

**Section 68 of the Competition Act 2004**

**Notice of Infringement Decision issued by CCCS**

**Infringement of the section 34 prohibition in relation to anti-competitive agreements and/or concerted practices involving bid-rigging in connection with the supply of interior fit-out construction services for non-residential properties in Singapore**

**20 December 2024**

**Case number: CCCS 500/100/2021/001**

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Confidential information in this Notice is denoted by square parenthesis [☒].

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## EXECUTIVE SUMMARY

1. The Competition and Consumer Commission of Singapore (“**CCCS**”) is issuing an Infringement Decision (“**ID**”) against the undertakings listed in paragraph 2 below, for their participation in anti-competitive agreements and/or concerted practices involving bid-rigging in relation to tenders for the supply of interior fit-out construction services for non-residential properties that have infringed section 34 of the Competition Act 2004 (“**the Act**”).
2. The ID is addressed to the following undertakings (each a “**Party**” and together the “**Parties**”):
  - a. Flex Connect Pte. Ltd. (formerly known as Facility Link Pte Ltd) (UEN 199504482H) (“**FL**”); and
  - b. Tarkus Interiors Pte Ltd (UEN 199004710D) (“**Tarkus**”).
3. CCCS’s investigations revealed that the Parties had entered into anti-competitive agreements and/or concerted practices to engage in bid-rigging in relation to 12 tenders conducted in Singapore involving non-residential developments, including offices, retail spaces and food and beverage outlets (the “**Conduct**”). The Conduct took place over a period of five years with the first tender affected by a bid-rigging agreement and/or concerted practice called in August 2016 and the last tender called in August 2021.
4. CCCS imposes financial penalties on each of the Parties of the following amounts: S\$5,113,918 on Tarkus and S\$4,885,263 on FL, amounting to a combined total of S\$9,999,182 for their infringements of section 34 of the Act. In determining the penalty amount for each Party, CCCS has applied the six-step approach set out in the *CCCS Guidelines on the Appropriate Amount of Penalty* which includes consideration of the seriousness of the infringement as well as the relevant aggravating and mitigating factors. The financial penalty of S\$4,885,263 that CCCS imposes on FL includes a leniency discount on account of FL’s leniency application and the assistance it has rendered during the course of CCCS’s investigation.

## CHAPTER 1: THE FACTS

### A. The Parties

#### (i) *Tarkus*

1. Tarkus is a private limited company incorporated on 24 September 1990. Tarkus’ primary activity as that of a general contractor for building and furniture construction

and its secondary business activity as that of interior design services.<sup>1</sup> Tarkus' registered office address is located at 1 Tai Seng Avenue, #05-11/12 Tai Seng Exchange, Singapore 536464. Tarkus is 100% owned by Itoki Corporation (incorporated in Japan). Key personnel of Tarkus referred to in this ID and their designations within Tarkus are:

- a. Mr. Tia Chee Wah (also known as "**Simon Tia**"), Tarkus' Chief Executive Officer. According to Tarkus' ACRA profile, Simon Tia is one of Tarkus' two directors<sup>2</sup> and has been a director since 2 December 2018;
  - b. Mr. Cho Chew Meng (also known as "**Mike Cho**"), Tarkus' Contract Director;
  - c. Ms. Nyein Wai Wai Aung (also known as "**Julie Aung**"), Tarkus' Assistant Contract Manager;
  - d. Ms. Aye Thanta Win ("**Thanta**"), Tarkus' Assistant Contract Manager; and
  - e. Ms. Alezandra M. Marquez (also known as "**Alezandra**" or "**Zandy**"), who was formerly Tarkus' Quantity Surveyor.<sup>3</sup>
2. Tarkus' turnover for the financial year ending 30 September 2023 was S\$[ ~~]]. Its turnover attributed to the supply of interior fit-out construction services for non-residential properties in Singapore for the financial year ending 30 September 2020 was S\$[ ~~]].<sup>4</sup>~~~~

(ii) **FL**

3. FL is an exempt private company. It was incorporated on 28 June 1995 as QKD Pte Ltd, before changing its name to Facility Link Pte Ltd on 23 April 1998 and then to Flex Connect Pte Ltd on 1 October 2022. FL's primary business activity as that of building construction n.e.c.<sup>5</sup> and its secondary business activity as that of the manufacture of furniture and fixtures of wood (including upholstery).<sup>6</sup> FL's registered office address is located at 4 Sungei Kadut Crescent, Singapore 728688. The key personnel of FL referred to in this ID and their designations within FL are:
- a. Mr. Chok Chin Foong Jason ("**Jason Chok**"), FL's Managing Director. According to FL's ACRA profile, Jason Chok is also a shareholder of FL (approximately 5% shareholding) and one of FL's two directors since 12 July 2021;
  - b. Ms. Sun Zhuo (also known as "**Judy Sun**"), FL's Director (Quantity Surveyor);

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<sup>1</sup> Tarkus' ACRA entity profile report, retrieved from Handshakes on 11 December 2024.

<sup>2</sup> Tarkus' other director is Mr. Nobuyuki Kitazawa. There is no evidence suggesting that this other director is involved in the Conduct.

<sup>3</sup> Alezandra (Tarkus) was under Tarkus' employment for the duration of the McKinsey Tender, Lilly Tender, Oracle Tender and Nokia Tender.

<sup>4</sup> Information provided by Tarkus dated 20 April 2023 pursuant to the email from CCCS dated 6 April 2023.

<sup>5</sup> The abbreviation "n.e.c." refers to "not elsewhere classified", see ACRA. (n.d.). *Step by Step Guide for Incorporation of Local Company*. How-to Guides. [https://www.acra.gov.sg/docs/default-source/\\_systemdoc/step-by-step-guide.pdf](https://www.acra.gov.sg/docs/default-source/_systemdoc/step-by-step-guide.pdf).

<sup>6</sup> FL's ACRA entity profile report, retrieved from Handshakes on 11 December 2024.

- c. Ms. Khaw Ling Yong (also known as “**Denise Khaw**”), FL’s Executive Quantity Surveyor;
  - d. Ms. Yvonne Law Lee Nee (“**Yvonne**”), FL’s Senior Project Administrator; and
  - e. Mr. Benny Koh, FL’s former Director (Quantity Surveyor).
4. FL’s turnover for the financial year ending 31 March 2023 was S\$[§<].<sup>7</sup> Its turnover attributed to the supply of interior fit-out construction services for non-residential properties in Singapore for the financial year ending 31 March 2021 was S\$[§<].

## **B. Background of the Relevant Industry and the Procurement Process**

5. Both Parties provide interior-fit out construction services for non-residential properties, including offices, retail spaces and food and beverage outlets.<sup>8</sup> Interior fit-out construction services refer to construction works related to an interior office space or commercial space. Such services can include the construction of interior partitions, works related to mechanical, electrical and plumbing services, and the application of finishes.<sup>9</sup> Customers of interior fit-out construction services may choose to procure interior fit-out construction services on a direct basis, i.e. by directly engaging a contractor to provide interior fit-out construction services or through a third party such as by engaging a project manager<sup>10</sup> to oversee the procurement of the interior fit-out construction services on their behalf.<sup>11</sup>
6. An overview of the procurement process for interior fit-out construction services is set out below:
- a. The customer may engage a project manager to oversee the procurement of interior fit-out construction services and management of the project. The customer or project manager may be supported by other appointed consultants, including quantity surveyors, architectural and interior designers, mechanical consultants and electrical consultants.<sup>12</sup>
  - b. The customer, or the project manager with the approval of the customer, shortlists candidates to be invited to participate in the tender for the general contractor scope of work (the “**pre-qualification process**”). The pre-qualification process may

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<sup>7</sup> FL submitted that it does not have the audited financial statements for the latest financial year 2024 (ended 31 March 2024). See FL’s email dated 5 December 2024 pursuant to CCCS’s email dated 3 December 2024.

<sup>8</sup> Tarkus. (n.d.). *Portfolio*. [https://tarkus.com.sg/portfolio\\_1/](https://tarkus.com.sg/portfolio_1/). FL. (2023). *Project Type – Office*. [https://flex.asia/project\\_type/office/](https://flex.asia/project_type/office/). FL. (2023). *Project Type – Retail*. [https://flex.asia/project\\_type/retail/](https://flex.asia/project_type/retail/).

<sup>9</sup> Information provided by Jones Lang LaSalle Pty Ltd (“**JLL**”) to question 4 dated 22 February 2024 pursuant to the section 63 Notice issued by CCCS dated 6 February 2024.

<sup>10</sup> Project managers are also known as project management consultants.

<sup>11</sup> Response to question 10 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022.

<sup>12</sup> Information provided by JLL to question 6 dated 22 February 2024 pursuant to the section 63 Notice issued by CCCS dated 6 February 2024.

require candidates to prepare pre-qualification submissions<sup>13</sup> which the customer, or the project manager together with the customer, will generally evaluate based on a set of selection criteria<sup>14</sup> such as relevant experience, prior experience with the customer or project manager, team members, workload and the financial standing of the candidate.

- c. The customer or the project manager will issue a request for proposal (“**RFP**”) and send the tender documents to the invited candidates to submit a bid. The RFP and tender documents set out the specific requirements for an interior fit-out construction project. The customer, or the project manager, may organise a site visit which candidates are required to attend.
- d. Candidates are usually required to submit their tender bids by the due date. A tender bid generally includes the following documents:
  - i. Bill of Quantities (“**BQ**”), which sets out a detailed and itemised list of materials, components, and labour required, along with the associated cost of each item required to complete the project on the basis of tender drawings and tender specifications;
  - ii. Schedule of Rates, which sets out prices of materials that may need to be purchased on an ad hoc basis in the course of construction and usually covers materials in variation works; and
  - iii. Construction Programme or Phasing Plan, which is a timeline setting out the duration of each stage of the project and the timing of when each stage of project is targeted to be completed.
- e. After candidates submit their tender bids, the customer or the project manager may find that there are aspects of the candidates’ bids which are not clearly stated and require clarification. The customer or the project manager will usually summarise the discrepancies and deficiencies in post tender questionnaires (“**PTQs**”) or post tender clarifications (“**PTCs**”) and send the PTQs/PTCs to the relevant candidates. PTQs/PTCs may comprise two sets of questions; one set of questions which is tailored to a candidate, as these questions seek to clarify discrepancies and deficiencies in that candidate’s tender bid, and another set of general questions that is posed to all candidates. Candidates may also be asked to attend a tender interview to present their tender bid to the customer, the project manager, or any other technical consultants and to clarify their tender bid or response to any PTQs/PTCs.<sup>15</sup>

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<sup>13</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>14</sup> The exact selection criteria may differ across project managers.

<sup>15</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

- f. The customer or project manager evaluates the tender submissions (which include each candidate's response to any PTQ/PTC and that candidate's performance during the tender interview) based on a set of selection criteria. The selection criteria commonly comprise factors such as price, the proposed project team, the tenderer's past project experience in the building where the interior fit-out construction work will be undertaken and the tenderer's overall level of technical competence. The weightage of each of these factors in the evaluation are discussed between the project manager and the customer (where relevant) and approved by the customer.<sup>16</sup>
- g. In the case of a tender overseen by a project manager, the project manager generally prepares a report for the customer with a recommendation on the proposed winning tenderer.<sup>17</sup> When preparing the recommendation report, the project manager may be supported by additional consultants appointed by the customer to verify various parts of the tender submission, such as the submissions relating to cost and tender specifications. In this scenario, the customer reviews the recommendation report and concurs with the recommendation or selects another winning tenderer based on the customer's own considerations.

### C. Investigations and Proceedings

7. The Conduct was first brought to CCCS's attention when CCCS received information from an anonymous source that the Parties may be engaged in price fixing and bid-rigging activities in relation to certain interior fit-out construction tenders. Following CCCS's further inquiries to verify the allegations made (which included checks to identify the possible affected customers, sending enquiries to these customers and following up on customer responses), CCCS commenced an investigation on 16 November 2020.
8. Due to the COVID-19 pandemic, CCCS's investigations were delayed. CCCS conducted inspections pursuant to its powers under section 64 of the Act ("**section 64 Inspections**") on 17 to 19 January 2022 at the premises of Tarkus and FL and obtained various documents. Interviews of key personnel of the Parties were also conducted in the course of the section 64 Inspections. Subsequently, CCCS received a leniency application from FL on 9 November 2022 for "*the sharing and /or use of commercially sensitive price information*" in relation to nine tenders.<sup>18</sup> FL subsequently sought to

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<sup>16</sup> Information provided by JLL dated 22 February 2024 pursuant to the section 63 Notice issued by CCCS dated 6 February 2024.

<sup>17</sup> Information provided by JLL dated 22 February 2024 pursuant to the section 63 Notice issued by CCCS dated 6 February 2024.

<sup>18</sup> FL's leniency application submissions dated 9 November 2022 and 29 November 2022.



expand its leniency application to cover an additional four tenders on 17 February 2023<sup>19</sup>, 22 March 2023<sup>20</sup> and 27 December 2023<sup>21</sup>.

9. In the course of the investigation, a detailed review of the documents obtained from the Parties was conducted, after which further interviews were conducted with employees of the Parties from 10 February 2022 to 4 April 2023 and from 14 November 2023 to 27 November 2023. Additionally, between 20 October 2022 and 15 November 2023, notices were also issued pursuant to section 63 of the Act (“**section 63 Notices**”) to require further information regarding the Conduct and to obtain information regarding the Parties’ respective turnovers. Section 63 Notices were also sent to customers and their respective project managers to ascertain whether their tenders had been affected by the Conduct.
10. The interviews conducted by CCCS in the course of the investigation are set out in **Annex A**.
11. On 23 May 2024, CCCS sent each Party a notice of its Proposed Infringement Decision (“**PID**”), which was reissued on 19 July 2024. At the same time, the Parties were given an opportunity to make representations to CCCS on the PID. The documents in CCCS’s file were made available for the Parties to inspect from 7 August 2024. Both Parties provided written representations to the PID on 5 September 2024. Some additional documents in CCCS’s investigation file were made available to the Parties on 27 September 2024 and the Parties were given a further opportunity to make additional representations in relation to these documents. CCCS received further written representations from the Parties on 4 October 2024.
12. After considering the evidence and representations received from the Parties, CCCS finds that section 34 of the Act has been infringed by Tarkus and FL.

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

13. This chapter sets out the legal and economic framework within which CCCS has considered the information and evidence it obtained in the course of its investigation.

### **A. The Section 34 Prohibition and Application to Undertakings**

14. Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore (the “**section**

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<sup>19</sup> FL’s leniency application submissions dated 17 February 2023.

<sup>20</sup> FL’s leniency application submissions dated 22 March 2023.

<sup>21</sup> Information provided by FL dated 27 December 2023 pursuant to the section 63 Notice issued by CCCS dated 20 December 2023.

**34 prohibition**”). In applying the section 34 prohibition, the Competition Appeal Board (“CAB”) accepted in *Re Pang’s Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1 (“*Pang’s Motor Trading*”) that decisions from the United Kingdom (“UK”) and European Union (“EU”) are highly persuasive in interpreting the section 34 prohibition due to the similarities between section 34 of the Act and the relevant sections of the UK’s and EU’s respective competition statutes, being Chapter I of the UK Competition Act 1998 and Article 101 of the Treaty of Functioning of the European Union (“TFEU”) (formerly Article 81 and Article 85 of the European Community Treaty).<sup>22</sup>

15. Section 2 of the Act defines “undertaking” to mean “*any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.*” The concept of an “undertaking” in section 2 of the Act covers any entity capable of carrying on commercial or economic activities, regardless of its legal status or the way in which it is financed. In view of the Parties’ commercial and economic activities in the market for the supply of interior-fit out construction services for non-residential properties in Singapore, each of the Parties constitutes an “undertaking” for the purposes of the Act.

## **B. Agreements and/or Concerted Practices**

16. The section 34 prohibition applies to both agreements and concerted practices.
17. In competition law, “agreement” has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written or oral; formal or informal including so-called “gentlemen’s agreements”. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means. All that is required is that the parties arrive at a consensus on the actions each party will, or will not, take.<sup>23</sup>
18. For an agreement to exist, EU jurisprudence has emphasised that it “*is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way*”.<sup>24</sup> Further, the fact that a formal agreement has not been reached on all matters does not preclude the finding of an agreement. In *Pre-Insulated Pipe Cartel*<sup>25</sup>, the European Commission (“EC”) stated:

*“An agreement for the purposes of Article 85(1) [now Article 101(1)] may also fall well short of the certainty required for the enforcement of a commercial contract. Its exact terms may never be expressed: the fact of agreement will have to be inferred from all the circumstances. The divergent*

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<sup>22</sup> *Pang’s Motor Trading*, at [33].

<sup>23</sup> *CCCS Guidelines on the Section 34 Prohibition*, at paragraph 2.10.

<sup>24</sup> Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711 (“*Hercules*”), at [256].

<sup>25</sup> COMP IV/35.691/E.4 [1999] OJ L24/50, 1999 CMLR 402, at [134].

*interests of the cartel members may also preclude a full consensus on all issues. One or other party may have reservations about some particular aspect of the arrangement while still adhering to the common enterprise. Some aspects may deliberately be left vague or undefined. It may be that the parties agree (expressly or tacitly) to adopt a common plan and that they have to meet on a continuing basis to work out the details, alter or amend it from time to time or resolve particular difficulties.*

*Formal agreement may never be reached on all matters. Agreements in one area may exist alongside conflicts in another. Competition may not be completely eliminated.*

*The participants may also show varying degrees of commitment to the common scheme. One may exercise a dominant role as ringleader. There may be internal conflicts and rivalries. Some members may even cheat. There could be outbreaks of fierce competition and even 'price wars' from time to time.*

*None of these elements will however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 85(1) [now Article 101(1)] where there is a combination of parties with a single common and continuing objective..."*

19. With respect to concerted practices, the European Court of Justice ("ECJ") in *Suiker Unie and others v Commission* set out the concept of "concerted practice" as a form of coordination between undertakings, which, "*without having been taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition practical cooperation between them which leads to conditions of competition which do not correspond to the normal conditions of the market, having regard to the nature of the products, the importance and number of the undertakings as well as the size and nature of the said market.*"<sup>26</sup>
20. The key difference between a concerted practice and an agreement is that a concerted practice may exist where there is informal cooperation, without any formal agreement or decision. A concerted practice would be found to exist if parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with cooperation between them.<sup>27</sup>

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<sup>26</sup> Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663 ("**Suiker Unie**"). Affirmed by the ECJ in the subsequent case of Case C-42/92 P *Commission of the European Communities v Anic Partecipazioni SpA* [1999] ECR I-4125, at [115]-[118].

<sup>27</sup> CCCS *Guidelines on the Section 34 Prohibition*, paragraph 2.18.

21. Whether it is by way of agreement or concerted practice, the ECJ also emphasised in *Suiker Unie* that the fundamental principle in competition is that economic operators should act independently when determining their conduct in the market:<sup>28</sup>

*“173. The criteria of coordination and cooperation laid down by the case-law of the Court, which in no way require the working out of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that **each economic operator must determine independently the policy which he intends to adopt on the common market including the choice of the persons and undertakings to which he makes offers or sells.***

*174. Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, **it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.**” (Emphasis in bold added)*

22. The principle that each economic operator must determine independently the policy it intends to adopt has also been emphasised by CCCS in its previous decisions in *Pest Control*,<sup>29</sup> *Express Bus Operators*,<sup>30</sup> *Ball Bearings*,<sup>31</sup> *Formula 1 and GEMS Tenders*,<sup>32</sup> *WRS*<sup>33</sup> and more recently in *Maintenance Services for Swimming Pools*<sup>34</sup>.

*(i) Necessity to conclude whether conduct is an agreement and/or a concerted practice*

23. It is established law that it is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice. In *Hercules*,<sup>35</sup> the Court of First Instance (“CFI”) (now the European General Court (“**General Court**”)) found that Hercules had taken part in an integrated set of schemes constituting a single infringement, which progressively manifested itself in both unlawful agreements and unlawful concerted practices. As such, the EC was entitled to

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<sup>28</sup> *Suiker Unie*, at [173] and [174].

<sup>29</sup> *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1 (“*Pest Control*”) at [42].

<sup>30</sup> *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2 (“*Express Bus Operators*”) at [50].

<sup>31</sup> *Re CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5 (“*Ball Bearings*”) at [35].

<sup>32</sup> *Formula 1 and GEMS Tenders* [2017] SGCCCS 1 (“*Formula 1 and GEMS Tenders*”) at [121].

<sup>33</sup> *Re Bid-rigging in Building, Construction and Maintenance Tenders* (“*WRS*”) at [48].

<sup>34</sup> *Re infringement of the section 34 prohibition in relation to the provision of maintenance services for swimming pools, spas, fountains and water features*, CCCS 500/7003/17 (“*Maintenance Services for Swimming Pools*”) at [44] to [46].

<sup>35</sup> *Hercules* [1991] ECR II-1711.

characterise that single infringement as “*an agreement and a concerted practice*” since the infringement involved, at one and the same time, factual elements that could be characterised as “*agreements*” and factual elements that could be characterised as “*concerted practices*”.<sup>36</sup>

24. Similarly, in *JJB Sports plc and Allsports Limited v Office of Fair Trading* (“**JJB Sports**”),<sup>37</sup> the UK Competition Appeal Tribunal (“**CAT**”) opined on the requirement for the Office of Fair Trading (“**OFT**”, now the UK Competition and Markets Authority (“**CMA**”)) to characterise an infringement as an agreement or a concerted practice:

“644 *It is trite law that it is not necessary for the OFT to characterise an infringement as either an agreement or a concerted practice: it is sufficient that the conduct in question amounts to one or the other...*”  
(Emphasis in bold added)

### C. Party to an Agreement or a Concerted Practice

25. The fact that a party may have played only a limited role in setting up the agreement or concerted practice, or may not be fully committed to its implementation, or participated only under pressure from the other parties, does not mean that it is not party to the agreement or concerted practice (although these factors may be taken into account in deciding on the level of any financial penalty).<sup>38</sup>
26. This is also established in EU jurisprudence. In *Sarrío v Commission*<sup>39</sup>, the ECJ held that:

“50 *It must be accepted, as the Court of First Instance accepted, that participation by an undertaking in meetings that have an anti-competitive object has the effect de facto of creating or strengthening a cartel and that the fact that an undertaking does not act on the outcome of those meetings is not such as to relieve it of responsibility for the fact of its participation in the cartel, unless it has publicly distanced itself from what was agreed in them ....*”<sup>40</sup> (Emphasis in bold added)

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<sup>36</sup> *Hercules*, at [262] to [265]. See also Case C-238/05 *Asnef-Equifax v Commission* [2006] ECR I-11125, at [32].

<sup>37</sup> *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [644], referring to Cases T-305/94 etc. *NV Limburgse Vinyl Maatschappij v Commission* [1999] ECR II-931, at [696] to [698], and Case C-49/92 P *Commission of the European Communities v Anic Partecipazioni* [1999] ECR I-4125, at [131] to [133]. Affirmed by the UK Court of Appeal in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2006] EWCA Civ 1318, at [21].

<sup>38</sup> *CCCS Guidelines on the Section 34 Prohibition*, at paragraph 2.11.

<sup>39</sup> Case C-291/98 P *Sarrío v Commission* [2000] ECR I-9991 (“*Sarrío*”).

<sup>40</sup> *Sarrío*, at [50].

27. In *Commission v Anic Partecipazioni*<sup>41</sup>, the ECJ held that:

“90 The fact that an undertaking has not taken part in all aspects of an anti-competitive scheme or that it played only a minor role in the aspects in which it did participate must be taken into consideration when the gravity of the infringement is assessed and if and when it comes to determining the fine.”<sup>42</sup>

28. An agreement or concerted practice would still be caught under the section 34 prohibition even if an undertaking does not intend to implement or adhere to the terms of an agreement.<sup>43</sup>

#### **D. Object or Effect of Preventing, Restricting or Distorting Competition**

##### **(i) “Object” and “Effect” Requirements are Alternative and Not Cumulative Requirements**

29. Section 34(1) of the Act prohibits “...agreements between undertakings ... or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore”. In accordance with the plain reading of the section, “object” and “effect” are alternative and not cumulative requirements. This principle has been affirmed by the CAB which considered the phrase “object or effect” to be disjunctive in nature.<sup>44</sup>

30. For the purposes of applying section 34 of the Act, it is sufficient for CCCS to show that the object of an agreement or concerted practice is to prevent, restrict or distort competition within Singapore, with no further requirement to prove the effects of that agreement or concerted practice. CCCS’s approach is set out at paragraph 2.22 of the *CCCS Guidelines on the Section 34 Prohibition*, which states that:

“Once it has been established that an agreement has as its object the appreciable restriction of competition, CCCS need not go further to demonstrate anti-competitive effects. On the other hand, if an agreement is not restrictive of competition by object, CCCS will examine whether it has appreciable adverse effects on competition.”

31. CCCS’s approach was endorsed by the CAB in *CU Water Services Pte Ltd v CCCS (“CU Water”)*.<sup>45</sup> The CAB also stated:

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<sup>41</sup> Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 (“*Anic*”).

<sup>42</sup> *Anic*, at [90].

<sup>43</sup> *Pest Control*, at [120] to [128].

<sup>44</sup> *Pang’s Motor Trading*, at [30].

<sup>45</sup> *CU Water*, at [50].

“51 Pursuant to the Section 34 Prohibition Guidelines, in determining if an agreement is anti-competitive, CCCS need not go further to demonstrate anti-competitive effects once it has been established that an agreement has as its object the appreciable restriction of competition. It follows that the CCCS is entitled to come to a view of the seriousness of bid-rigging based on its likely effects, as it did in this case, and is not obliged to investigate the actual effect of the infringement on competition.”<sup>46</sup>

32. This is consistent with European jurisprudence which established that where the object being pursued is to prevent, restrict or distort competition, there can be an infringement even if an agreement does not have any effect on the market. In *Tréfilunion SA v Commission*<sup>47</sup>, the CFI held:

“79 ...It must be stated that non-observance of the agreed prices does not change the fact that the object of those meetings was anti-competitive and that, therefore, the applicant participated in the agreements: at most, it might indicate that the applicant did not implement the agreements in question. There is no need to take account of the concrete effects of an agreement, for the purposes of applying Article 85(1) [now Article 101(1)] of the Treaty, where it appears, as it does in the case of the agreements referred to in the Decision, that the object pursued is to prevent, restrict or distort competition within the Common Market...”<sup>48</sup>

33. Similarly, the ECJ has held that a concerted practice can be anti-competitive by object even if there is no actual effect on the market. In *Hüls AG v Commission*<sup>49</sup>, the ECJ stated:

“163 Secondly, contrary to Hüls’s argument, a concerted practice as defined above is caught by Article 81(1) EC [now Article 101(1)], **even in the absence of anti-competitive effects on the market.**

164 First, it follows from the actual text of that provision that, as in the case of agreements between undertakings and decisions by associations of undertakings, **concerted practices are prohibited, regardless of their effect, when they have an anti-competitive object.**

165 Next, although the very concept of a concerted practice presupposes conduct by the participating undertakings on the market, it does not necessarily mean that that conduct should produce the specific

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<sup>46</sup> *CU Water*, at [51].

<sup>47</sup> Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063 (“*Tréfilunion*”).

<sup>48</sup> *Tréfilunion*, at [79].

<sup>49</sup> Case C-199/92 *Hüls AG v Commission* [1999] ECR I-4287 (“*Hüls*”).

*effect of restricting, preventing or distorting competition.*”<sup>50</sup> (Emphasis in bold added)

34. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*<sup>51</sup>, the CATCAT stated:

“357 However, the OFT does not in our judgment need to rely on the similarity of prices to prove its case if other evidence shows that relevant agreements or concerted practices came into existence. **It is trite law that once it is shown that such agreements or practices had the object of preventing, restricting or distorting competition, there is no need for the OFT to show what the actual effect was: see Cases 56 and 58/64 Consten and Grundig v Commission [1996] ECR 299, 342 and many subsequent cases**”.<sup>52</sup> (Emphasis in bold added)

(ii) ***Object of Restricting, Preventing or Distorting Competition***

35. As reflected at paragraphs 2.23 and 2.24 of the *CCCS Guidelines on the Section 34 Prohibition*, agreements involving restrictions of competition by object, for example agreements involving price fixing, bid-rigging, market sharing or output limitations, will always have an appreciable adverse effect on competition. CCCS’s approach is consistent with well-established European jurisprudence that the finding of an infringement by “object” is grounded in the principle that certain types of coordination between undertakings can be regarded, by their very nature as being injurious to the proper functioning of normal competition.<sup>53</sup>
36. The ECJ elucidated the concept of an “object” infringement in *Cartes Bancaires*<sup>54</sup>. *Cartes Bancaires* concerned a fee structure established by the nine main members of a payment card system. In annulling the General Court’s finding that the fee structure restricted competition by object, the ECJ explained that coordination between undertakings will be regarded to be restrictive of competition by “object” if such coordination by its very nature reveals a sufficient degree of harm to competition:

“50 That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition (see, to that effect, in particular, judgment in *Allianz Hungária Biztosító and Others* (EU:C:2013:160) paragraph 35 and the case-law cited).”

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<sup>50</sup> *Hüls*, at [163] to [165].

<sup>51</sup> *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24 (“*Argos*”).

<sup>52</sup> *Argos*, at [357].

<sup>53</sup> Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2 (“*Cartes Bancaires*”), at [50].

<sup>54</sup> Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2.



In this regard, the competition regulator should consider the objectives which the coordination is intended to attain and its economic and legal context to determine the nature of said concerted practice.<sup>55</sup>

37. The ECJ in *Cartes Bancaire* further explained that there are certain types of collusive conduct such as price fixing, bid-rigging and market sharing which, by their very nature, have such a high likelihood of producing deleterious effects on the state of competition in the market that they may be deemed to be restrictive of competition by “object”.

*“51 Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 81(1)[now Article 101] EC, to prove that they have actual effects on the market (see, to that effect, in particular, judgment in Clair, 123/83, EU:C:1985:33, paragraph 22). Experience shows that such behaviour leads to falls in production and price increases, resulting in the poor allocation of resources to the detriment, in particular, of consumers.”<sup>56</sup>*

38. The principle that certain forms of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition such that it is not necessary for the competition regulator to assess their effects is well-established. This well-established principle was most recently applied by the ECJ in *Generics (UK) Ltd and Others*:<sup>57</sup>

*“64 Accordingly, as regards practices characterised as ‘restrictions by object’, there is no need to investigate their effects nor a fortiori to demonstrate their effects on competition in order to classify them as ‘restrictions of competition’, within the meaning of Article 101(1) TFEU...”*

39. It is not necessary to prove that the parties have the subjective intention of restricting competition when entering into the agreement or concerted practice. However, the ECJ found that the EC is not precluded from finding that the parties’ subjective intention is a relevant factor in assessing whether the object of an agreement is anti-competitive.<sup>58</sup>
40. Furthermore, an agreement may be regarded as having a restrictive object even if the restriction of competition is not its sole aim. In *Competition Authority v Beef Industry*

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<sup>55</sup> *Cartes Bancaires*, at [53].

<sup>56</sup> *Cartes Bancaires*, at [50] to [51].

<sup>57</sup> *Case C-307/18 Generics (UK) Ltd and Others* ECLI: EU:C:2020:52 (Judgment of 30 January 2020), at [64].

<sup>58</sup> *Cartes Bancaires*, at [54]; and *Case C-32/11 Allianz Hungária Biztosító Zrt v Gazdasági Versenyhivatal* [2013] 4 CMLR 25, at [37].

*Development Society Ltd and Another (“Irish Beef”)*<sup>59</sup>, the Beef Industry Development Society argued that the arrangements in question were not anti-competitive in purpose or injurious for consumers or competition, but rather were intended to rationalise the beef industry to make it more competitive by reducing production overcapacity. The ECJ rejected the argument and held that:

“21 In fact, to determine whether an agreement comes within the prohibition laid down in Article 81(1) EC (now Article 101(1)), close regard must be paid to the wording of its provisions and to the objectives which it is intended to attain. In that regard, even supposing it to be established that the parties to an agreement acted without any subjective intention of restricting competition, but with the object of remedying the effects of a crisis in their sector, such considerations are irrelevant for the purposes of applying that provision. Indeed, **an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives** (*General Motors* [2006] 5 C.M.L.R. 1 at [64] and the case law cited)”.<sup>60</sup> (Emphasis in bold added)

The proposition that an agreement may still be restrictive by object even if it purports to pursue other legitimate aims was also endorsed by the General Court in *Lundbeck v Commission*,<sup>61</sup> where the argument that restrictions in the agreements at issue were necessary to protect the parties’ intellectual property rights was rejected. Notwithstanding that such restrictions may have been the most cost-effective or least risky option from a commercial perspective, the General Court did not agree that this precludes the application of Article 101 of the TFEU, which prohibits anti-competitive agreements.

## E. Bid-Rigging

41. The *CCCS Guidelines on the Section 34 Prohibition* state that bid-rigging will always be regarded to have an appreciable adverse effect on competition.<sup>62</sup> This position has been cited with approval by the CAB in *CU Water* and *Pang’s Motor Trading*.<sup>63</sup> The tendering process is designed to foster competition, and an essential feature of this system is that each interested supplier should prepare and submit its bids independently. Tender bids that are submitted as a result of collusion or co-operation between suppliers

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<sup>59</sup> Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6.

<sup>60</sup> Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21]. See also Case 96/82 *IAZ International Belgium v Commission* [1983] ECR 3369, at [22] to [25].

<sup>61</sup> Case T-472/13 *H. Lundbeck A/S and Lundbeck Ltd v Commission* [2016] ECLI:EU:T:2016:449, at [459].

<sup>62</sup> *CCCS Guidelines on the Section 34 Prohibition*, at paragraph 2.24.

<sup>63</sup> *CU Water*, at [27]; and *Pang’s Motor Trading*, at [30].

competing for the award of the tender will, by their very nature, be regarded as restricting competition appreciably.<sup>64</sup>

42. The requirement for independent bids in the tendering process is illustrated in the UK decisions of *Apex Asphalt and Paving Co Limited v Office of Fair Trading*<sup>65</sup> (“**Apex**”) (cited by CCCS in *Pest Control*<sup>66</sup>) and, subsequently, *Makers UK Limited v Office of Fair Trading* (“**Makers**”), which applied the principles set out in *Apex*<sup>67</sup>. The principles set out in these decisions were applied by CCCS in *Formula 1 and GEMS Tenders*.<sup>68</sup>
43. In *Apex*, the CAT identified the anti-competitive harms of a cover bid to be that (a) it reduces the number of competitive bids submitted in respect of that particular tender; (b) it deprives the tenderee of the opportunity of seeking a replacement (competitive) bid; (c) it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so; and (d) it gives the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.<sup>69</sup>
44. In *Design, Construction and Fit-out Services*<sup>70</sup>, the UK Competition and Markets Authority (“**CMA**”) cited *Kier Group Plc and others v Office of Fair Trading*<sup>71</sup> (“**Kier**”) and *Bid Rigging in the Construction Industry*<sup>72</sup> for the principle that cover bidding is a form of bid-rigging which infringes Article 101(1) of the TFEU by object.<sup>73</sup> In this decision, the CMA found that six office fit-out firms had participated in “*one or more agreements and/or concerted practices to submit cover bids and/or exchange commercially sensitive information in relation to certain customers’ contracts*”.<sup>74</sup> In all instances, the firm which wanted to win the contract arranged for one or more of its competitors to submit a cover bid. In most cases, the requesting firm also provided competitors with completed costs and/or design plans meant to be submitted as the competitors’ own bids.
45. Bid-rigging has also been condemned by the EC under Article 101(1) of the TFEU. In *Carglass*<sup>75</sup>, the EC imposed fines on four carglass manufacturers for an infringement of Article 81(1) of the European Community Treaty (now Article 101(1)). The

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<sup>64</sup> CCCS *Guidelines on the Section 34 Prohibition*, at paragraph 3.8.

<sup>65</sup> [2005] CAT 4.

<sup>66</sup> *Pest Control*, at [59].

<sup>67</sup> [2007] CAT 11.

<sup>68</sup> *Formula 1 and GEMS Tenders*.

<sup>69</sup> *Apex*, at [251].

<sup>70</sup> *Design, construction and fit-out services* (Case 50481, decision of 16 April 2019) (“**Design, construction and fit-out services**”).

<sup>71</sup> [2011] CAT 3.

<sup>72</sup> OFT Decision CA98/02/2009 of 21 September 2009, which was appealed to the UK CAT in *Kier*.

<sup>73</sup> *Design, construction and fit-out services*, at [5.83].

<sup>74</sup> *Design, construction and fit-out services*, at [6.1].

