Section 68 of the Competition Act (Cap. 50B)

Notice of Infringement Decision issued by CCCS

Infringement of the section 34 prohibition in relation to the sale and distribution of fresh chicken products in Singapore

12 September 2018

Case number: CCCS 500/7002/14

Confidential information in the original version of this Decision has been redacted from the published version available on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂].

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EXECUTIVE SUMMARY

1. The Competition and Consumer Commission of Singapore ("CCCS") is issuing an Infringement Decision ("ID") against the following undertakings for their participation in anti-competitive agreements and/or concerted practices to not compete for one another's customers and to coordinate the quantum and timing of price movements in relation to the supply of fresh chicken products in Singapore[1], in contravention of section 34 of the Competition Act (Cap. 50B) (the "Act"):

   (i) Gold Chic Poultry Supply Pte. Ltd. and its related company, Hua Kun Food Industry Pte. Ltd.;

   (ii) Hy-fresh Industries (S) Pte. Ltd.;

   (iii) Kee Song Food Corporation (S) Pte. Ltd. (formerly Kee Song Brothers Poultry Industries Pte. Ltd.);

   (iv) Lee Say Group Pte. Ltd. which is the sole-proprietor of Lee Say Poultry Industrial, and its subsidiaries, Hup Heng Poultry Industries Pte. Ltd., ES Food International Pte. Ltd., Leong Hup Food Pte. Ltd. (formerly KSB Distribution Pte. Ltd.) and Prestige Fortune (S) Pte. Ltd.;

   (v) Ng Ai Food Industries Pte. Ltd. (formerly Ng Ai Muslim Poultry Industries Pte. Ltd.);

   (vi) Sinmah Poultry Processing (S) Pte. Ltd.;

   (vii) Toh Thye San Farm; and

   (viii) Tong Huat Poultry Processing Factory Pte. Ltd. and its wholly-owned subsidiary Ban Hong Poultry Pte. Ltd.

   (Each a "Party" and together the "Parties").

2. CCCS's investigations revealed that the Parties met on numerous occasions between 2000 and 2014. Interviews with key personnel of the Parties revealed that the Parties engaged in discussions relating to the prices of fresh chicken

[1] See Chapter 2, Section I on The Relevant Market.

products in Singapore and reached an understanding to not compete for one another's customers.

3. Statements by employees of the Parties and documentary evidence revealed that Parties discussed price movements including the quantum and timing of the increases, and implemented these price movements accordingly. Further evidence gathered by CCCS indicates that the understanding to not compete was implemented as a general industry practice. There were specific incidents involving refusal to compete and customers have stated that the Parties do not approach them to encourage switching.

4. CCCS finds that the Parties participated in agreements and/or concerted practices with the common objective of distorting the normal movement of prices of fresh chicken products in Singapore, from at least 19 September 2007 to 13 August 2014. In agreeing to not compete, the Parties restricted or eliminated competition, including price competition, in the supply of fresh chicken products in Singapore. Similarly, the discussions relating to prices ensured that price movements of fresh chicken products were coordinated, thereby restricting or eliminating price competition in the supply of fresh chicken products in Singapore. The Parties' collusion restricted competition in the market and had likely contributed to price increases of fresh chicken products in Singapore, including but not necessarily limited to, the following time periods: July 2008, May 2009, August 2010, January 2011, March 2011, January 2013 and January 2014.

5. CCCS considers that the Parties' agreements and/or concerted practices were, by their very nature, injurious to the proper functioning of normal competition. As the agreements and/or concerted practices have a common object to distort the movement of prices of fresh chicken products, CCCS finds that the Parties participated in a single continuous infringement in contravention of section 34 of the Act from 19 September 2007 to 13 August 2014.

6. CCCS is imposing on each of the Parties penalties of between S$5,000 and S$3,355,110, amounting to a total combined penalty of S$26,948,639, for infringing section 34 of the Act. In determining the penalty amount, CCCS has taken into consideration the seriousness of the infringement as well as the relevant aggravating and mitigating factors, where applicable.

CHAPTER 1: THE FACTS

A. The Parties

1. All the Parties are in the business of trading in or distributing fresh chicken products. Some of the Parties have slaughtering facilities[2] and may offer slaughtering services to other Parties without such facilities. The Parties may also offer processing, cutting and marinating services, depending on the customers' requirements.

i. Gold Chic Poultry Supply Pte. Ltd. and Hua Kun Food Industry Pte. Ltd.

