer o f €5,208,000.00, and the other competing tenderer Neofarma Pharmaceuticals Limited [TID 229802] unexplainedly submitting a far superior offer of €5,702,375.00 - representing a difference of approximately €500,000 between both bids. There were only two other bids submitted, one by the appellant and another by an altogether different competing bidder - whose price offers were, in both cases, substantially inferior to the highest bid submitted by Neofarma Pharmaceuticals Limited [TID 229802]. One must also keep in mind that the Tender in question was for the supply of only one specific product, namely Imfinzi 500mg x1 vial (EU/1/18/1322/001), which product is the only one under patent until the year 2030 in Europe a s per Document 'F', meaning that there could b e n o possible variations between the respective bids in this particular Tender, since only one specific product is needed and all competing bidders bid on the exact

same product. In other words, the bids of the affiliated bidders could not show a difference in the service offered that may have been relevant to the assessment of the respective bids, and the affiliated bidders could easily define the particular subject matter of the Tender on the basis of the invitation to tender and that the specific qualities of the product to be supplied. In conclusion, the only determining factor which differentiates the recommended bidder from the other competing tenderers, is only the price.

d) In the light of all the above unequivocal evidence, it is the appellant's humble grievance that the submission of two separate bids by the two affiliated bidders, which differ only in price, is not permissible under procurement law, because the affiliated bidders could thus try, depending on the result of the bid opening, either to have their lowest bid eliminated, for example due to under-pricing, or even to withdraw their lower bid offer thereby leaving the higher bid as the only competing bid which is to be evaluated. It need hardly be emphasised that the Contracting Authority is obliged, throughout any tendering procedure, to observe the principles o f procurement set out in Public Procurement Directive 2014/24, which include, inter alia, the principles of equal treatment and proportionality (judgment of 2 6 September 2019, Vitali, C-63/18, EU:C:2019:787, paragraph 39 and the case-law cited). And in terms of Art 57 (4) subparagraph 1(d) of the Directive, bidders are t o b e excluded from a tendering procedure if the contracting entity has sufficiently plausible indications that the economic participant has made agreements with other economic participants which are aimed at distorting competition.

e) In the light of the above facts and enunciated principles, it is the appellant's humble grievance that, in the Tender under review, the Contracting Authority could not have had the peace of mind that the bids were formulated without any influence and, therefore, the Contracting Authority should not have evaluated the unexplainedly different bids submitted by the affiliated bidders and, thus, should have disqualified both affiliated bidders from the Tender.

f) In summary, this means that the affiliated bidders should have been and merit to be excluded from the Tender under review on the basis of multiple participation, particularly in circumstances where, as explained above, there is absolutely no justification for the unexplainedly different bids submitted by the affiliated bidders.

This Board also noted the Contracting Authority and the Departments of Contract's Reasoned Joint Letter of Reply filed on 20th October 2025 and its verbal submission during the hearing held on 16th February 2026, in that:

a) In its reasoned application the objector submits various documents which show that the UBOs of the recommended bidder and of the third cheapest bidder are the same individuals.

b) The objector highlighted the fact that these two companies offered the same product, and that the only difference was the price. The Objector argues that this is not permissible under EU Legislation as it is intended to distort competition, and cites a number of judgments of the European Court of Justice highlighting that bidders should submit independent offers, and that bidders should enter into agreements to distort competition. These judgments state inter alia that Contracting Authorities should investigate if they have objective evidence on such matters.

c) Despite citing various judgments, the only legal provision cited by the objector is the discretion given to Contracting Authorities under Article 57(4) sub paragraph 1(d) of the Directive 2014/24/EU on public procurement, which discretion is not directly applicable in Malta. However this same article is transposed in article 199(c) of the Public Procurement Regulations of Malta.

d) This article provides that:

199. The Director is empowered to blacklist an economic operator from participating in a procurement procedure where: (c) the Director has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;

e) DOC and CPSU primarily submit that the above cited article deals with the blacklisting process, which is different from an evaluation process. The Public Procurement Regulations however do not put any blanket prohibition on offers by companies having the same UBOs and neither does the General Rules Governing Tenders.