<sup>75</sup> Case COMP/39.125 – *Carglass*, Commission Decision of 12 November 2008 relating to a proceeding pursuant to Article 81 (now Article 101) of the EC Treaty and Article 53 of the EEA Agreement (“**Carglass**”).

manufacturers had formed a cartel which allocated new and reallocated existing supply contracts among themselves whilst keeping market shares stable. To carry out the allocation, the cartel participants exchanged price and other commercially sensitive information, and coordinated pricing and supply policies, which allowed them to make concerted decisions regarding their responses to requests for quotations from customers.<sup>76</sup>

46. The EC found, amongst other things, that the practice adopted by the carglass manufacturers of allocating contracts among themselves constituted an infringement. One mechanism employed by the manufacturers was to “preselect” the winner, either by the other manufacturers not quoting at all, or by quoting higher prices than the preselected winner. The second and “*more sophisticated mechanism*” involved the preselected winner setting a price in response to specific requests for quotations, with the other manufacturers agreeing to quote higher prices.<sup>77</sup> These tactics gave the false appearance of competition.
47. In *International Removal Services*<sup>78</sup>, the EC found that providers of international removal services in Belgium had participated in a cartel to fix prices, share customers, and manipulate tender submissions. In particular, the EC found that the undertakings had entered into a market sharing agreement by means of a system providing bogus quotes called “cover quotes”, where the requesting firm (which wanted to win the contract) indicated to its competitors the price and the rate of storage costs that the latter were to quote.
48. The EC stated that the submission of cover quotes constituted a concerted practice within Article 81(1) of the European Community Treaty (now Article 101(1)), as the undertakings had “*entered into concertation on the prices of the services to be provided, on the hidden price elements (the commissions), and on the submission of bids as part of the procedure for selecting the service provider.*”<sup>79</sup> By doing so, the undertakings had “*replaced the risks of competition with practical cooperation among themselves*”.<sup>80</sup>
49. The EC held that the submission of cover quotes (amongst other conduct) gave the customer a false choice and the prices quoted in all the bids which the customer received were deliberately higher than the price quoted by the company which was the “lowest bidder”, and at all times, the prices were higher than they would have been in a competitive environment.<sup>81</sup> This direct and indirect fixing of prices including by means of the drawing up of cover quotes was, by its very nature, a restriction by object of

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<sup>76</sup> *Carglass*, at [99] and [505].

<sup>77</sup> *Carglass*, at [102] to [103].

<sup>78</sup> Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 (now Article 101) of the EC Treaty and Article 53 of the EEA Agreement (“*International Removal Services*”).

<sup>79</sup> *International Removal Services*, at [299].

<sup>80</sup> *International Removal Services*, at [299].

<sup>81</sup> *International Removal Services*, at [358].

competition within the meaning of Article 81 (now Article 101) of the European Community Treaty.<sup>82</sup>

50. In *Gosselin Group and Stichting Administratiekantoor Portielje v Commission*<sup>83</sup>, an appeal against *International Removal Services*, the appellants argued that there was a lack of evidence of anti-competitive effects or of any restriction of competition. The General Court rejected the appellants' argument and stated that "*the object of [the parties'] practices was indeed to distort competition within the meaning of Article 81 [now Article 101]*",<sup>84</sup> and "*[i]n order to prepare cover quotes, the removal undertakings concerned exchanged information, such as the exact date and details of the removal to be carried out, and the prices of that service, so that the undertaking which submitted a cover quote deliberately waived any real competition with the undertaking which had requested that cover quote. The result was a sophisticated system resulting in an artificial price rise.*" The General Court stated that because of the cover quotes, the institution which paid for the service could not benefit from competition, although that was precisely the reason why it would have asked for quotes in the first place.<sup>85</sup>
51. In *Putters International v Commission*,<sup>86</sup> another appeal arising from the EC's decision in *International Removal Services*, regarding the parties' practices relating to cover quotes, the General Court held that "*for the purpose of the application of Article 81(1) [now Article 101(1)], there is no need to take account of the concrete effects of an agreement when it is clear, as in the present case, that it has as its object the restriction, prevention or distortion of competition within the common market*".<sup>87</sup> The General Court noted that "*[a]s regards the quotes, the price indicated in a 'false' quote was determined by the requesting company and accepted by the company drawing up the cover quote, which enabled the former to set its price at a higher level than would have resulted from the free play of competition, close to the 'false' price agreed by common accord.*"<sup>88</sup>
52. The foregoing cases are of particular relevance given CCCS's findings, as detailed in Section H below, that the Parties' Conduct involved 12 instances of bid-rigging in the submission of tender bids for the supply of interior fit-out construction services for non-residential properties in Singapore.

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<sup>82</sup> *International Removal Services*, at [361].

<sup>83</sup> Joined Cases T-208/08 *Gosselin Group and Stichting Administratiekantoor Portielje v Commission* and T-209/08 *Stichting Administratiekantoor Portielje v Commission* [2011] ECR II-3639 ("**Gosselin**").

<sup>84</sup> *Gosselin*, at [69].

<sup>85</sup> *Gosselin*, at [67] to [68].

<sup>86</sup> Case T-211/08 *Putters International v Commission* [2011] ECR II-3729 ("**Putters**").

<sup>87</sup> *Putters*, at [30].

<sup>88</sup> *Putters*, at [28].

## F. Burden and Standard of Proof

53. CCCS bears the legal burden of proving an infringement. The standard of proof which applies in deciding whether an infringement of the section 34 prohibition has been established is the civil standard of proof, commonly known as proof on the balance of probabilities. The civil standard was applied by the CAB in *Gold Chic Poultry Supply Pte Ltd and anor v CCCS and other appeals* (“**Fresh Chicken Products Appeals**”).<sup>89</sup> The CAB stated:

“59 *It is not disputed by the Parties that CCCS bears the burden of proving that an infringement has been committed on the civil standard of balance of probabilities (see also Konsortium Express and others v Competition Commission of Singapore [2011] SGCAB 1 at [85]), or that CCCS has to produce “strong and compelling evidence” to prove the infringement within this civil standard under s 34 of the Act. ...*

66 *Requiring “strong and convincing evidence” does not however mean that the standard of proof is higher or more onerous than the ordinary civil standard, or that it is “closer” to the criminal standard; there is no third or intermediate legal burden of proof apart from the civil burden of balance of probabilities and the criminal burden of beyond reasonable doubt (see Super Group at [105]; Alwie Handoyo v Tjong Very Sumito and another and another appeal [2013] 4 SLR 308 at [158]–[160]; Napp Pharmaceutical at [107]). The principle merely goes to the quality of evidence that would sufficiently establish an infringement on a balance of probabilities.”<sup>90</sup>*

54. Given the secret and clandestine nature of anti-competitive conduct in cases involving cartels or collusive conduct such as the Conduct, it is sufficient if the body of evidence, viewed as a whole, establishes that an infringement of the section 34 prohibition has occurred on a balance of probabilities. Such evidence includes direct evidence, circumstantial evidence, and inferences from the established facts.
55. In *JJB Sports*, the CAT took the view that as cartels “*are by their nature hidden and secret; little or nothing may be committed to writing ... even a single item of evidence, or wholly circumstantial evidence, depending on the particular context and the particular circumstances, may be sufficient to meet the required standard*”.<sup>91</sup> In *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair*

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<sup>89</sup> *Gold Chic Poultry Supply Pte Ltd and anor v CCCS and other appeals* [2020] SGCAB 1.

<sup>90</sup> *Fresh Chicken Products Appeals*, at [59] to [60]. See also *Express Bus Operators Appeals Nos. 1 and 2 of 2009* (“**Express Bus Operators Appeals**”), at [85].

<sup>91</sup> *JJB Sports*, at [206].

*Trading*<sup>92</sup>, the CAT held that the OFT (now the CMA), in discharging the burden of proof, can rely on “*inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts*”.<sup>93</sup>

56. The EU courts have also recognised the difficulties in obtaining evidence where anti-competitive conduct takes place secretly. For example, in *JFE Engineering v Commission*<sup>94</sup>, the CFI observed that:

“179 As the Japanese applicants correctly observe, the Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place ...

180 However, it is important to emphasise that it is **not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement...**”<sup>95</sup> (Emphasis in bold added)

57. The holistic approach to evidence assessment was endorsed by the ECJ in *Imperial Chemical Industries v European Commission* where it stated that “*the question whether there was concerted action in this case can only be correctly determined if the evidence on which the contested decision is based is considered, not in isolation, but as a whole.*”<sup>96</sup>
58. The CAB expressed similar views in the *Fresh Chicken Products Appeals*, holding that CCCS would be entitled to draw inferences or presumptions from a given set of circumstances under conditions where CCCS could obtain only fragmentary and sparse evidence:<sup>97</sup>

“69 In addition, it should be appreciated that anti-competitive practices and agreements are by their nature hidden and secret. Given the clandestine nature of such activities, it would follow that the associated documentation could be reduced to a minimum and that the evidence CCCS can obtain may be only fragmentary and sparse, such that it is necessary to reconstitute certain details by deduction. Under such conditions, it is possible that the existence of an anti-competitive practice or agreement has to be inferred from a number of coincidences and indicia

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<sup>92</sup> *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 (“*Napp Pharmaceutical*”).

<sup>93</sup> *Napp Pharmaceutical*, at [110].

<sup>94</sup> Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, *JFE Engineering v Commission* [2004] ECR II 2501 (“*JFE Engineering*”).

<sup>95</sup> *JFE Engineering*, at [179] to [180].

<sup>96</sup> Case 48/69 *Imperial Chemical Industries v European Commission* [1972] ECR 619, at [68].

<sup>97</sup> *Fresh Chicken Products Appeals*, at [69].

*which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition: see Pilkington Group Ltd v European Commission (Case T-72/09) 17 December 2014 at [83]; Aalborg Portland and others v European Commission (Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P) 7 January 2004 (“Aalborg”) at [55]-[57]; JFE Engineering at [203]; Claymore Dairies Ltd and Express Dairies PLC v Office of Fair Trading [2003] CAT 18 at [3]; JJB Sports at [206]; Napp Pharmaceutical at [110]. **CCCS is thus well entitled to draw inferences or presumptions from a given set of circumstances. It is not required to produce documents expressly attesting to contacts between the economic operators concerned, and fragmentary and sporadic items of evidence that are available can be supplemented by inferences that allow the relevant circumstances to be reconstituted: Silec Cable SAS v European Commission (T-438/14) [2018] 5 CMLR 14.**” (Emphasis in bold added)*

## **G. The Relevant Market**

59. Market definition typically serves two purposes in the context of the section 34 prohibition. First, it provides, where needed, the framework for assessing whether an agreement and/or concerted practice appreciably prevents, restricts or distorts competition. Secondly, where liability has been established, market definition can assist to determine the turnover of the business of the undertaking in Singapore for the relevant markets that are affected by the infringement and therefore, the appropriate amount of penalty.<sup>98</sup>
60. In the present case, a distinct market definition is not necessary for the purpose of establishing an infringement of the section 34 prohibition as the present investigation involves agreements and/or concerted practices that amount to bid-rigging. As held by the UK Court of Appeal in *Argos/JJB Sports*, for agreements and/or concerted practices that have as their object the prevention, restriction and distortion of competition, market definition is not intrinsic to the determination of liability:

*“As a matter of principle, we agree with what the tribunal said about the correct approach for the OFT to the question of relevant product market, as summarised in paragraph [171] above. There is inevitably an arbitrary element in the calculation, in the sense there described. Inevitably also, in the absence of a formal market analysis, the market as ascertained may be other than that which would be established, in a Chapter II case, by the formal analysis which would have been carried out in such a case. The purpose of the identification of the relevant product market in relation to penalty is quite different, and it is not necessary or appropriate to be so*

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<sup>98</sup> CCCS Penalty Guidelines, at paragraph 2.1.



*exact as when ascertaining a market for the purpose of seeing whether an undertaking has a dominant position in a relevant market, before deciding whether that position, if it exists, has been abused. Thus, as it seems to us, the reason why it is not necessary, at any rate in a Chapter I case involving price-fixing, to conduct a formal market analysis is the same as the reason why the market which is taken for calculation of the turnover relevant for Step 1 on a penalty assessment may properly be assessed on a broad view of the particular trade which has been affected by the proved infringement, rather than by a relatively exact application of principles that would be relevant for a formal analysis, such as substitutability or, on the other hand, by limiting the turnover in question to sales of the very products or services which were the direct subject of the price-fixing arrangement or other anti-competitive practice.”<sup>99</sup>*

61. However, once it is assessed that an undertaking has infringed the section 34 prohibition, and where CCCS exercises its discretion to impose a financial penalty pursuant to section 69(2)(e) of the Act, market definition becomes relevant to the assessment of the appropriate amount of penalties. This is further discussed in the Financial Penalties section of this ID at paragraphs 249 to 250.

## **H. Evidence Relating to Bid-Rigging Arrangements**

### **(i) Summary of the Parties’ Conduct**

62. The conduct that forms the subject matter of the infringements relates to the Parties’ Conduct in 12 tenders (collectively the “**Affected Tenders**”) for the supply of interior fit-out construction services for non-residential properties in Singapore. Listed chronologically according to the date the tender was called, the Affected Tenders are:
- a. Pure Fitness Tender;
  - b. Citibank Tender;
  - c. McKinsey Tender;
  - d. Lilly Tender;
  - e. Oracle Tender;
  - f. Nokia Tender;
  - g. HIG Boat Quay Tender;
  - h. Ernst & Young (“**EY**”) Tender;
  - i. Dupont Tender;
  - j. HIG Vivo Tender;
  - k. Pico Art Tender; and
  - l. Nike Tender.

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<sup>99</sup> *Argos Ltd and another v Office of Fair Trading, and JJB Sports v Office of Fair Trading* [2006] EWCA Civ 1318 (“*Argos/JJB Sports*”), at [173].

63. In respect of each of the Affected Tenders, there was an agreement and/or concerted practice between the Parties such that either FL or Tarkus would be the designated winner between the Parties (the “**Designated Winner**”) and have a better prospect than the other Party (the “**Covering Tenderer**”) of winning the tender. The Conduct was generally characterised by the Designated Winner providing to the Covering Tenderer tender bid pricing, information and/or other bid details<sup>100</sup> for the Covering Tenderer’s subsequent submission to the customer that was, to the Designated Winner and Covering Tenderer’s belief, at a price higher than that submitted by the Designated Winner to the customer.
64. In 11 of the Affected Tenders,<sup>101</sup> the Designated Winner prepared and provided the tender bid pricing and/or other bid details (or subsequent revision(s) to these prices and/or bid details) to the Covering Tenderer. In nine of these Affected Tenders, the tender bid pricing and/or other bid details prepared by the Designated Winner (which were higher than the Designated Winner’s own submission) was adopted by the Covering Tenderer without any adjustments to the pricing.<sup>102</sup> As for the remaining two of the Affected Tenders (i.e. the HIG Boat Quay Tender and HIG Vivo Tender), the Covering Tenderer applied a further mark up (i.e. an upward adjustment) to the pricing prepared by the Designated Winner.
65. As for the twelfth Affected Tender, i.e. the Nike Tender, the Designated Winner and Covering Tenderer both provided their intended tender bid prices to each other and then adjusted their bid prices such that the Covering Tenderer’s bid price would be higher than the Designated Winner’s bid price.
66. In each Affected Tender, the Covering Tenderer submitted cover tender bids priced by, or priced in agreement and/or concertation with, the Designated Winner. The Conduct related to the tender bids of the Parties and took place at a confidential stage of the tender process whilst the Parties were supposedly in competition with one another to win the relevant tender. Employees from each Party confirmed that the Parties’ respective tender bid submissions for the Affected Tenders were supposed to be kept confidential and would ordinarily not have been disclosed/made available to other competing tenderers.<sup>103</sup> Interviews with employees of the Parties responsible for the preparation of the tender submissions also confirmed that the information exchange and coordination between the Parties was not made known to the relevant customer.<sup>104</sup> For

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<sup>100</sup> The Parties and their employees have at times referred to the tender bid pricing and/or other bid details as “costing” or “costings” information.

<sup>101</sup> Citibank Tender, Dupont Tender, EY Tender, HIG Boat Quay Tender, HIG Vivo Tender, Lilly Tender, McKinsey Tender, Nokia Tender, Oracle Tender, Pico Art Tender and Pure Fitness Tender.

<sup>102</sup> Citibank Tender, Dupont Tender, EY Tender, Lilly Tender, McKinsey Tender, Nokia Tender, Oracle Tender Pico Art Tender and Pure Fitness Tender.

<sup>103</sup> Response to question 15 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; and response to questions 30 to 36 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022.

<sup>104</sup> Response to question 28 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; and response to question 37 of Notes of Interview/Explanation provided by Judy Sun (FL), 18 January 2023.

example, in relation to the costing information and tender submissions provided by Tarkus (as the Designated Winner) to FL (as the Covering Tenderer) for the EY Tender, Jason Chok (FL) instructed Yvonne Law (FL) that “*we are not allowed to submit in the exact same format*” which indicates that FL sought to hide the Conduct from the customer as it knew that it would be prejudicial to the customer’s tender process.<sup>105</sup>

67. Customers who responded to CCCS’s section 63 notices likewise noted the confidential nature of such submissions in relation to their respective tenders.<sup>106</sup> In fact, certain customers required any participating tenderer to sign non-disclosure agreements and/or declarations that their tender submissions were independent.<sup>107</sup>
68. Evidence from key employees of both Parties indicated that the Parties were well aware that the higher pricing (*vis-à-vis* the Designated Winner) which the Covering Tenderer would submit pursuant to the Conduct would, in all likelihood, price the Covering Tenderer out of contention due to the competitive nature of each Affected Tender. This suggested that there was no genuine intention for the Covering Tenderer to compete with the Designated Winner to win each Affected Tender.
69. The Parties’ conflicting claims (i.e. that the Conduct may have taken place pursuant to arrangements where the Covering Tenderer would subcontract the work associated with an Affected Tender to the Designated Winner if the former was somehow awarded the tender) were in any case not borne out by the evidence. These claims also stand in stark contrast to the Parties’ respective knowledge that a tenderer with a higher tender bid was highly unlikely to win.
70. The Conduct took place over a five-year period with the first affected tender being the Pure Fitness Tender which was called in August 2016 and the last being the Nike Tender which was called in August 2021. The Conduct involved either (i) key personnel of each of the Parties holding senior positions or (ii) personnel whose responsibilities included the preparation and submission of the Parties’ tender bids.
71. Details of the Conduct and evidence in respect of each of the Affected Tenders are set out in paragraphs 72 to 219. Key evidence of the Conduct comprises internal email and

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<sup>105</sup> Exhibit JC-022A.

<sup>106</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022; information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2023; information provided by Lilly to question 2d dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021, and information provided by Northcroft to question 2 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>107</sup> Response to questions 17 to 20 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; information provided by Citibank to questions 2(h) and 2(i) on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 1 November 2022, information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022, document titled “CDA for ODP Singapore GC (Facility Link) - signed and CDA for ODP Singapore GC (Tarkus) – signed” and information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

WhatsApp correspondence between employees of each Party, and information provided by key personnel of the Parties in interviews conducted by CCCS.

(ii) ***Bid-rigging conduct in relation to each Affected Tender***

Pure Fitness Tender (August 2016)

72. On 5 August 2016, Pure Fitness (OFC) Pte Ltd issued an RFP to identify and select the most suitable vendor for interior fit-out construction works for the Pure Fitness centre at 10 Collyer Quay #04-01 to #04-10, Ocean Financial Centre (“OFC”), 049315 (the “**Pure Fitness Tender**”).<sup>108</sup> The tender closed on 22 August 2016.<sup>109</sup> The tender was managed in-house by [REDACTED] from Pure International (Singapore) Pte Ltd, which is an affiliate of the PURE corporate group (along with Pure Fitness (OFC) Pte Ltd). FL<sup>110</sup> and Tarkus<sup>111</sup> were amongst the five contractors invited by Pure International to submit a bid. The tender bid prices submitted by FL<sup>112</sup> and Tarkus<sup>113</sup> for the Pure Fitness Tender are set out below.

	<b>FL’s Tender Submission</b>	<b>Tarkus’ Tender Submission</b>
<b>Tender Submission</b> Received on 22 August 2016	S\$4,438,000.00	S\$4,186,874.00

The Pure Fitness Tender was not awarded to FL or Tarkus.<sup>114</sup>

73. Evidence related to the Pure Fitness Tender showed that FL, the Covering Tenderer in this instance, submitted a cover tender bid comprised of tender bid pricing and bid details prepared by Tarkus, the Designated Winner, at a price higher than Tarkus’ own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. In particular, Mike Cho (Tarkus) sent an email to Judy Sun (FL), copying Benny Koh (FL) on 20 August 2016, at 1.26 p.m. stating “*Pricing for your submission*” and attaching an excel workbook titled “*Pure Yoga at OFC --- 20<sup>th</sup> Aug 16 --- FL.xls*” which

<sup>108</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>109</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>110</sup> Information provided by Julie Aung (Tarkus) dated 9 November 2023 pursuant to the section 63 Notice issued by the CCCS dated 2 October 2023 (MAX.001.045535).

<sup>111</sup> Information provided by Julie Aung (Tarkus) dated 9 November 2023 pursuant to the section 63 Notice issued by the CCCS dated 2 October 2023 (MAX.009.053813).

<sup>112</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, document titled “Facility Link – Form of Tender”.

<sup>113</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, document titled “Tarkus – Tender Summary”.

<sup>114</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

refers to a project called “OFC Pure Fitness Centre”.<sup>115</sup> When asked to explain what the attachment contained, Jason Chok (FL) stated that it contained pricing information provided by Tarkus for FL’s submission as set out below in his interview on 16 November 2023<sup>116</sup>:

*Q26. I refer to Mike Cho’s (Tarkus) email to Judy Sun (FL), copying Benny Koh (FL) on 20 August 2016, at 1.26 p.m. stating “Pricing for your submission” and attaching an excel workbook titled “Pure Yoga at OFC --- 20th Aug 16 --- FL.xls” at JC-036. Please explain this correspondence.*

*A: This is the whole attachment of the price list provided by Tarkus. We are using this to submit.*

74. In this regard the amounts provided for Preliminary works, Demolition works, Miscellaneous items, M&E preliminary works, ACMV works, Electrical works, Fire Protection works and Sanitary & Plumbing works in the excel workbook titled “*Pure Yoga at OFC --- 20th Aug 16 --- FL.xls*” supplied by Mike Cho (Tarkus) to Judy Sun (FL) are identical to those submitted in FL’s final submission bid on 22 August 2016.<sup>117</sup>
75. When asked during his interview of 16 May 2023 why Tarkus was preparing FL’s pricing, Jason Chok (FL) did not deny that Tarkus prepared FL’s pricing for the Pure Fitness Tender. FL subsequently requested to expand the scope of FL’s leniency application to include the Pure Fitness Tender. In doing so, FL admitted to the “*sharing and/or use of commercially sensitive price information*” with Tarkus in respect of the Pure Fitness Tender.<sup>118</sup>
76. Likewise, Mike Cho (Tarkus) in his interview on 20 November 2023 did not deny that Tarkus prepared FL’s pricing for the Pure Fitness Tender. Both Mike Cho (Tarkus) and Jason Chok (FL) however, separately claimed that there was an alleged subcontracting arrangement between FL and Tarkus. Jason Chok (FL) said he assumed Tarkus prepared the costings as FL did not have the resources to undertake the works if it was awarded the Pure Fitness Tender but could not “reject” (i.e. decline to participate in) the tender, while Mike Cho (Tarkus) asserted there was an intention to subcontract, hence the reason for Tarkus preparing the costings.<sup>119</sup>
77. There were then further communications between FL and Tarkus on the Pure Fitness Tender. For instance, on 25 August 2016, at 6.12 p.m., Mike Cho (Tarkus) forwarded

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<sup>115</sup> Exhibit marked JC-036.

<sup>116</sup> Response to question 26 of Notes of Information/Explanation provided by Jason Chok (FL), 16 November 2023.

<sup>117</sup> Exhibit marked JC-036. Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, document titled “Facility Link – Tender Summary”.

<sup>118</sup> FL’s leniency application submissions dated 27 December 2023.

<sup>119</sup> Response to question 28 of Notes of Information/Explanation provided by Jason Chok (FL), 16 November 2023. Response to question 9 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 20 November 2023.

an email from Judy Sun (FL) to Julie Aung (Tarkus) and stated “FYA”.<sup>120</sup> The email from Judy Sun (FL) in turn enclosed an email from [X] addressed to Ying Lim (FL) dated the same day titled “FW: OFC Fitness Centre - Post Tender Clarification #1”.<sup>121</sup> The email from [X] contained queries to FL regarding the Pure Fitness Tender. When forwarding the email to Mike Cho (Tarkus), Judy Sun (FL) stated “*please refer to the attached tender clarification and help to reply to me by tomorrow 3.00pm.*”<sup>122</sup> When asked what “FYA” stood for in her interview of 16 November 2023, Julie Aung (Tarkus) stated that it stood for “*For Your Action*” and that she understood Mike Cho (Tarkus) as wanting her to follow up on the tender queries sent to FL; although she claimed to be unsure as to why Tarkus was responding to queries posed to FL.<sup>123</sup>

78. When asked about the email correspondence in his interview on 14 November 2023, Mike Cho (Tarkus) again did not deny the exchange of information between Tarkus and FL. However, Mike Cho (Tarkus) stated that Tarkus was answering the questions posed to FL as Tarkus was the intended subcontractor and would ultimately be performing the tender works.<sup>124</sup>
79. Separately, in another exchange of correspondence on 30 August 2016, at 7.33 p.m., Judy Sun (FL) forwarded to Mike Cho (Tarkus) and Julie Aung (Tarkus), and copied to Edmund Tee (FL), Ying Lim (FL) and Benny Koh (FL), an email from [X] addressed to Ying Lim (FL) titled “FW: OFC Pure Fitness Tender Meetings - 30-Aug 2016”.<sup>125</sup> The email from [X] requested that Ying Lim (FL) “*review and adjust accordingly the following ID Schedules of Rates [for items] which were highlighted for clarifications*” and attached a catalogue for a “*sound proofing component*”.<sup>126</sup> When Judy Sun (FL) forwarded this email to Mike Cho (Tarkus) and Julie Aung (Tarkus), she stated “*Please help to reply (sic) the below queries by tomorrow 3.00 p.m.*”.<sup>127</sup> When asked to explain this correspondence in his interview of 14 November 2023, Mike Cho (Tarkus) again did not deny the exchange between Tarkus and FL. He again stated that it was done for the same reason that applied to the email correspondence on 25 August 2016 (i.e. that Tarkus answered the questions posed to FL as Tarkus would ultimately be performing the tender works).<sup>128</sup>
80. Despite the Parties’ assertions, FL and Tarkus were unable to provide any documentation to substantiate the Parties’ subcontracting claims other than to assert

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<sup>120</sup> Exhibit marked MC-022.

<sup>121</sup> Exhibit marked MC-022.

<sup>122</sup> Exhibit marked MC-022.

<sup>123</sup> Response to questions 26 to 28 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 16 November 2023.

<sup>124</sup> Response to questions 10 and 11 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 14 November 2023.

<sup>125</sup> Exhibit marked MC-023.

<sup>126</sup> Exhibit marked MC-023.

<sup>127</sup> Exhibit marked MC-023.

<sup>128</sup> Response to question 15 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 14 November 2023.

that there were only “*informal verbal arrangements/discussions*” between FL and Tarkus.<sup>129</sup> This was despite CCCS’s requests for such documentation in the Pure Fitness Tender as well as for the remaining Affected Tenders. In fact, employees of the Parties, such as Jason Chok (FL) and Julie Aung (Tarkus), confirmed that the Parties had never entered into subcontracting arrangements with each other.<sup>130</sup> For example, Julie Aung (Tarkus) in her interview of 22 August 2022, unequivocally stated in response to CCCS’s queries that FL and Tarkus were not in a subcontracting relationship for any tenders.<sup>131</sup>

81. When Jason Chok (FL) was asked why the purported subcontracting arrangements did not materialise despite the Parties’ alleged intentions to subcontract, he stated in his interview of 10 February 2023 that this was because FL’s pricing would be higher than Tarkus’ and FL was therefore unlikely to win a tender:<sup>132</sup>

*Q83. Why didn’t FL use Tarkus before?*

*A: No chance because FL’s price is higher than Tarkus’. It doesn’t make sense for Tarkus to quote me low and quote the client high.*

*Q84. You will submit a pricing higher than Tarkus knowing that there is a low chance of winning?*

*A: Yes I will submit [a pricing higher than Tarkus] even if I know there is no chance as my price is higher. Logically I have to submit as I don’t have any resources. Just like buying 4D. It is a matter of how much chance you are talking about.*

82. Simon Tia (Tarkus) likewise stated that due to the competitive nature of the tenders, a small percentage mark-up would be sufficient to price a tenderer out of the tender.<sup>133</sup> Simon Tia (Tarkus) stated in his interview of 28 March 2023:<sup>134</sup>

*Q112. Have there been an instance where Tarkus or FL did not want to win the tender and attempted to price itself out of the project but still get shortlisted?*

*A: I do not recall such an instance. Tenders are very competitive. A small percentage will be sufficient to price you out of the tender.*

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<sup>129</sup> Information provided by Tarkus dated 27 July 2023 pursuant to the section 63 Notice issued by CCCS dated 13 July 2023; see also paragraph 221 below.

<sup>130</sup> Response to questions 31 of Notes of Information/Explanation provided by Jason Chok (FL), 10 February 2023; Response to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>131</sup> Response to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>132</sup> Response to questions 83 and 84 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>133</sup> Response to question 112 of Notes of Information/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>134</sup> Response to question 112 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

83. It is evident from the above that the Parties were aware that a small mark-up would be sufficient to price a tenderer out of a tender. The evidence showed that Tarkus' pricing to FL of S\$4,428,733<sup>135</sup> (allegedly for the works that Tarkus would perform as subcontractor) was significantly higher than Tarkus' own tender bid pricing of S\$4,186,874<sup>136</sup> received on 22 August 2016 for the same works. It would follow that FL's tender bid pricing would likewise be significantly higher than Tarkus', and the Parties would have been aware in this instance that it was highly unlikely that FL would be awarded the Pure Fitness Tender and consequently, there was no prospect that Tarkus would need to be engaged by FL as its subcontractor. In view of this, CCCS considers the claims of subcontracting for the Pure Fitness Tender implausible. Furthermore, CCCS considers that such claims would not in any event justify the Conduct (i.e. Tarkus preparing the tender bid pricing and other bid details for FL's submission at a higher price than its own, so that Tarkus would have a better prospect than FL of winning the Pure Fitness Tender).
84. The claims that FL had engaged in the Conduct as it did not have resources to carry out the project but did not wish to reject the invitation to participate in the tender, as the customer might not invite it for future tenders, were also not borne out by the evidence collected in CCCS's investigation from Pure Fitness. Pure Fitness confirmed [§<].<sup>137</sup>
85. Pure Fitness' response to CCCS's questions in this regard also noted that the Parties were required to declare that the bids they submitted were determined independently without communicating with any other company that was a participant to the Pure Fitness Tender.<sup>138</sup> Given this requirement, the Parties could not have been unaware that the communications with competing tenderers for the Pure Fitness Tender were prohibited.
86. In view of the evidence set out in paragraphs 72 to 85 above, CCCS finds that the Parties had engaged in the Conduct in respect of the Pure Fitness Tender. In particular, FL submitted tender bid pricing and bid details prepared and priced by Tarkus. The bid prices provided by Tarkus for FL's submission were higher than Tarkus', such that Tarkus would have a better prospect than FL of winning the Pure Fitness Tender. Through the Conduct, the Parties gave Pure Fitness the false impression that the bids it received from the Parties were independently determined when they were not and undermined the competitive process that the Pure Fitness Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-

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<sup>135</sup> Exhibit marked JC-036.

<sup>136</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, document titled "Tarkus –Tender Summary".

<sup>137</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>138</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.



rigging agreement and/or concerted practice between the Parties in relation to the Pure Fitness Tender.

Citibank Tender (February 2017)

87. On 24 February 2017, Citibank issued an RFP to identify and select the most suitable vendor for fit-out works at its Citiwork premises at Changi Business Park, block 1 level 3 (the “**Citibank Tender**”).<sup>139</sup> The tender was managed by property consultants JLL.<sup>140</sup> The submission date for the RFP was 16 March 2017.<sup>141</sup> Citibank invited five contractors including FL and Tarkus to submit bids, all of which did so by the due date.<sup>142</sup>
88. Of the five contractors who submitted tender bids, Tarkus and two other tenderers were shortlisted based on the pricing received.<sup>143</sup> The shortlisted contractors were then requested to provide their “*best and final offer*” in response to a PTQ from Citibank on 29 March 2017. This was to be done by 31 March 2017.<sup>144</sup> The tender bid prices submitted by FL and Tarkus are set out in the table below.

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions</b>
<b>First Submission</b> Due on 16 March 2017	\$2,093,557.00 <sup>145</sup>	\$1,809,352.00 <sup>146</sup>
<b>Response to PTQ</b> Due on 31 March 2017	N/A	S\$1,626,531.40 <sup>147</sup>

The Citibank Tender was awarded to Tarkus on 24 April 2017.<sup>148</sup>

<sup>139</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>140</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>141</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>142</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>143</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>144</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>145</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>146</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>147</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>148</sup> Information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

89. Evidence related to the Citibank Tender showed that FL, the Covering Tenderer in this instance, submitted a cover tender bid comprised of tender bid pricing information and bid details that were provided by and priced by Tarkus at a level higher than Tarkus' own tender such that Tarkus would have a better prospect of winning the tender than FL. On 15 March 2017, Maria Jocelyn Crisologo (Tarkus) sent two emails to Judy Sun (FL), copying Mike Cho (Tarkus). The first email at 5.10 p.m. attached costing information.<sup>149</sup> The second email at 7.35 p.m. included a “*phasing plan*” and a “*work schedule*”.<sup>150</sup> These documents were prepared by Tarkus for FL's tender bid submission for the Citibank Tender.<sup>151</sup> According to Jason Chok (FL), the costing information related to the breakdown of the pricing for the Citibank Tender for FL's submission, whereas “*phasing plan*” and “*work schedule*” in tenders set out technical information, such as the phases for the different types of work required to be done for a particular project.<sup>152</sup> The costing information was sent to FL by Tarkus in a zipped folder titled “*CITIBANK – FL*”, containing various tender documents including an itemised breakdown for FL's tender price.<sup>153</sup>
90. In her interview of 19 January 2022, Judy Sun (FL) explained the contents of the email from Tarkus as follows:

*Q1. We refer you to the exhibit marked as “JS-018”, which is an email dated 15 March 2017, timed 5.10pm, sent from Maria Jocelyn Crisologo to yourself, copying Mike Cho. Please explain what JS-018 is about.*

*A: This attachment is the complete set of tender submission (sic), including tender pricing. Maria sent this to me and this costing is, if I remember correctly, for [FL's] submission.*<sup>154</sup>

91. When the email correspondence between FL and Tarkus was shown to him in his interview of 28 March 2023, Simon Tia (Tarkus) agreed that Tarkus had assisted FL with the latter's costing information and tender bid documents so that FL was unlikely to win and Tarkus had a better prospect of winning the tender:<sup>155</sup>

*Q104. I refer you to the exhibit marked as “ST-006” [the email correspondence between FL and Tarkus on the Citibank Tender costing], would you agree that this shows that Tarkus did in fact send Facility Link its detailed costings?*

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<sup>149</sup> Exhibit marked JS-018.

<sup>150</sup> Exhibit marked JS-019.

<sup>151</sup> Information provided by FL to question 5 dated 22 March 2023 to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>152</sup> Response to questions 44 and 45 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>153</sup> Exhibit marked JS-018.

<sup>154</sup> Response to question 1 of Notes of Interview/Explanation provided by Judy Sun (FL), 19 January 2022.

<sup>155</sup> Response to questions 104 to 107 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

*A: Yes, I agree that this document shows Tarkus is sending Facility Link its detailed costing...*

*Q106. Based on these documents, Tarkus also shared with Facility Link its phasing plan and work schedule. Is that correct?*

*A: Yes...*

*Q107. Do the documents show that Tarkus is assisting FL with costing and tender bid documents so that FL can price itself out of the tender (sic)*

*A: Yes...*

92. This was also confirmed by Jason Chok (FL)<sup>156</sup> in his interview on 3 May 2023:

*Q36. I refer to exhibit JC-024 which is FL's response dated 22 March 2023 to Q5 of CCCS's 24 February 2023 Notice. In particular, we note that you are able to confirm that Tarkus did all costing for FL. Please elaborate what it is meant by that "Tarkus did all costing for FL".*

*A: Same like Citi, McKinsey and Oracle. They do up all the costing for us to submit.*

93. In its leniency application, FL also admitted to "*sharing and/or use of commercially sensitive price information*" in relation to the Citibank Tender.<sup>157</sup>

94. FL went on to submit a total price of S\$2,093,557 in its tender submission for the Citibank Tender on or about 16 March 2017, which was the exact amount that Maria Jocelyn Crisologo (Tarkus) provided to Judy Sun (FL) the day before (i.e. 15 March 2017) in the email correspondence described at paragraph 89 above.<sup>158</sup>

95. According to Judy Sun (FL), FL had no resources for this project but could not reject the customer's invitation.<sup>159</sup> Jason Chok (FL) also claimed that there was a pre-arrangement with Tarkus that if FL had won the tender, it would subcontract the project to Tarkus.<sup>160</sup>

96. Mike Cho (Tarkus) initially maintained in his interview with CCCS on 22 August 2022 that in relation to the Citibank Tender, neither he nor any Tarkus employee communicated with FL.<sup>161</sup> It was only after he was confronted with documentary evidence in the Citibank Tender that showed Tarkus had in fact sent pricing information

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<sup>156</sup> Response to questions 36 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>157</sup> FL's leniency application submissions dated 29 November 2022.

<sup>158</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023; information provided by Citibank dated 21 August 2023 pursuant to the section 63 Notice issued by CCCS dated 1 November 2022 and email from CCCS dated 7 August 2023.

<sup>159</sup> Response to question 3 of Notes of Interview/Explanation provided by Judy Sun (FL), 19 January 2022.