2. Gold Chic Poultry Supply Pte. Ltd. ("Gold Chic") is a company limited by shares incorporated in Singapore on 12 October 1988, having its registered address at 197 Pandan Loop Singapore 128385. Its shareholders are Yap Ah Tee (45%), Lim Soh Koon (44.99%) and Lin Yuqun (10.01%).[3]

3. Hua Kun Food Industry Pte. Ltd. ("Hua Kun") is a company limited by shares incorporated in Singapore on 15 June 2006 and shares the same registered address as Gold Chic. Its shareholders are Yap Ah Tee (50%) and Lim Soh Koon (50%).[4] Hua Kun is the [✂] Gold Chic.

4. The key management figure in Gold Chic and Hua Kun at the material time was Lim Soh Hua. The employees of Gold Chic and Hua Kun referred to him as their manager.[5]

ii. Hock Chuan Heng Farm/ Hy-fresh Industries (S) Pte. Ltd.

5. Hock Chuan Heng Farm ("Hock Chuan Heng") was a sole-proprietorship established in Singapore on 21 October 1980 with its registered address at 195 Pandan Loop, Singapore 126890. Its sole proprietor was Hy-fresh Industries (S)

[2] The parties with slaughtering facilities are Lee Say, Hup Heng, KSB (through a related company Soonly Food Processing Industries Pte. Ltd.), Tong Huat, Kee Song, Gold Chic/Hua Kun, Hock Chuan Heng/Hy-fresh, Ng Ai and Sinmah.
[3] Extracted from ACRA record *Business Profile of Gold Chic Poultry Supply Pte. Ltd.* (on 29/8/2018).
[4] Extracted from ACRA record *Business Profile of Hua Kun Food Industry Pte. Ltd.* (on 29/8/2018).
[5] Answer to Questions 4 and 5 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 29 April 2015.

Pte. Ltd. ("Hy-fresh").[6] Registration of Hock Chuan Heng ceased on 30 November 2016.[7]

6. Hy-fresh is a company limited by shares incorporated in Singapore on 11 December 2009, having its registered address at 195 Pandan Loop, Singapore 126890.[8] Hy-fresh became a partner of Hock Chuan Heng on 10 August 2010 and its sole proprietor on 1 April 2013.[9]

7. The key management figure in Hy-fresh and Hock Chuan Heng at the material time was Ng Lay Long. Ng Lay Long has been a director at Hy-fresh since its incorporation and was also one of the owners of Hock Chuan Heng prior to the sale of the business to Hy-fresh.[10]

iii. Kee Song Food Corporation (S) Pte. Ltd.

8. Kee Song Food Corporation (S) Pte. Ltd. (formerly Kee Song Brothers Poultry Industries Pte. Ltd.) ("Kee Song") is a company limited by shares incorporated in Singapore on 11 April 1987, having its registered address at 28 Senoko Way, Singapore 758048. It is a wholly-owned subsidiary of Kee Song Holdings Pte. Ltd. ("Kee Song Holdings").[11]

9. Kee Song Holdings is a company limited by shares incorporated in Singapore on 1 April 2010 having its registered address at 28 Senoko Way, Singapore 758048. It is a wholly-owned subsidiary of Kee Song Bio-Technology Holdings Limited, and is registered as an investment holding company.[12]

10. The key management figure in Kee Song at the material time was Ong Kian San (Managing Director). Ong Kian San had been employed at Kee Song since 1987 and was in charge of daily operations including [✂].[13]