f) The only clause which deals with UBOs in the General Rules Governing Tenders is clause 24.1 which stated that: 24.1 As may be applicable, a filled-in Ultimate Beneficiary Owner Information Sheet and/or any supporting documentation will be requested to be provided by the recommended Tenderer once the tender has been awarded.

g) The above cited clause clearly indicates that the Contracting Authority should deal with the question of UBOs only a t post award stage.

h) DOC and CPSU are well aware of clause number 3 of the General Rules, which state that "Bidders may submit up to three (3) multiple bids which should all be non-identical (technically and financially) for a tender. "This clause however concerns the same bidder, and legally, different companies, despite having the same UBOs, are still considered a s separate legal persons and thus separate bidders.

i) DOC and CPSU thus submit that since the applicable legislation and the applicable General Rules do not prohibit companies having the same UBOs from participating in a procurement process with the same product, the Evaluation Committee's recommendation was certainly not illegal.

j) Moreover, and without prejudice to the above, the basic principle relating to the onus of proof is that who alleges must prove.

k) The objector is alleging that the preferred bidder intended to distort the market in some form or another however falls short of explaining how these offers were aiming at distorting the market.

l) The objector submitted its bid regularly and without any difficulty and placed second in the price ranking; a slightly higher price from the preferred bidder and a slightly cheaper price from the objector would have probably meant that the objector would have been recommended for award.

m) Similarly, another economic operator placed its bid which however was the highest priced offer, however the bid was submitted regularly. DOC and CPSU thus insist that it is the objector who must prove any wrong doing and any market distortion.

n) Additionally, and without prejudice to the above, if the objector is attacking the fact that the law, general rules or tender document did not prohibit economic operators with the same UBOs from participating in the same tender with the same product the challenge should have been done in a different forum if the law is being challenged, or with a different procedure before this Honourable Board if the general rules and tender document are being challenged.

o) Similarly, in the decision of the Court of Appeal in the names Vassallo Builders Ltd v. Wasteserv Malta Ltd et decided on the 6 of May 2025 it was stated that: "... jekk VBL dehrilha li r-rekwizit in kwistjoni kien illegali, hija setghet tattakka dak il-kriterju fl-istadju ta' qabel l-gheluq tas-sottomissjoni tal-offerti, u dan bil-mod kif isemmi f Regolament 262 Regolamenti dwar l-Akkwist Pubbliku. La hija naqset milli taghmel hekk, u s-sejha ghall-offerti kienet tobbligaha tressaq kopja tal-Final or Provisional Acceptance Certificate or equivalent, mela allura, VBL kienet marbuta li tressaq tali dokumentazzjoni, anke jekk dehrilha li dik id-dokumentazzjoni ma kinitx meltiega minhabba s-setghat tal-kumitat tal-evalwazzjoni li jwettaq il-verifiki kollha mehtiega, jew inkella ghaliex dak il-kumitat seta' jsib I-informazzjoni minn fuq l-internet."

This Board also noted the Recommended Bidder's Reasoned Letter of Reply filed on 24th October 2025 and its verbal submission during the hearing held on 16th February 2026, in that:

a) ***No breach of law or regulations***

Pharmabart notes that Objector cites only one legal provision as basis for its objection, namely Art 57(4) subparagraph 1(d) of the Public Procurement Directive 2014/24 (the "Directive"), which is referred to in the third page of the objection. Needless to say, the Directive is not directly applicable in Malta and therefore one should refer to the provision by virtue of which this particular provision was transposed into Maltese law. This is Article 199(c) of the Public

Procurement Regulations, which states that: *"199. The Director [of Contracts] is empowered to blacklist an economic operator from participating in a procurement procedure where:…. (c) the Director has sufficiently*

plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition."