<sup>160</sup> Response to question 37 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>161</sup> Response to question 65 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022.

and other tender bid details to Judy Sun (FL), that he then posited that “*it could be the case that the invitation to tender is to FL, and FL sub-contracted or outsourced the tender to Tarkus*” (emphasis added).<sup>162</sup> Mike Cho (Tarkus) then claimed that the purported “*subcontracting arrangement*” with FL in relation to the Citibank Tender was “*the one sub [contracting] arrangement [Tarkus] had with FL*”.<sup>163</sup> After adamantly asserting that the Citibank Tender was the sole subcontracting arrangement that existed between Tarkus and FL, Mike Cho (Tarkus) subsequently, when shown documentary evidence in remaining Affected Tenders of cover tender bids, then tried in his interviews to claim that subcontracting arrangements existed in relation to these remaining Affected Tenders in an attempt to explain away the Parties’ Conduct.<sup>164</sup>

97. CCCS finds that the claims of subcontracting for the Citibank Tender implausible, and in any event, would not justify the Conduct. In this regard CCCS has noted, first, the inherent inconsistencies of the claims, for example Mike Cho’s (Tarkus) conflicting account set out in paragraph 96 above. In contrast, Julie Aung (Tarkus) provided an unequivocal account that FL and Tarkus were not in any subcontracting relationship (see paragraph 80 above).<sup>165</sup> Second, the claims that a subcontracting arrangement existed were not borne out by any documentary evidence for the Citibank Tender. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely for FL to win the tender given the higher tender bid prices supplied by Tarkus for FL’s submission.<sup>166</sup>
98. The claims that FL had engaged in the Conduct as it did not have resources to carry out the project but did not wish to reject the invitation to participate in the Citibank Tender as Citibank might not invite it for future tenders were not supported by either Citibank or JLL, [X]. Both Citibank and JLL were also not aware of any practice where a contractor submitted an inflated bid because it did not wish to win a tender which it had been invited to participate in.<sup>167</sup>
99. The evidence also showed that the Parties could not have been unaware that the Conduct was disallowed. Documents obtained from Citibank showed that tenderers were

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<sup>162</sup> Response to question 65 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022.

<sup>163</sup> Response to question 79 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022.

<sup>164</sup> See also response to question 83 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022; response to question 29 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022; response to question 68 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022; response to question 111 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022; response to question 13 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022; response to question 71 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022; response to question 11 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 14 November 2023; and response to question 30 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 20 November 2023.

<sup>165</sup> Response to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>166</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>167</sup> Information provided by Citibank dated 21 August 2023 pursuant to request for clarifications from CCCS on 7 August 2023.

required to declare that the bids they submit were determined independently without communicating with any other tenderers; a declaration that both FL and Tarkus submitted.<sup>168</sup> Furthermore, tenderers were required to sign a non-disclosure agreement under which they could not share information pertaining to their tender submissions.<sup>169</sup>

100. In view of the evidence set out in paragraphs 87 to 99 above, CCCS finds that the Parties engaged in the Conduct in respect of the Citibank Tender whereby FL submitted tender bid pricing and bid details prepared and priced by Tarkus such that Tarkus would have a better prospect than FL of winning the Citibank Tender. The bid prices provided by Tarkus for FL’s submission were higher than Tarkus’. Through the Conduct, the Parties gave Citibank the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the Citibank Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Citibank Tender.

McKinsey Tender (March 2017)

101. On 7 March 2017, McKinsey & Co Singapore, Pte Ltd (“**McKinsey**”) issued an RFP seeking a contractor for office fit-out works for its office at level 24 of One Raffles Quay. Sennex Consultants Pte Ltd (“**Sennex**”) was appointed by McKinsey to form a trade package for the project. Sennex called a tender to find a contractor to provide the services for the builders work package, which was a part of the trade package for the project (the “**McKinsey Tender**”). Three contractors including FL and Tarkus were invited to bid. FL submitted its bid on 13 March 2017. Sennex issued a PTQ on 13 March 2017 with a deadline of 16 March 2017.<sup>170</sup> The tender bid prices submitted by FL and Tarkus are set out in the table below.

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions</b>
<b>Submission</b> Received by 16 March 2017	S\$2,734,298 <sup>171</sup>	Around S\$2,400,000 <sup>172</sup>

<sup>168</sup> Information provided by Citibank dated 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>169</sup> Information provided by Citibank dated 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>170</sup> Information provided by FL to question 5 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, email titled “RE: McKinsey Design Proposal – Quotation Facility Link”.

<sup>171</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>172</sup> Exhibit marked MC-002.

The McKinsey Tender was awarded to Tarkus sometime in March 2017.<sup>173</sup>

102. Evidence related to the McKinsey Tender showed that FL, the Covering Tenderer in this instance, submitted a cover tender bid comprising tender bid pricing and bid details priced by Tarkus, the Designated Winner, at a level higher than Tarkus' own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. On 10 March 2017 at 8.22 p.m., Benny Koh (FL) forwarded to Judy Sun (FL) an email that had been sent to Benny Koh (FL) from Alezandra (Tarkus) on 10 March 2017 at 7.12 p.m., enclosing a quotation from Tarkus for Sennex where the "*Summary of cost*" was stated to be "2,536,710".<sup>174</sup> In a subsequent email dated 14 March 2017 from Benny Koh (FL) to Alezandra (Tarkus) copied to Judy Sun (FL), Benny Koh (FL) forwarded the PTQ issued by Sennex and stated "*Hi Alezandra ... please also clarify the following queries raised during tender interview*".<sup>175</sup> In response, Alezandra (Tarkus) sent an email dated 15 March 2017 to Benny Koh (FL), copying Judy Sun (FL) and Mike Cho (Tarkus), in which she provided responses to the queries raised for FL's action during the tender interview and enclosed tender bid pricing provided by Tarkus for FL's submission to Sennex where the "*Summary of cost*" was stated to be "2,734,298".<sup>176</sup>
103. In her interview on 18 January 2022, Judy Sun (FL) provided some context to the exchange of emails between FL and Tarkus referred to in paragraph 102 above. Crucially, Judy Sun (FL) explained that, prior to Benny Koh (FL) sending to her the quotation from Tarkus for FL's submission to Sennex for the McKinsey Tender, she had already expected an email from Tarkus as Jason Chok (FL) would inform her of the "*arrangements*" so she "*did not need to waste... resources*" to create FL's own tender bid.<sup>177</sup> Judy Sun (FL) also admitted that Tarkus had provided the quotation to FL for FL's submission for the McKinsey Tender. Judy Sun (FL) stated:<sup>178</sup>

*Q110. Would I be correct to say the attachment to this email [i.e., email from Benny Koh (FL) to Judy Sun (FL) dated 10 March 2017, enclosing a quotation from Tarkus for FL's submission to Sennex] is a quotation prepared by Tarkus for the customer?*

*A: This is for FL's submission. It is not Tarkus' price; it is our price.*

*Q111. This document is prepared by who?*

*A: By Tarkus.*

*Q112. This quotation is to be submitted to which customer?*

*A: To the consultant.*

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<sup>173</sup> Exhibit marked MC-002.

<sup>174</sup> Exhibits marked MC-005 and JS-012.

<sup>175</sup> Exhibit marked JS-013.

<sup>176</sup> Exhibit marked JC-026.

<sup>177</sup> Response to question 123 of Notes of Information/Explanation provided by Judy Sun (FL), 18 January 2022.

<sup>178</sup> Response to questions 110, 111, 112, 113, 114, 117, 122 and 123 of Notes of Information/Explanation provided by Judy Sun (FL), 18 January 2022.

*Q113. Do you agree that this quotation contained the prices that Tarkus will be sending to the consultant?*

*A: This is not Tarkus' price, it is another set of quotation that Tarkus created for FL to submit to the consultant. I do not know what is Tarkus' real price. Tarkus will not tell us because they know FL is not interested in this tender.*

*Q114. How did Alezandra know to send this quotation to FL?*

*A: ... There may have been some discussion between Tarkus and FL's bosses. Tarkus boss may have called FL boss to say they are interested in the job and FL was not interested in the job. So Tarkus created this set of quotation for FL to send.*

...

*Q117. Can you explain what JS-013 [which is the email from Benny Koh (FL) to Alezandra (Tarkus) and Mike Cho (Tarkus), copied to Judy Sun (FL) dated 14 March 2017] is about?*

*A: After Tarkus provided the BQ to FL, FL submitted the same BQ to the consultant on 13 March 2017. The consultant then sent FL the invitation for interview. We attended the interview and after the interview, the consultant sent us the tender interview questionnaire. Subsequently, I sent this questionnaire to Tarkus to ask them to help FL to fill it in. Benny then wrote down some points that were raised during the tender interview. I believe Benny was the one who attended the interview which was why he noted down some of the points from the interview.*

...

*Q122. Did you know what to expect when you saw Benny's email on the BQ?*

*A: Yes.*

*Q123. Why is that so?*

*A: Before Benny sent this email to me, normally Jason would inform us of the arrangements, and that we would expect an email from Tarkus for this tender exercise so we did not need to waste QS resources on this exercise. So when I received the document from Tarkus, I submitted it accordingly.*

104. In his interview on 3 May 2023, Jason Chok (FL) confirmed that Tarkus had provided the pricing and other bid details for FL's submission for the McKinsey Tender, and explained the email from Alezandra (Tarkus) dated 15 March 2017:<sup>179</sup>

*Q9. I refer to exhibit JC-024 which is part of FL's response dated 22 March 2023 to Q5 of CCCS's 24 February 2023 Notice. In particular, we note that you are able to confirm that Tarkus did all costing for FL in relation to the McKinsey tender. Please elaborate what it is meant by that "Tarkus did all costing for FL".*

*A: Same like Citibank.<sup>180</sup>*

*Q10. I refer to the following exhibit JC-026 [which is the email from Alezandra (Tarkus) to Benny Koh (FL), copied to Judy Sun (FL) and Mike Cho (Tarkus) dated 15 March 2017] which FL provided in its response to CCCS's Notice issued on 24 February 2023. Can you explain the correspondence?*

*A: Quotation for McKinsey works. Tarkus Alezandra's email to Benny, attachment indicated the total sum, 2,734,298.*

*Q11. Could you also walk through the entire correspondence with us?*

*A: Andy Han from Sennex replied with comments and list of questions and comments for FL. On the next day, Judy emailed to Alezandra the email from Sennex asking them to re-submit the BQ. Judy then replied with an attachment but I cannot see what it is. Benny later emailed Alezandra seeking confirmation on the queries set out in the email and raised during the tender interview. Advised to reduce the tender cost- c/o FL. Benny should be the one who attended the tender interview.*

*Q12. Can you explain the context as to why Benny list out these queries?*

*A: These should be the clarifications that Benny needed Tarkus's input for. These are questions that Benny don't know how to answer. The parts in blue are Alezandra's replies.*

*Q13. In particular, we refer to Alezandra's response on 15 March 2017 where she replied "c/o FL" for line item 4 "advised to reduce the tender cost" in Benny Koh's email on 14 March 2017. Please explain what is your understanding of Alezandra's response.*

*A: She was clarifying that the costing provided by Tarkus included FL's mark up.*

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<sup>179</sup> Response to questions 9 to 13 of Notes of Information/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>180</sup> See paragraph 90 and response to question 36 of Notes of Information/Explanation provided by Jason Chok (FL), 3 May 2023, which indicates that "Same like Citibank" meant that Tarkus created the costing for FL to submit.



105. In its leniency application, FL admitted to the “*sharing and/or use of commercially sensitive price information*” in relation to the McKinsey Tender.<sup>181</sup>
106. In his interview on 23 August 2022, Mike Cho (Tarkus) explained the email from Benny Koh (FL) dated 10 March 2017 as follows:<sup>182</sup>

*Q29. Why did Zandy from Tarkus send this document to Benny Koh from Facility Link, copying you for the McKinsey Tender?*

*A: She sent this document to Benny because there may have been a subcontracting arrangement between FL and Tarkus.*

...

*Q32. What would Facility Link do with the costing or pricing information received?*

*A: It would be up to them to add markup. They would add in their preliminaries after considering how many employees they would staff on the project. I would not know the extent of FL’s markup. The cost Tarkus sends to FL is just our fixed lump sum cost.*

*Q33. Did FL ask for costing, or did Tarkus send the costing to them?*

*A: I cannot recall. Unless I read the complete email chain, I would not know. I do not know the details of the communication between Zandy and FL. I cannot recall if Jason had approached me directly. I would not have approached Jason. Tarkus does not approach FL for sub arrangements, only FL has approached us for sub arrangements.*

107. FL subsequently submitted to Sennex the detailed itemised pricing for the project provided by Alezandra (Tarkus) in her email dated 15 March 2017. The total tender bid price submitted by FL of S\$2,734,298<sup>183</sup> was higher than Tarkus’ tender bid price of S\$2,400,000. FL’s tender bid price was the exact amount provided by Tarkus to FL for FL’s submission.<sup>184</sup> This was contrary to Mike Cho’s (Tarkus) claim as set out in paragraph 106 above that Tarkus provided its “*fixed lump sum cost*” and it would be for FL to apply a mark-up. The evidence is instead more consistent with Judy Sun’s (FL) account that when she “*received the document from Tarkus*”, she “*submitted it accordingly*” because of the “*arrangements*” made by the Parties.<sup>185</sup>

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<sup>181</sup> FL’s leniency application submissions dated 29 November 2022.

<sup>182</sup> Response to questions 29, 32 and 33 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>183</sup> Exhibit marked JC-026.

<sup>184</sup> Exhibit marked MC-002.

<sup>185</sup> See paragraph 101 and response to question 123 of Notes of Information/Explanation provided by Judy Sun (FL), 18 January 2022.

108. CCCS finds that the claims made by Mike Cho (Tarkus) that there may have been a subcontracting relationship between the Parties for the McKinsey Tender<sup>186</sup> implausible and, in any event, fail to justify the Conduct. CCCS notes, first, the inherent inconsistencies in Mike Cho's (Tarkus) subcontracting claims as set out in paragraphs 96 and 106 above. Second, the subcontracting claims were not borne out by any documentary evidence produced by either of the Parties in respect of the McKinsey Tender. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely that FL would have been awarded the McKinsey Tender since its tender bid price was substantially higher than that of Tarkus', which casts doubt on the claims that there existed any genuine intention between the Parties for FL to subcontract to Tarkus.<sup>187</sup>
109. In view of the evidence set out in paragraphs 101 to 108 above, CCCS finds that the Parties engaged in the Conduct in respect of the McKinsey Tender whereby FL submitted tender bid pricing and bid details prepared and priced by Tarkus such that Tarkus would have a better prospect than FL of winning the McKinsey Tender. The bid prices provided by Tarkus for FL's submission were higher than Tarkus'. Through the Conduct, the Parties gave McKinsey the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the McKinsey Tender was meant to achieve. CCCS consequently finds that the evidence established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the McKinsey Tender.

#### Lilly Tender (June 2017)

110. On 12 June 2017, the Lilly-NUS Centre for Clinical Pharmacology Pte Ltd (now renamed to Lilly Centre for Clinical Pharmacology Pte Ltd) ("**Lilly**") issued an RFP seeking a contractor for office fit-out works for its relocated clinical facility at level 2 of Synapse Building (the "**Lilly Tender**") with the deadline for the submission of bids being 23 October 2017. CBRE Pte Ltd ("**CBRE**") was appointed by Lilly as the project management firm and in turn appointed Northcroft Lim Consultants Pte Ltd ("**Northcroft**") to assist in managing the Lilly Tender.
111. Six contractors including FL and Tarkus were invited to bid for the project. A site visit was conducted in two sessions on 26 September 2017. Both the first and second session each involved three contractors. FL and Tarkus attended the second session.<sup>188</sup> All six contractors submitted their respective bids on 16 October 2017.<sup>189</sup> Following the submission of these bids, Lilly issued Tender Questionnaire No. 1 ("**PTQ 1**") on 19 October 2017. Four of the invited contractors including FL responded to PTQ 1 by the

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<sup>186</sup> Response to question 29 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>187</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>188</sup> Information provided by Lilly dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021.

<sup>189</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

deadline of 23 October 2017.<sup>190</sup> Tarkus submitted a submission but after the specified deadline. FL and two other contractors were shortlisted to make further submissions due to the commercial aspects and technical compliance of their submissions.<sup>191</sup> Tarkus however was disqualified due to its late submission. Lilly then issued Tender Questionnaire No. 2 (“**PTQ 2**”) on 27 October 2017.<sup>192</sup> FL and the two other contractors responded to PTQ 2 by 2 November 2017. Finally, Lilly issued Tender Questionnaire No. 3 (“**PTQ 3**”) on 10 November 2017. FL and another contractor responded to PTQ 3 by 13 November 2023. The tender bid prices submitted by FL and Tarkus for the Lilly Tender are set out in the table below.<sup>193</sup>

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions</b>
<b>First Submission</b> Received on 16 October 2017	S\$9,275,011	S\$9,815,562
<b>Second Submission</b> Received on 23 October 2017	S\$7,631,331	S\$9,842,362 (Late submission)
<b>Third Submission</b> Due by 2 November 2017	S\$7,653,050	N/A
<b>Final Submission</b> Due by 13 November 2017	S\$7,688,000	N/A

FL was awarded the Lilly Tender on 17 November 2017.<sup>194</sup>

112. Evidence related to the Lilly Tender showed that Tarkus, the Covering Tenderer in this instance, submitted cover tender bids comprised of tender bid pricing and bid details prepared and priced by FL, the Designated Winner, to be higher than FL’s own tender bid, such that FL would have a better prospect of winning the tender than Tarkus. In an email dated 13 October 2017 from Denise Khaw (FL) to Mike Cho (Tarkus), she stated “*Hi Mike, Please find attached the BQ for your further action*”. As noted in paragraph 6 above, a BQ sets out a detailed and itemised list of materials, components, and labour, along with the associated cost of each item required to complete an individual project. The email enclosed the BQ and was copied to Jason Chok (FL), Judy Sun (FL) and Alezandra (Tarkus). In one part of the enclosed BQ, pricing for the “*Total of Section 3 – Business & Clinical Research Unit*” and “*Total of Section 4 – Clean Room*” were

<sup>190</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

<sup>191</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

<sup>192</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

<sup>193</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020, and information provided by Lilly dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021.

<sup>194</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

quoted as being “4,188,255.00” and “712,307.00” respectively. The email also set out a breakdown of the following items which amounted to S\$155,000.00:<sup>195</sup>

*Prelim breakdown is as below:-*

1	Page 1/6	OT	\$	20,000.00
2	Page 1/9	Insurance	\$	20,000.00
3	Page 1/13	Site Management	\$	80,000.00
4	Page 1/29	Scaffolding	\$	15,000.00
5	Page 1/30	Water / Lighting	\$	10,000.00
6	Page 1/36	Protection	\$	2,000.00
7	Page 1/37	Final Cleaning	\$	8,000.00

113. In his interview on 10 February 2023, Jason Chok (FL) explained the contents of the email sent by Denise Khaw (FL) dated 13 October 2017 to Mike Cho (Tarkus) and Julie Aung (Tarkus) as follows:<sup>196</sup>

*Q63. I refer to JC-019-B [which is the email from Denise Khaw (FL) to Mike Cho (Tarkus), copied to Jason Chok (FL), Judy Sun (FL) and Aezandra (Tarkus) dated 13 October 2017] which was provided by FL which is a series of correspondence between Denise Khaw (FL), Mike Cho (Tarkus) and Julie Aung (Tarkus). Please explain the correspondence.*

*A: This relates to the breakdown to Tarkus. The breakdown is in the preliminaries e.g. overtime to workers, insurance, site management staff, site protection and scaffolding, utility and these are quoted by Tarkus.*

*Q64. Is this the same that you quoted to the customers?*

*A: Yes.*

*Q65. Please elaborate on the various terms used e.g. BQ, preliminaries, etc.*

*A: BQ refers to the bill of quantities which is the breakdown of materials according to the schedule of work. Preliminaries are referring to start-up costs for e.g., how much you cater for overtime and what kind of quality of cleaning standard you are expecting, amount that is catered to pay for the utilities to landlord, etc.*

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<sup>195</sup> Exhibit marked JC-019-B and information provided by FL dated 22 March 2023 pursuant to section 63 Notice issued by the CCCS on 24 February 2023, email titled “004. Lilly Clinic - BQ”.

<sup>196</sup> Response to questions 63 and 64 of Notes of Information/Explanation provided by Jason Chok (FL), 10 February 2023.

114. In the same interview on 10 February 2023, Jason Chok (FL) explained the arrangement between FL and Tarkus for the Lilly Tender:<sup>197</sup>

*Q59. I refer to JC-019-A. This is a write up provided by FL in relation to the Lilly tender. Can you describe this tender?*

*A: This tender is the other way round. Tarkus will not have the resources to do it and he came to me to ask whether we can extend the quote to them as I have the capability to do it. It started off that we have difficulty committing to this project. I was the one who reached out to Tarkus. ...*

*Q60. Can you clarify the arrangement between FL and Tarkus? Why would Tarkus provide quotes to you if FL wishes to carry out the job?*

*A: The complication arose because we were initially uncertain if we can take the job. However, we later decided that we can take it on, hence we provided our cost to Tarkus. So the role play is the reverse of the arrangement involving Citibank, EY....*

*Q61. From Tarkus' perspective, they have the capacity to carry out the job initially when you were not sure if you could take it. Why would they agree to submit a bid based on your costing and to subcontract it to you if they won, instead of putting in their own bid to compete to do the job?*

*A: Because I have been giving Tarkus chances and it is a business thing. Like a gentleman's agreement and give and take. If I don't have capacity I will be glad to subcontract to them.*

*Q62. This is the first instance where we come across FL purportedly attempting to subcontracting to Tarkus and disclosing to Tarkus its costing and technical information. Can we understand FL's thinking here? FL has the resources to win. When you provide your pricing and technical information to a competitor like Tarkus, and given you said sometimes pricing is not everything, do you run the risk that Tarkus might undercut you or use your information to win the tender for itself?*

*A: Business is always long term. There is some risk that we need to accept. You can cheat but the ultimate winner of the tender is not a secret and you know who are your friends and your foes. I make these decisions on the interests of my company. The key to the Lilly clinic tender is the labwork for the GMP and I had the contact. So Tarkus will have some challenges if they want to play punk.*

115. Tarkus subsequently submitted in its second submission on 23 October 2017 the sum of S\$155,000 for “Section 1 – Preliminaries”, which is the total of the sums stated under

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<sup>197</sup> Response to questions 59 to 62 of Notes of Information/Explanation provided by Jason Chok (FL), 10 February 2023.

“Prelim breakdown” sent to Tarkus in the email from Denise Khaw (FL) dated 13 October 2017. Likewise, the prices of S\$4,188,255 for “Section 3 – Business & Clinical Research Unit” and S\$712,307 for “Section 4 – Clean Room”, were the exact amounts as stated in the BQ provided by Denise Khaw (FL) in her email dated 13 October 2017. The total bid price submitted by Tarkus in its second submission was S\$9,842,362,<sup>198</sup> which was higher than any of FL’s bid prices, including FL’s submission in the same round (i.e. FL’s second submission of S\$7,631,331 on 23 October 2017) and FL’s final and total bid price of S\$7,688,000 submitted on 10 November 2017.<sup>199</sup> Tarkus did not make a third or final bid as it had been disqualified after its second submission was submitted late.

116. Jason Chok (FL) said in his interview on 3 May 2023 that for the Lilly Tender, he reached out to Tarkus initially as FL had difficulty committing to the project. According to him, FL later decided that FL could take the project on so the arrangement changed to one where Tarkus would submit the tender bid pricing and bid details provided by FL. The tender bid pricing was priced higher than FL’s own tender bid, and Tarkus would subcontract the project to FL if Tarkus won.<sup>200</sup> When asked why Tarkus would enter into this purported arrangement when Tarkus had capacity to undertake the project, Jason Chok (FL) explained that it was because FL had been “giving Tarkus chances” and alluded to a “gentleman’s agreement” where there would be “give and take”.<sup>201</sup> In its leniency application, FL admitted to the “sharing and/or use of commercially sensitive price information” in relation to the Lilly Tender.<sup>202</sup>
117. Mike Cho (Tarkus) claimed in his interview on 23 August 2022 that first, there was a subcontracting arrangement between FL and Tarkus, whereby FL would subcontract to Tarkus if FL won the Lilly Tender, and subsequently that “[t]here is a sub arrangement from Tarkus to FL”.<sup>203</sup> He also gave evidence in his earlier interview on 22 August 2022 that “there were no other [instances of subcontracting between the Parties], other than a HIG tender and Citibank Tender, where FL asked [Tarkus] for a sub arrangement”.<sup>204</sup> When questioned on 23 August 2022 why his responses on 22 August 2022 and 23 August 2022 were contradictory, Mike Cho (Tarkus) claimed that he could not recall why the Lilly Tender involved a subcontracting arrangement.<sup>205</sup> Tellingly, in spite of Mike Cho’s (Tarkus) claim in his interview of 23 August 2022 that FL would subcontract to Tarkus if FL successfully won the tender,<sup>206</sup> FL did not subcontract any part of the Lilly Tender to Tarkus even when FL was awarded the Lilly Tender.

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<sup>198</sup> Information provided by Lilly dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021.

<sup>199</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

<sup>200</sup> Response to questions 59 and 60 of Notes of Information/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>201</sup> Response to question 61 of Notes of Information/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>202</sup> FL’s leniency application submissions dated 29 November 2022.

<sup>203</sup> Response to questions 74 and 80 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>204</sup> Response to question 83 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022.

<sup>205</sup> Response to question 81 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>206</sup> Response to question 80 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

118. CCCS finds the claims of subcontracting for the Lilly Tender implausible and, in any event, would not justify the Conduct. First, CCCS notes the inconsistencies in Mike Cho's (Tarkus) account regarding the subcontracting arrangement in the preceding paragraph 117. Second, the claims were not borne out by any documentary evidence. Third, as set out in paragraphs 81 to 83 above, the evidence showed that the Parties were aware that it was highly unlikely that Tarkus would have won the Lilly Tender since it had used the tender bid prices supplied by FL (which were substantially higher than FL's own submission), which casts doubt on the claims of a genuine intention to subcontract.<sup>207</sup>
119. The claims that Tarkus had engaged in the Conduct as it did not have resources to carry out the project were likewise contradicted by Lilly, CBRE and Northcroft. [§<].<sup>208</sup>
120. CCCS also noted the communication between the Parties was contrary to the express requirements of Lilly. Lilly's tender documents such as the RFP issued on 12 June 2017 contained a requirement that the invited contractors were not to disclose any confidential information for a purpose other than the Lilly Tender.<sup>209</sup> The Conditions of Tendering and Instructions to Tenderers required the tender bid submissions to be sealed in an envelope and marked "*Private and Confidential*" for submission.<sup>210</sup> Tenderers were also required to and had signed a Confidentiality Agreement prior to the site visit for the Lilly Tender which provided that Tenderers were not to disclose confidential information submitted to Lilly to "*any third person without express written permission from Lilly*".<sup>211</sup>
121. In view of the evidence set out in paragraphs 110 to 120 above, CCCS finds that the Parties engaged in the Conduct in respect of the Lilly Tender whereby Tarkus submitted tender bid pricing and bid details prepared and priced by FL such that FL would have a better prospect than Tarkus of winning the Lilly Tender. The bid prices provided by FL for Takus' submission were higher than FL's. Through the Conduct, the Parties gave Lilly the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process the Lilly Tender was

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<sup>207</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>208</sup> Information provided by Lilly dated 3 August 2023 pursuant to the email from CCCS dated 31 July 2023, information provided by CBRE to question 19a dated 9 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, and information provided by Northcroft to question 6 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>209</sup> Information provided by Lilly dated 28 August 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled "Request for Proposal (RFP) Cost Consultancy Services for the Office and Clinic Fitout Works at Level 2, Synapse Building, Singapore" at "E. Non-disclosure Undertaking and Confidentiality"; and information provided by CBRE to question 17 dated 9 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>210</sup> Information provided by Northcroft to question 3 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>211</sup> Information provided by Lilly to question 2d dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021, and information provided by Northcroft to question 2 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Lilly Tender.

### Oracle Tender (September 2017)

122. Oracle Corporation (Singapore) Pte Ltd (“**Oracle**”) engaged JLL as the project manager to assist Oracle with the interior fit-out construction works for its Oracle Singapore Hub Office premises at Level 22, 80 Mapletree Business City II (the “**Oracle Tender**”).<sup>212</sup> On 15 September 2017<sup>213</sup>, JLL issued an RFP to identify and select the most suitable contractor for the Oracle Tender.<sup>214</sup> Five contractors including Tarkus and FL were invited to submit bids.<sup>215</sup>
123. Tender Addendum 1 was issued to all five contractors on 18 September 2017.<sup>216</sup> Tender Clarification No. 1 was issued to all five contractors on 25 September 2017.<sup>217</sup> Tender Clarification No. 2 was issued to all five contractors on 27 September 2017.<sup>218</sup> The submission date for the RFP was 29 September 2017.<sup>219</sup> All five contractors submitted their tender offers by the due date.<sup>220</sup> Post Tender Questionnaire No. 1 (“**Oracle PTQ1**”) was circulated to all the contractors on 10 October 2017 with a due date for responses of 12 October 2017.<sup>221</sup> Oracle PTQ1 consisted of some items which required all contractors to confirm certain commercial and technical matters and some items particularised to each contractor for each contractor to clarify any discrepancies and deficiencies found in their original tender offers.<sup>222</sup> All five contractors submitted their responses to Oracle PTQ1 by the due date. Post Tender Questionnaire No. 2 (“**Oracle PTQ2**”) for technical and commercial matters was circulated to all contractors on 19 October 2017 and responses were received by all five contractors on 23 October 2017. Post Tender Questionnaire No. 3 (“**Oracle PTQ3**”) was issued to all five contractors

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<sup>212</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020.

<sup>213</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [1.1].

<sup>214</sup> Information provided by JLL dated 22 February 2024 pursuant to the section 63 Notice issued by CCCS dated 6 February 2024.

<sup>215</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [3.3].

<sup>216</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [4.2].

<sup>217</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [4.6].

<sup>218</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [4.8].

<sup>219</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [4.10].

<sup>220</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [5.1].

<sup>221</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [5.6].

<sup>222</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [5.5].



on 24 October 2017 with a due date for responses of 25 October 2017 with each contractor’s final tender offer. All five contractors submitted their responses to Oracle PTQ3 with their final tender offer by the due date. The tender bid prices submitted by FL and Tarkus are set out in the table below.<sup>223</sup>

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions</b>
<b>Original Tender Offer</b> Submissions received by 29 September 2017	S\$ 2,720,915.00	S\$ 2,497,081.00
<b>Response to Oracle PTQ1</b> Submissions received by 12 October 2017	S\$ 2,759,015.00	S\$ 2,508,849.00
<b>Response to Oracle PTQ2</b> Submissions received by 23 October 2017	S\$ 2,755,205.00	S\$ 2,498,450.00
<b>Response to Oracle PTQ3 / Final Tender Offer</b> Submissions received by 25 October 2017	S\$ 2,759,205.00	S\$ 2,499,490.00

The Oracle Tender was not awarded to either FL or Tarkus.

124. Evidence related to the Oracle Tender showed that FL, the Covering Tenderer in this instance, had submitted cover tender bids comprised of tender bid pricing and bid details prepared and priced by Tarkus, the Designated Winner, at a level higher than Tarkus’ own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. On 10 October 2017, Yvonne Law (FL) sent an email to Alezandra (Tarkus), attaching a document titled “*Post Tender Questionnaire No. 1*”, addressed to “*Tenderer: Facility Link Pte Ltd*”, for Alezandra’s (Tarkus) action and asked Alezandra (Tarkus) to revert by 11 October 2017.<sup>224</sup> On 11 October 2017, Alezandra (Tarkus) responded to Yvonne Law’s (FL) email, attaching a document titled “*Post Tender Questionnaire No. 1*”, addressed to “*Tenderer: Facility Link Pte Ltd*” complete with

<sup>223</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [6.1] to [6.3] and [7.8].

<sup>224</sup> Exhibit marked JS-020.

responses and a cost submission of S\$2,759,015.00.<sup>225</sup> FL submitted this exact amount in its tender offer dated 12 October 2017 in response to Oracle PTQ1.<sup>226</sup>

125. On 20 October 2017, Yvonne Law (FL) sent an email to Alezandra (Tarkus), seeking her assistance with “*PTQ No. 2*”, referring to Oracle PTQ2, and asked for Alezandra (Tarkus) to respond on the same day. Alezandra (Tarkus) responded to Yvonne Law’s (FL) email on the same day, attaching a document titled “*Post Tender Questionnaire No. 2*”, addressed to “*Tenderer: Facility Link Pte Ltd*” complete with responses and a tender bid price of S\$2,755,205.00.<sup>227</sup> Again, FL submitted the exact amount that Tarkus had given it for FL’s tender bid in response to Oracle PTQ2.<sup>228</sup>
126. Yvonne Law (FL) sent an email to Alezandra (Tarkus) again on 24 October 2017, seeking her assistance on “*PTQ No. 3*” and attaching a document titled “*Post Tender Questionnaire No. 3*”, addressed to “*Tenderer: Facility Link Pte Ltd*”, and asked Alezandra (Tarkus) to revert by “*tomorrow not later than 12 noon*”.<sup>229</sup> Alezandra (Tarkus) responded to Yvonne Law’s (FL) email, attaching a PDF document named “*Oracle ODP\_PTQ No 3\_GC\_FACILITYLINK.PDF*” and an excel spreadsheet named “*FL Oracle - Main Contract Schedule of Works - Tender Addendum Rev. 3.xlsx*”. The content of the PDF document when opened was titled “*Post Tender Questionnaire No. 3*”, addressed to “*Tenderer: Facility Link Pte Ltd*” and contained responses to Oracle PTQ3 including a tender bid price of S\$2,759,205.00.<sup>230</sup> On 25 October 2023, FL submitted this exact amount in its final tender submission<sup>231</sup> in response to Oracle PTQ3. FL also submitted the excel spreadsheet Alezandra (Tarkus) provided to Yvonne Law (FL) in the former’s email dated 25 October 2023 as part of FL’s submission to Oracle PTQ3.<sup>232</sup>
127. Mike Cho (Tarkus), Judy Sun (FL) and Jason Chok (FL) confirmed that Tarkus had provided costing information to FL for its submission for the Oracle Tender. Mike Cho (Tarkus) in his interview of 23 August 2022 stated:<sup>233</sup>

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<sup>225</sup> Exhibit marked JS-021.

<sup>226</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [6.2].

<sup>227</sup> Exhibit marked JS-026.

<sup>228</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [6.3].

<sup>229</sup> Exhibit marked JS-027.

<sup>230</sup> Exhibit marked JS-028.

<sup>231</sup> Information provided by Oracle dated 7 September 2020 pursuant to the letter issued by CCCS dated 16 July 2020, document titled “Oracle General Contractor Recommendation Report” at [7.8].

<sup>232</sup> Information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022, document titled “FL Oracle – Main Contract Schedule of Works – Tender Addendum Rev. 3”.

<sup>233</sup> Response to question 50 of of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

*Q50. Referring to page 4 of MC-006 where there is an email dated 24 October 2017 from Yvonne to Alezandra, Yvonne requested Alezandra, to assist on PTQ No. 3. Why is this the case?*

*A: Since FL is submitting Tarkus's costing to the client, Tarkus would need to inform FL of the details of what exactly is offered to the client and FL will in turn relay such information to the client.*

128. Judy Sun (FL) in her interview of 19 January 2022 stated:<sup>234</sup>

*Q49. To the best of your knowledge, did FL use the information from Tarkus for FL's submission to Oracle?*

*A: Yes.*

129. Jason Chok (FL) in his interview of 3 May 2023 stated:<sup>235</sup>

*Q20. I refer to the following exhibit JC-027A where Alezandra (Tarkus) responded to Yvonne Law (FL) on 11 October 2017. We note Alezandra revised the total amount upwards by \$38,100 from the original amount of \$2,720,915 to \$2,759,015 for the second submission. In JC-027B, where Alezandra (Tarkus) responded to Judy Sun (FL) on 20 October 2017, we note Alezandra revised the total amount downwards by \$3,810 from \$2,759,015 to \$2,755,205 for the third submission. In JC-027C, where Alezandra (Tarkus) responded to Yvonne Law (FL) on 25 October 2017, we note Alezandra revised the total amount upwards by \$4,000 from \$2,755,205 to \$2,759,205 for the final submission. Can you explain why Alezandra made these revisions?*

*A: The changes were made further to modifications required by the client and each PTQ issued by the client. The gist is that we want to be priced out, so we will not be penalised for not participating. So all the information we have to be transparent to Tarkus. They adjust the price and give it to us. We submit.*

...

*Q24. Would you agree that FL submitted the costing provided by Tarkus in this instance?*

*A: Yes.*

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<sup>234</sup> Response to question 49 of Notes of Interview/Explanation provided by Judy Sun (FL), 19 January 2022.