It is submitted that this Article does not regulate the bidding or evaluation process, but is a power or discretion given to the Director to blacklist any economic operators who have entered into agreements with other economic operators aimed at distorting competition. In other words, this provision does not regulate the procedure of individual tender proceedings, but provides for a priori exclusion through blacklisting of economic operators which have previously engaged in illegal or criminal activity such as arrangements to distort competition or, as provided in other paragraphs of the same article, breach of employment laws, misrepresentations and so on. This is also the principle behind the equivalent provision in the Directive.

Tellingly, the Objector does not refer to any other article of the law, nor does it refer to the General Rules Government Tenders, precisely because there is absolutely no prohibition against the participation in the same tender proceedings of two different entities having the same UBO. Nor is there any such prohibition in the call for tenders relating to these Tender Proceedings.

b) ***No concerted actions or distortion of competition***

In view of the lack of statutory backing for its objection, JVH refers to some judgments which, in Objector's view, support its position. Pharmabart, however, notes that the cited case law does not raise any form of general prohibition on the participation of different bidders sharing a UBO.

On the contrary, what these decisions provide against is a situation which gives one bidder an unjustified advantage over other bidders. It is therefore not enough for JVH to claim that sharing a UBO leads to an irregularity, but it has the onus of proving to this Honourable Board that as a result of a concerted action Pharmabart gained some sort of advantage.

It is submitted that in this case there were two separate entities which made two distinct offers. The cheaper of the two options was chosen as the recommended bid. This did not lead to any sort of "distortion" and did not prejudice any of the other bidders in any manner.

Objector states that since the product provided by each of the bidders is identical, the *"only determining factor which differentiates the recommended bidder from the other competing tenderers is only the price"*. Objector suggests that, consequently, the only reason why Pharmabart and Neofarma submitted competing bids with different prices was to have the Lowest bid eliminated. This is pure speculation.

With due respect, JVH either is not aware of how the pharmaceutical market works or is being disingenuous and pretending it does not know. The reality is that different pharmaceutical companies have different suppliers and/or principals, with different supply chains and pricing. This is the case here.

Despite the connections highlighted by Objector, Pharmabart and Neofarma, remain two different companies with market strategies and connections which are intentionally distinct from one another. Pharmabart and Neofarma were not set up as separate companies as a part of some attempt to rig these tender proceedings. They are both well-established companies in the pharmaceutical market, with distinct market connections. Specifically with regard to the product which is the subject of these Tender Proceedings, two companies source the product from different supply chains and from different countries of origin, hence the differences in price. JVH, being an experienced player in the industry surely appreciates that in such circumstances there are bona fide market reasons justifying the participation of the two different operators, rather than the groundless allegations and suspicions raised in the Objection. These actions do not stultify competition — quite the contrary! Nor do they cause any prejudice to any other bidders, which were free to participate in the tender and quote whatever price they deemed fit.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

a) The Board first notes that the Appellant's grievance is primarily based on the argument that two bidders participating in the tender share the same Ultimate Beneficial Owner (UBO), and that this circumstance could potentially distort competition or give rise to a conflict of interest during the tendering process.

b) However, the Board observes that during the hearing the Appellant failed to provide any evidence demonstrating that the participation of two companies having the same UBO resulted in any distortion of competition or manipulation of the tender procedure. The Board reiterates that the burden of proof rests on the Appellant, and in the present case the Appellant has not succeeded in substantiating the allegations raised.

c) The Appellant further alleged that, since the companies share the same UBOs, their bids should effectively be considered identical and therefore impermissible. The Board notes that this argument appears to rely on Article 3.1 of the General Rules Governing Tenders, which provides that bidders may submit multiple bids provided that such bids are not identical (Financial and Technical).

d) However, the Board recalls the well-established doctrine of separate juridical personality, whereby a company is recognised as a legal person distinct from its shareholders and directors, possessing its own rights, obligations and liabilities. Consequently, the Board does not agree with the Appellant's interpretation. Article 3.1 does not apply in the present circumstances since each company submitted one bid in its own legal capacity. The fact that the companies may share the same ultimate beneficial owners does not negate their separate legal personality nor render their bids identical.