<sup>235</sup> Response to question 20 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023. See also response to question 36 of the Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

130. FL, in its response to CCCS's request for information, also stated that its tender bid prices for the Oracle Tender were prepared by Tarkus.<sup>236</sup> In its leniency application, FL also admitted to "*sharing and/or use of commercially sensitive price information*" in relation to the Oracle Tender.<sup>237</sup>
131. According to Jason Chok (FL)<sup>238</sup> and Mike Cho (Tarkus)<sup>239</sup>, Tarkus prepared FL's costings and submissions for FL's submission for the Oracle Tender because FL had subcontracted the work to be undertaken in the Oracle Tender to Tarkus. Jason Chok (FL) stated that this purported subcontracting arrangement arose because FL did not have resources to undertake the work for the Oracle Tender<sup>240</sup> but did not wish to reject the invitation to participate in the tender, as the customer might not invite FL for future tenders and so sought to be "*priced out*" of the Oracle Tender<sup>241</sup>.
132. Simon Tia (Tarkus) similarly explained that Tarkus provided costing information to FL for FL to submit such that FL was unlikely to win and Tarkus had a better prospect of winning the Oracle Tender. Simon Tia (Tarkus) in his interview of 28 March 2023 stated:<sup>242</sup>

*Q109. Looking at ST-007, it appears that FL was sending PTQs to Tarkus for Tarkus's assistance and Tarkus would reply with the completed PTQs. Why would FL seek Tarkus's assistance and why would Tarkus be willing to do this for FL as a business?*

*A: On FL's part, this should be because of shortage of resource on FL's part. It takes a lot of time for an entity that don't want to win the tender to work on tender bid documents. Hence Tarkus helped FL with its submissions to help it price out. If FL still wins the tender, FL will subcontract to Tarkus but this is unlikely.*

*Q110. What is the basis of the costs and submissions Tarkus helped to prepare for FL?*

*A: It should be based on Tarkus's own submissions. FL's submissions will be marked up from Tarkus's so that it is priced out.*

133. Simon Tia (Tarkus) explained that through the arrangement between the Parties, Tarkus sought to provide for FL's submission, cost submissions that consisted of a mark-up

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<sup>236</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled "Oracle\_Write Up Tender Submission Process". CCCS noted that FL stated that the Oracle bid consisted of a mark up on the cost submission provided by Tarkus.

<sup>237</sup> FL's leniency application submissions dated 29 November 2022.

<sup>238</sup> Response to question 85 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>239</sup> Response to question 49 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>240</sup> Response to question 21 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>241</sup> Response to question 20 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>242</sup> Responses to questions 109 and 110 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

applied by Tarkus on Tarkus' own submitted tender bid pricing such that FL was "priced out" and Tarkus had a better prospect of winning the Oracle Tender.<sup>243</sup> Simon Tia (Tarkus) acknowledged that it was unlikely that FL would win the Oracle Tender given its higher bid and hence unlikely for FL and Tarkus to enter into a subcontracting arrangement.<sup>244</sup> He further noted that there has never been an instance where FL or Tarkus had successfully won the tender where FL or Tarkus had priced itself out of tenders.<sup>245</sup> Therefore, the subcontracting arrangement between FL or Tarkus had never taken effect.<sup>246</sup>

134. CCCS finds that the claims of subcontracting for the Oracle Tender implausible and, in any event, would not justify the Conduct. CCCS notes, first, the inherent inconsistencies in the claims. For example, while Jason Chok (FL) and Simon Tia (Tarkus) claimed that a subcontracting arrangement existed, both stated that the actual arrangement between the Parties was to first and foremost to provide Tarkus with a better prospect than FL to win the Oracle Tender and it was not envisaged that any subcontracting would in fact be needed, as admitted by Simon Tia (Tarkus). The absence of any subcontracting arrangement accords with Julie Aung's (Tarkus) unequivocal account that FL and Tarkus were not in any subcontracting relationship (see paragraph 80 above).<sup>247</sup> Second, the claims that a subcontracting arrangement existed were not borne out by any documentary evidence for the Oracle Tender.<sup>248</sup> Third, as set out in paragraphs 82 to 84 above, the Parties were aware that it was highly unlikely that FL would have won the Oracle Tender with the higher tender bid prices supplied by Tarkus for FL's submission, which casts doubt on the claims that there existed any genuine intention to subcontract.<sup>249</sup>
135. The claim that FL had engaged in the Conduct as it did not have resources to carry out the project, but did not wish to reject the invitation to participate in the tender as the customer might not invite it for future tenders, was likewise inconsistent with Oracle's statement [§<].<sup>250</sup> [§<]<sup>251</sup> Oracle also stated that it was not aware of any practice where a contractor submitted an inflated bid because it did not wish to win a tender which it has been invited to participate in. Oracle regarded such behaviour from a participating

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<sup>243</sup> Responses to questions 109 and 110 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>244</sup> Responses to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>245</sup> Response to question 112 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>246</sup> Response to question 45 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>247</sup> Response to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>248</sup> Information provided by Tarkus dated 29 November 2022 pursuant to section 63 Notice issued by the CCCS on 20 October 2022 and information provided by Tarkus dated 27 July 2023 pursuant to section 63 Notice issued by the CCCS on 13 July 2023.

<sup>249</sup> Response to question 45 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>250</sup> Information provided by Oracle dated 10 August 2023 pursuant to the email from CCCS dated 1 August 2023.

<sup>251</sup> Information provided by Oracle dated 10 August 2023 pursuant to the email from CCCS dated 1 August 2023.

tenderer as “*unethical*” and would disqualify such a tenderer from the ongoing tender as well as any future tenders.<sup>252</sup>

136. The evidence also showed that the Parties could not have been unaware that the Conduct was disallowed. Oracle required each participating tenderer to enter into a Confidential Disclosure Agreement (“**Oracle CDA**”) with it. One of the terms of the Oracle CDA was that the tenderer should comply with the Oracle Supplier Code of Ethics (“**OSCoE**”).<sup>253</sup> The OSCoE provided that the tenderer must comply with a country’s competition laws and further specified that agreements to “*structure or orchestrate bids to direct a contract to a certain competitor or reseller (bid-rigging) ... are against public policy and are against Oracle policy*” and contractors “*must refrain from discussions with competitors about (1) prices, (2) costs, (3) profits or profit margins, (4) production volumes, or (5) bids or quotes for a specific customer’s business*”.<sup>254</sup> The Oracle CDA had an effective period starting from 18 September 2017 to 17 September 2019. Both FL and Tarkus acknowledged, signed and submitted the Oracle CDA.<sup>255</sup>
137. In view of the evidence set out in paragraphs 122 to 136, CCCS finds that the Parties had engaged in the Conduct in respect of the Oracle Tender whereby FL submitted tender bid pricing and bid details prepared and priced by Tarkus such that Tarkus would have a better prospect than FL of winning the Oracle Tender. The bid prices provided by Tarkus for FL’s submission were higher than Tarkus’. Through the Conduct, the Parties gave Oracle the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the Oracle Tender was meant to achieve. CCCS consequently finds that the evidence established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Oracle Tender.

#### Nokia Tender (October 2017)

138. On or around 3 October 2017<sup>256</sup>, Nokia issued an RFP to various contractors, including FL and Tarkus<sup>257</sup>, to identify and select the most suitable contractor for reinstatement

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<sup>252</sup> Information provided by Oracle dated 10 August 2023 pursuant to the email from CCCS dated 1 August 2023.

<sup>253</sup> Information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022, document titled “CDA for ODP Singapore GC (Facility Link) - signed and CDA for ODP Singapore GC (Tarkus) – signed”.

<sup>254</sup> Information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022, document titled “Doc Reference ID 03 - Supplier Code of Ethics & Business Conduct”.

<sup>255</sup> Information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022, document titled “CDA for ODP Singapore GC (Facility Link) - signed and CDA for ODP Singapore GC (Tarkus) – signed”.

<sup>256</sup> Information provided by Judy Sun (FL) dated 8 November 2023 pursuant to the section 63 Notice issued by CCCS dated 3 October 2023 (MAX.006.047490).

<sup>257</sup> Information provided by CBRE to question 9 dated 23 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

works for its office premises at 750D Chai Chee Rd, Viva Business Park, Singapore 469004 (the “**Nokia Tender**”). Nokia engaged CBRE as the project manager. On 16 October 2017 at 10.39 a.m., Post Tender Clarification No.1 (“**Nokia PTC**”) was issued to FL.<sup>258</sup> It is unclear if any Post Tender Clarification was issued to other contractors.

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions</b>
<b>First Submission</b>		
Nokia Base Tender	S\$642,830.00	Unknown
Nokia Tender Option 1	S\$632,615.00	
Nokia Tender Option 2	S\$628,075.00	
Due by 13 October 2017		

The Nokia Tender was awarded to Tarkus in or around October or November 2017 for the contract sum of about S\$409,000.<sup>259</sup>

139. Evidence related to the Nokia Tender showed that FL, the Covering Tenderer in this instance, submitted a cover tender bid comprised of tender bid pricing and bid details prepared and priced by Tarkus, the Designated Winner, at a level higher than Tarkus’ own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. On 12 October 2017 Alezandra (Tarkus) provided to Yvonne Law (FL) copying Mike Cho (Tarkus) and Jason Chok (FL) costing information for FL’s tender bid submission for the Nokia Tender (“**Nokia Tender Submission**”), which comprised three alternative offers, namely the “*Nokia Base Tender*”, “*Nokia Tender Option 1*” and “*Nokia Tender Option 2*”.<sup>260</sup> Subsequently, on 17 October 2017, Alezandra (Tarkus) provided to Khaing (FL) responses to Nokia PTC and revised BQ for FL’s submission.<sup>261</sup>

140. With respect to the Nokia Tender Submission, Alezandra (Tarkus) wrote to Yvonne Law (FL) in an email dated 12 October 2017 stating:<sup>262</sup>

*Hi Yvonne,*

*For your submission:*

*1. Base tender - tenancy wall, brick wall*

*2. Option 1 - tenancy wall, block wall*

*3. Option 2 - tenancy wall, fire rated partition*

<sup>258</sup> Information provided by Judy Sun (FL) dated 8 November 2023 pursuant to the section 63 Notice issued by CCCS dated 3 October 2023 (MAX.006.046450).

<sup>259</sup> Information provided by Nokia Solutions and Networks Singapore Pte Ltd dated 25 October 2023 pursuant to the letter issued by CCCS dated 2 August 2023 and exhibit marked MC-002, at page 5.

<sup>260</sup> Exhibit marked JS-022.

<sup>261</sup> Exhibit marked JS-024.

<sup>262</sup> Exhibit marked JS-022.

On receiving Alezandra's (Tarkus) email, Yvonne Law (FL) forwarded the email to Khaing (FL) the same day.<sup>263</sup> There were three excel files attached to this email, named "*FL - S8 Schedule of Works (Reinstatement Works).xlsx*"; "*FL - S8 Schedule of Works (Reinstatement Works) Option 1.xlsx*"; and "*FL - S8 Schedule of Works (Reinstatement Works) Option 2.xlsx*".<sup>264</sup> These excel files were costings prepared by Alezandra (Tarkus) for FL's submission for the Nokia Tender. FL subsequently on 13 October 2017<sup>265</sup> submitted a tender bid price of S\$642,830.00 in its Nokia Tender Submission for the Nokia Base Tender<sup>266</sup>, S\$632,615.00 for Nokia Tender Option 1<sup>267</sup> and S\$628,075.00 Nokia Tender Option 2<sup>268</sup> which were the exact amounts that Alezandra (Tarkus) provided to Yvonne Law (FL) in her email dated 12 October 2017<sup>269</sup>. FL also submitted the exact copies of the excel files provided by Alezandra (Tarkus) for the Nokia Tender.

141. On 16 October 2017 at 11.43 a.m., Khaing (FL) forwarded the Nokia PTC to Alezandra (Tarkus) in an email titled "*RE: FOR YOUR EYES ONLY - Nokia Reinstatement- PTC No.1*". In this email, Khaing (FL) attached "*PTC No. 1 for your reply*" and asked Alezandra (Tarkus) to "*get back to us by tomorrow Noon*". On 17 October 2017 at 10.10 a.m., Alezandra (Tarkus) responded to Khaing (FL), attaching two documents which were responses to the Nokia PTC and revised cost submissions for the Nokia Tender.<sup>270</sup>
142. Jason Chok (FL) and Judy Sun (FL) in their interviews both admitted that Tarkus prepared FL's costing information and submissions and that FL had used the information provided by Tarkus for FL's submission for the Nokia Tender.
143. Jason Chok (FL) in his interviews of 3 May 2023 and 10 February 2023 stated:

*Q35. Would you agree that FL submitted the costing provided by Tarkus in this instance?*<sup>271</sup>

*A: Yes.*

*Q79. I refer to JC-021-B which was provided by FL which is a series of correspondence between yourself, Judy Sun (FL), Khaing (FL), Mike Cho*

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<sup>263</sup> Exhibit marked JS-022.

<sup>264</sup> Exhibit marked JS-022.

<sup>265</sup> Information provided by FL dated 22 March 2023 pursuant to section 63 Notice issued by the CCCS on 24 February 2023, document titled "S4.0- Form of Tender".

<sup>266</sup> Information provided by FL dated 22 March 2023 pursuant to section 63 Notice issued by the CCCS on 24 February 2023, document titled "S8 Schedule of Works (Reinstatement Works) and Summary".

<sup>267</sup> Information provided by FL dated 22 March 2023 pursuant to section 63 Notice issued by the CCCS on 24 February 2023, document titled "S8 Schedule of Works (Reinstatement Works) Option 1".

<sup>268</sup> Information provided by FL dated 22 March 2023 pursuant to section 63 Notice issued by the CCCS on 24 February 2023, document titled "S8 Schedule of Works (Reinstatement Works) Option 2".

<sup>269</sup> Exhibit marked JS-022.

<sup>270</sup> Information provided by Judy Sun (FL) dated 8 November 2023 pursuant to the section 63 notice issued by CCCS dated 3 October 2023 (MAX.006.033741).

<sup>271</sup> Response to question 35 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.



*(Tarkus) and Alezandra- Marquez (Tarkus). Please explain the correspondence.*

*A: It is Tarkus' costing submission to us. Subsequent is in relation to post-tender question clarification which we asked Tarkus to answer.<sup>272</sup>*

144. Judy Sun (FL) in her interview of 19 January 2022 stated:<sup>273</sup>

*Q45. To the best of your knowledge, did FL use the information from Tarkus for FL's submission to Nokia?*

*A: Yes.*

145. FL, in its response to CCCS's request for information, stated that its tender bid for the Nokia Tender was prepared by Tarkus.<sup>274</sup> In its leniency application, FL also admitted to "*sharing and/or use of commercially sensitive price information*" in relation to the Nokia Tender.<sup>275</sup>

146. According to Judy Sun (FL), the correspondence between the Parties occurred because FL was going to subcontract the entirety of the work in the Nokia Tender to Tarkus. Judy Sun (FL) stated that FL was likely not to have the resources to undertake the work for the Nokia Tender<sup>276</sup> but did not wish to reject the invitation to participate in the tender, as such rejection may have a negative impact on future opportunities to work with this customer<sup>277</sup>. Jason Chok (FL) in his 10 February 2023 interview claimed that "*Tarkus subcontracted for [FL]*" in respect of the Nokia Tender.<sup>278</sup>

147. However, contrary to Jason Chok (FL) and Judy Sun's (FL) claims, Simon Tia (Tarkus) in his interview of 4 April 2023 stated he was not aware of any purported subcontracting arrangement between Tarkus and FL applying to the Nokia Tender:<sup>279</sup>

*Q107. At your interview on 28 March 2023, you told us that for some tenders where either Tarkus or FL had no resources to take up a job, you will seek the other's help to provide costing and tender submissions to help you to price out, and in the unlikely event the high bid still won, the other party would help to subcontract and do the job. Did that arrangement apply to this tender?*

*A: Not to my knowledge.*

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<sup>272</sup> Response to question 79 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>273</sup> Response to question 45 of Notes of Interview/Explanation provided by Judy Sun (FL), 19 January 2022.

<sup>274</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled "Nokia Reinstatement\_Write Up Tender Submission Process". CCCS noted that FL stated that the Nokia bid consisted of a mark up on the cost submission provided by Tarkus.

<sup>275</sup> FL's leniency application submissions dated 29 November 2022.

<sup>276</sup> Response to questions 28 and 44 of Notes of Interview/Explanation provided by Judy Sun (FL), 19 January 2022.

<sup>277</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled "Nokia Reinstatement\_Write Up Tender Submission Process".

<sup>278</sup> Response to question 78 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>279</sup> Response to questions 106 and 107 of Notes of Information/Explanation provided by Simon Tia (Tarkus), 4 April 2023.

148. CCCS finds that the claims of subcontracting for the Nokia Tender implausible and, in any event, would not justify the Conduct. CCCS has noted, first, the inherent inconsistencies in the claims as demonstrated by Simon Tia’s (Tarkus), Jason Chok’s (FL) and Judy Sun’s (FL) contradicting accounts set out in the preceding paragraphs 146 and 147. Second, the claims of a subcontracting arrangement were not borne out by any documentary evidence for the Nokia Tender. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely that FL would have won with the higher pricing supplied by Tarkus for FL’s submission, which casts doubt on the claims that there existed any genuine intention to subcontract.<sup>280</sup>
149. In view of the evidence set out in paragraphs 138 to 148, CCCS finds that the Parties engaged in the Conduct in respect of the Nokia Tender whereby FL submitted tender bid pricing and bid details provided by Tarkus such that Tarkus would have a better prospect than FL of winning the Nokia Tender. The bid prices provided by Tarkus for FL’s submission were higher than Tarkus’. Through the Conduct, the Parties gave Nokia the false impression that the tender bids it received were independently determined, when they were not, and undermined the competitive process that the Nokia Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Nokia Tender.

#### HIG Boat Quay Tender (May 2018)

150. On 23 May 2018, Wolf Studio Pte Ltd (“**Wolf Studio**”), the design and build firm engaged to oversee this project,<sup>281</sup> issued a Request for Quotation (“**RFQ**”) on behalf of its customer, HANS IM GLUCK SG Pte Ltd (“**HIG**”), to seek quotations for the build works for HIG’s premises situated at 70 Boat Quay (the “**HIG Boat Quay Tender**”).<sup>282</sup> Wolf Studio was responsible for conveying the design and scope of works to vendors, requesting for quotations and evaluating the quotation returns.<sup>283</sup> In relation to the build works, Wolf Studio initially issued an RFQ only to Tarkus as HIG had

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<sup>280</sup> Response to question 45 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>281</sup> See information provided by Wolf Studio to questions 1 and 4 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. See also information provided by Wolf Studio to question 5 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024, document titled “Signed Contract”.

<sup>282</sup> CCCS understands that such an arrangement can be common in design and build tenders where a build partner works with a designer firm in delivering the project. See also information provided by FL to question 5 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled “HIG Design and Build Tender Write Up Tender Submission Process”. See also information provided by Wolf Studio to question 1 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. Wolf Studio separately sought a quotation for the mechanical, electrical and plumbing (“**MEP**”) works from another contractor.

<sup>283</sup> Information provided by Wolf Studio to question 1 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024.

previously worked with Tarkus and was keen for Tarkus to also undertake the works for the HIG Boat Quay Tender.<sup>284</sup>

151. Wolf Studio subsequently reached out to FL on 3 July 2018 via email to obtain another quotation for the build works.<sup>285</sup> This was done as HIG requested Wolf Studio to seek the quote from FL as a “*cost comparison*”.<sup>286</sup> FL submitted that Wolf Studio reached out to FL to obtain another quotation as Wolf Studio was of the view that HIG had limited budget.<sup>287</sup> According to Wolf Studio, HIG had asked specifically for FL because FL had worked with HIG in the past.<sup>288</sup> The submitted tender bids of FL and Tarkus for the HIG Boat Quay Tender are set out below.

	<b>FL’s Tender Submission</b>	<b>Tarkus’ Tender Submission</b>
<b>Submission</b>	S\$192,885.00  (Submission dated 5 July 2018) <sup>289</sup>	S\$187,290.00 <sup>290</sup>  (Submission dated 3 July 2018) <sup>291</sup>

The HIG Boat Quay Tender for build works was eventually awarded to Tarkus on 17 July 2018.<sup>292</sup>

<sup>284</sup> Information provided by Wolf Studio to question 1 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024.

<sup>285</sup> Information provided by Wolf Studio to question 1 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. See also information provided by Wolf Studio to question 6 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024, document titled “FL quote”. Information provided by FL to question 5 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled “HIG Design and Build Tender Write Up Tender Submission Process”.

<sup>286</sup> Information provided by Wolf Studio to question 1 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. See also information provided by Wolf Studio to question 6 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024.

<sup>287</sup> Information provided by FL to question 5 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled “HIG Design and Build Tender Write Up Tender Submission Process”. See also email titled HIG Boat Quay dated 3 July 2018.

<sup>288</sup> Information provided by Wolf Studio to question 7 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. See also information provided by Wolf Studio to question 6 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024.

<sup>289</sup> FL submitted this quotation after Tarkus submitted 7 rounds of quotations (including the original quotation) on 30 May 2018, 7 June 2018 (2 rounds of quotations submitted), 11 June 2018, 12 June 2018, 20 June 2018 and 21 June 2018. See also information provided by Wolf Studio to question 6 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. See document titled “FL quote”. See also information provided by Tarkus to question 3 dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022. See also sub-folder titled “Submission” under folder titled “Confidential Document 4 – HIG”.

<sup>290</sup> CCCS notes that this was not the final tender submission amount by Tarkus. Tarkus submitted another revised quotation of \$182,355.00 on 9 July 2018 to reflect the cost of the materials and samples that it would be proposing for the build works for HIG Boat Quay Tender. The revised quotation was the basis which the HIG Boat Quay Tender for build works was eventually awarded to Tarkus on 17 July 2018.

<sup>291</sup> Information provided by Tarkus to question 3 dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022. See also document titled “HIG @ 70 BQ\_R7 – Submission on 3<sup>rd</sup> July”.

<sup>292</sup> Information provided by Tarkus to question 3 dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022. See also document titled “HIG PO Tarkus PO\_001”.

152. Evidence related to the HIG Boat Quay Tender showed that FL, the Covering Tenderer in this instance, submitted a cover tender bid comprised of tender bid pricing and bid details priced at a level higher than Tarkus' own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. On 3 July 2018, Thanta (Tarkus) sent Jason Chok (FL) an email providing Jason Chok (FL) with "*the attached latest costing which [Tarkus has] yet to send. Kindly make your own adjustment and prepare your own BQ*". Jason Chok (FL) followed up by forwarding the costing information to Judy Sun (FL) and instructed her to mark these up by 3% with reference to Tarkus' costing information for submission to Wolf Studio for the HIG Boat Quay Tender.<sup>293</sup>
153. Jason Chok (FL) claimed that FL had no resources for the project, but could not reject the invitation as Wolf Studio was one of its regular design partners, so Tarkus provided its costing information to FL such that FL was unlikely to win and Tarkus had a better prospect of winning the tender:<sup>294</sup>

*Q48. I refer to exhibit JC-024 which is FL's response dated 22 March 2023 to Q5 of CCCS's 24 February 2023 Notice. We note that it is stated that "Mr Jason Chok's instruction to Judy Sun of FL was to mark up submission by 3%. Tarkus submitted \$187,290.00 and Mr. Jason Chok's instruction to Judy Sun was to increase the price by 3%". How did FL know that Tarkus submitted \$187,290?  
A: Tarkus was working with Wolf. They asked us to provide a second submission. Instead of preparing our own submission, we got Tarkus's costing and marked it up by 3% to price ourselves out.*

*Q49. Hence the attachment to Thanta's email of date at JC-031 was Tarkus's submission?  
A: Yes. This is the costing they provided to us. Then I asked Judy to mark up by 3%. Tarkus provided the number to us. Whether they submitted the number to the client, I wouldn't know, but this is the number that Tarkus gave to me. From there, I mark up 3% because I want to price myself out.*

*Q50. Please explain why the final submitted amount of \$192,885.00 was different from the amount that you had asked Judy to mark up (i.e. \$192,908.7).  
A: No reason. Maybe she wanted to round down. We knew that we did not want to win. Any number above Tarkus's costing would suffice. No special formula or whatever auspicious number*

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<sup>293</sup> Exhibit marked JC-018-B.

<sup>294</sup> Information provided by FL to question 5 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled "HIG Design and Build Tender Write Up Tender Submission Process"; and response to questions 48, 49 and 50 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

154. FL had also admitted to “*sharing and/or use of commercially sensitive price information of [FL] and Tarkus*” in respect of the HIG Boat Quay Tender in its leniency application.<sup>295</sup>
155. Mike Cho (Tarkus) likewise confirmed that Tarkus had sent FL its costing information.<sup>296</sup> In his interview of 4 April 2023, Simon Tia (Tarkus) claimed that the correspondence was “*for FL to markup and price themselves out...it is their decision on how much markup they wish to add to price themselves out. For this tender, it is likely that FL does not have resources...*”<sup>297</sup> As such, FL was highly unlikely to win and Tarkus would have a better prospect of winning the HIG Boat Quay Tender.
156. FL went on to submit a total price of S\$192,885 on or about 5 July 2018 in its tender submission.<sup>298</sup> While this amount was slightly different from the amount that Jason Chok (FL) asked Judy Sun (FL) to mark up to (i.e. S\$192,908.70), this does not detract from the fact that Tarkus had indeed provided the costing information to FL with the view for the latter to apply a markup and submit to Wolf Studio for the HIG Boat Quay Tender. Jason Chok (FL) explained that this might have been a “*round down*” given that “*[a]ny number above Tarkus’s costing would suffice*” as “*[w]e knew that we did not want to win*”.<sup>299</sup>
157. According to Jason Chok (FL) as noted in paragraph 153 above and Simon Tia (Tarkus), FL had no resources for this project but could not reject Wolf Studio’s invitation.<sup>300</sup> Each claimed that if FL had won the tender, FL would subcontract the project to Tarkus.
158. CCCS finds that the claims of subcontracting for the HIG Boat Quay Tender implausible and, in any event, would not justify the Conduct. CCCS has noted, first, the inherent inconsistencies in the claims for the HIG Boat Quay Tender. For example, Mike Cho’s (Tarkus) conflicting account set out in paragraph 96 above did not at first identify the HIG Boat Quay Tender as one which had a subcontracting arrangement between FL and Tarkus. Mike Cho’s (Tarkus) account also conflicts with Julie Aung’s (Tarkus) unequivocal account that FL and Tarkus were not in any subcontracting relationship (see paragraph 80 above).<sup>301</sup> Second, the claims of a subcontracting

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<sup>295</sup> FL’s leniency application submissions dated 29 November 2022.

<sup>296</sup> Response to questions 10 and 11 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>297</sup> Response to questions 50 and 51 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 4 April 2023.

<sup>298</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023. See also information provided by Wolf Studio to question 6 dated 26 June 2024 pursuant to the section 63 Notice issued by CCCS dated 20 June 2024. See document titled “FL quote”.

<sup>299</sup> Response to question 50 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>300</sup> Response to question 53 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; response to questions 14 to 19 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022; and response to questions 50 to 51 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 4 April 2023.

<sup>301</sup> Response to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

arrangement were not borne out by any documentary evidence for the HIG Boat Quay Tender. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely that FL would have won with the higher pricing FL submitted in agreement and/or concertation with Tarkus, which casts doubt on the claims that there existed any genuine intention to subcontract.<sup>302</sup>

159. The communications between the Parties made it clear that the information communicated from Tarkus to FL was in fact Tarkus' own intended submission to the HIG Boat Quay and not a quote from Tarkus to FL in the role of a subcontractor. Tarkus had shared with FL the costing information it had intended to send to the HIG Boat Quay as evinced by Thanta (Tarkus) communicating to Jason Chok (FL) “[p]lease find the attached latest costing which we (sic) yet to send”.<sup>303</sup> This suggested, as between the Parties, that the documents provided were going to be Tarkus' bid to be submitted to the customer and that FL, who had no intention of winning the tender, would then mark up “[a]ny number above Tarkus's costing” such that Tarkus would have a better prospect than FL of winning the tender.
160. In view of the evidence set out in paragraphs 150 to 159, CCCS finds that the Parties engaged in the Conduct in respect of the HIG Boat Quay Tender whereby FL submitted tender bid pricing that would be marked up to be at a level higher than Tarkus' own tender bid such that Tarkus would have a better prospect than FL of winning the HIG Boat Quay Tender. Through the Conduct, the Parties gave HIG Boat Quay the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the HIG Boat Quay Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the HIG Boat Quay Tender.

#### EY Tender (May 2018)

161. On 2 May 2018, Ernst & Young (“EY”) issued an RFP to identify and select the most suitable contractor for fit-out works for its premise, EY Wavespace, situated at level 32, 77 Robinson Road (the “EY Tender”). The submission date for the RFP was 11 May 2018 and the EY Tender was overseen by WT Partnership, a quantity surveyor appointed by CBRE to administer and oversee the tender process for the project.<sup>304</sup>
162. A total of four contractors were pre-qualified to tender, including FL and Tarkus. A site visit was conducted on 4 May 2018 for this tender. All four contractors submitted their original offers before the tender closing date on 11 May 2018. Post-Tender Questionnaire No. 1 and 1(a) (“PTQ 1” and “PTQ 1a” respectively) were issued on 14

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<sup>302</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>303</sup> Exhibit marked JC-018-B.

<sup>304</sup> Information provided by EY to question 1 dated 8 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022.

May 2018 and 15 May 2018 respectively to all four contractors. All four contractors submitted their revised offers on 16 May 2018. Based on the revised offers received, only FL, Tarkus and one other tenderer were shortlisted. WT Partnership issued a draft Post-Tender Questionnaire No. 2 (“PTQ 2”) on 18 May 2023. A tender interview was held for these three shortlisted contractors on 21 May 2018 and the finalised PTQ 2 was issued. EY received the revised tender submissions from these three contractors on 22 May 2018. The tender bids submitted by FL and Tarkus are set out in the table below.

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions</b>
<b>First submission</b> Received on 11 May 2018	S\$2,255,603.00	S\$2,122,985.00
<b>Revised submission</b> Received on 16 May 2018	S\$2,322,263.00	S\$2,165,870.00
<b>Final submission</b> Received on 22 May 2018	S\$2,318,863.00	S\$2,130,000.00

The EY Tender was awarded on or around 2 July 2018 to Tarkus.<sup>305</sup>

163. Evidence related to the EY Tender showed that FL, the Covering Tenderer in this instance, had submitted cover tender bids comprised of tender bid pricing and bid details priced by Tarkus, the Designated Winner, at a level higher than Tarkus’ own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. On 16 May 2018, Mike Cho (Tarkus) sent an email to Jason Chok (FL), Judy Sun (FL) and Denise Khaw (FL) titled “*EY – TQ1 + TQ1A*” where Mike Cho (Tarkus) stated “*Please find attached TQ1+TQ1A for your submission.*”<sup>306</sup> On 18 May 2018, Judy Sun (FL) sent Mike Cho (Tarkus) an email requesting that Mike Cho (Tarkus) assist her “*on the attached PTQ [2 (draft)] and reply by Monday 12noon*”.<sup>307</sup> Subsequently, Mike Cho (Tarkus) replied on 19 May 2018 with Tarkus’ responses to the “*PTQ 2 (draft)*”, which mainly related to costing (including pricing aspects), and noted that he would “*update/ resend upon receiving (sic) of supplier quotation*”.<sup>308</sup> These email exchanges established that Tarkus prepared and provided costing information as well as responses to PTQs for FL’s subsequent submission for the EY Tender.

<sup>305</sup> Information provided by EY to question 1f dated 8 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022.

<sup>306</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023. See also Exhibit JC-030.

<sup>307</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>308</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

164. This was confirmed by Jason Chok (FL) in his interview on 3 May 2023:<sup>309</sup>

*Q36. I refer to exhibit JC-024 which is FL's response dated 22 March 2023 to Q5 of CCCS's 24 February 2023 Notice. In particular, we note that you are able to confirm that Tarkus did all costing for FL. Please elaborate what it is meant by that "Tarkus did all costing for FL".*

*A: Same like Citi, McKinsey and Oracle. They do up all the costing for us to submit.*

...

*Q38. Please explain why were there multiple revisions to the submitted figure from \$2,255,603 at the first submission to \$2,322,263 at the 2<sup>nd</sup> submission and finally to \$2,318,863 at the final submission.*

*A: Same thing. Changes required by clients through the PTQ. We send it to Tarkus, Tarkus will readjust the pricing for us.*

*Q39. Based on FL's 24 February 2023 response, the total cost submitted by FL is 2,318,863. Is that correct?*

*A: Yes that was the final submission*

*Q40. Would you agree that FL submitted the costing provided by Tarkus in this instance?*

*A: Yes.*

165. FL also admitted to "sharing and/or use of commercially sensitive price information of [FL] and Tarkus" in respect of the EY Tender in its leniency application.<sup>310</sup>

166. Simon Tia (Tarkus) likewise confirmed that the costing information had been provided by Tarkus to FL and explained that this was for the purpose of ensuring that FL was unlikely to win the tender and Tarkus had a better prospect of winning.<sup>311</sup>

*Q42. Please explain why Mike Cho stated in his email "Dear Judy/Jason, please find attached TQ1 + TQ1A for your submission".*

*A: TQ means tender questions. For the rest of the attached documents, I do not know if these documents are Tarkus' response to the tender questions, or FL's response to the tender questions. All these are without my knowledge, but probably part of the subcontracting arrangement Tarkus has with FL. FL might subcontract to Tarkus because it seems from*

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<sup>309</sup> Response to questions 36, 38, 39 and 40 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>310</sup> FL's leniency application submissions dated 29 November 2022.

<sup>311</sup> Response to questions 42 and 43 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 4 April 2023.



*the documents<sup>312</sup> that FL does not have the resources to undertake this project.*

*Q43. So your reading of the documents is that Mike Cho is sending these documents to FL to help FL price itself out of the tender, since Mike is sending these documents to FL.*

*A: Yes.*

167. The response provided by Simon Tia (Tarkus) that Tarkus had provided costing information to FL so that FL was unlikely to win the tender and Tarkus had a better prospect than FL of winning the tender was consistent with Jason Chok's (FL) statement that whenever the client (EY in this case) required changes subsequently (e.g. via a PTQ), FL would forward such requests to Tarkus so that Tarkus could re-adjust the pricing for FL to submit to the client.<sup>313</sup> In this regard, such steps were taken to ensure that any adjustment in prices subsequently stayed true to the objective of ensuring FL was unlikely to win the tender and Tarkus had a better prospect than FL of winning the tender. Consequently, the difference in FL's and Tarkus' tender submissions persisted for the revised submission and final submission as shown in the table above.
168. FL went on to submit a total price of S\$2,318,863 in its tender submission which was the exact amount that Mike Cho (Tarkus) provided to FL after the multiple revisions to FL's pricing as explained by Jason Chok (FL) in his interview set out in paragraph 164 above.<sup>314</sup>
169. According to Jason Chok (FL), FL had no resources for this project but could not reject the customer's invitation.<sup>315</sup> FL claimed that if FL had won the tender, it would subcontract the project to Tarkus. However, despite CCCS's requests, FL could not provide any documentary evidence of this. Mike Cho (Tarkus) confirmed that Tarkus had provided the costing information to FL. However, when asked to explain the email he sent to Jason Chok (FL) and Judy Sun (FL) on 16 May 2018 stating "*Dear Judy/Jason, [P]lease find attached TQ1+TQ1A for your submission. Thank you. Best regards, Mike Cho (Contracts Manager)*",<sup>316</sup> Mike Cho (Tarkus) explained that the information was to ensure consistency in the amounts quoted to EY and FL. Mike Cho (Tarkus) stated:<sup>317</sup>

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<sup>312</sup> Exhibit marked ST-10, an email from Mike Cho (Tarkus) dated 16 May 2018 which states "*Dear Judy/Jason, please find attached TQ1 + TQ1A for your submission*".

<sup>313</sup> Response to question 38 of Notes of Interview/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>314</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>315</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, document titled "Ernst and Young\_Write Up Tender Submission Process".

<sup>316</sup> Exhibit marked MC-014.

<sup>317</sup> Response to question 105 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

*“I provided my response to TQ1 and TQ1A to Jason and Judy so that the responses they submit to the client will be aligned to the responses I submit to the client. I would have provided the same quote to FL and the client. There cannot be two different submissions to the client and FL. This email informs FL that I am providing the same response to them as what I will be providing the client. The answers I provide to the client and FL must be consistent because should FL win the tender, I will provide FL the same work as what I would have provided to the client directly.”*

170. When pressed further on why he needed to send “TQ1” and “TQ1A” to Judy Sun (FL), Jason Chok (FL) and Denise Khaw (FL), Mike Cho (Tarkus) stated that he was required to “provide input since I am the one providing the quote to FL, so I would need to inform FL exactly what I am offering to them.”<sup>318</sup> However, from documents obtained by CCCS, Tarkus had submitted a different tender bid price to the customer than that submitted by FL (which was provided by Tarkus). CCCS also noted that while Tarkus was able to furnish documents to CCCS related to the submission of its tenders, Tarkus could not, when asked by CCCS, provide any documentary evidence related to any subcontracting arrangement between the Parties. This absence of documentation was consistent with the evidence of Julie Aung (Tarkus) as discussed at paragraph 80 above who stated that there was no subcontracting arrangement between FL and Tarkus.<sup>319</sup>
171. In addition, as set out in paragraphs 81 to 83 above, the evidence showed that the Parties were aware that it was highly unlikely that FL would have won with the higher tender bid pricing submitted, which casts doubt on the claims that there existed any genuine intention to subcontract.<sup>320</sup>
172. The claims that FL engaged in the Conduct as it did not have resources to carry out the project but did not wish to reject the invitation to participate in the tender, as the customer might not invite it for future tenders, were also not borne out in the evidence provided by EY. [§<]. Rather, EY’s evaluation matrix was based on objective criteria such as whether the tender bid submission is competitive, whether the tender submissions are in full compliance to all commercial and contractual terms, drawings and specifications, etc.<sup>321</sup>
173. Moreover, documents obtained from EY evidenced that contractors were required to declare their list of subcontractors and subcontracted works in their tender submissions. In this regard, FL had indicated various other subcontractors in their tender submission,

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<sup>318</sup> Responses to questions 105 and 108 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 23 August 2022.