e) The Board further notes that the companies in question are long-established entities, one incorporated in the 1990s and the other in 2009. This circumstance does not indicate any intention on the part of the ultimate beneficial owners to establish separate companies for the purpose of gaining an advantage in this particular procurement procedure. In any event, the Appellant has failed to demonstrate that the common UBO resulted in any undue advantage or distortion of the procurement process.

f) This conclusion is further supported by the testimony given under oath by Mr Paul Camilleri, representative of the Recommended Bidder, who explained that the companies operate independently and source the product from different suppliers. Mr Camilleri stated that the two companies submitted different bids because their products were supplied through different supply chains operating from different jurisdictions, resulting in different logistical costs and pricing structures. This explanation was not contested by the Appellant, nor was any evidence produced to contradict such testimony.

g) With respect to the Appellant's argument that the Ultimate Beneficial Owner should have been disclosed during the evaluation stage, the Board notes that the applicable legal framework clearly regulates the timing of such declaration. Article 24.1 of the General Rules Governing Tenders stipulates that:

"As may be applicable, a filled-in Ultimately Beneficiary Owner Information Sheet and/or any supporting documentation will be requested to be provided by the recommended Tenderer once the tender has been awarded".

h) The Board therefore agrees with the explanation provided by the Department of Contracts that the declaration concerning the UBO serves a due diligence and transparency purpose rather than a competitive evaluation criterion. Consequently, the Evaluation Committee acted in accordance with the applicable rules when it did not examine UBO information during the evaluation stage.

i) The Board also considered the Appellant's argument that a bidder controlling more than one company could potentially withdraw the lowest bid in order for another higher bid submitted by the same operator to be selected. The Board finds that this argument remains speculative and unsupported by evidence. The facts of the case demonstrate that if this withdrawal happened the Recommended bidder would have actually lost the tender to the Appellant.

j) Furthermore, the regulatory framework already provides safeguards against such conduct. In particular, Article 20.1 of the General Rules Governing Tenders clearly provides that:

"If the Contractor fails to comply with this obligation the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority can revoke the award and recommend the next bidder. In this circumstance the bidder who failed to accept the offer through Government's E-procurement Platform shall forfeit the bid-bond. Where there is no Bid Bond the economic operator ***shall*** *[Board emphasis] be liable for the payment of any difference between his/her offer and the awarded offer."*

k) The Board considers that these provisions act as a sufficient deterrent against any attempt by an economic operator to manipulate the outcome of the procurement process by withdrawing a winning bid in order to favour another bid submitted by a related entity.

l) The Board therefore concludes that the arguments presented by the Appellant remain hypothetical and unsupported by evidence demonstrating that the integrity of the procurement procedure was compromised or that any advantage was obtained by the recommended bidder to the detriment of other participants.

m) The Board also notes that the Appellant repeatedly raised concerns regarding the effectiveness of the legislative framework regulating UBO disclosures and competition safeguards in public procurement. The Board emphasises that it is not within its remit to assess or amend the legislative framework governing public procurement. The role of the Board is limited to determining whether the procurement procedure in question was conducted in accordance with the applicable regulations.

n) Having considered all the evidence and submissions presented, the Board finds that the Appellant failed to demonstrate that any breach of the Public Procurement Regulations, the General Rules Governing Tenders, or the fundamental principles of transparency, equal treatment and competition occurred in the evaluation and award process.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

a) To reject the appeal submitted by the Appellant, JV Healthcare Limited;

b) To uphold the decision of the Contracting Authority to award CT2141/2025 – Tender for the Supply of durvalumab 50mg/ml Concentrate for Solution for Infusion to Pharmabat Limited; and

c) To order that the deposit paid by the Appellant shall not be reimbursed.

Mr Kenneth Swain	**Mr Keith Victor Grech**	**Mr Lawrence Ancilleri**
Chairman	**Member**	**Member**