<sup>319</sup> Responses to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>320</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>321</sup> Information provided by EY dated 8 December 2022 pursuant to the section 63 Notice issued by CCCS dated 3 November 2022.

but Tarkus was not identified within its declared list of subcontractors, even though FL claimed that there was a subcontracting relationship between FL and Tarkus.<sup>322</sup>

174. Overall, the evidence related to the EY Tender disclosed an arrangement whereby information regarding tender pricing and other bid details was communicated from Tarkus to FL with Tarkus preparing FL's submission. It was not a quote from Tarkus to FL in the role of a subcontractor. As noted in paragraphs 170 and 173 above, there is no evidence of a subcontracting arrangement. Rather, the Conduct was consistent with the objective outlined in paragraph 166 of ensuring FL was priced out of the EY Tender. CCCS finds that the claims of subcontracting for the EY Tender implausible and, in any event, would not justify the Conduct.
175. In view of the evidence set out in paragraphs 161 to 174, CCCS finds that the Parties engaged in the Conduct in respect of the EY Tender whereby FL submitted tender bid pricing and bid details prepared and priced by Tarkus such that Tarkus would have a better prospect than FL of winning the EY Tender. The bid prices provided by Tarkus for FL's submission were higher than Tarkus'. Through the Conduct, the Parties gave EY the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process the EY Tender was meant to achieve. CCCS consequently finds that the evidence established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the EY Tender.

#### Dupont Tender (June 2018)

176. On 19 June 2018, Dupont Company (Singapore) Pte Ltd ("**Dupont**") issued an RFP to identify and select the most suitable vendor for interior fit-out builder and MEP works at 21 Biopolis Road Nucleos, South Tower, Singapore 138567 (the "**Dupont Tender**").<sup>323</sup> The submission due date for the RFP was 4 July 2018.<sup>324</sup> Tarkus and FL were amongst the contractors invited to submit a bid. The appointed project manager was BGIS Pte Ltd ("**BGIS**"). For the Dupont Tender, the tender bid pricing submitted by FL<sup>325</sup> and Tarkus<sup>326</sup> are set out in the table below.

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<sup>322</sup> Information provided by EY to question 1 dated 8 December 2022 pursuant to the section 63 Notice issued by CCCS dated 3 November 2022; FL's tender submission including list of preferred contractors dated 11 May 2018.

<sup>323</sup> Information provided by BGIS dated 17 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024 and document titled "Tarkus Interiors Pte Ltd -Letter of Intent".

<sup>324</sup> Email from BGIS to Judy Sun (FL) dated 19 June 2018, titled "Interior Fit Out Works For Nucleos Space Consolidation at DuPont [FL]".

<sup>325</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, documents titled "Section 4 – Form of Tender" and "Section 2 – Form of tender (Final Sub)".

<sup>326</sup> Information provided by Tarkus dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022, document titled "Cover Letter" dated 4 July 2018 and 19 July 2018; and exhibit marked MC-002, at page 21, line 56.

	<b>FL’s Tender Submissions</b>	<b>Tarkus’ Tender Submissions<sup>327</sup></b>
<b>First Submission</b> Received on 4 July 2018	S\$8,707,426.58	S\$7,315,301.68
<b>Final Submission</b> Received by 19 July 2018	S\$8,002,218.00	S\$6,075,000.00

The Dupont Tender was awarded to Tarkus on 23 July 2018.<sup>328</sup>

177. Evidence related to the Dupont Tender showed that FL, the Covering Tenderer in this instance, had submitted cover tender bids comprised of tender bid pricing and bid details prepared by Tarkus, the Designated Winner, at a price higher than Tarkus’ own tender bid pricing for the tender, such that Tarkus would have a better prospect of winning the tender than FL.
178. As part of FL’s leniency application, FL admitted to “*sharing and/or use of commercially sensitive price information*” with Tarkus with respect to the Dupont Tender.<sup>329</sup> In his interview of 17 February 2023, Jason Chok (FL) stated that he “*approached Tarkus*” as he did not have the resources to perform the tender (i.e. that FL would subcontract to Tarkus if FL was awarded).<sup>330</sup> Jason Chok (FL) admitted in his interview on 3 May 2023 that Tarkus had prepared all the costings (i.e. breakdown of the tender quotations) for FL and FL just submitted it to Dupont as its own costings.<sup>331</sup> He confirmed that FL submitted a final submission (i.e. tender bid pricing) of S\$8,002,218<sup>332</sup> which was higher than Tarkus’ own final submission of S\$6,075,000.

*Q44. I refer to exhibit JC-024 which is FL’s response dated 22 March 2023 to Q5 of CCCS’s 24 February 2023 Notice. In particular, we note that you are able to confirm that Tarkus did all costing for FL. Please elaborate what it is meant by that “Tarkus did all costing for FL”.*

*A: The same. They quote everything and we just submit.*

<sup>327</sup> Note the table refers to the first submission and final submissions by the Parties. CCCS noted from the document titled “(03) Section 5 Schedule of Works (PTC 1)” of JA-007 that Tarkus appears to have put in a revised tender submission of S\$6,562,987.00 for the Dupont Tender on 10 July 2018.

<sup>328</sup> Information provided by Tarkus dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022, document titled “Cover Letter” dated 19 July 2018”.

<sup>329</sup> FL’s leniency application submissions dated 29 November 2022.

<sup>330</sup> Response to question 2 of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>331</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023; and responses to questions 44 and 47 of Notes of Information/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>332</sup> Responses to questions 46 and 47 of Notes of Information/Explanation provided by Jason Chok (FL), 3 May 2023.

*Q47. Would you agree that FL submitted the costing provided by Tarkus in this instance?*

*A: Yes.*

179. As stated at paragraph 81 above, Jason Chok (FL) was aware that in cases where FL was the Covering Tenderer, the tender bid pricing given by Tarkus for FL's use in submitting to the customer was higher than the tender bid pricing Tarkus itself submitted to the customer, and FL was therefore unlikely to win the tender due to the higher tender bid pricing.<sup>333</sup>
180. With respect to pricing provided to FL by Tarkus, CCCS had through the section 64 Inspections also obtained WhatsApp messages showing that Mike Cho (Tarkus) had checked with Julie Aung (Tarkus) on 3 July 2018 if it was acceptable for FL to submit a tender bid pricing for the Dupont Tender for "\$8.5m".<sup>334</sup> Julie Aung (Tarkus) in the same WhatsApp chat replied in the affirmative, stating that Tarkus' tender bid pricing was around "7.3mil".<sup>335</sup>

*"3/7/18, 8:14:17 PM – Mike Cho: FL submission for Dupont \$8.5m ok?  
3/7/18, 8:30:26 PM – Julie: Ok. Ours around 7.3mil."*

181. When asked about how he had obtained knowledge about FL's tender bid pricing, Mike Cho (Tarkus) claimed to not remember where he obtained the information from but admitted it was possible that he obtained it from FL.<sup>336</sup>

*Q10. How did you know "FL submission for Dupont" is "\$8.5m"? Where did you get such information from?*

*A: I can't remember how I got to know this information. I don't know where we got this \$8.5m figure from. It could be that it was Jason who provided me with this information, or some other FL staff providing me with the information.*

182. FL submitted its tender bid pricing of S\$8,707,426.58 on 4 July 2018. Tarkus likewise submitted its tender bid pricing of S\$7,315,301.68 on 4 July 2018, being around \$7.3 million as indicated in Julie Aung (Tarkus)'s WhatsApp response to Mike Cho (Tarkus). The WhatsApp messages between Mike Cho (Tarkus) and Julie Aung (Tarkus) showed that FL had, through Mike Cho (Tarkus), sought Tarkus' views on whether FL could submit a tender bid pricing of "\$8.5m". Julie Aung (Tarkus) then responded to Mike Cho (Tarkus)'s query in the WhatsApp conversation with "Ok. Ours

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<sup>333</sup> Response to questions 83 and 84 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023.

<sup>334</sup> Exhibit marked JA-009, WhatsApp message from Mike Cho (Tarkus) to Julie Aung (Tarkus) between 3 July 2018 at 8.14 p.m. to 8.40 p.m.

<sup>335</sup> Exhibit marked JA-009, WhatsApp message from Mike Cho (Tarkus) to Julie Aung (Tarkus) between 3 July 2018 at 8.14 p.m. to 8.40 p.m.

<sup>336</sup> Response to questions 9 and 10 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

around 7.3mil”<sup>337</sup> CCCS considers that this gives rise to the strong inference that the purpose of FL’s query (as conveyed through Mike Cho’s (Tarkus) WhatsApp message) was to ensure that FL’s tender bid pricing would be higher than Tarkus’ own bid, and Julie Aung (Tarkus) had understood it as such and hence replied to assure Mike Cho (Tarkus) that it was “ok” for FL to submit that amount since Tarkus’ bid at “7.3 mil” was lower than “\$8.5m”.

183. WhatsApp messages between Julie Aung (Tarkus) and Lilibeth (a former Tarkus employee) set out below also reflected that FL “gave way” to Tarkus in the Dupont Tender and had the highest tender bid pricing because Julie Aung (Tarkus) priced it as such.<sup>338</sup> This was corroborated by Jason Chok (FL)’s statements that Tarkus prepared the pricing for FL.<sup>339</sup>

*10:03 PM – Julie Aung: Cisco 1mil different.*  
*10:03 PM – Julie Aung: Dupont 500K different.*  
*10:03 PM – Lilibeth: 1 mil higher?*  
*10:03 PM – Lilibeth: Dupont? FL gave way ryt?*  
*10:04 PM – Julie Aung: FL highest becos I price.*  
*10:04 PM – Julie Aung: After FL, Tarkus*  
*10:04 PM – Julie Aung: Hahaha*  
*10:04 PM – Lilibeth: Still high ha*  
*10:04 PM – Lilibeth: O my god*  
*10:04 PM – Julie Aung: Yeah so surprise*

184. When asked to explain in her interview of 22 August 2022 what the phrase “FL gave way ryt” meant, Julie Aung (Tarkus) explained that “gave way” meant “give up on this tender and not being too competitive to get this tender.”<sup>340</sup> When asked to explain what she meant by “FL is the highest becos I price”, Julie Aung (Tarkus) stated that “What I meant is FL is the highest because of how much I priced for the Tarkus quote. We do not price for others.”<sup>341</sup> In view of the exchange between Mike Cho (Tarkus) and Julie Aung (Tarkus) set out in paragraph 180 above, CCCS considers it more likely that Julie Aung’s (Tarkus) WhatsApp message to Lilibeth was meant to convey that FL’s tender bid pricing was the highest between Tarkus and FL because Julie Aung (Tarkus) had prepared the tender bid pricing for FL.

185. CCCS noted that there was also evidence of further communications between Tarkus and FL for the Dupont Tender. CCCS noted for instance that Mike Cho (Tarkus)

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<sup>337</sup> Exhibit marked JA-009, WhatsApp message from Mike Cho (Tarkus) to Julie Aung (Tarkus) between 3 July 2018 at 8.14 p.m. to 8.40 p.m.

<sup>338</sup> Exhibit marked JA-010 at page 28.

<sup>339</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023; and responses to questions 44 and 47 of Notes of Information/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>340</sup> Response to question 55 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>341</sup> Response to question 61 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

forwarded an email from Julie Aung (Tarkus) dated 26 June 2018 to Jason Chok (FL), with Julie Aung (Tarkus) in copy, on 29 June 2018 at 2.09 p.m. The email from Julie Aung (Tarkus) dated 26 June 2018 was addressed to Jason Chok (FL) and sent to him at 6.13 p.m. attaching an excel workbook titled “*Dupont procurement log*” stating “*Hi Jason, attached for your info*”.<sup>342</sup> In his email of 29 June 2018 forwarding Julie Aung’s (Tarkus) 26 June 2018 email, Mike Cho (Tarkus) stated to Jason Chok (FL) “*Hi Jason, please refer to attached*”.<sup>343</sup> According to Julie Aung (Tarkus), the procurement log contains the contact details of suppliers involved in a call for tenders by Dupont, for which Tarkus had done a previous project.<sup>344</sup> Mike Cho (Tarkus) gave a similar response and indicated that the procurement log is a document prepared by the project managers/consultants detailing the exact specifications of the materials and products to be used and the supplier that the materials and products should be purchased from.<sup>345</sup> Jason Chok (FL) subsequently forwarded Mike Cho’s (Tarkus) email with the attached Dupont procurement log internally to Yvonne Law (FL) and stated “*as per attached*”.<sup>346</sup>

186. Yvonne Law (FL) also sent Julie Aung (Tarkus) an email on 6 July 2018 requesting that Julie Aung (Tarkus) provide her with “*long lead items / materials that will affect construction schedule*”.<sup>347</sup> Julie Aung (Tarkus) responded on the same day at 1.00 p.m. stating “*Hi Yvonne, FYR*”.<sup>348</sup> Jason Chok (FL) then sent an email to Yvonne Law (FL) stating “*Yvonne, we are not allowed to submit the exact format. Please take note*”.<sup>349</sup> These emails evidenced that the employees of Tarkus and FL communicated and exchanged information about the Dupont Tender and had deliberately sought to hide this fact by “*not submitting the exact format*”.
187. Mike Cho (Tarkus) initially stated that he did not recall whether there was a subcontracting arrangement between FL and Tarkus for the Dupont Tender in his interview of 17 October 2022.<sup>350</sup> In a subsequent interview on 14 November 2023, while Mike Cho (Tarkus) continued to be unsure about whether there was an intended subcontracting arrangement between FL and Tarkus for the Dupont Tender, he made an assertion that any communications between FL and Tarkus must necessarily have been made in the context of a subcontracting arrangement between the Parties.<sup>351</sup>

*Q2. Why did you send the Dupont procurement log to Jason Chok?*

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<sup>342</sup> Exhibit marked MC-021.

<sup>343</sup> Exhibit marked MC-021.

<sup>344</sup> Notes section of Notes of Information/Explanation provided by Julie Aung (Tarkus), 18 January 2022.

<sup>345</sup> Response to question 1 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 14 November 2023.

<sup>346</sup> Exhibit marked MC-021.

<sup>347</sup> Exhibit marked YL-007.

<sup>348</sup> Exhibit marked YL-007.

<sup>349</sup> Exhibit marked YL-007.

<sup>350</sup> Response to question 15 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

<sup>351</sup> Response to questions 2 to 5 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 14 November 2023.

*A: I don't remember sending it. If we are going to subcontract to Jason Chok of FL, he needs to know the product that needs to be used for this project, so I sent the procurement log to him.*

*Q3. Did this communication take place because Tarkus had provided tender submissions to FL for submission?*

*A: I don't recall. If there is an intention to subcontract to FL, then necessarily there will be communication between subcontractor and main contractor. I cannot remember who is the main contractor for this project but there will be one main contractor and one sub contractor.*

188. CCCS finds that the claims of subcontracting for the Dupont Tender implausible and, in any event, would not justify the Conduct. With respect to the implausibility of the Parties' claims, CCCS has noted, first, the inherent inconsistencies in the Parties' claims; for example Mike Cho's (Tarkus) conflicting account set out in paragraph 96 above and his purported inability to remember whether there was any subcontracting arrangement with FL and to recall if he had even sent the Dupont procurement log to Jason Chok (FL) in relation to the Dupont Tender in the preceding paragraph 187. Second, the claims were not borne out by any documentary evidence. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely that FL would have won with the higher pricing supplied by Tarkus for FL's submission, which casts doubt on the Parties' claims that there was a genuine intention to subcontract the Dupont Tender.<sup>352</sup> Lastly, even if this purported subcontracting arrangement existed, it does not explain or justify the Parties' conduct; CCCS considers that subcontracting arrangements do not necessitate that the main contractor must check with the subcontractor regarding the amount that the main contractor intends to bid for a tender.
189. Rather, the evidence for the Dupont Tender showed that Mike Cho (Tarkus) and Julie Aung (Tarkus) had deliberately priced FL's tender bids such that it was higher than Tarkus' own bids. This was corroborated by Jason Chok's (FL) admission in his interview on 3 May 2023 that Tarkus had prepared all the costings (i.e. breakdown of the tender quotations) for FL and FL had just submitted it to Dupont as its own costings, though he claimed that this was part of a subcontracting arrangement between Tarkus and FL.<sup>353</sup> As Mike Cho (Tarkus) and Julie Aung (Tarkus) had priced FL's tender bids for the Dupont Tender, they must have been aware that Tarkus' own bids of S\$7,315,301.68 and S\$6,075,000.00 for the first and second rounds of submission<sup>354</sup>

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<sup>352</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>353</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023; and responses to questions 44 and 47 of Notes of Information/Explanation provided by Jason Chok (FL), 3 May 2023.

<sup>354</sup> Information provided by Tarkus dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022, document titled "Cover Letter" dated 4 July 2018 and 19 July 2018; and exhibit marked MC-002, at page 21, line 56.



were much lower than FL’s bids of S\$8,707,426.58 and S\$8,002,218.00<sup>355</sup> respectively. This was reinforced by Julie Aung’s (Tarkus) conversation with Lilibeth where she noted that “*FL is the highest becós (sic) I price*”.<sup>356</sup>

190. In view of the evidence set out in paragraphs 176 to 189, CCCS finds that the Parties engaged in the Conduct in respect of the Dupont Tender whereby FL submitted tender bid pricing and bid details provided by Tarkus such that Tarkus would have a better prospect than FL of winning the Dupont Tender. The bid prices provided by Tarkus for FL’s submission were higher than Tarkus’. Through the Conduct, the Parties gave Dupont the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the Dupont Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Dupont Tender.

HIG Vivo Tender (July 2018)

191. On 24 July 2018, Wolf Studio, on behalf of its client HIG, issued an RFP seeking a contractor for additions and alteration build work for its premises at Vivo City (the “**HIG Vivo Tender**”).<sup>357</sup> Wolf Studio was the appointed design consultant for the HIG Vivo Tender and also assisted HIG in producing the BQ, issuing the RFP and evaluating the completeness of the tender submissions.<sup>358</sup> The tender bid prices submitted by FL and Tarkus are set out below.<sup>359</sup>

	<b>FL’s Submissions</b>	<b>Tarkus’ Submissions</b>
<b>Initial Submission 1</b> <sup>360</sup>	S\$412,200.00  (Submission dated 30 July 2018)	S\$332,199.00  (Submission dated 27 July 2018)
<b>Initial Submission 2</b> <sup>361</sup>	S\$415,600.00	S\$383,039.00

<sup>355</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023, documents titled “Section 4 – Form of Tender” and “Section 2 – Form of tender (Final Sub)”.

<sup>356</sup> Exhibit marked JA-010 at page 28.

<sup>357</sup> Information provided by Wolf Studio to question 10 dated 2 February 2024 pursuant to the letter issued by CCCS dated 11 January 2024.

<sup>358</sup> Information provided by Wolf Studio to question 8 dated 2 February 2024 pursuant to the letter issued by CCCS dated 11 January 2024.

<sup>359</sup> Information provided by Wolf Studio to question 12 dated 2 February 2024 pursuant to the letter issued by CCCS dated 11 January 2024 and information provided by Wolf Studio dated 15 March 2024 pursuant to the clarification issued by CCCS dated 13 March 2024.

<sup>360</sup> The Initial Submission 1 was submitted by Wolf to HIG Vivo on 30 July 2018.

<sup>361</sup> The Initial Submission 2 was submitted by Wolf to HIG Vivo on 6 August 2018.

	<b>FL's Submissions</b>	<b>Tarkus' Submissions</b>
	(Submission dated 3 August 2018)	(Revision 02, Submission dated 6 August 2018)
<b>First Submission</b> <sup>362</sup>	S\$372,150.00  (Submission date unknown)	S\$358,774.00  (Revision 03, Submission dated 8 August 2018)
<b>Second Submission</b> <sup>363</sup>	N/A	S\$325,279.00  (Revision 04, Submission dated 23 August 2018)
<b>Third Submission</b> <sup>364</sup>	N/A	S\$297,145.00  (Revision 09, Submission dated 18 September 2018)
<b>Fourth (final) Submission</b> <sup>365</sup>	N/A	S\$213,646.45  (Revision 11, Submission dated 24 September 2018)

Tarkus was awarded the HIG Vivo Tender on 24 September 2018.<sup>366</sup>

192. The evidence for the HIG Vivo Tender showed that FL, the Covering Tenderer in this instance, submitted cover tender bids comprised of tender bid pricing and bid details prepared and priced by Tarkus, the Designated Winner at a level higher than Tarkus' own tender bid, such that Tarkus would have a better prospect of winning the tender than FL. On 27 July 2018, Thanta (Tarkus) sent an email to Judy Sun (FL), with an excel file attached to the email, named "*HIG @ VIVO – FL.xlsx*".<sup>367</sup> The excel file contained costs prepared by Thanta (Tarkus) for the purpose of FL's bid for the HIG Vivo Tender. The set of costs totalled S\$403,648.00. In the email, Thanta (Tarkus) wrote:

*Hi Judy,*

<sup>362</sup> The First Submission was submitted by Wolf to HIG Vivo on 13 August 2018.

<sup>363</sup> The Second Submission was submitted by Wolf to HIG Vivo on 23 August 2018.

<sup>364</sup> The Third Submission was submitted by Wolf to HIG Vivo on 18 September 2018.

<sup>365</sup> The Fourth Submission was submitted by Wolf to HIG Vivo on 24 September 2018.

<sup>366</sup> Information provided by Wolf Studio to question 10 dated 2 February 2024 pursuant to the letter issued by CCCS dated 11 January 2024.

<sup>367</sup> Information provided by Judy Sun (FL) dated 8 November 2023 pursuant to the section 63 Notice issued by CCCS dated 3 October 2023 (MAX.003.021458).

*Please find the attached costing for your ref.  
We have adjusted the quantity and rate. Kindly make your own adjustment to the description in BQ.*

*Best Regards,  
Thanta*

FL's tender bid in its submission dated 30 July 2018 provided a price of S\$412,200.00, which was higher than the set of costs prepared by Thanta (Tarkus) for FL of S\$403,648.00, and the description of the BQ is likewise slightly different from that prepared by Thanta (Tarkus) which accords with the instruction Thanta (Tarkus) gave to FL to make its own "adjustment".

193. Jason Chok (FL) admitted in his interview of 16 November 2023 that Tarkus prepared the costing information for FL to submit for the HIG Vivo Tender.<sup>368</sup>

*Q.33 I refer you to the email from Thanta (Tarkus) to Judy Sun (FL) on 27 July 2018 titled "HIG @ Vivo" at JC-037. In the email, Thanta attaches costing in relation to the HIG @ Vivo tender, informing Judy that "[w]e have adjusted the quantity and rate. Kindly make your own adjustment in the description in BQ". Please explain this correspondence.*

*A: The cost is from Tarkus to us for us to submit to HIG. Scenario will be as I told you just now – we have no resources and cannot reject so we get the costing from Tarkus. We are always given the freedom to make our own adjustment since we are the one taking the liability.*

194. FL also admitted to "sharing and/or use of commercially sensitive price information" in relation to the HIG Vivo Tender in its leniency application.<sup>369</sup>
195. When Mike Cho (Tarkus) in his interview of 20 November 2023 was asked to explain why Thanta (Tarkus) would send costing information to Judy Sun (FL), he stated:<sup>370</sup>

*Q.30 Why would Tarkus send costing to FL?*

*A: If there is costing sent, I keep repeating the same answer, there is intention to subcontract.*

196. CCCS finds that the claims that a subcontracting arrangement existed between the Parties for the HIG Vivo Tender implausible and, in any event, would not justify the

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<sup>368</sup> Response to question 33 of Notes of Information/Explanation provided by Jason Chok (FL), 16 November 2023.

<sup>369</sup> FL leniency application submissions dated 27 December 2023 pursuant to section 63 Notice issued by CCCS dated 20 December 2023.

<sup>370</sup> Response to question 30 of Notes of Information/Explanation provided by Mike Cho (Tarkus), 20 November 2023.

Conduct. CCCS noted, first, the inherent inconsistencies in the Parties' evidence with respect to their claims of a subcontracting arrangement. While Mike Cho (Tarkus) asserted that if costings (i.e. tender bid prices) were sent, it was with the intention of subcontracting, this conflicts with his earlier accounts regarding the existence of subcontracting arrangements detailed in paragraph 96 above. In contrast, CCCS noted Julie Aung's (Tarkus) unequivocal account that FL and Tarkus were not in any subcontracting relationship (see paragraph 80 above).<sup>371</sup> Second, the claim that a subcontracting relationship existed for the HIG Vivo City Tender was not borne out by any documentary evidence. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely for FL to win with the higher pricing provided by Tarkus on the costing it provided for FL's submission, which casts doubt on the claims that there existed any genuine intention to subcontract.<sup>372</sup> In this regard, CCCS noted that the tender bid pricing provided by Tarkus for FL totalled S\$403,648.00, but for its own submission for the same scope of work, Tarkus submitted to HIG Vivo the tender bid pricing of S\$332,199 which was significantly lower than the pricing it had prepared for FL.

197. In view of the evidence set out in paragraphs 191 to 196, CCCS finds that the Parties had engaged in the Conduct in respect of the HIG Vivo Tender which entailed the submission by FL of tender bid pricing and bid details that was higher than Tarkus' own tender bid. Indeed, Tarkus in providing its bid pricing to FL, encouraged FL to make their "*own adjustment*" such that Tarkus would have a better prospect than FL of winning the HIG Vivo Tender. Through the Conduct, the Parties gave HIG Vivo the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the HIG Vivo Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the HIG Vivo Tender.

#### Pico Art Tender (February 2020)

198. On 14 February 2020, Pico Art issued a notice of tender invitation to identify and select the most suitable contractor for interior renovation works for its Pico Creative Centre (Main Lobby) at 20 Kallang Avenue ("**Pico Art Tender**"). Tristan & Ju Pte Ltd was the designer and project manager for this tender. A total of four contractors including FL and Tarkus were invited to participate. The first submission date was 6 March 2020 for FL, Tarkus and another tenderer and 16 March 2020 for the fourth tenderer.<sup>373</sup>

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<sup>371</sup> Response to questions 329 to 332 of Notes of Information/Explanation provided by Julie Aung (Tarkus), 22 August 2022.

<sup>372</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>373</sup> Information provided by Pico Art dated 11 November 2022 pursuant to the email from CCCS dated 28 October 2022.

	<b>FL's Tender Submission</b>	<b>Tarkus' Tender Submission</b>
<b>First Submission</b> Received by 6 March 2020	S\$1,658,042.00	S\$1,856,282.60

The tender submission due date was extended multiple times at Pico Art's request due to the COVID-19 pandemic. When Pico Art informed contractors that it would be resuming the Pico Art Tender process in January 2021, Tarkus informed Pico Art that it no longer wished to participate due to insufficient capacity at that point. On 9 July 2021, Pico Art informed contractors that it would be putting the interior renovation works on hold. The tender was therefore not awarded.<sup>374</sup>

199. Evidence related to the Pico Art Tender showed that Tarkus, the Covering Tenderer in this instance, had submitted a cover tender bid comprised of tender bid pricing and bid details prepared and priced by FL, the Designated Winner, at a level higher than FL's own tender bid, such that FL would have a better prospect of winning the tender than Tarkus. The WhatsApp messages between Jason Chok (FL), Simon Tia (Tarkus) and Mike Cho (Tarkus) showed that FL had prepared the costing for Tarkus' submission for this tender. On 26 February 2020, Simon Tia (Tarkus) asked Jason Chok (FL) via WhatsApp "*is your side working on the full set of Pico pricing for us*".<sup>375</sup> On 4 and 5 February 2020, Mike Cho (Tarkus) followed up with Jason Chok (FL) as follows:

*04/03/2020, 09:16 – Mike Cho: Good morning, when can we hv Pico Art costing?*

*04/03/2020, 19:32 – Jason Chok: Mike the thumb drive will be ready ... in an hour time ... cost and programme.*

*04/03/2020, 19:32 – Mike Cho: Ok ... tomorrow*

*04/03/2020, 19:33 – Jason Chok: if tonight would be better let me know where to*

*drop the thing to you ... tomorrow am whole day at Sungei Kadut ..*

*04/03/2020, 19:34 – Mike Cho: Where r u*

*04/03/2020, 19:34 – Jason Chok: am still in office ... generating your costing ..*

*should be done in an hour time then I can go and meet you*

*04/03/2020, 19:39 – Mike Cho: Where to meet? Me otw home now*

*04/03/2020, 19:40 – Jason Chok: I can drop by your house and pass it to you ...*

*where do you stay?*

*04/03/2020, 19:40 – Mike Cho: Possible drop by to our office b4 heading to*

*Sungei Kadut?*

*04/03/2020, 19:41 – Jason Chok: also can tomolo morning ...*

<sup>374</sup> Information provided by Pico Art dated 11 November 2022 pursuant to the email from CCCS dated 28 October 2022.

<sup>375</sup> Exhibit marked JC-005 at page 5.

04/03/2020, 19:41 – Jason Chok: thanks mike  
04/03/2020, 19:48 – Mike Cho: Ugo bk hv a good rest, see u tomorrow  
04/03/2020, 19:49 – Mike Cho: Anyway I stay at Bendemeer Light ... for info only  
04/03/2020, 19:59 – Jason Chok: Ok  
05/03/2020, 08:58 – Mike Cho: Will you be coming over?  
05/03/2020, 08:59 – Jason Chok: Just awaken up  
05/03/2020, 09:00 – Mike Cho: Wow .. ok  
05/03/2020, 09:00 – Jason Chok: Will text you  
05/03/2020, 09:01 – Mike Cho: Ok ... will be out of office at 10am  
05/03/2020, 09:03 – Jason Chok: Can I pass it to Simon ard 10.30?  
05/03/2020, 09:04 – Mike Cho: Ok  
05/03/2020, 09:21 – Mike Cho: Thanta  
05/03/2020, 10:12 – Mike Cho: Pass to Ms Thanta  
05/03/2020, 15:55 – Mike Cho: <Media omitted>  
05/03/2020, 15:55 – Jason Chok: Dun need had done so<sup>376</sup>

200. When asked to explain the WhatsApp messages, Jason Chok (FL) confirmed that FL was “doing the costing for Tarkus” for the Pico Art Tender<sup>377</sup> and that the costing information provided was for Tarkus’ submission to Pico Art. He also explained that it was a lot of work generating a different set of submissions for Tarkus’ submission, which was undertaken so that the Pico Art would not know that it had been prepared by FL:

*“Q89. Is there a lot of work involved in generating the cost estimates?”*

*A: Yes.*

*Q90. Why is that so?*

*A: It is a different set of costing.*

*Q91. Can you elaborate on what you meant that it is a different set of costing?*

*A: We had the resource to do this job. We offered to do another set of costing for Tarkus. It could have been a different format of presenting the bill of quantities, different layout for the technical proposal and so on. Under Commercial Submission folder that we had submitted to CCCS, you would notice a copy of the breakdown of works and you notice those in red font which would be the modifications made to the bills of quantities for Tarkus’s costing. You would recall that at our last interview, I mentioned there are certain formats that can be indicative of whether they are from FL or others. **So you would need to churn a separate set for Tarkus to present the thing to the client so the client does not know it is from us. This requires a separate submission. You need to reformat the***

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<sup>376</sup> Exhibit marked JC-004.

<sup>377</sup> Information provided by Pico Art dated 11 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022; and response to question 86 of Notes of Interview/Explanation provided by Jason Chok (FL), 17 February 2023.

*files i.e., you can't just submit duplicates to the client. Tarkus will have to create a different set of signature for authors so that it is different from what we submitted to the client.” (Emphasis added)*<sup>378</sup>

201. FL confirmed that, based on the costings set out in the tender documents FL provided to Tarkus for Tarkus' submission including an excel file titled “20200304 – PICO Lobby – Breakdown of Work (TAR).xlsx”, FL provided tender bid pricing of S\$1,856,282.60 to Tarkus, which was 12% higher than FL's first submission amount.<sup>379</sup> FL also admitted to “*sharing and/or use of commercially sensitive price information*” in relation to the Pico Art Tender in its leniency application.<sup>380</sup>
202. Mike Cho (Tarkus) initially claimed in his interview on 17 October 2022 that he could not remember whether he or anyone from Tarkus communicated with any employee from FL on this tender.<sup>381</sup> When shown the WhatsApp messages between Jason Chok (FL) and himself, he then postulated that “*Pico Art costing*” could be the budget and costing information provided by Pico Art to Jason Chok (FL), or FL's costing for the Pico Art Tender.<sup>382</sup> He also claimed that the costing information was provided by FL to Tarkus “*as a guide because [FL was] subcontracting the project to [Tarkus]*” and the “*costing Tarkus submitted was not the costing provided by Jason*”.<sup>383</sup> According to Mike Cho (Tarkus), “[i]t could be that Pico Art is FL's client and FL wanted to subcontractor (sic) to Tarkus so he is providing us with the client's budget. It should be a subcontracting arrangement because otherwise, I would not be corresponding with Jason. If we are competitors on a tender, we would not be talking to each other”.<sup>384</sup> When asked why FL would provide costing to Tarkus if FL was subcontracting the project to Tarkus, Mike Cho claimed that it was for Tarkus' budgeting purpose so that Tarkus could determine whether it could work within the budget.<sup>385</sup>
203. Mike Cho's (Tarkus) claims that the costing had been provided to it “*as a guide*” because FL intended to subcontract the tender to Tarkus or that it was for Tarkus' budgeting purpose as an intended subcontractor are inconsistent with the WhatsApp messages between him and Jason Chok (FL) where Jason Chok (FL) explicitly stated that he was “*generating [Tarkus'] costing*”. Consistent with the content of the WhatsApp messages, Tarkus went on to not only participate in the tender as a competitor to FL, but also submitted the amount of S\$1,856,282.60 in its first submission, i.e. the precise costing provided by FL to Tarkus, which was higher than

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<sup>378</sup> Response to questions 89 to 91 of Notes of Interview/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>379</sup> Information provided by FL dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>380</sup> FL's leniency application submissions dated 22 March 2023.

<sup>381</sup> Response to question 66 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

<sup>382</sup> Response to question 67 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

<sup>383</sup> Response to question 73 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

<sup>384</sup> Response to question 71 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

<sup>385</sup> Response to question 76 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

FL's submission of S\$1,658,042.00.<sup>386</sup> It is evident that these communications were not made in the context of a subcontracting relationship, rather FL was providing to Tarkus a cover tender bid for Tarkus to submit to Pico Art to support the bid of FL, the Designated Winner for this tender.

204. In the circumstances, CCCS finds that the claims of subcontracting for the Pico Art Tender implausible and, in any event, would not justify the Conduct. CCCS has noted, first, the inherent inconsistencies in the claims. As set out above, Mike Cho's (Tarkus) account does not cohere with Jason's Chok's (FL) account and contradicts his previous accounts as detailed in paragraph 96 above. Second, the claims of subcontracting were not borne out by any documentary evidence for the Pico Art Tender despite CCCS's requests for the same. Third, as set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely for FL to win the tender with the higher pricing supplied by FL for Tarkus' submission, which casts doubt on the claims that there existed any genuine intention to subcontract.<sup>387</sup>
205. FL was also unable to substantiate its claim that it had engaged in the Conduct as it did not have resources to carry out the project but did not wish to reject the invitation to participate in the tender, as Pico Art might not invite it for future tenders. These claims were further contradicted by the response from Pico Art, [REDACTED].<sup>388</sup>
206. In view of the evidence set out in paragraphs 198 to 205 above, CCCS finds that the Parties engaged in the Conduct in respect of the Pico Art Tender whereby FL provided to Tarkus tender bid pricing and bid details which FL had prepared and marked up for Tarkus' submission such that FL would have a better prospect than Tarkus of winning the Pico Art Tender. The bid prices provided by FL for Tarkus' submission were higher than FL's. Through the Conduct, the Parties gave Pico Art the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the Pico Art Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Pico Art Tender.

#### Nike Tender (August 2021)

207. On 11 August 2021, Nike Trading Company B.V. Singapore Branch ("Nike") issued an RFP to identify and select the most suitable contractor for interior fit-out construction works for its offices at levels 8 to 10, Mapletree Business City, ("**Nike Tender**").<sup>389</sup>

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<sup>386</sup> Information provided by Pico Art dated 11 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>387</sup> Response to question 109 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

<sup>388</sup> Information provided by Pico Art dated 2 August 2023 pursuant to the email from CCCS dated 1 August 2023.

<sup>389</sup> Information provided by Tarkus dated 29 November 2022 pursuant to the section 63 Notice issued by CCCS dated 20 October 2022.



The first tender closing date for the Nike Tender was 25 August 2021.<sup>390</sup> Asia/Pacific Hill International Holdings Pte Ltd was appointed by Nike as the project management firm to oversee the tender process.<sup>391</sup> Tarkus and FL were amongst six contractors invited to submit a bid.<sup>392</sup> The tender bid pricing submitted by FL and Tarkus for the Nike Tender are set out below.<sup>393</sup>

	<b>FL's Tender Submissions</b>	<b>Tarkus' Tender Submissions</b>
<b>First Submission</b> Received on 25 August 2021)	Base: S\$4,390,677.00 Alternative: S\$4,563,875.00	Base: S\$4,303,370.00 Alternative: No offer
<b>Second Submission</b> Received on 6 September 2021	Base: S\$4,630,740.00 Alternative: S\$5,294,995.00	Base: S\$4,574,056.20 Alternative: S\$5,230,428.20
<b>Third Submission</b> Received on 11 October 2021	N/A (FL was not shortlisted)	Base: S\$5,167,846.20 Alternative: No submission of summary

The tender was not awarded to either Tarkus or FL.<sup>394</sup>

208. The information obtained by CCCS showed that the Parties engaged in a discussion about the tender bid pricing that they intended to submit for the Nike Tender and FL made adjustments to its tender bid pricing as a result of the discussion. In particular, the WhatsApp messages between Simon Tia (Tarkus) and Jason Chok (FL) on 6 September 2021 showed that they had exchanged each Party's respective costings that were intended to be submitted for the Nike Tender:

*“06/09/2021, 13:46 - Simon Tia Tarkus: 4962599  
06/09/2021, 14:18 - Simon Tia Tarkus: B- 4962599  
A- 5618971  
06/09/2021, 14:24 - Jason Chok: B- 4616740  
A-5280995  
06/09/2021, 14:25 - Jason Chok: MEP -*

<sup>390</sup> CCCS noted that of the six tenderers invited, two declined to participate. Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022, document titled “NIKE Response Set 1.000001-001504” at page 1468.

<sup>391</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>392</sup> CCCS noted that of the six tenderers invited, two declined to participate. Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022, document titled “NIKE Response Set 1.000001-001504” at page 1468.

<sup>393</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022, document titled “NIKE Response Set 1.000001-001504” at pages 1466 through 1504.

<sup>394</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

B-1725900  
A-2055000  
06/09/2021, 14:35 - Jason Chok: You deleted this message  
06/09/2021, 14:35 - Jason Chok: You deleted this message  
06/09/2021, 14:41 - Jason Chok: You deleted this message  
06/09/2021, 14:41 - Jason Chok: You deleted this message  
06/09/2021, 14:43 - Jason Chok: You deleted this message  
06/09/2021, 14:44 - Simon Tia Tarkus: She checking again now  
06/09/2021, 14:45 - Jason Chok: You deleted this message  
06/09/2021, 14:46 - Jason Chok: You deleted this message  
06/09/2021, 15:10 - Simon Tia Tarkus: Base - \$4,574,056.20  
Alternative - \$ 5,230,428.20  
06/09/2021, 15:11 - Jason Chok: ok ~  
06/09/2021, 15:11 - Jason Chok: ~  
06/09/2021, 15:12 - Simon Tia Tarkus: ~  
06/09/2021, 15:12 - Jason Chok: i increase my prelim abit more  
06/09/2021, 15:13 - Simon Tia Tarkus: Ok<sup>395</sup>

209. When asked about the WhatsApp messages, in his interview on 18 January 2022, Jason Chok (FL) admitted that the figures that he had discussed with Simon Tia (Tarkus) were the intended tender bid prices (i.e. base price and alternative price) for a tender, though he could not recall which tender it was with reference to.<sup>396</sup> Jason Chok (FL) subsequently checked his internal records and confirmed in his subsequent interview on 17 February 2023 that the information passed between himself and Simon Tia (Tarkus) on September 2021 pertained to the Nike Tender. Jason Chok (FL) also confirmed in his interview that FL had submitted the amounts discussed and agreed with Simon Tia (Tarkus).<sup>397</sup>

*Q4: What about the conduct and arrangement with Tarkus regarding the other tender?*

*A: The next one is the Nike tender. After CCCS asked about my WhatsApp conversation with Simon Tia last week, in particular the conversation around Sept 2021 containing a few numbers going on, I did a number search on my tender documents and submissions. The numbers matched with FL's submissions on the Nike tender. The Nike P&L excel spreadsheet that had been provided to CCCS previous shows that the total amount submitted was based on \$4616740. On the date of the text on 6 Sept 2021, my response to Simon, B-\$4616740 means base. An as an alternative - \$5280995. The rest of the numbers I cannot reconcile.*

210. FL in fact submitted a slightly higher base price of S\$4,630,740.00 and an alternative price of S\$5,294,995.00 in the Second Tender Submission in response to Post-Tender Clarifications 1 and 2 than that discussed between Jason Chok (FL) and Simon Tia

<sup>395</sup> Exhibit marked JC-005 at page 8.

<sup>396</sup> Response to questions 148 and 149 of Notes of Information/Explanation provided by Jason Chok (FL), 18 January 2022.

<sup>397</sup> Response to question 4 of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

(Tarkus) in the exchange of WhatsApp messages reproduced in paragraph 208 above.<sup>398</sup> This was confirmed by FL in its subsequent response dated 27 December 2023 to CCCS's section 63 notice dated 20 December 2023.<sup>399</sup> This difference was explained by Jason Chok's (FL) WhatsApp message to Simon Tia (Tarkus) on 6 September 2021, at 3.12 p.m. where he states that he would "*increase [FL's] prelim abit more*".

211. Simon Tia (Tarkus) claimed to not remember which tender the WhatsApp messages pertained to,<sup>400</sup> but did not deny that he had a discussion with Jason Chok (FL). Simon Tia (Tarkus) claimed that as far as he can recall, the WhatsApp messages pertained to a potential subcontracting arrangement between Tarkus and FL – though he stated that he could not confirm this fact<sup>401</sup>. Simon Tia (Tarkus) stated that "*We [i.e. Jason Chok (FL) and himself] are offering each other numbers, in the event of subcontracting, these are the numbers that we can work with*".<sup>402</sup> The evidence showed that Tarkus had indeed submitted the base price of S\$4,574,056.20 and alternative price of S\$5,230,428.20 for the Second Tender Submission in response to Post-Tender Clarifications 1 and 2.<sup>403</sup>
212. The WhatsApp messages on 6 September 2021 showed that FL's intended tender bid base price of S\$4,616,740, and alternative pricing of S\$5,280,995 were initially lower than Tarkus' intended tender bid base price of S\$4,962,599 and alternative pricing of S\$5,618,971, and that Jason Chok (FL) and Simon Tia (Tarkus) had then discussed and adjusted their intended submissions to Nike such that Tarkus' pricing for its tender bid became lower than FL's.
213. According to Jason Chok (FL) in his interview of 17 February 2023, he was initially interested in winning the Nike Tender and had the resources to do the job if awarded.<sup>404</sup> However, the Nike Tender was put on hold due to the COVID-19 pandemic and when the tender was "revived", FL no longer had the resources to do the job.<sup>405</sup> Jason Chok (FL) asserted that he then discussed with Simon Tia (Tarkus) on "*working together so that if I get the job I can subcontract to him.*"<sup>406</sup> Jason Chok (FL) indicated in a subsequent interview on 16 November 2023 that similar to FL, Tarkus "*got busy*" and wanted to "*price itself*" out of the Nike Tender.<sup>407</sup>

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<sup>398</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>399</sup> Information provided by FL dated 27 December 2023 pursuant to the section 63 Notice issued by CCCS dated 20 December 2023.

<sup>400</sup> Response to questions 15 and 16 of Notes of Information/Explanation provided by Simon Tia (Tarkus), 4 April 2023.

<sup>401</sup> Response to question 12 of Notes of Information/Explanation provided by Simon Tia (Tarkus), 4 April 2023.

<sup>402</sup> Response to question 12 of Notes of Information/Explanation provided by Simon Tia (Tarkus), 4 April 2023.

<sup>403</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>404</sup> Response to question 14 of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>405</sup> Response to question 14 of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>406</sup> Response to question 5 of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>407</sup> Response to question 44 of Notes of Information/Explanation provided by Jason Chok (FL), 16 November 2023.

214. According to Jason Chok (FL), he thus planned to “*price myself out*” of the Nike Tender without it being too “*obvious to the consultant or client*” and communicated with Simon Tia (Tarkus) to that end.<sup>408</sup>

*Q6: When you submitted for the Nike tender you did not intend to carry out the job?*

*A: No I did not. I intended to price myself out and similar for Simon. We cross checked to make sure that we are doing the right thing. Communication was between Simon and myself. My staff will not know of this arrangement.*

215. At the same interview on 17 February 2023, Jason Chok (FL) requested to expand the scope of FL’s leniency application to the Nike Tender<sup>409</sup> and an application by FL for leniency in respect of the Nike Tender was subsequently made. In doing so, FL admitted to the “*sharing and/or use of commercially sensitive price information*” with Tarkus on the Nike Tender.
216. The evidence showed that FL and Tarkus had exchanged commercially sensitive information on their intended tender bid prices for the Nike Tender. The evidence also showed that, notwithstanding whether FL and Tarkus had indeed subsequently changed their minds on whether they wished to win the tender, Jason Chok (FL) and Simon Tia (Tarkus) adjusted their tender bid prices for the Nike Tender such that Tarkus’ was lower than FL’s as a result of their discussion. Given that FL’s tender bid price was initially lower than Tarkus’ before this exchange, the information exchanged likely enabled Tarkus to have a better prospect than FL of being awarded the Nike Tender as compared to the scenario where the Parties had independently prepared their own bids.
217. The Parties could not provide any documentary evidence to support their claims of an alleged initial intended subcontracting arrangement between Tarkus and FL. The claims of subcontracting also contradict the evidence of the Conduct. As set out in paragraphs 81 to 83 above, the Parties were aware that it was highly unlikely for FL to win with the higher pricing, which casts doubt on the claims that there existed any genuine intention to subcontract.
218. Furthermore, claims regarding the existence of such subcontracting arrangements were contradicted by the response from Nike. Nike was not informed of any subcontracting arrangement between Tarkus and FL despite contractors bidding in the Nike Tender being required to notify and seek approval from Nike of any such subcontracting

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<sup>408</sup> Response to questions 6 and 7 of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>409</sup> Notes section of Notes of Information/Explanation provided by Jason Chok (FL), 17 February 2023.

arrangements.<sup>410</sup> Subcontracting arrangements were not permitted unless specifically approved by Nike in writing.<sup>411</sup> Accordingly, CCCS finds that the claims that a subcontracting arrangement existed between the Parties for the Nike Tender implausible and, in any event, would not justify the Conduct.

219. In view of the evidence set out in paragraphs 207 to 218, CCCS finds that the Parties engaged in the Conduct in respect of Nike Tender whereby the Parties exchanged information about their respective intended pricing and adjusted such tender bid pricing accordingly so that FL's pricing would be higher than Tarkus' such that Tarkus would have a better prospect than FL of winning the Nike Tender. Through the Conduct the Parties gave Nike the false impression that the tender bids it received were independently determined when they were not and undermined the competitive process that the Nike Tender was meant to achieve. CCCS consequently finds that the evidence has established an anti-competitive bid-rigging agreement and/or concerted practice between the Parties in relation to the Nike Tender.

**(iii) Findings regarding the conduct of FL and Tarkus**

220. In view of the evidence set out in paragraphs 72 to 219, including CCCS's assessment of the contemporaneous documentary evidence, such as the WhatsApp messages exchanged between the Parties, the Parties' respective tender submissions, each Party's internal correspondence, as well as the statements given by the Parties' employees, CCCS finds that the evidence set out in paragraphs 72 to 219 has established that the Parties engaged in bid-rigging in relation to the Affected Tenders. In particular, the evidence reflected a clear pattern of conduct whereby in relation to most of the Affected Tenders, the Designated Winner provided tender bid pricing and submissions to the Covering Tenderer for the Covering Tenderer's submission such that, as between the Designated Winner and Covering Tenderer, it was intended that the Designated Winner would have a better prospect of winning the tender.
221. The relevant tender submissions which included the Parties' respective pricing contained confidential, commercially sensitive information. In a competitive tender bidding process such information was clearly not supposed to be disclosed to competing contractors.<sup>412</sup> Indeed some customers required tenderers to enter into non-disclosure or confidentiality agreements to maintain the confidentiality of their tender

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<sup>410</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>411</sup> Information provided by Nike dated 1 December 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022.

<sup>412</sup> Response to question 15 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; response to questions 30 to 36 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 22 August 2022; information provided by Citibank to questions 2(h) and 2(i) on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 1 November 2022, information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2023 information provided by Lilly to question 2d dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021 and information provided by Northcroft to question 2 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

submissions.<sup>413</sup> Some customers also required a declaration from tenderers that their respective bids had been made independently.<sup>414</sup> Contrary to such requirements, the conduct of the Parties involved a deliberate (and sometimes elaborate) arrangement for the Covering Tenderer to submit cover tender bids for the Affected Tenders. In fact, there is evidence of employees being instructed to conduct themselves in a manner as to conceal the information exchange and coordination from the customers in relation to some tenders<sup>415</sup>. In none of the Affected Tenders was the information discussed and coordination of the tender submission by the Parties made known to the customers.<sup>416</sup>

222. Pursuant to the Parties' Conduct, the Designated Winner as between FL and Tarkus won eight of the Affected Tenders. Of the remaining Affected Tenders, three were awarded to another tenderer (i.e. neither Party won the tender) and one Affected Tender, the Pico Art Tender, was called off. The Covering Tenderer did not win any of the Affected Tenders.
223. The Parties' claims set out in the Affected Tenders that they had engaged in the Conduct as the Covering Tenderer would have no resources to carry out the works for the project and the Designated Winner intended to be the Covering Tenderer's subcontractor if the Covering Tenderer won the tender<sup>417</sup> were inconsistent and not borne out by any documentary evidence. CCCS was never given any sight of any documents evidencing any intended subcontracting arrangements between the Parties in CCCS's review of information stored on the computers and mobile phones of key personnel of the Parties. In fact, there was absolutely no trace of the implementation of the Parties' alleged subcontracting arrangements, including in the Lilly Tender where Mike Cho (Tarkus) claimed that FL would subcontract to Tarkus if FL successfully won the tender and FL was in fact awarded the Lilly Tender. This corroborates CCCS's view that the Parties never actually intended to engage in subcontracting for the Affected Tenders and that the alleged subcontracting arrangements never actually existed. The Parties' conduct in having the Covering Tenderer submit substantially higher pricing than the Designated Winner in circumstances where they knew it was highly unlikely that the higher priced tender bid would win also reinforces CCCS's view that the Parties' alleged

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<sup>413</sup>Information provided by Lilly dated 1 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022; information provided by Citibank on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 28 October 2022; information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2023, information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024 and information provided by Northcroft to question 2 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>414</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024.

<sup>415</sup> Exhibit marked JS-032; exhibit marked JC-022B; and response to questions 89 to 91 of Notes of Interview/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>416</sup> Response to question 28 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; and response to question 37 of Notes of Interview/Explanation provided by Judy Sun (FL), 18 January 2023.

<sup>417</sup> Information provided by FL dated 29 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023. For example, see response to question 71 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022; and response to question 27 of Notes of Interview/Explanation provided by Simon Tia (Tarkus), 28 March 2023.

subcontracting arrangements *were not* only implausible but more likely a mere cover story.

### Tarkus' Representations

224. In its representations, Tarkus made the following submissions regarding the subcontracting arrangement between itself and FL:
- a. Tarkus sought to draw a distinction between an “agreement to subcontract” and a “subcontracting agreement”. According to Tarkus, the latter would only arise if the Covering Tenderer won the tender and did not have resources to attend to the project.<sup>418</sup> Tarkus explained that CCCS could not have located evidence of the agreement to subcontract and subcontracting agreement because the agreement to subcontract arose orally and/or by way of conduct<sup>419</sup> and that the arrangement was a “backup plan” to be put into effect in situations where the Covering Tenderer is awarded the contract despite pricing higher than the Designated Winner. As no situation arose whereby the Covering Tenderer was awarded the tender, no subcontracting agreement was entered into.<sup>420</sup> Tarkus also alleged that there was no blanket agreement to subcontract and there was only an agreement to subcontract in the 12 discrete instances (i.e. the Affected Tenders) where FL or Tarkus did not have the resources to undertake the project but did not want to risk being excluded from future tenders.<sup>421</sup>
  - b. Tarkus asserted that there was only an agreement to subcontract in the 12 discrete instances (i.e. the Affected Tenders) because the Covering Tenderer did not have the resources to undertake the project but did not want to risk being excluded from future tenders if it rejected the invitation to tender. Tarkus asserted that the genuine belief held by Tarkus and FL that either Party may be excluded from such future tenders is borne out in consistent evidence by both Parties in the form of (i) statements from the Parties’ employees<sup>422</sup> and (ii) alleged anecdotal experiences from Tarkus’ former quantity surveyor about customers expressing their disappointment once a rejection to an invitation to tender was received from Tarkus<sup>423</sup>. Tarkus further alleged that it had witnessed a decrease in the number of invites received from customers, from an average of three to five invites per year, to no invitations when Tarkus rejected those customers’ invitation to tender.<sup>424</sup> Tarkus submitted that CCCS did not place weight on the Parties’ claims that they were at risk of being excluded from future tenders if they declined to participate in

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<sup>418</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 8(a).

<sup>419</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 10.

<sup>420</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 9(a)(ii).

<sup>421</sup> Written Representations from Tarkus dated 5 September 2024, paragraphs 15 and 16.

<sup>422</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 18.

<sup>423</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 19(d).

<sup>424</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 19(d).

tenders and only relied on the statements of customers that contradicted the Parties' claims.<sup>425</sup>

- c. Tarkus further asserted that there was no evidence suggesting that (i) the Covering Tenderer had control over the Designated Winner's price to be charged to the customer and (ii) the Designated Winner had control to specify the mark-up to be applied by the Covering Tenderer<sup>426</sup>. Tarkus noted that the Covering Tenderer did not control or specify the Designated Winner's price to be charged to customer; and vice versa, the Designated Winner did not control or specify the mark-up (if any) to be applied by the Covering Tenderer.<sup>427</sup>

225. CCCS does not agree with Tarkus's representations at paragraph 224(a). Ultimately, this is a question of evidence, and in the present case, CCCS reiterates that there is no evidence of any kind of subcontracting arrangement, be it an "agreement to subcontract" or a "subcontracting agreement" between the Parties and in fact, in paragraphs 72 to 219 above, CCCS has set out, in detail, the contemporaneous evidence of the Parties discussing and exchanging bid prices and bid details to engage in bid-rigging in the Affected Tenders, with no earlier mention at all of any subcontracting agreement. None of the evidence CCCS obtained, which included an examination of the computer hard drive disks of key employees and the messages on their mobile phones, disclosed any evidence of the Parties discussing any kind of subcontracting arrangement between them. In Tarkus' representations, it also could not identify any specific evidence to show any agreement to subcontract or any kind of subcontracting arrangement between the Parties beyond its bare assertions. Instead, for the majority of the Affected Tenders<sup>428</sup> (i.e. nine of the Affected Tenders), the evidence showed that what was communicated from the Designated Winner to the Covering Tenderer was not a subcontractor's quote as claimed, but in fact cover bids prepared by the Designated Winner for the Covering Tenderer's submission. For the HIG Boat Quay Tender and HIG Vivo Tender, the Designated Winner sent the tender bid pricing and specifications it intended to submit to the customer for the Covering Tenderer to then mark up or adjust and submit, with the understanding that the Covering Tenderer was unlikely to win the tender with the marked-up pricing. As for the Nike Tender, the Designated Winner and Covering Tenderer exchanged and adjusted their respective intended tender bid pricing, so that the Covering Tenderer's pricing would be higher than the Designated Winner's such that the Designated Winner would have a better prospect of winning the tender. CCCS is therefore of the view that any suggestion of an "agreement to subcontract" or a "subcontracting agreement" is a mere afterthought.

226. In any case, regardless of the exact nature of the purported "subcontracting arrangement" (i.e. agreement to subcontract or a subcontracting agreement), it is

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<sup>425</sup> Written Representations from Tarkus dated 5 September 2024, paragraphs 19(a), (b) and (c).

<sup>426</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 11.

<sup>427</sup> Written Representations from Tarkus dated 5 September 2024, paragraph 14.

<sup>428</sup> All the Affected Tenders save for the HIG Boat Quay Tender, HIG Vivo Tender and Nike Tender.



undisputed that the Parties had submitted tender submissions in agreement and/or concertation with each other as part of this arrangement. As CCCS found in the *Formula 1 and GEMS Tenders* decision, such conduct by the Parties would be considered bid-rigging:

“...the fact that the Cyclect Group had intended to be HPH’s and/or Peak Top’s sub-contractor should either of them be awarded the F1 Tender would not relieve the Parties from liability of bid-rigging conduct in circumstances where they had exchanged information on prices for submission for the F1 Tender and held themselves as being competing bidders for the F1 Tender. It was clearly the case here that the Cyclect Group had provided prices to influence HPH and Peak Top’s individual submissions for the F1 Tender, and the prices that HPH and Peak Top did use for their separate bids were in fact based on the figures provided by the Cyclect Group as competing bidders to Chemicrete and Cyclect Electrical in the F1 Tender. There was thus no independence in the preparation of their competing bids for the same tender.”<sup>429</sup>

227. The Parties’ liability for engaging in bid-rigging is not addressed by Tarkus’ representation in paragraph 224(b) that the Parties had engaged in the “subcontracting arrangement” as the Covering Tenderer had no resources to carry out the works for a project. Tarkus’ claim, even if found to be true, would not change the assessment above that the Conduct between the Parties effectively constituted cover bidding in relation to each of the Affected Tenders, which is a form of bid-rigging. In *Gosselin*, one of the appellants, Gosselin, did not deny that it had requested and provided cover quotes, but stated that the cover quotes were requested or produced only when it was of the opinion that it could not win the contract in question. One of the arguments advanced by Gosselin was that the EC had not established that the cover quotes had a significant restrictive effect on competition. The General Court rejected this argument. As set out in paragraph 50 above, the General Court noted that the process of preparing and submitting a cover quote deliberately waived any real competition between the parties providing and submitting the cover quote respectively. It thus considered *Gosselin’s* conduct to be a clear restriction of competition by object.<sup>430</sup> The General Court’s decision was upheld upon appeal before the full ECJ in *Commission v Stichting Administratiekantoor Portielje*.<sup>431</sup>
228. With respect to Tarkus’s further claims in paragraph 224(b) that there was consistent evidence that the Parties held a genuine belief that they were at risk of being excluded from future tenders if they declined to participate, CCCS notes that “evidence” cited by the Parties is both unconvincing and unsubstantiated being in the form of statements from the Parties’ employees (who are clearly interested parties) or anecdotal

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<sup>429</sup> *Formula 1 and GEMS Tenders*, at [178].

<sup>430</sup> *Gosselin*, at [71] to [74].

<sup>431</sup> C-440/11 P *Commission v Gosselin Group and Stichting Administratiekantoor Portielje*, ECLI:EU:C:2013:514 (Judgment of 11 July 2013) at [95].

experiences of unnamed ex-employees. Further, CCCS reiterates that even if the Parties' Conduct was motivated by a genuine belief that they would be excluded from future tenders, this does not negate the fact that the Parties' Conduct constitutes bid-rigging that has an appreciable adverse impact on competition as set out in paragraphs 226 and 227 of this ID. CCCS further highlights that in *Apex*, Apex had submitted that it had engaged in cover bidding because if a contractor did not submit a "realistic" bid following an invitation, there was significant risk that the customer would not approach that contractor again or invite it to submit on other tenders when an appropriate contract arose.<sup>432</sup> However, the CAT did not accept that Apex's explanation absolved Apex of liability and held that Apex's conduct formed the very mischief that the UK Chapter I Prohibition (on which the section 34 prohibition is modelled)<sup>433</sup> is seeking to prevent.<sup>434</sup>

229. In respect of Tarkus' representation at paragraph 224(c), it is unclear how the lack of evidence on control over the Designated Winner's price or control over the mark-up to be applied by the Covering Tenderer shows that there was a subcontracting agreement between Parties. Further, CCCS observes that it did not make a finding that there was an agreement between the Designated Winner and Covering Tenderer to specify the exact Designated Winner's price to be charged to the customer or on the mark-up to be applied by the Covering Tenderer. Rather, CCCS's findings as set out in paragraphs 63 to 66 and 220 above is that there were bid-rigging agreements and/or concerted practices between the Parties such that either FL or Tarkus, would be the Designated Winner and have a better prospect than the Covering Tenderer of winning the Affected Tenders – which constitutes bid-rigging as explained in paragraph 220 above. This was generally characterised by the Designated Winner approaching and providing to the Covering Tenderer tender bid pricing, information and/or other bid details for the Covering Tenderer's subsequent submission to the customer where the bid prices provided by the Designated Winner to Covering Tenderer were priced higher than that submitted by the Designated Winner to the customer.<sup>435</sup>
230. In considering whether the Parties had an agreement and/or concerted practice to engage in bid-rigging, it is immaterial that the Designated Winner and Covering Tenderer did not have full control over the tender bid price that the other party submitted to the customer. The Conduct effectively reduced the number of shortlisted tenderers genuinely competing for an Affected Tender, thereby increasing the chances of the Designated Winner vis-à-vis the Covering Tenderer winning. As set out in *Apex* the submission of cover bids prevents, restricts or distorts competition because:

*“(a) it reduces the number of competitive bids submitted in respect of that particular tender;*

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<sup>432</sup> *Apex*, at [249].

<sup>433</sup> The section 34 prohibition is modelled on the Chapter I Prohibition in the UK Competition Act 1998.

<sup>434</sup> *Apex*, at [250].

<sup>435</sup> All the Affected Tenders save for the HIG Boat Quay Tender, HIG Vivo Tender and Nike Tender.

(b) *it deprives the [customer] of the opportunity of seeking a replacement (competitive) bid;*

(c) *it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so;*

(d) *it gives the [customer] a false impression of the nature of competition in the market”.*<sup>436</sup>

231. In *Makers*, the CAT found that even if it had accepted Makers’ claim that it had contacted Asphaltic (the other party to the agreement or concerted practice) for a sub-contract price, the CAT was satisfied that the facts disclosed an agreement or concerted practice which infringed the UK Chapter I prohibition<sup>437</sup>, considering that at the point where Makers submitted its bid, the figures it included had been influenced by the figures provided to it by Asphaltic. The CAT noted that while it was true that Asphaltic could not have been sure that the figures that Makers would submit would be exactly the same as those provided, the obtaining of a quotation by Makers when both parties knew that the other was involved in the bidding process infringed the principle that each undertaking must determine independently the policy it intends to adopt on the market.<sup>438</sup>

232. CCCS is of the view that the Conduct relating to each the Affected Tenders constitutes bid-rigging that infringes section 34 of the Act. The evidence set out in each of the Affected Tenders showed that these tender bid submissions were submitted in agreement and/or concertation between these two supposedly independent bidders. The bid-rigging agreement and/or concerted practice in the majority of tenders (nine tenders) involved the Covering Tenderer’s bid being priced by the Designated Winner at an amount higher than the Designated Winner’s tender bid pricing, such that the Designated Winner would have a better prospect than the Covering Tenderer of winning each of the Affected Tenders. For two of the remaining three tenders, the Covering Tenderer submitted a bid that was priced by either marking up or adjusting the prices it had been provided with by the Designated Winner, while in the last tender both the Designated Winner and Covering Tenderer adjusted their prices to ensure that the Designated Winner’s prices were lower. The harm to competition is clear as the Parties’ Conduct created an illusion of competition which distorted the normal competitive bidding process. The affected customers were consequently given a false sense of competition, and the tender bid prices submitted were manipulated by the Parties so as to steer the customer vis-à-vis the Parties towards choosing the Designated Winner over the Covering Tenderer.

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<sup>436</sup> *Apex*, at [251].

<sup>437</sup> The section 34 prohibition is modelled on the UK Chapter I prohibition in the UK Competition Act 1998.

<sup>438</sup> *Makers*, at [107].

## CHAPTER 3: INFRINGEMENT DECISION

### A. Addressees of CCCS's Infringement Decision

233. The addressees of CCCS's infringement decision are (1) Tarkus Interiors Pte Ltd and (2) Flex Connect Pte Ltd (effective 1 October 2022), formerly known as Facility Link Pte Ltd.

### B. CCCS's Infringement Decision

234. Given the anticompetitive object of the agreements and/or concerted practices between FL and Tarkus, there is no need to prove that these arrangements had effects which were restrictive of competition. In view of the evidence set out above, CCCS concludes that the evidence unequivocally established agreements, or at the very least, concerted practices that had the object of restricting, preventing or distorting competition in the market for the supply of interior fit-out construction services for non-residential properties in Singapore.
235. CCCS therefore makes a decision that the Parties, namely FL and Tarkus, have infringed section 34 of the Act in relation to each of the Affected Tenders and impose on the Parties the financial penalties stated at paragraphs 320, 342 and 343 below in respect of the Conduct pursuant to section 69(2)(e) of the Act.

## CHAPTER 4: CCCS'S ACTION

### A. Financial Penalties – General Points

236. Under section 69(2)(e) read with section 69(4) of the Act, where CCCS has made a decision that an agreement and/or concerted practice has infringed the section 34 prohibition, CCCS may impose on a party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of that party in Singapore for each year of infringement, up to a maximum of three years.
237. Before exercising the power to impose a financial penalty, CCCS must, as a threshold condition under section 69(3), be satisfied that the infringement has been committed intentionally or negligently.<sup>439</sup> The CAB established in the *Express Bus Operators Appeals* that the threshold conditions under section 69(3) of the Act would be satisfied if the undertaking must have been aware, or could not have been unaware, that the

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<sup>439</sup> Section 69(3) of the Act and *CCCS Guidelines on Directions and Remedies*, at paragraphs 6.3 to 6.11.

agreements had the object or would have the effect of restricting competition.<sup>440</sup> These principles were subsequently affirmed by the CAB in *Uber v CCCS*.<sup>441</sup>

238. As set out in *Pest Control*<sup>442</sup>, *Express Bus Operators*<sup>443</sup>, *Maintenance Services for Swimming Pools*<sup>444</sup> and *Warehouse Operators at Keppel Distripark*<sup>445</sup>, the circumstances in which CCCS might find that an infringement has been committed intentionally include the following:
- a. the agreement and/or concerted practice has as its object the restriction of competition;
  - b. the undertaking in question is aware that its action will be, or is reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or
  - c. the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.
239. Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. CCCS is likely to find that an infringement of the section 34 prohibition has been committed negligently where an undertaking ought to have known that its agreement and/or conduct would result in a restriction or distortion of competition.<sup>446</sup> CCCS considers that bid-rigging, as in this case, is a serious infringement of the section 34 prohibition, which has as its object the restriction of competition, and is likely to have been, by its very nature, committed intentionally. The Conduct took place despite the Parties' knowledge of the confidentiality of tender bid pricing and bid details and, in some instances, despite them having signed non-disclosure agreements and/or declarations that their tender submissions were independently determined as required by customers.<sup>447</sup> In the Affected Tenders, the

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<sup>440</sup> *Express Bus Operators Appeals*, at [141] to [143].

<sup>441</sup> *Uber Singapore Technology Pte Ltd and Others v CCCS, Appeal No 1 of 2018* [2020] SGCAB 2, at [182].

<sup>442</sup> *Pest Control*, at [355].

<sup>443</sup> *Express Bus Operators*, at [445].

<sup>444</sup> *Maintenance Services for Swimming Pools*, at [142].

<sup>445</sup> *Re infringement of the section 34 prohibition in relation to price fixing by warehouse operators at Keppel Distripark*, CCCS 700/001/2020/001 ("**Warehouse Operators at Keppel Distripark**") at [269].

<sup>446</sup> See *CCCS Guidelines on Directions and Remedies*, at paragraphs 6.3 to 6.11.

<sup>447</sup> Response to questions 17 to 20 of Notes of Interview/Explanation provided by Jason Chok (FL), 10 February 2023; information provided by Citibank to questions 2(h) and 2(i) on 17 November 2022 pursuant to the section 63 Notice issued by CCCS dated 1 November 2022; information provided by Oracle dated 2 December 2022 pursuant to the letter issued by CCCS dated 3 November 2022; information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024; and information provided by Lilly to question 2d dated 30 April 2021 pursuant to the letter issued by CCCS dated 19 April 2021.

Conduct was not made known to the customer,<sup>448</sup> with some evidence indicating the Conduct had in fact been deliberately concealed from the customer.<sup>449</sup>

240. Considering all the evidence set out in the preceding section, CCCS finds that the Parties submitted tender bid pricing and/or bid details in agreement and/or concertation in respect of the Affected Tenders even though they knew, or ought to have known, that the purpose of conducting tenders is to ensure competition in the award of projects. CCCS considers that, by reason of the very nature of the agreements and/or concerted practices that have a sufficient degree of harm on competition as they involve bid-rigging, each of the Parties must have been aware that the agreements and/or concerted practices in which they participated prevented, restricted or distorted competition.
241. Accordingly, based on the above evidence, CCCS is satisfied that the Parties were aware that their actions would restrict competition but had still chosen to carry them out. CCCS therefore finds that each Party infringed the section 34 prohibition intentionally.
242. As stated in paragraph 234 above, CCCS considers that agreement and/or concerted practices involving bid-rigging pertaining to the Affected Tenders had as their object the prevention, restriction and distortion of competition and are, by their very nature, serious infringements of the Act. This conduct therefore necessitates deterrence through the imposition of financial penalties.
243. In addition to imposing financial penalties, CCCS has the discretion to impose directions. Directions are made in circumstances where it is appropriate to bring an infringement to an end, and where necessary to require persons to take such action to remedy, mitigate or eliminate any adverse effects of such infringement.<sup>450</sup> In the current circumstances, and more generally, in cases involving bid-rigging, the infringing conduct relating to collusion and submission of bids had ended by the time of the award of the relevant contracts, such that directions other than financial penalties would not be a sufficient measure to either bring the infringement to an end, or to remedy any harm done as a result of the collusive conduct. Therefore, financial penalties would be appropriate to underscore the importance of independent bid submissions by the Parties,<sup>451</sup> and to deter collusion or co-operation in future tenders.
244. In view of the above, CCCS imposes a penalty on the Parties in relation to the infringements considered above in respect of which each Party is found to have participated in bid-rigging.

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<sup>448</sup> Response to question 28 of Notes of Information/Explanation provided by Jason Chok (FL), 10 February 2023; and response to question 37 of Notes of Information/Explanation provided by Judy Sun (FL), 18 January 2022.

<sup>449</sup> Exhibit marked JS-032; exhibit marked JC-022B and response to questions 89 to 91 of Notes of Interview/Explanation provided by Jason Chok (FL), 17 February 2023.

<sup>450</sup> Section 69(1) of the Act.

<sup>451</sup> See also the *CCCS Guidelines on the Section 34 Prohibition*, at paragraph 3.8.

## **B. Calculation of Penalties**

245. The *CCCS Penalty Guidelines* provide that the objectives of imposing financial penalties are to reflect the seriousness of the infringement, and to deter the infringing undertakings and other undertakings from engaging in anti-competitive conduct.<sup>452</sup>
246. The *CCCS Penalty Guidelines* provide that the financial penalty to be imposed by CCCS under section 69 of the Act will be calculated following a six-step approach:<sup>453</sup>
- a. Step 1: calculation of the base penalty having regard to the seriousness of the infringement (expressed as a percentage rate) and the party's turnover of the business in Singapore for the relevant product and relevant geographic markets affected by the infringement (“**the Relevant Turnover**”) in the party's financial year preceding the date when the infringement ended<sup>454</sup>;
  - b. Step 2: the duration of the infringement;
  - c. Step 3: any aggravating and mitigating factors;
  - d. Step 4: other relevant factors such as deterrent value;
  - e. Step 5: statutory maximum penalty as provided for under section 69(4) of the Act; and
  - f. Step 6: immunity, leniency reductions and/or fast-track procedure discounts.
247. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations and leniency discounts.

### **(i) Step 1: Calculation of the Base Penalty**

248. The base penalty for an infringement by each Party is determined having regard to the seriousness of the infringement expressed as a percentage rate of each Party's relevant turnover.

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<sup>452</sup> *CCCS Penalty Guidelines*, at paragraph 1.7.

<sup>453</sup> *CCCS Penalty Guidelines*, at paragraph 2.1.

<sup>454</sup> Competition (Financial Penalties) Order 2007, at paragraph 3; and *CCCS Penalty Guidelines*, at paragraph 2.5.

### *Relevant turnover*

249. An undertaking's relevant turnover is the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year.<sup>455</sup> The "last business year" is the financial year preceding the date when the infringement ended.<sup>456</sup>
250. In this case, the focal product of concern is the supply of interior fit-out construction services for non-residential properties in Singapore. Accordingly, for the purposes of exercising its discretion to impose a financial penalty pursuant to section 69(2)(e) of the Act in this case, CCCS finds that the relevant market is the supply of interior fit-out construction services for non-residential properties in Singapore. Based on this market definition, the relevant turnover for each undertaking is the turnover derived from the provision of interior fit-out construction services for non-residential properties in Singapore.

### *Seriousness*

251. As set out in paragraph 2.3 of the *CCCS Penalty Guidelines*, CCCS will consider the seriousness of the infringement and set a percentage starting point for calculating the base penalty. The more serious and widespread the infringement, the higher the starting percentage point is likely to be. In assessing the seriousness of the infringement, CCCS will consider a number of factors, including the nature of the product, the structure and condition of the market, the market share(s) of the undertaking(s) involved in the infringement, entry conditions and the effect on competitors and third parties. The impact and effect of the infringement on the market, direct or indirect, will also be an important consideration. The assessment will be made on a case-by-case basis for all types of infringements, taking into account all of the circumstances of the case.<sup>457</sup> The seriousness of the infringement and consequently what starting percentage is applied to the relevant turnover may also depend on the nature of the infringement.
252. Nature of the products and structure of the market – As set out above in paragraph 250, the relevant market in this case is the provision of interior fit-out construction services for non-residential properties in Singapore. There are numerous players in the market for the provision of interior fit-out construction services for non-residential properties in Singapore. Based on the data published on the website of the Building and Construction Authority ("BCA"), CCCS estimates that there are potentially around 382 players in the market for the provision of interior fit-out construction services for non-residential properties in Singapore, but only 41 players (including the Parties) are

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<sup>455</sup> *CCCS Penalty Guidelines*, paragraph 2.5.

<sup>456</sup> Competition (Financial Penalties) Order 2007 at paragraph 3 and *CCCS Penalty Guidelines*, at paragraph 2.5.

<sup>457</sup> *CCCS Penalty Guidelines*, at paragraph 2.4.



classified as being at L6 under BCA's Contractors Registration System<sup>458</sup> which is reserved for companies with a minimum paid-up capital of S\$1,500,000 and a track record of completed projects worth S\$30,000,000.<sup>459</sup> In contrast, information gathered from the section 63 interviews suggested that players registered in lower tiers are smaller and may not be able to participate in tenders of the same size and scale as the Parties.<sup>460</sup>

253. Further, CCCS notes the evidence that customers typically only receive a limited number of quotations for their tenders as there is a limited pool of qualified and trusted contractors.<sup>461</sup> This appears to be corroborated by CCCS's review of the Affected Tenders which involved only a range of two to six contractors per tender and a total of 21 known contractors including FL and Tarkus. Based on the available information on 17 of these contractors, 11 are at L6 (highest grade), two are at L5, and one is at L4 under BCA's Contractor's Registration System for interior decoration and finishing works.<sup>462</sup> Thus, even though there may be competitors available in the market, they may not necessarily be considered in practice. CCCS has taken into consideration that the Parties may account for a not insubstantial part of the relevant market and the pool of tenderers or potential tenderers for the Affected Tenders, in addition to the other factors discussed in this section, when coming to the view that the harm caused by the conduct was substantial. Moreover, it appears that incumbency may be a factor in the industry. For example, in Jason Chok's (FL) interview on 9 March 2023, when asked about his WhatsApp message with Simon Tia (Tarkus) in relation to a tender called by Allianz, Jason Chok (FL) shared that he was invited by Allianz to participate in final negotiation for levels 9 and 10 of the building as he was the incumbent for Allianz since FL was also doing interior fit-out construction works at levels 8 and 11 in the same building.<sup>463</sup>
254. Effect on customers, competitors and third parties – The relevant discussions between FL and Tarkus pertain directly to the prices and/or bid details offered to customers through the tender submissions of the Parties which gave the appearance of competing tender submissions when they were not. This undermines the competitive tender process which is designed to create competition between tenderers. Even where the Designated Winner was not awarded a tender, the Conduct caused anti-competitive harm including giving a false sense of competition in the tender process that in turn

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<sup>458</sup> CCCS arrived at this estimate by applying the following workhead filters which mirror closely to the parties involved. These filters are CW01-General Building and CR06- Interior Decoration & Finishing Works.

<sup>459</sup> For interior decoration and finishing works. BCA. (2024, December 16). *Specific Registration Requirements for Construction Workhead (CW)*. Contractors Registration System. [https://safe.menlosecurity.com/https://www1.bca.gov.sg/docs/default-source/docs-corp-procurement/registration\\_cw.pdf](https://safe.menlosecurity.com/https://www1.bca.gov.sg/docs/default-source/docs-corp-procurement/registration_cw.pdf)

<sup>460</sup> Response to question 136 of Notes of Interview/Explanation provided by Mike Cho (Tarkus), 17 October 2022.

<sup>461</sup> Response to question 97 of Notes of Interview/Explanation provided by Jason Chok (FL), 9 March 2023.

<sup>462</sup> The BCA grade contractors into six levels according to their financial capability, technical personnel, and relevant track record of the past three years. Registered companies with the highest L6 license are able to tender for government projects of unlimited contract value, and hence, may be invited to participate in larger-scale projects.

<sup>463</sup> Response to questions 4 to 15 of Notes of Interview/Explanation provided by Jason Chok (FL), 9 March 2023.

could reduce the number of competitive bids submitted, and deprive the customer of the chance to search for more competitive bids hence preventing other suppliers wishing to place competitive bids from doing so.<sup>464</sup> As such, CCCS is of the view that in the absence of the Conduct, there would likely have been more competition and potentially lower and more competitive prices and tender submissions received by the customers who called the Affected Tenders.

255. Nature of infringement – As stated in paragraph 234 above, CCCS considers that agreements and/or concerted practices involving bid-rigging in relation of the Affected Tenders had as their object the prevention, restriction and distortion of competition and are by their very nature, serious infringements of the Act. As stated in the *Express Bus Operators*<sup>465</sup>, *Motor Vehicles*<sup>466</sup>, and *Maintenance Services for Swimming Pools*<sup>467</sup>, CCCS considers that cartel cases involving price fixing, bid-rigging, market sharing and limiting or controlling production or investment are especially serious infringements and should normally attract a starting percentage of the relevant turnover that is on the higher end. This is notwithstanding where the aggregate market share of the parties engaged in an infringement falls below the 20% threshold and even if the parties to such agreements are SMEs.<sup>468</sup> The CAB in *CU Water* affirmed that CCCS is entitled to take a policy stance that bid-rigging conduct is a serious infringement deserving of a base penalty that is on the higher end of the scale,<sup>469</sup> and noted that CCCS is entitled to come to a view of the seriousness of bid-rigging based on its likely effects without being obliged to investigate the actual effect of the infringement on competition.<sup>470</sup>
256. Having regard to the nature of the product, the structure of the market, the potential effect of the infringements on customers, competitors and third parties and that bid-rigging is one of the more serious infringements of the Act, CCCS considers it appropriate to fix the starting point at [~~3~~]6% of relevant turnover for each of the Parties.

**(ii) Duration of the infringements**

257. After calculating the base penalty sum, CCCS will next consider whether this sum should be adjusted to take into account the duration of the infringements. CCCS considers that an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement.<sup>471</sup> However, CCCS may, in

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<sup>464</sup> *CU Water*, at [56].

<sup>465</sup> *Express Bus Operators*, at [457].

<sup>466</sup> *Re CCS Imposes Penalties on 12 Motor Vehicle Traders for Engaging in Bid-Rigging Activities at Public Auctions (“Motor Vehicle Traders”)* [2013] SGCCS 6, at [252].

<sup>467</sup> *Maintenance Services for Swimming Pools*, at [164].

<sup>468</sup> *CCCS Guidelines on the Section 34 Prohibition*, at paragraph 2.25.

<sup>469</sup> *CU Water*, at [45].

<sup>470</sup> *CU Water*, at [51].

<sup>471</sup> *CCCS Penalty Guidelines*, at paragraph 2.10.

cases involving duration of over one (1) year, round down part years to the nearest month.

258. While the agreements and/or concerted practices for the bid-rigging took place repeatedly in discrete tenders from years 2016 to 2021, each of which lasted for a short period of time. CCCS considers that the effects of bid-rigging are generally irreversible, cannot be easily rectified, and continue to be felt long after the duration where the infringing conduct occurred.<sup>472</sup> Therefore, CCCS will generally not set a duration of infringement that is less than one year in cases of bid-rigging infringements.<sup>473</sup> Hence, CCCS is of the view that the duration for the purpose of calculating penalties in this case should be one full year for each separate incidence of infringement. As regards the fact that the conduct took place repeatedly in discrete tenders, this will be taken into consideration as an aggravating factor in the following section.

*(iii) Aggravating and mitigating factors*

259. At this stage, CCCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,<sup>474</sup> i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.
260. The adjustments for mitigating and aggravating factors, if any, will be dealt with below for each Party.

*(iv) Other relevant factors*

261. Under other relevant factors, CCCS takes into consideration the principle of proportionality which is to be applied with reference to the twin objectives of punishment and deterrence. The CAB has endorsed the twin objectives in *CU Water*.<sup>475</sup> In this regard, proportionality ensures that the amount of financial penalty is no higher or lower than is necessary to satisfy the twin objectives of punishment and deterrence.
262. CCCS considers that the penalty may be adjusted as appropriate to achieve policy objectives, particularly the deterrence of the Parties and other undertakings from engaging in anti-competitive practices.
263. If the financial penalty imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of deterrence, CCCS will adjust the penalty to meet the objectives of deterrence.

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<sup>472</sup> CCCS Penalty Guidelines, at paragraph 2.12.

<sup>473</sup> CCCS Penalty Guidelines, at paragraph 2.12.

<sup>474</sup> CCCS Penalty Guidelines, at paragraph 2.13.

<sup>475</sup> *CU Water*, at [79].

264. In determining whether to make any adjustments, CCCS may take into account other considerations, including, but not limited to, an objective estimate of any economic or financial benefit derived or likely to be derived from the infringement by the infringing undertaking and any other special features of the case, including the size and financial position of the undertaking in question.<sup>476</sup> Bid-rigging is one of the most serious infringements of the Act and as such, penalties imposed should be sufficient to deter undertakings from engaging in this conduct.<sup>477</sup>

(v) ***Maximum statutory penalty***

265. Section 69(4) of the Act provides that the maximum financial penalty shall not exceed 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years. The total turnover of the business of the undertaking in Singapore for the purposes of section 69(4) of the Act is defined in the *Competition (Financial Penalties) Order 2007* as the applicable turnover for the business year preceding the date on which the decision of the Commission is taken, or if figures are not available for that business year, the previous business year. The financial penalty will be adjusted if necessary to ensure that the statutory maximum is not exceeded.

(vi) ***Adjustments for leniency reductions***

266. An undertaking participating in cartel activity may benefit from total immunity from, or a significant reduction in the amount of financial penalty to be imposed if it satisfies the requirements for immunity or lenient treatment set out in the *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*. CCCS will make the necessary adjustments to the financial penalty calculated after Step 5 to take into account immunity or any leniency reductions conferred on an undertaking.<sup>478</sup>

**C. Penalty for FL**

267. CCCS finds that FL was engaged in the Conduct, which involves bid-rigging in relation to the Affected Tenders conducted by customers for interior fit-out construction services for non-residential properties in Singapore, with the object of preventing, restricting or distorting competition in the market for the provision of interior fit-out construction services for non-residential properties.

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<sup>476</sup> *CCCS Penalty Guidelines*, at paragraph 2.18.

<sup>477</sup> *CCCS Penalty Guidelines*, at paragraph 2.3. See also *Pest Control*, at [378].

<sup>478</sup> *CCCS Penalty Guidelines*, at paragraph 2.22.

268. **Step 1: Calculation of the Base Penalty:** FL’s financial year commences on 1 April and ends on 31 March.<sup>479</sup> As the infringement ended in around September 2021, the business year for the purpose of determining relevant turnover is financial year 2021, i.e. 1 April 2020 to 31 March 2021. CCCS has assessed that FL’s relevant turnover for the financial year 2021 was ~~££[X]~~.<sup>480</sup>
269. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 251 to 256 above and fixed the starting point at ~~[X]%~~ of relevant turnover. The starting amount for FL is therefore ~~££[X]~~.

### FL’s Representations

270. In its representations, FL submitted that a starting percentage of ~~[X]%~~ would be more appropriate because “*FL only engaged in “simple cover pricing”, which should be distinguished from other types of bid-rigging*”.<sup>481</sup> Citing *Kier*, FL submitted that its conduct should be considered as “simple” cover pricing because (a) FL wished to avoid indicating its lack of interest to customers, (b) FL participated competitively in the Lilly Tender and Pico Art Tender and only shared information with Tarkus as Tarkus did not wish to participate in these tenders, but at the same time it did not want to indicate a lack of interest to customers, (c) FL did not engage in market sharing with Tarkus, and (d) FL feared being excluded from subsequent tenders called by customers.<sup>482</sup> FL also submitted that CCCS relied on evidence that is not relevant in determining whether FL was motivated by a genuine fear of exclusion from future tenders. In this regard, FL submitted CCCS placed too much significance on statements from certain customers and project managers who stated that it was not their practice to refrain from inviting or awarding contractors that have declined to participate in a previous tender.<sup>483</sup>
271. CCCS is of the view that FL’s representation that its conduct is “simple cover pricing” is a mischaracterisation of FL’s conduct. As noted by the CAB in *CU Water*, “simple cover pricing” involves particular factual circumstances surrounding the provision of a cover quote.<sup>484</sup> It refers to a situation where a covering tenderer has no desire to compete but does not want to indicate its lack of interest to a client for whose work it may wish to be invited to tender in the future. The covering tenderer consequently seeks pricing information for its cover price from another bidder in the tender which will be

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<sup>479</sup> Information provided by FL dated 15 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023.

<sup>480</sup> Information provided by FL dated 15 March 2023 pursuant to the section 63 Notice issued by CCCS dated 24 February 2023; and information provided by FL dated 11 April 2023 pursuant to the email from CCCS dated 6 April 2023.

<sup>481</sup> Written Representations of FL dated 5 September 2024, at paragraphs 30 to 42, and Written Representations of FL dated 4 October 2024, at paragraph 2.

<sup>482</sup> Written Representations of FL dated 5 September 2024, at paragraph 34.

<sup>483</sup> Written Representations of FL dated 5 September 2024, at paragraphs 36 to 39, and Written Representations of FL dated 4 October 2024, at paragraph 2. The third parties referred to by FL are Pure Fitness, Citibank, JLL, Oracle, EY and Pico Art.

<sup>484</sup> *CU Water* at [37].

at a level sufficiently high to ensure that the covering tenderer does not win.<sup>485</sup> Such factual circumstances simply do not apply to the Affected Tenders. There is no evidence in any of the Affected Tenders that the Covering Tenderer, in an effort to lose the contract, sought bid pricing or bid details from the Designated Winner to ensure its bid would be higher. Rather, as set out in paragraphs 63 to 66 above, the conduct of the Parties reveals that it was the Designated Winner who, wanting to win the contract, approached and provided bid pricing and bid details for the Covering Tenderer's submission.

272. FL's conduct involved cover bidding arrangements, which is a form of bid-rigging. As set out in *CU Water*, bid-rigging implies an agreement or arrangement which determines, or assists in the determination of, the price which would be charged to the customer.<sup>486</sup> In each of the nine tenders summarised in paragraph 64 above, the Designated Winner and Covering Tenderer entered into an agreement and/or concerted practice that involved the Designated Winner providing the Covering Tenderer with bid pricing and bid details such that the Covering Tenderer's bid would be priced at a level higher than the Designated Winner's bid to provide the Designated Winner with a better prospect of winning.
273. It should also be noted that the CAT in *Kier* stated that in reaching its conclusion that a starting point of 3.5% was warranted, it had taken into account the mitigating effect of the general uncertainty and ambivalence as to the legitimacy of the practice of cover pricing in the construction industry<sup>487</sup> perpetuated through training materials widely used in the training of industry participants.<sup>488</sup> The CAT emphasised that if the cover pricing were to occur at a time when that mitigation was clearly no longer applicable, a higher starting point might well be appropriate.<sup>489</sup>
274. Apart from conduct in the Affected Tenders not constituting simple cover pricing, the present case also differs from *Kier*, as there is no evidence of a widespread perception that if a company did not participate in a tender process when invited to do so, it ran the risk of exclusion from tender lists, or that this risk had materialised. There was also no evidence from the Parties of any uncertainty or ambivalence regarding cover pricing when the Conduct took place (i.e., August 2016 to August 2021).
275. In stark contrast to the absence of evidence from the Parties noted in paragraph 274 above and in response to FL's submission that CCCS placed too much significance on statements from certain customers and project managers, there exists clear and abundant evidence from customers that they would not exclude a company simply because the company did not participate in the customer's previous tender. Contrary to FL's

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<sup>485</sup> *Kier* at [3] and *CU Water* at [36].

<sup>486</sup> *CU Water* at [38].

<sup>487</sup> *Kier* at [115].

<sup>488</sup> *Kier* at [104].

<sup>489</sup> *Kier* at [115].

submission that CCCS relied on evidence that is not relevant to determining whether FL was motivated by a genuine fear of exclusion from future tenders,<sup>490</sup> the tendering practices of the customers and project managers provide relevant evidence to shed light on the industry's practices. For example, in *Kier*, the CAT considered the tender practices in the industry, which is why it considered relevant the references to cover pricing in textbooks and materials widely used in the training of industry participants.<sup>491</sup> Evidence on tendering practices in this industry are hence relevant. On the facts, the responses received from customers and project managers show the opposite to what was submitted by FL and undermine the widespread industry perception asserted.<sup>492</sup>

276. Moreover, even if there was such a perception, the CAT in *Apex* rejected similar reasoning that a contractor engaged in cover bidding to avoid the risk of not being approached by a customer as “[t]he subjective intentions of a party... are immaterial where the obvious consequence of the conduct is to prevent, restrict or distort competition”<sup>493</sup>.
277. It is also a mischaracterisation to describe FL as having participated competitively in the Lilly Tender and Pico Art Tender and only sharing information with Tarkus, as Tarkus did not wish to participate but did not want to indicate a lack of interest to these customers. The evidence clearly shows FL provided inflated tender bid pricing and bid details to Tarkus for Tarkus' submission so that FL would have a better prospect of winning these tenders. Furthermore, in respect of FL's submission that the absence of market sharing between the Parties reduces the seriousness of the Parties' bid-rigging conduct in relation to the Affected Tenders, this is irrelevant to CCCS's finding that the Parties engaged in bid-rigging conduct. A finding of bid-rigging does not require that market sharing be present; nor does the absence of market sharing detract from the serious nature of bid-rigging.
278. In addition, a review of the legal jurisprudence in the EU and UK, which are viewed by the CAB as persuasive, reveals that *Kier* is an exception for its proposition regarding “simple” cover pricing. CCCS reiterates paragraphs 42 to 51 that being party to an agreement and/or concerted practice with its competitor(s) where one party requests its

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<sup>490</sup> Written Representations of FL dated 5 September 2024, at paragraphs 36 to 38, and Written Representations of FL dated 4 October 2024, at paragraph 2.

<sup>491</sup> *Kier*, at [104].

<sup>492</sup> Information provided by Pure Fitness dated 8 March 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, information provided by Citibank dated 21 August 2023 pursuant to request for clarifications from CCCS on 7 August 2023, information provided by Lilly dated 3 August 2023 pursuant to the email from CCCS dated 31 July 2023, information provided by CBRE to question 19a dated 9 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, information provided by Northcroft to question 6 dated 2 February 2024 pursuant to the section 63 Notice issued by CCCS dated 11 January 2024, information provided by Oracle dated 10 August 2023 pursuant to the email from CCCS dated 1 August 2023; and information provided by Pico Art dated 2 August 2023 pursuant to the email from CCCS dated 1 August 2023.

<sup>493</sup> *Apex*, at [250].

competitor to provide cover quotations to increase its own chances of winning the tender is recognised as bid-rigging in the EU and UK.

279. Considering the principles and cases cited at paragraphs 274 to 278, CCCS is of the view that the Parties' Conduct does not fall within the ambit of simple cover pricing described in *Kier*. The infringements set out in the Affected Tenders constitute bid-rigging which is one of the most egregious forms of anti-competitive conduct. Consequently, the starting percentage of [~~3~~]6% is appropriate.
280. On the issue of relevant turnover, FL submitted in its representations that its relevant turnover should be the lower figure of ~~SS[3]~~, "comprising its entire non-passthrough revenue from the Lilly Tender", rather than ~~SS[3]~~ comprising its turnover for all tenders in the relevant market for the following reasons:<sup>494</sup>
- a. relevant turnover should exclude all sales not attributable to the Affected Tenders;
  - b. it is unreasonable to base the penalty FL's turnover for an entire year if it bears no relationship to FL's infringement; and
  - c. relevant turnover should exclude any sums paid by FL to subcontractors appointed by clients.
281. In support of the points made in paragraphs 280(a) and (b), FL submitted that calculating the base penalty using FL's turnover for the financial year 2021 is unreasonable and arbitrary because FL's 2021 turnover bears virtually no relationship to the underlying infringement or its gravity.<sup>495</sup> FL additionally submitted that penalties should correlate with the seriousness and economic consequences of the infringement.<sup>496</sup> Accordingly, FL submitted that its turnover should be limited to turnover derived only from the Lilly Tender as it was the only tender that it won and accordingly the only tender affected by its infringing conduct.
282. In relation the point made in paragraph 280 above, FL submitted that parts of its relevant turnover must be excluded because they are a subset of revenues paid to FL by clients. FL claimed that these subsets of revenue are passed through FL to pay subcontractors that were appointed by clients. In this context, FL cited the CAT in *Hays Plc and others v OFT* [2011] CAT 8 ("**Hays**") at [56], to note that in certain circumstances taking net revenue relevant to the conduct, as opposed to gross turnover, was found to provide "a more meaningful measure of the scale of the conduct".<sup>497</sup> FL additionally cited *Bees Work Casting and others v CCCS* [2012] SGCAB 2 ("**Bees Work**") [129] and *Hays* at [47 - 48] to note that the CAB considered whether certain characteristics of the relevant

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<sup>494</sup> Written Representations of FL dated 5 September 2024, at paragraphs 9 to 26.

<sup>495</sup> Written Representations of FL dated 5 September 2024 at paragraph 12.

<sup>496</sup> Written Representations of FL dated 5 September 2024 at paragraphs 15 to 20.

<sup>497</sup> Written Representations of FL dated 5 September 2024 at paragraphs 23 and 24.



market that justified the use of net revenue in *Hays* should likewise apply. FL submitted that in the present case the characteristics set out in *Hays* should be applied and accordingly its relevant turnover figure should exclude instances where FL had been directed by its clients to engage and pay for pre-determined subcontractors at prices which were fixed or directed by these clients.<sup>498</sup> FL further submitted that the fees received by FL for such pre-determined subcontractor arrangements were clearly and separately recorded from the amounts to be "passed through" to these subcontractors.<sup>499</sup>

283. FL added that as a result, a total of ~~\$\$[X]~~ should be excluded from the turnover attributable to the Lilly Tender, which comprises: a. ~~\$\$[X]~~ for the engagement of the client's contractor for "GMP Clean Room Works", which was procured separately by the client and subsequently parked under the final contract between FL and the client under Section 2 "P.C. & Provisional Sums" of the Contract Sum; and b. ~~\$\$[X]~~ for the engagement and works done by the client's preferred Mechanical, Electrical and Plumbing ("MEP") subcontractor, which was subsequently parked under the final contract between FL and the client under "MEP Works (Volume 2 of 2).
284. FL therefore submitted that its relevant turnover should be ~~\$\$[X]~~, comprising its entire non-passthrough revenue from the Lilly Tender. FL additionally submitted that in the alternative, should CCCS consider that the relevant turnover should be calculated on the basis of the entire turnover for the financial year 2021, then the relevant turnover would be ~~\$\$[X]~~ which is FL's total turnover for FY2021 excluding the sums that were paid to the client's nominated and/or preferred subcontractors.
285. CCCS is of the view that FL's representations in paragraphs 280(a) and (b) that its relevant turnover should be limited to turnover from the Lilly Tender (as it was the only tender it won) fails to grasp the gravity of its infringing conduct. As set out in paragraphs 62 to 66 above, FL has in 12 separate tenders engaged in bid-rigging, each instance of which constitutes a separate infringement in the market for the supply of fit-out services for non-residential properties, regardless of whether the Designated Winner or Covering Tenderer involved in the bid-rigging were successful in winning the tender. This is trite law, given that the CAB in *CU Water* had noted, "*there is no logical reason to make a distinction between tenders awarded and those not awarded as both were affected by the bid-rigging behaviour*".<sup>500</sup>
286. The representations in paragraphs 280(a) and (b) also fail to correctly apply the *CCCS Penalty Guidelines* for the determination of relevant turnover. As noted in paragraphs 249 and 250, relevant turnover is derived from the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year.<sup>501</sup> This entails a computation

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<sup>498</sup> Written Representations of FL dated 5 September 2024 at paragraph 25.

<sup>499</sup> Written Representations of FL dated 5 September 2024 at paragraph 25(c).

<sup>500</sup> *CU Water* at [64].

<sup>501</sup> *CCCS Penalty Guidelines*, paragraph 2.5.

of relevant turnover by reference to any turnover of the undertaking derived from the relevant market and is not limited to the turnover derived from the actual infringements. In the present case, the relevant market is the market for the supply of fit-out construction services for non-residential properties for the reasons set out in paragraph 250.

287. This position has been affirmed by the CAB and is in line with EU and UK case law. Further, the imposition of financial penalties for anti-competitive practices is based on the twin objectives of punishment and deterrence as opposed to the disgorgement of gains received from the infringing conduct. CCCS's approach of defining relevant turnover by reference to the relevant market has been upheld by the CAB in *IPP Financial Advisers Pte. Ltd.* [2017] SGCAB 1 ("*IPP Financial Advisers*") and *Transtar Travel & Anor v. CCS, Appeal No. 3 of 2009* ("*Transtar*"). In *Transtar* at [96], the CAB rejected the appellants' contention that relevant turnover should only include sales from the affected subset of a product market, unless the affected subset cannot be clearly distinguished from the product market. In *IPP Financial Advisers* at [35], the CAB explained why it held the view that the relevant turnover should not be limited to the turnover derived from the actual infringement. In citing the ECJ's decision in *Team Relocations v Commission*<sup>502</sup> with approval, the CAB observed that:

"35 ...the penalty determined was based on the volume of sales, which provided an appropriate proxy to reflect the economic significance of the infringement and the size of the undertaking's contribution to the infringement; it would be contrary to that goal if the concept applied only to the turnover achieved by the sales which were actually affected by the cartel. In such a case, the fine imposed would bear no actual relation to the scope of application of the cartel. The result would be that parties to the cartel would have an incentive to be covert in their operations. This is obviously undesirable."

Likewise, the CAT in *Argos* at [189] dismissed an appeal by Argos to narrow the relevant market to include only products directly affected by the conduct and exclude products in neighbouring markets that are related to the directed affected products.

288. CCCS has considered FL's submissions in respect of its third point in paragraph 280(c) above. CCCS notes that the CAT in *Hays* found that there were certain characteristics present in the relevant market in *Hays* that justified the use of the "net revenue" approach in the case (the "*Hays Characteristics*"). The CAB distinguished *Ave* and *Bees Work* from *Hays*, finding that the *Hays Characteristics* were not present in the relevant markets defined in *Ave* and *Bees Work* and hence the CAB did not adopt the use of the "net revenue" approach when calculating relevant turnover in these two cases.

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<sup>502</sup> *Team Relocations v Commission* (Case C-441/11) [2013] ECR I-000.

289. In *Ave*, the CAB rejected the modelling agencies’ submission that the turnover used to calculate the financial penalties should be their turnover net of the amounts paid to the models and found that CCCS had correctly used gross turnover in calculating penalties.<sup>503</sup> The CAB noted that the agencies had fixed the entire rate charged to the client and not just the commission rates payable to the models. The CAB further noted that clients looking for modelling services would contract with the modelling agencies and hold these agencies responsible for providing the services contracted for.<sup>504</sup> In this regard, modelling agencies are “not acting as mere intermediaries for the models or mother agents, unlike the recruitment agencies in the *Hays* case”.<sup>505</sup>
290. In the present case, FL was not merely an intermediary but a key participant in the tenders for the provision of fit out services for non-residential properties in Singapore. Consequently, the sums paid to FL’s various subcontractors cannot be regarded as “pass through” sums and excluded from the relevant turnover. CCCS’s assessment that the *Hays* Characteristics are not present in the relevant market for this case is set out below:
- a. One of the main characteristics of the relevant market that justified the use of the “net revenue” approach in *Hays* was that the wages of the temporary workers that passed through the recruitment agencies were set by clients, and the recruitment agencies did not control or influence the level of wages paid by the clients to the temporary workers.<sup>506</sup> In the present case, FL has not however produced evidence that the client had control or influence over the prices for the subcontractors. On the contrary, evidence from CCCS’s investigation indicates that for some tenders, where tenderers sourced their own proposed subcontractors such as M&E Contractors and Cleanroom Contractors, these tenderers submitted a price to the client which they had separately agreed with the subcontractors (i.e. the client had no control or influence over the prices of the subcontractors).<sup>507</sup>
  - b. Another key factor that the CAT took into account in *Hays* which justified the use of the “net revenue” approach was that the workers supplied by the recruitment agency were under the control, supervision and direction of the clients.<sup>508</sup> In the present case, FL has not provided any evidence that the client controls, supervises or directs the subcontractors for each Affected Tender or for the industry more generally. On the contrary, the evidence in some tenders indicates that the client was unlikely to have control or responsibility for the work of the subcontractors,

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<sup>503</sup> *Ave*, at [136].

<sup>504</sup> *Bees Work*, at [125].

<sup>505</sup> *Bees Work*, at [125].

<sup>506</sup> *Ave*, at [131(b)], citing *Hays*, at [47].

<sup>507</sup> Information provided by Northcroft on 2 February 2024 in response to CCCS’s RFI dated 24 January 2024.

<sup>508</sup> *Ave*, at [131(d)] citing *Hays*, [48]. See also *Bees Work*, at [129(a)].

and in fact, in some tenders the tenderer (i.e. the main contractors) was not required to seek the client’s approval for the tenderer’s choice of subcontractor.<sup>509</sup>

- c. Another key factor that the CAT took into account in *Hays* was that the fees received by recruitment agencies were clearly and separately recorded from the amounts that were “passed through” to temporary workers.<sup>510</sup> In contrast, in the present case FL, as did all other tenderers, submitted the costs of subcontractors (such as cleanroom works and MEP works), as *part* of their tender submissions.

291. CCCS is of the view that FL has not sufficiently demonstrated that for the calculation of penalties, a different measure of turnover, such as the “net revenue” approach, should be used instead of gross turnover as stated in the *CCCS Penalty Guidelines*. CCCS notes that in relation to the construction industry, the OFT decided in *Bid Rigging in the Construction Industry*<sup>511</sup> that contrary to some of the parties’ submissions that the OFT should base its financial penalties on profit rather than turnover due to the “*high turnover / low margin business where much of the work is passed through to subcontractors with the main contractor taking a small portion of the profit for itself for overseeing the operation of the contract*”,<sup>512</sup> that there was in reality, “*there is little to distinguish the construction industry in this respect from many other industries where work is passed on to subcontractors, or from cartels in other industries that operate at a particular level of the distribution chain (e.g. at the retail level), where the parties’ turnover figures reflect the cost price of goods purchased from undertakings operating at another level of the distribution chain (e.g. from manufacturers or wholesalers).*”<sup>513</sup> The OFT further stated that a calculation based on relevant turnover reflects the size of the affected market, and is capable of also reflecting the impact of the infringement on competitors, third parties and consumers more effectively than an undertaking-specific measure such as profitability.<sup>514</sup> Further, turnover is easily ascertained from corporate accounts and less susceptible to subjective interpretation or manipulation than measures such as profitability or “value added” turnover.<sup>515</sup>
292. CCCS also notes that in the present case, inequity can arise should a different measure of turnover be adopted instead of using gross turnover. This is as noted in the CAT decision in *GF Tomlinson Group Limited and another v OFT* [2011] CAT 7 (“*Tomlinson*”), where the CAT agreed with the OFT that gross turnover should be used and rejected the appellants’ submissions that their turnover net of subcontractor fees

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<sup>509</sup> Information provided by CBRE on 9 February 2024 in response to CCCS’s RFI dated 11 January 2024; information provided by Wolf Studio on 2 February 2024 in response to CCCS’s RFI dated 11 January 2024; information provided by Pico Art on 11 November 2022 in response to CCCS’s RFI dated 28 October 2022; and NOI of Mike Cho dated 22 August 2022, Q65.

<sup>510</sup> *Ave*, at [131(f)] citing *Hays*, [47]. See also *Bees Work*, at [129(c)].

<sup>511</sup> OFT Decision CA98/02/2009 of 21 September 2009, which was appealed to the UK CAT in *Kier*, at paragraphs VI.70. to VI.75.

<sup>512</sup> OFT Decision CA98/02/2009 of 21 September 2009, at paragraph VI.70.

<sup>513</sup> OFT Decision CA98/02/2009 of 21 September 2009, at paragraph VI.75.

<sup>514</sup> OFT Decision CA98/02/2009 of 21 September 2009, at paragraph VI.72.

<sup>515</sup> OFT Decision CA98/02/2009 of 21 September 2009, at paragraph VI.73.

should be used. The CAT took the view that net turnover approach would lead to an uneven effect on the undertakings depending on how far they used subcontractors and would also mean that a company that chooses to employ its own workforce would be disadvantaged.

293. For the reasons provided in paragraphs 285 to 292 above, CCCS does not accept FL's representations in respect of the relevant turnover.
294. **Step 2: Duration of Infringement**: In accordance with paragraphs 257 to 258 above, the duration multiplier is **one** year.
295. **Step 3: Adjustment for Aggravating or Mitigating Factors**: As co-operation is a condition of it being granted leniency, no extra mitigation is given for the same.
296. However, as seen in this ID, there have been multiple infringements by FL,<sup>516</sup> which CCCS considers as an aggravating factor. In view of FL's participation in the Conduct in relation to in 12 instances of bid-rigging, CCCS considers it appropriate to add an aggravating factor of **55%**. This approach of increasing the penalties by multiples of 5% for each additional instance of infringement after the first was noted by CAB in *Pang's Motor Trading*.<sup>517</sup>, and endorsed by the CAB in *CU Water* that it was "*not satisfied that the CCCS's methodology was wrong or that CCCS had misapplied the Penalty Guidelines*"<sup>518</sup>. The financial penalty is accordingly increased by 55% to **S\$[X]**.

### FL's Representations

297. FL made the following representations regarding mitigating factors that warrant a reduction in its penalty:
- a. **CCCS should not apply the multiplier approach to this case**: First, FL submitted that the CAB has not explicitly endorsed the multiplier approach.<sup>519</sup> In this regard, FL submitted that in *Pang's Motor Trading*, the soundness of the multiplier approach had not been at issue rather, Pang had contested the application of the multiplier approach to the facts of that case.<sup>520</sup> Second, FL submitted that the multiplier approach unjustly penalises businesses in markets characterised by voluminous numbers of tenders.<sup>521</sup>

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<sup>516</sup> *CCCS Penalty Guidelines*, at paragraph 2.14.

<sup>517</sup> *Pang's Motor Trading*, at [58] and [59].

<sup>518</sup> *CU Water*, at [85].

<sup>519</sup> Written Representations of FL dated 5 September 2024, paragraph 46.

<sup>520</sup> Written Representations of FL dated 5 September 2024, paragraph 46.

<sup>521</sup> Written Representations of FL dated 5 September 2024, paragraphs 49 to 55.

- b. The number of bid-rigging infringing incidences calculated for the purposes of applying the multiplier: FL submitted that if CCCS considers the multiplier approach to be sound policy, CCCS should exclude tenders not actually awarded to either FL or Tarkus (i.e. the Pure Fitness Tender, Oracle Tender, Pico Art Tender and Nike Tender). Therefore, FL submitted that any appropriate multiplier should be no greater than 35%.<sup>522</sup>
- c. High turnover/low margin industry: As noted above, FL submitted that the relevant market for the provision of interior fit-out construction services for non-residential properties in Singapore is one where a significant portion of the gross revenue of a company is not retained but passed on to other independent parties, such as subcontractors.<sup>523</sup> FL submitted that account should be taken of this in granting a mitigating factor. In this regard FL submitted its financial statements from 2016 to 2023 to show that FL's yearly net profit averages at [~~3~~]% (ranging from [~~3~~]% to [~~3~~]% across the same period).<sup>524</sup>
298. CCCS has considered FL's submissions regarding mitigating factors that warrant a reduction in penalty, but is of the view no reduction is warranted for the reasons set out in paragraphs 299 to 301 below.
299. In relation to FL's representation in paragraph 297(a) on the application of the multiplier approach, the CAB in *Pang's Motor* implicitly noted the use of the multiplier approach when determining whether the aggravating factor applied by CCCS was correct. Moreover, CCCS highlights that the CAB in *CU Water* noted explicitly that it was "not satisfied that the CCCS's methodology [in using the multiplier approach] was wrong or that it [CCCS] had misapplied the Penalty Guidelines".<sup>525</sup> In *CU Water*, the CAB also noted that CCCS's methodology of using a multiplier in that case was consistent with the methodology that it had adopted in previous cases including *Motor Vehicle Traders*, *Pest Control*, *Electrical and Building Works*, and *Maintenance Services for Swimming Pools*.<sup>526</sup> Accordingly, CCCS finds that FL's representation for this mitigating discount is not merited.
300. In relation to FL's point in paragraph 297(b) on the appropriate amount of multiplier, CCCS takes the view that the approach submitted by FL is wrong in principle as the multiplier reflects the number of additional infringements by an undertaking. CCCS's findings establish that the Parties engaged in bid-rigging in relation to each of the Affected Tenders. Consequently, for the purpose of applying the multiplier of 55%, CCCS took into account FL's involvement in 12 incidences of bid-rigging

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<sup>522</sup> Written Representations of FL dated 5 September 2024, paragraph 58.

<sup>523</sup> Written Representations of FL dated 5 September 2024, paragraph 63.

<sup>524</sup> Written Representations of FL dated 5 September 2024, paragraph 63. See also Annex E of Written Representations of FL dated 5 September 2024.

<sup>525</sup> *CU Water*, at [85].

<sup>526</sup> *CU Water*, at [86].

infringements. CCCS also notes that the approach of treating each instance of bid-rigging as a separate infringement, regardless of whether the tender was eventually awarded to either FL or Tarkus was upheld by the CAB in *Pang's Motor Trading*.<sup>527</sup>

301. In relation to FL's point in paragraph 297(c) that it operates in a high turnover but low margin industry, CCCS notes that the fact that an undertaking operates in a unique industry with high turnovers but low margins is a factor that can be taken into account in adjusting the financial penalty<sup>528</sup>. As noted by the CAB in *Bees Work* and *IPP Financial Advisors*, this is because where an industry operates in such a way that a significant proportion of an undertaking's turnover comprises monies paid over to other independent parties (i.e. low margin), the absolute turnover of an undertaking may cease to be a useful indicator of an undertaking's economic presence and/or financial strength in the market.<sup>529</sup> Consequently, a penalty based on a percentage of that undertaking's turnover can be disproportionately high compared to an undertaking operating in an industry where margins are typically higher.<sup>530</sup> However, as held by the CAB in *IPP Financial Advisors*, an undertaking seeking a reduction on this basis bears the burden to show that the nature of the industry is such that a significant proportion of the gross revenue earned is not retained but passed on to other independent parties.<sup>531</sup> Business costs that affect an undertaking's profit margins, such as administrative and operational expenses incurred should not be considered in the determination because this would lead to the perverse result of penalising the more efficient undertakings that have lower overheads.<sup>532</sup>
302. While CCCS notes that FL has provided its financial information records from 2016 to 2023 as part of its written representations, it has not provided an explanation regarding why such monies should be considered as passing through (or even identified which "monies passed through" to independent third parties), apart from implicitly arguing that sub-contract cost and costs incurred in procuring materials should be regarded to be "monies passed through".<sup>533</sup> In this regard, FL has not discharged its onus to justify its claims such that CCCS can properly assess which sums were "monies passed through" to independent third parties. Second, while FL implicitly argued that costs incurred in procuring materials should be regarded to be "monies passed through", these would appear to be operational expenses.<sup>534</sup> Without more, such expenses should not be considered in the determination as this would lead to the perverse result of penalising more efficient undertakings that have lower overheads.<sup>535</sup> Third, CCCS also notes that

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<sup>527</sup> *Pang's Motor Trading*, at [58] and [59].

<sup>528</sup> *Pang's Motor Trading*, at [54].

<sup>529</sup> *IPP Financial Advisors v CCS* [2017] SGCAB 1 ("*IPP Financial Advisors*"), at [68]; *Bees Work Casting Pte Ltd and others v CCS* [2013] SGCAB 1 ("*Bees Work*"), at [131] to [137]; *CU Water Services Pte Ltd v CCCS [2023] SGCAB 1 ("CU Water")*, at [93] to [97].

<sup>530</sup> *IPP Financial Advisors* at [68]; *Bees Work* at [131] to [137]; *CU Water* at [93] to [97].

<sup>531</sup> *IPP Financial Advisors*, at [70]; *CU Water* at [94].

<sup>532</sup> *IPP Financial Advisors*, at [70]; *CU Water* at [94].

<sup>533</sup> *CU Water*, at [96].

<sup>534</sup> *CU Water*, at [96].

<sup>535</sup> See also *IPP Financial Advisors* at [70].

FL did not submit any representations to demonstrate that the industry as a whole operates in a way that “monies passed through” to independent third parties is a substantial component of turnover of suppliers in this industry. Accordingly, in view of the above, CCCS finds that FL has not established that it operates in a high turnover but low margin industry.

303. **Step 4: Adjustment for Other Relevant Factors:** CCCS considers that the figure of ~~S\$[X]~~ is sufficient to act as an effective deterrent to FL and to other undertakings which may consider engaging in similar conduct. In view of FL’s size and financial position, CCCS considers that there is no need for an adjustment with regard to penalty on the basis of proportionality. No adjustments were made to the financial penalty at this step.

#### FL’s Representations

304. FL submitted in its representations that in applying the principle of proportionality, CCCS should consider factors such as:<sup>536</sup>
- a. FL’s conduct exhibited a relatively low level of culpability as it was the Covering Tenderer in 10 of the Affected Tenders and FL derived “*very little financial benefit from the infringement*”.<sup>537</sup> FL won only the Lilly Tender. In this regard, FL submitted that CCCS should take into account that competition for the Lilly Tender was exceptionally strong (there being four other experienced project managers bidding) and consequently competition was unlikely to have been substantially affected by Tarkus’ cover bid. Any anti-competitive effects arising from the arrangement were likely to be marginal. Further, as Tarkus was disqualified on 23 October 2017, a substantial portion of the competitive process took place after the Parties’ Conduct for the Lilly Tender had ended, and FL did not receive any compensation payments for providing cover bids unlike some parties in *Kier*.<sup>538</sup>
  - b. FL’s financial position and economic viability. Citing the CAB in *CU Water*, FL submitted its overall financial health including profits and expenses, should be considered in determining the overall appropriateness of a penalty to be imposed.<sup>539</sup> FL submitted that since publication of its involvement in a potential infringement under the Act, it had been excluded from at least 20 tenders, all of which it had confirmed, or has strong reason to believe, to be the result of the publication of the Notice of the PID on 23 May 2024 (the “**Notice**”). FL also had strong reasons to believe that many project managers have ceased, suspended, or otherwise substantially cut back the extension of invitations to FL to tender for projects, and

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<sup>536</sup> FL’s Written Representations dated 5 September 2024, at paragraphs 64 to 75.

<sup>537</sup> FL’s Written Representations dated 5 September 2024, at paragraphs 66 to 67.

<sup>538</sup> FL’s Written Representations dated 5 September 2024, at paragraphs 67 to 68.

<sup>539</sup> FL’s Written Representations dated 5 September 2024, at paragraph 69 which cited *CU Water*, at paragraph 109.



that these exclusions have substantially achieved the objectives of deterrence and punishment of any potential penalty. Essentially, FL submitted that its loss of reputation and business opportunities since the publication of the Notice is a sufficient penalty, and this should be considered for a “downwards adjustment of the proposed penalty amount on the basis of proportionality”.<sup>540</sup> Further, since the publication of the PID, [X]. Additionally, FL submitted that the proposed penalty of ~~€~~ represents nearly [X]% of its turnover for the financial year 2023, while the OFT in the similar case of *Bid Rigging in the Construction Industry* levied a fine which represented an average of 1.13% of the relevant companies’ annual worldwide turnover.<sup>541</sup>

305. CCCS has considered FL’s submissions, and particularly the principle of proportionality, but is of the view no further reduction is warranted for the reasons set out in paragraphs 306 to 309 below.
306. In respect of FL’s representation in paragraph 304(a), CCCS notes that whether a company requested for or provided the cover bid does not materially affect the extent of its culpability.<sup>542</sup> FL being the Covering Tenderer in most of the Affected Tenders does not detract from the fact that FL chose to and participated in the Conduct, which CCCS has found to be an agreement and/or concerted practice between the Parties to engage in bid-rigging for each of the Affected Tenders.
307. In CCCS’s view, FL’s Conduct “formed part of the category of the most *serious restrictions of competition*”<sup>543</sup>. The severity of its Conduct cannot be diminished by the fact that it may not have substantially benefited financially from the Conduct or by the unique features and circumstances of the Lilly Tender. Furthermore, FL’s submission that it did not receive any compensation payments for providing cover bids unlike some parties in *Kier* does not justify a reduced penalty.<sup>544</sup> CCCS notes that the CAT in *Kier* took the compensation payments into account by applying a higher starting percentage than 3.5%, rather than awarding a discount to the undertakings.<sup>545</sup> The lack of compensation payment to FL when it was the Covering Tenderer is not, in CCCS’s view, a reason for a discount at Step 4.
308. In respect of FL’s representation at paragraph 304(b), FL has not established that its financial position and economic viability warrant a reduction in its penalty. It is an established principle that the mere finding of an adverse financial situation or loss-making situation is not a sufficient reason to justify a reduction in financial penalty since doing so would have the perverse effect of conferring an unfair competitive

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<sup>540</sup> FL’s Written Representations dated 5 September 2024, at paragraph 75.

<sup>541</sup> FL’s Written Representations dated 5 September 2024, at paragraphs 69 to 74.

<sup>542</sup> *Kier*, at paragraph 122.

<sup>543</sup> C-440/11 P *Commission v Gosselin Group and Stichting Administratiekantor Portielje*, ECLI:EU:C:2013:514 (Judgment of 11 July 2013), at [110] to [111].

<sup>544</sup> *Design, Construction and Fit-out Services*, at paragraph 5.90.

<sup>545</sup> *Kier*, at paragraph 286.

advantage on the undertakings least well adapted to the conditions of the market.<sup>546</sup> [X].

309. Finally, with regard to FL's representation in paragraph 304(b) that the proposed penalty represents close to [X]% of its turnover for the financial year 2023, CCCS highlights at the outset that FL has relied on the proportionality principle to seek an adjustment of the final financial penalty imposed after Step 6 of the *CCCS Penalty Guidelines*, which is erroneous. Instead, the proportionality principle should operate at Step 4 to adjust the financial penalty derived after Step 3. Further, the application of the *CCCS Penalty Guidelines* does in fact already account for the Parties' respective size and financial position. At Step 1, the relevant turnover identifies a base penalty individualised to the undertaking, as it is calculated from the turnover derived from the specific market affected by the infringing conduct. Additionally, the statutory maximum penalty imposed at Step 5 also ensures that the financial penalty does not impose an excessive burden on the undertaking as it sets a cap of 10% of the total turnover of the infringing undertaking in Singapore for the business year preceding the issuance of the ID. Finally, CCCS notes that FL's representation that the proposed penalty makes up [X]% of its turnover for the financial year 2023 is exaggerated as the proposed penalty amount at this step does not take into consideration the leniency discount that CCCS is extending to FL for its leniency application.
310. In light of the above, CCCS does not consider further adjustments are needed at Step 4.
311. **Step 5: Adjustment to Prevent Maximum Penalty Being Exceeded:** The business year preceding the date of this ID for FL is financial year 2024, for the period 1 April 2023 to 31 March 2024. However, FL submitted that it does not have the audited financial statements for 2024.<sup>547</sup> Pursuant to paragraph 2.20 of the Penalty Guidelines, in the event that the applicable turnover for the business year preceding the date of CCCS's decision is not available, CCCS shall take reference with FL's previous business year i.e. financial year 2023 for the period 1 April 2022 to 31 March 2023. FL submitted that its applicable turnover for its financial year 2023 was S\$[X].<sup>548</sup> As such, the statutory maximum penalty for FL is S\$[X].
312. The financial penalty of S\$[X] does not exceed the maximum penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S\$[X].

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<sup>546</sup> *Express Bus Operators*, at paragraph 500, *CCS 500/002/09 Price Fixing in Modelling Services ("Models")*, at paragraphs 292 to 293, and Case T-54/14 *Goldfish BV etc. v Commission* EU:T:2016:255, at paragraphs 135 to 136.

<sup>547</sup> Information provided by FL dated 5 December 2024 pursuant to CCCS's email dated 3 December 2024. However, CCCS notes from FL's unaudited financial statement for financial year 2024 (ended 31 Mar 2024) that it reported a total sales revenue of S\$[X]. Based on this, the statutory maximum penalty for FL is S\$[X].

<sup>548</sup> Information provided by FL to question 1 dated 20 November 2023 pursuant to the section 63 Notice issued by CCCS dated 9 November 2023.

313. **Step 6: Adjustment for Leniency Reductions:** FL applied for leniency on 9 November 2022, which is a significant period after the unannounced inspections in January 2022. In relation to FL’s application for leniency, CCCS has noted that:
- a. FL and its key employees provided significant information in response to CCCS’s requests for information, and in interviews conducted by CCCS pursuant to section 63 of the Act.
  - b. FL’s leniency application only covers the “*sharing and/or use of commercially sensitive information*”.<sup>549</sup> FL has denied any bid-rigging conduct and made claims that it had a subcontracting arrangement with Tarkus that is not borne out by any documentary evidence.
  - c. FL only provided information to CCCS on some of the Affected Tenders *after* the respective tenders were highlighted by CCCS to FL.
314. In view of the above, CCCS considered it appropriate to grant a leniency discount of [X] % to FL in view of the useful information it provided and cooperation it rendered, in accordance with the *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016* (“*CCCS Leniency Guidelines*”).<sup>550</sup>

#### FL’s Representations

315. FL submitted in its representations that a higher leniency discount should be granted by CCCS for the following reasons:
- a. CCCS should not excessively penalise FL for its logistical difficulties when providing information.<sup>551</sup> In this regard, FL highlighted that the Affected Tenders took place many years ago, and in the period since, FL has carried out and performed hundreds of tenders and contracts.
  - b. CCCS should not penalise FL for the form of its leniency application in applying for the “*sharing and/or use of commercially sensitive information*”.<sup>552</sup> FL highlighted that it phrased its leniency application in such a manner because it genuinely believed that its actions were substantially different from more serious types of price fixing and bid-rigging.

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<sup>549</sup> FL first applied for leniency on 17 February 2023 in relation to the Citibank Tender, McKinsey Tender, Oracle Tender, Lilly Tender, Nokia Tender, EY Tender, Dupont Tender, HIG Boat Quay Tender. On 17 February 2023, 22 March 2023 and 27 December 2023 respectively, it expanded its leniency application to cover the Pico Art Tender, Nike Tender, HIG Vivo Tender and Pure Fitness Tender.

<sup>550</sup> *Leniency Guidelines*, at paragraphs 4.1 and 4.2.

<sup>551</sup> FL’s Written Representations dated 5 September 2024, at paragraphs 85 to 87.

<sup>552</sup> FL’s Written Representations dated 5 September 2024, at paragraphs 78 to 84.

316. CCCS has considered FL's representations set out in relation to the leniency discount provided. CCCS highlights under the *CCCS Leniency Guidelines* an undertaking who is the first to apply for leniency after CCCS has begun an investigation can receive a discount on its financial penalty of up to 100%.<sup>553</sup> The level of discount is discretionary. CCCS in exercising this discretion takes into account the stage at which the undertaking came forward, the evidence already in CCCS's possession when FL applied for leniency, and the quality of information provided by FL.<sup>554</sup> CCCS notes in respect of FL's application that FL only applied for leniency on 9 November 2022, which is a significant period after CCCS's unannounced inspections in January 2022. Furthermore, at the stage at which FL applied for leniency, CCCS already had in its possession a significant amount of evidence including that which it obtained from its inspection in January 2022.
317. In relation to FL's representation at paragraph 313(a) that it should not be penalised for the logistical difficulties when providing information, CCCS notes that a leniency applicant who wishes to qualify for leniency must satisfy all the conditions outlined at paragraph 2.2 of the *CCCS Leniency Guidelines* which include providing CCCS with all the information, documents and evidence available to it regarding the cartel activity immediately and maintaining continuous and complete co-operation throughout the investigation. In this regard, CCCS is of the view that FL did not readily provide CCCS with all the information, documents and evidence available to it regarding the Conduct immediately.<sup>555</sup> FL only sought leniency and provided information on a number of the Affected Tenders after these were highlighted by CCCS to FL. For example, in relation to the Nike Tender<sup>556</sup>, Pico Art Tender<sup>557</sup>, HIG Vivo Tender and Pure Fitness Tender<sup>558</sup>, CCCS notes that FL only sought to extend its leniency application progressively to these four tenders only after key personnel were interviewed by CCCS.
318. In relation to FL's representation at paragraph 313(b), CCCS notes that a leniency applicant is required under paragraph 2.2 of the *CCCS Leniency Guidelines* to *unconditionally* admit to the conduct for which leniency is sought and detail the extent to which this had an impact in Singapore. CCCS is of the view that FL has not fulfilled this criterion. FL, when seeking leniency for the "*the exchange of commercially sensitive information*" sought to hedge its application by excusing its conduct as part of a subcontracting arrangement. As set out in paragraph 225 above, CCCS has found no evidence of subcontracting between the Parties, rather the conduct clearly discloses bid-rigging. CCCS is of the view that the careful language used throughout FL's leniency submission to condition the Parties' information sharing as part of a subcontracting arrangement, demonstrates that FL has taken a conscious and informed position in

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<sup>553</sup> *CCCS Leniency Guidelines*, paragraph 3.1.

<sup>554</sup> *CCCS Leniency Guidelines*, paragraph 3.2.

<sup>555</sup> *CCCS Leniency Guidelines*, paragraph 2.2.

<sup>556</sup> FL's leniency application dated 17 February 2023.

<sup>557</sup> FL's leniency application dated 22 March 2023.

<sup>558</sup> FL's leniency application dated 27 December 2023.

characterising and qualifying the conduct that it admitted in exchange for lenient treatment.

319. CCCS in determining the level of leniency discount has taken into consideration the abovementioned as well as and is of the view that the leniency discount of [X]% is appropriate given the circumstances.<sup>559</sup> This approach is consistent with the previous position in CCCS’s investigation into bid-rigging in its decision on *Electrical Services and Asset Tagging*.<sup>560</sup>
320. Accordingly, CCCS concludes that a financial penalty of **S\$4,885,263** is to be imposed on FL for its involvement in the Conduct.

#### **D. Penalty for Tarkus**

321. CCCS finds that Tarkus was engaged in the Conduct, which involves bid-rigging in relation to the Affected Tenders, with the object of preventing, restricting or distorting competition in the market for the provision of interior fit-out construction services for non-residential properties.
322. **Step 1: Calculation of the Base Penalty:** Tarkus’ financial year commences on 1 October and ends on 30 September.<sup>561</sup> As the infringement ended in around September 2021, the business year for the purpose of determining relevant turnover is financial year 2020, i.e. 1 October 2019 to 30 September 2020. Tarkus submitted that its relevant turnover for the financial year 2020 was **S\$[X]**.<sup>562</sup>
323. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 251 to 256 above and fixed the starting point at [X]% of relevant turnover. The starting amount for Tarkus is therefore **S\$[X]**.

#### **Tarkus’ Representations**

324. In its representations, Tarkus submitted that:
- a. The starting percentage should be [X]% for reasons that were similar to those used by FL, which are that (i) Tarkus’ conduct is “simple” cover pricing as opposed to “bid rigging”, and (ii) the harm caused by Tarkus’ conduct was not substantial.<sup>563</sup>

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<sup>559</sup> *CCCS Leniency Guidelines*, at paragraph 3.2.

<sup>560</sup> *Electrical Services and Asset Tagging*, at [303].

<sup>561</sup> Information provided by Tarkus to question 1 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 8 March 2023.

<sup>562</sup> Information provided by Tarkus to questions 4 and 5 dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 8 March 2023; and information provided by Tarkus dated 20 April 2023 pursuant to the email from CCCS dated 6 April 2023.

<sup>563</sup> Tarkus’ Written Representations dated 5 September 2024, at paragraphs 26 to 31.

- b. The relevant turnover of Tarkus should exclude:
  - i. customer sales totalling ~~SS\$[X]~~ as this figure is attributed to purchases from direct customers with no tender process involved in the purchase, and are small in scale;<sup>564</sup> and
  - ii. tax in the sum of ~~SS\$[X]~~.<sup>565</sup>

325. In response to the submission that Tarkus' Conduct is "simple" cover pricing, this is an inaccurate characterisation of what simple cover pricing entails. CCCS reiterates paragraphs 271 to 277 above which details how CCCS's finding is that the Conduct involved cover bidding arrangements, which is a form of bid-rigging. The Conduct constitutes a serious infringement.<sup>566</sup> As for Tarkus' submission that the harm caused by the Conduct was not substantial, CCCS repeats paragraph 43 above on the anti-competitive harms of a cover bid as held by the CAT in *Apex*, and paragraph 307 above that the Conduct formed part of the category of the most serious restrictions of competition.<sup>567</sup> Tarkus' submission that it makes up a small portion of the market such that the harm is not substantial, that the Conduct related to only 12 tenders when the Parties participated in more than 160 tenders between 2016 to 2021, and that the Conduct was limited to two players, does not detract from the seriousness of the infringement by the Parties.

326. Tarkus also submitted that the Conduct is "simple" cover pricing because it was motivated by a genuine perception that it ran the risk of being excluded from future tender lists if it did not participate in a tender when invited to do so, and that this risk had materialised given Tarkus was not invited to bid for projects for substantial periods of time after it had rejected an invitation to bid.<sup>568</sup> In this regard, CCCS refers to paragraphs 273 to 275 above, that in the present case, there is no evidence provided by any of the Parties of an industry practice such that if contractors chose not to participate in a tender which they were invited to, they would be excluded from such tenders in future. Tarkus has not put forth any evidence to support its assertion that there exists an "unofficial blacklisting" of contractors by customers. Furthermore, Tarkus' submission that its "former quantity surveyor had received calls from customers expressing their disappointment once a rejection to an invitation to tender was received from Tarkus" and "After rejecting a customer's invitation to tender, Tarkus would not receive any invitations to tender for the next 1 – 2 tenders within the year" compared to the "3 – 5 tenders" received prior to rejecting the invitation to tender, is based on the view of a former unnamed employee. As stated above in paragraph 228, CCCS considers the alleged anecdotal experience from Tarkus' former quantity surveyor to be hearsay and of limited probative value, especially since it cannot be verified. Tarkus' claim is a bare

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<sup>564</sup> Tarkus' Written Representations dated 5 September 2024, at paragraph 24.

<sup>565</sup> Tarkus' Written Representations dated 5 September 2024, at paragraph 22.

<sup>566</sup> Tarkus' Written Representations dated 5 September 2024, at paragraphs 28a and 28b.

<sup>567</sup> C-440/11 P *Commission v Gosselin Group and Stichting Administratiekantoor Portielje*, ECLI:EU:C:2013:514 (Judgment of 11 July 2013), at [110] to [111].

<sup>568</sup> Tarkus' Written Representations dated 5 September 2024, at paragraph 28c.

assertion. In any event, as stated in paragraph 276 above, the purported fear of exclusion from future tenders cannot be a factor that can be considered as the subjective intentions of a party are immaterial where the conduct is to prevent, restrict or distort competition.<sup>569</sup>

327. In light of the foregoing, CCCS has not adjusted the starting percentage.

328. CCCS has considered Tarkus' further submissions in relation to the appropriate amount of relevant turnover, but is of the view that the relevant turnover it has applied is correct for the following reasons:

- a. CCCS does not agree with Tarkus' submission that the relevant turnover should exclude direct customer sales for interior fit-out construction service because there was no tender process involved with these purchases. As noted in paragraphs 249 and 286 above, relevant turnover is determined based on the relevant market within which the infringements occurred. In this regard, consistent with CAB's ruling in *Pang's Motor Trading*, a precise market definition is unnecessary. The CAB referred to CAT's ruling in *Argos* where it was held that "*in Chapter I<sup>570</sup> cases involving price-fixing it would be inappropriate for the [Office of Fair Trading] to be required to establish the relevant market with the same rigour as would be expected in a case involving the Chapter II prohibition<sup>571</sup>*" (at [178]). Further, as stated at paragraph 60 above, the UK Court of Appeal held in *Argos/JJB Sports* that "*... the reason why it is not necessary, at any rate in a Chapter I<sup>572</sup> case involving price-fixing, to conduct a formal market analysis is the same as the reason why the market which is taken for calculation of the turnover relevant for Step 1 on a penalty assessment may properly be assessed on a broad view of the particular trade which has been affected by the proved infringement, rather than by a relatively exact application of principles that would be relevant for a formal analysis, such as substitutability or, on the other hand, by limiting the turnover in question to sales of the very products or services which were the direct subject of the price-fixing arrangement or other anti-competitive practice.*"<sup>573</sup> In any case, CCCS is of the view that the distinction of the sales for interior fit-out construction services via tendering process and non-tendering process (e.g. direct contracting) is artificial as the supply of interior fit-out construction services is the same regardless of whether such services are procured via tendering process or non-tendering process.

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<sup>569</sup> *Apex*, at [250].

<sup>570</sup> The section 34 prohibition is modelled on the Chapter I Prohibition in the UK Competition Act 1998.

<sup>571</sup> The section 47 prohibition is modelled on the Chapter II Prohibition in the UK Competition Act 1998.

<sup>572</sup> The section 34 prohibition is modelled on the Chapter I Prohibition in the UK Competition Act 1998.

<sup>573</sup> *Argos/JJB Sports*, at [173].

- b. CCCS understands that the amount of tax refers to Tarkus' income tax expense for the financial year ending 30 September 2020.<sup>574</sup> Paragraph 2.6 of the Penalty Guidelines specifies deductible components of relevant turnover as “*sales rebates, goods and services tax and other taxes directly related to turnover*”. CCCS considers that income tax does not qualify as a form of tax that is *directly* related to turnover, as income tax is derived from a firm's profits and not from its turnover. Therefore, the income tax figure of ~~\$\$[X]~~ ought not to be subtracted from the relevant turnover.
329. **Step 2: Duration of Infringement**: In accordance with paragraphs 257 to 258 above, the duration multiplier is one year.
330. **Step 3: Adjustment for Aggravating and Mitigating Factors**: CCCS considers that Tarkus did not provide cooperation over and above the extent to which it was legally required. CCCS therefore adjusts the penalty by [~~X~~]  %.
331. As seen in this ID, there have been multiple infringements by Tarkus,<sup>575</sup> which CCCS considers as an aggravating factor. In view of Tarkus' involvement in at least 12 bid-rigging infringements, CCCS considers it appropriate to add an aggravating factor of **55%**. As stated in paragraph 295, this approach of increasing the penalties by multiples of 5% for each additional instance of infringement after the first was endorsed by CAB in *Pang's Motor Trading*.<sup>576</sup> The financial penalty is accordingly increased to ~~\$\$[X]~~.

### Tarkus' Representations

332. Tarkus made the following representations regarding mitigating factors that it submitted warranted a further reduction in its penalty:
- a. **Tarkus' co-operation with CCCS during the investigation**: Tarkus submitted that right from the start of the investigation, it had provided information on its communication with FL and had admitted to this communication with FL.<sup>577</sup> Tarkus further submitted that FL only gave details of tenders where costing information was shared between Tarkus and FL when questioned by CCCS.<sup>578</sup> By the time FL had provided these details on 29 November 2022, Tarkus had already cooperated with CCCS to provide the relevant available information pertaining to the various projects during the interviews Tarkus' employees had with CCCS.<sup>579</sup> Tarkus also submitted that all the documents that were in its possession relating to its communication with FL had been taken by CCCS since the commencement of

<sup>574</sup> Information provided by Tarkus dated 20 April 2023 pursuant to the email from CCCS dated 6 April 2023.

<sup>575</sup> *CCCS Penalty Guidelines* at paragraph 2.14.

<sup>576</sup> *Pang's Motor Trading*, at [58] and [59].

<sup>577</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 34.

<sup>578</sup> Written Representations of Tarkus dated 4 October 2024, paragraph 4.

<sup>579</sup> Written Representations of Tarkus dated 4 October 2024, paragraph 4.



investigations.<sup>580</sup> Tarkus highlighted that FL’s admission of “sharing and/or use of commercially sensitive price information” was in line with Tarkus’ position from the outset.<sup>581</sup> Accordingly, Tarkus submitted that a similar discount ought to be given to it for the information and cooperation rendered.<sup>582</sup>

- b. Compliance programme: Tarkus submitted that it had taken swift action to ensure its future compliance with competition law.<sup>583</sup> In this regard, Tarkus submitted that it had stopped all communications with FL for the purposes of the agreement since the commencement of the investigations<sup>584</sup> and internally, taken steps including conducting a town hall meeting with all members of Tarkus’ contract team,<sup>585</sup> and developing an internal Fair Competition Policy.<sup>586</sup> Tarkus noted that it intends to arrange for all employees to undergo comprehensive training sessions led by industry professionals.<sup>587</sup> Furthermore, the parent company of Tarkus, Itoki Corporation, intends to commence an internal investigation of the facts and circumstances surrounding the Conduct with a view to obtaining a comprehensive report detailing future preventive measures to avoid any future transgressions with the law.<sup>588</sup>
- c. The number of incidences of bid-rigging infringements calculated for the purposes of applying the multiplier: Tarkus submitted that Pico Art Tender ought to be excluded from CCCS’s calculation of the multiplier as an aggravating factor as only completed tenders should be taken into account.<sup>589</sup> As the Pico Art Tender was not completed, there existed the possibility that the infringing act would have been mitigated or ameliorated prior to completion of the tender, including withdrawing from the tender (which was done by Tarkus in the Pico Art Tender) or disclosing to the customer details of the infringing act in question for the customer’s approval.<sup>590</sup>
- d. High turnover/low margin industry: Tarkus submitted that both Parties operate in the construction sector which has been recognised as a high turnover and low margin industry.<sup>591</sup> Tarkus also submitted its financial statements for 2019 to 2020 to show that the majority of the cost of revenue consisted of payments to third parties. Based on these statements, Tarkus submitted that approximately [~~3~~]% to [~~3~~]% of the gross revenue were “monies passed through”, which is to be regarded

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<sup>580</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 34.

<sup>581</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 36.

<sup>582</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 34.

<sup>583</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 38.

<sup>584</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 39.

<sup>585</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 39.

<sup>586</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 39.

<sup>587</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 40.

<sup>588</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 41.

<sup>589</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 44.

<sup>590</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 44.

<sup>591</sup> Written Representations of Tarkus dated 5 September 2024, paragraphs 45 to 52.

as significant.<sup>592</sup> Tarkus also highlighted that in FY2020, its profit margin was a mere [X]%. Accordingly, Tarkus submitted that its turnover is not a useful indicator of its economic presence and/or financial strength, and a penalty based on a percentage of the turnover can be disproportionately high compared to an undertaking operating in an industry where margins are typically higher.<sup>593</sup>

333. In relation to Tarkus' representation at paragraph 332(a) above, CCCS has further considered the extent of Tarkus' cooperation in deciding the appropriate mitigating discount, set out in paragraph 328 above. However, CCCS notes that Tarkus did not provide cooperation over and above the extent to which it was legally required to warrant a higher mitigating discount pursuant to paragraph 2.15 of the *CCCS Penalty Guidelines*. For example, the admissions and information provided by Tarkus for the Affected Tenders were in response to Tarkus receiving a notice under section 63 of the Act which requires the recipient to furnish information to CCCS.
334. While Tarkus has noted its compliance programme measures in its representations, CCCS has noted that Tarkus' heavy emphasis on compliance was only put in place after investigations started and hence no further mitigating discount is warranted pursuant to paragraph 2.15 of the *CCCS Penalty Guidelines*. Paragraph 2.15 states that mitigating factors include adequate steps taken with a view to ensuring compliance with the section 34 prohibition, for example, existence of any compliance programme. In this regard, CCCS reiterates that the key is the existence of any compliance programme before the investigation rather than after CCCS's investigation. This point is noted in *Freight Forwarding*<sup>594</sup> and *Hotels*.<sup>595</sup> In the case of Tarkus, the internal Fair Competition Policy only came into force fairly recently on 9 July 2024, i.e., it was only implemented a significant amount of time after CCCS's investigation was first made known to Tarkus and after the issuance of the PID on 23 May 2024.<sup>596</sup>
335. CCCS highlights in response to Tarkus's representations at paragraph 332(c) that for the purpose of applying the multiplier of 55%, CCCS took into account Tarkus' involvement in 12 incidences of bid-rigging infringements (as set out from paragraphs 72 to 219). These 12 bid-rigging infringements only consist of incidences where there is evidence that the Covering Tenderer submitted cover tender bids priced by, or priced in agreement and/or concertation with, the Designated Winner. In relation to Tarkus' representation that the multiplier approach should exclude the Pico Art Tender on the basis that it was not completed, CCCS takes the view that this is not a material consideration as it has already been established that the Parties had indeed engaged in bid-rigging in relation to the Pico Art Tender. These 12 bid-rigging infringements only

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<sup>592</sup> Written Representations of Tarkus dated 5 September 2024, paragraphs 49 and 50.

<sup>593</sup> Written Representations of Tarkus dated 5 September 2024, paragraph 52.

<sup>594</sup> *Re infringement of the section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore*, CCS 700/003/11 ("**Freight Forwarding**"), at [760].

<sup>595</sup> *Re infringement of the section 34 prohibition in relation to the exchange of confidential corporate customer information in the provision of hotel room accommodation in Singapore*, CCCS/700/002/14 ("**Hotels**"), at [614].

<sup>596</sup> Written Representations of Tarkus dated 5 September 2024, Annex H.

consist of incidences where there is evidence that the Covering Tenderer submitted cover tender bids priced by, or priced in agreement and/or concertation with, the Designated Winner.

336. As for Tarkus' representations at paragraph 332(d), while it appears from the face of these financial figures that a significant proportion of gross revenue consists of cash outflow to third parties, CCCS is of the view that this amount is overstated. For example, while Tarkus argued that costs incurred arising from payments of supplies should be regarded as "monies passed through", these appear to be operational expenses.<sup>597</sup> Without more, such expenses should not be considered in the determination as this would lead to the perverse result of penalising more efficient undertakings that have lower overheads.<sup>598</sup> Furthermore, Tarkus did not make any representations or provide any evidence to demonstrate that this was indeed the case for the entire industry and that Tarkus "was in the position of a normal player in the industry"<sup>599</sup>.
337. CCCS does not consider that the present industry as a whole is one that has consistently experienced low margins based on the information provided. CCCS reiterates the point stated by the OFT in *Bid Rigging in the Construction Industry*<sup>600</sup> noted in paragraph 291 above, that there is little to distinguish the construction industry from many other industries where work is passed on to subcontractors, and the parties' turnover figures reflect the cost price of goods purchased from undertakings operating at another level of the distribution chain. In this regard, while Tarkus submitted that its net profit margin (as a proportion of its gross revenue) in FY2020 was [X]%, CCCS notes that this is more of an exception rather than the norm as its net profits in FY 2019, 2021, 2022 and 2023 were about [X]%, [X]%, [X]% and [X]% respectively.<sup>601</sup> More importantly, CCCS reiterates that low margin in itself is not sufficient to establish that an industry displays the classic high turnover low margin characteristic. Low margin has to be coupled with evidence of pass through i.e., the low margin is due to the fact that a significant proportion of an undertaking's turnover comprises monies paid over to other independent third parties for example, subcontractors. On balance, CCCS takes the view that Tarkus has failed to demonstrate that it operates in a high turnover, low margin industry.
338. **Step 4: Adjustment for Other Relevant Factors:** CCCS considers that the figure of **S\$[X]** is sufficient to act as an effective deterrent to Tarkus and to other undertakings

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<sup>597</sup> *CU Water*, at [96].

<sup>598</sup> *IPP Financial Advisors*, at [70].

<sup>599</sup> *CU Water*, at [95].

<sup>600</sup> OFT Decision CA98/02/2009 of 21 September 2009, at paragraph VI.75.

<sup>601</sup> Information provided by Tarkus dated 22 March 2023 pursuant to the section 63 Notice issued by CCCS dated 8 March 2023; information provided by Tarkus dated 20 April 2023 pursuant to CCCS's email dated 6 April 2023; information provided by Tarkus dated 17 November 2023 pursuant to the section 63 Notice issued by CCCS dated 9 November 2023; and information provided by Tarkus dated 12 March 2024 pursuant to the section 63 Notice issued by CCCS dated 6 March 2024.

which may consider engaging in similar conduct. In view of Tarkus' size and financial position, CCCS considers that there is no need for an adjustment to the penalty on the basis of proportionality. No adjustments were made to the financial penalty at this step.

339. **Step 5: Adjustment to Prevent Maximum Penalty Being Exceeded:** The business year preceding the date of this ID for Tarkus is financial year 2024, for the period 1 October 2023 to 30 September 2024. However, Tarkus was not able to submit audited financial statements for 2024. Accordingly, pursuant to paragraph 2.20 of the Penalty Guidelines, CCCS shall take reference with Tarkus' previous business year i.e. financial year 2023 for the period from 1 October 2022 to 30 September 2023. Tarkus submitted that its applicable turnover for its financial year 2023 was S\$[X].<sup>602</sup> As such, the statutory maximum penalty for Tarkus is S\$[X].
340. The financial penalty of S\$[X] does not exceed the maximum penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S\$[X].
341. **Step 6: Adjustment for Leniency Reductions:** Tarkus did not apply for leniency and consequently receives no further discount on its financial penalty.
342. Accordingly, CCCS concludes that a financial penalty of S\$5,113,918 is to be imposed on Tarkus for its involvement in bid-rigging in various interior fit-out construction projects for non-residential properties in Singapore.

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<sup>602</sup> Information provided by Tarkus dated 12 March 2024 pursuant to the section 63 Notice issued by CCCS dated 6 March 2024.

**E. Conclusion on Penalties**

343. In conclusion, pursuant to section 69(2)(d) of the Act, CCCS imposes the following financial penalties on the Parties for their infringements:

<b>Party</b>	<b>Financial Penalty</b>
FL	S\$4,885,263
Tarkus	S\$5,113,918
<b>Total</b>	<b>S\$9,999,182</b>

Alvin Koh  
Chief Executive  
Competition and Consumer Commission of Singapore

## ANNEX A

S/N	Name of PUI/designation	Date(s) of Interview
<b>FL</b>		
1.	Jason Chok Chin Foong (Managing Director)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> <li>• 10 February 2023</li> <li>• 17 February 2023</li> <li>• 9 March 2023</li> <li>• 3 May 2023</li> <li>• 16 November 2023</li> </ul>
2.	Richard Koh (former Operations Director)	<ul style="list-style-type: none"> <li>• 3 June 2022</li> </ul>
3.	Judy Sun Zhuo (Director, Quantity Survey)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> <li>• 19 January 2022</li> <li>• 27 November 2023</li> </ul>
4.	Yvonne Law Lee Nee (Project Administrator)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> </ul>
5.	Eugene Pang Han Ming (Director, Corporate Development)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> </ul>
6.	Ivy Chen Kim Yoke (Quantity Surveyor)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> </ul>
<b>Tarkus</b>		
1.	Mike Cho Chew Meng (Contracts Director)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> <li>• 22 August 2022</li> <li>• 23 August 2023</li> <li>• 17 October 2022</li> <li>• 14 November 2023</li> <li>• 20 November 2023</li> </ul>
2.	Simon Tia Chee Wah (Managing Director)	<ul style="list-style-type: none"> <li>• 28 March 2023</li> <li>• 4 April 2023</li> </ul>
3.	Nyein Wai Wai Aung, Julie (Assistant Contracts Manager)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> <li>• 22 August 2022</li> <li>• 16 November 2023</li> </ul>
4.	Aye Thanta Win (Assistant Contracts Manager)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> </ul>
5.	Lim Siam Choo (Finance Director)	<ul style="list-style-type: none"> <li>• 18 January 2022</li> </ul>