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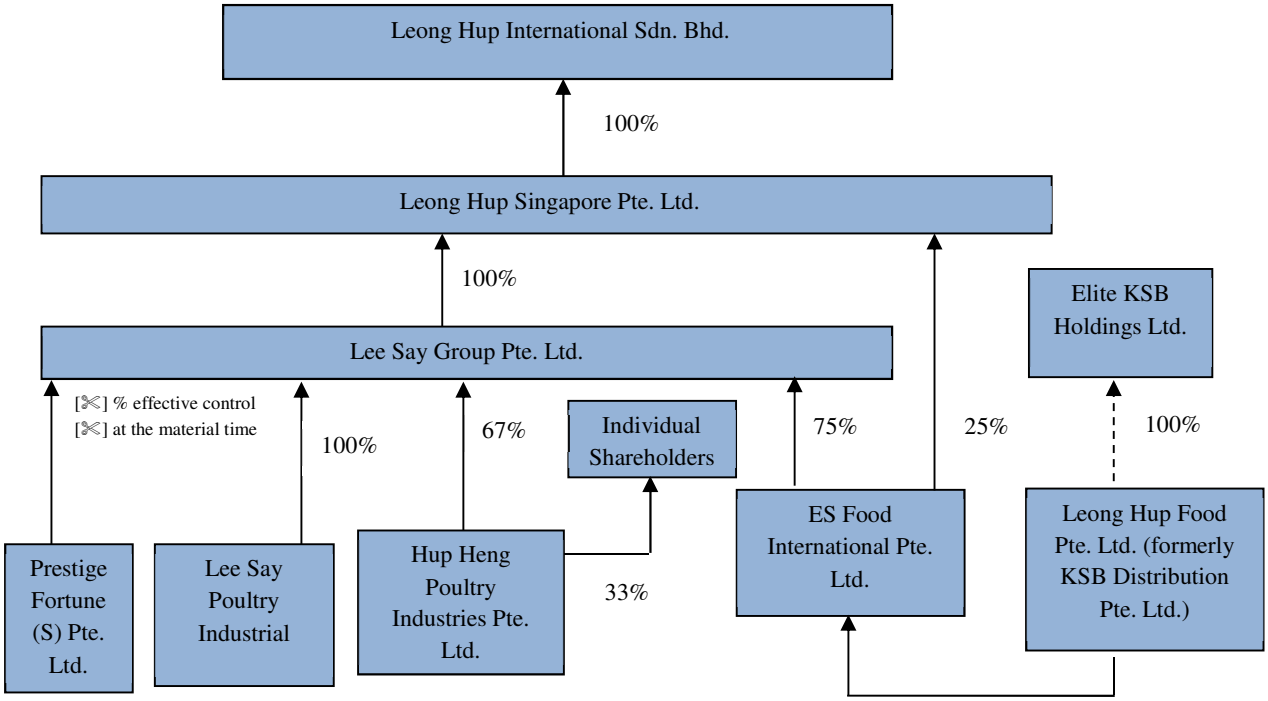
[6] Extracted from ACRA record *Business Profile of Hock Chuan Heng Farm* (on 31/8/2018).
[7] Information provided by Hock Chuan Heng/Hy-fresh dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017.
[8] Extracted from ACRA record *Business Profile of Hy-fresh Industries (s) Pte. Ltd.* (on 29/8/2018).
[9] Extracted from ACRA record *Business Profile of Hock Chuan Heng Farm* (on 31/8/2018).
[10] Extracted from ACRA record *Business Profile of Hy-fresh Industries (s) Pte. Ltd.* (on 29/8/2018); Extracted from ACRA record *Business Profile of Hock Chuan Heng Farm* (on 31/8/2018).
[11] Extracted from ACRA record *Business Profile of Kee Song Food Corporation (S) Pte. Ltd.* (on 29/8/2018).
[12] Extracted from ACRA record *Business Profile of Kee Song Holdings Pte. Ltd.* (on 31/8/2018).
[13] Answer to Question 3 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 24 November 2014.

iv. Lee Say Group

11. The Lee Say Group comprises Lee Say Poultry Industrial, Lee Say Group Pte. Ltd., KSB Distribution Pte. Ltd., ES Food International Pte. Ltd., Hup Heng Poultry Industries Pte. Ltd. and Prestige Fortune (S) Pte. Ltd. A diagram showing the entities of the Lee Say Group is set out in **Figure 1** below.

Figure 1



Lee Say Poultry Industrial and Lee Say Group Pte. Ltd.

12. Lee Say Poultry Industrial ("Lee Say Poultry") is a sole-proprietorship established in Singapore on 12 July 1991 with its registered office at 18 Senoko Way, Woodlands East Industrial Estate, Singapore 758040. Its sole proprietor is Lee Say Group Pte. Ltd. ("Lee Say").[14] Lee Say Poultry and Lee Say shall together be referred to as "Lee Say".

13. Lee Say is a company limited by shares incorporated in Singapore and shares the same registered office as Lee Say Poultry. Lee Say is 100% owned by Leong

[14] Extracted from ACRA record *Business Profile of Lee Say Poultry Industrial* (on 29/8/2018).

Hup Singapore Pte. Ltd., which is in turn 100% owned by Leong Hup International Sdn. Bhd.[15]

14. On 18 April 2011 and 31 October 2012, Lee Say acquired a [✂]% stake and [✂]% stake in Hup Heng Poultry Industries Pte. Ltd. ("Hup Heng") and KSB Distribution Pte. Ltd., respectively. On 22 March 2012, Lee Say increased its stake in Hup Heng to [✂]%.[16]

15. The key management figures in Lee Say at the material time included Ong Pang Guan (Director); Toh Ying Seng (Deputy Managing Director) and Tan Koon Seng (Executive Director, who also represented the majority shareholder at the material time, Leong Hup Holdings Berhad).[17] Toh Ying Seng had been employed by Lee Say since 28 March 1991 and was in charge of [✂] fresh chicken in Singapore.[18] Tan Koon Seng had been a director at Lee Say since 15 November 1995 and had [✂].[19]

Leong Hup Food Pte. Ltd.

16. Leong Hup Food Pte. Ltd. (formerly KSB Distribution Pte. Ltd.) ("KSB")[20] is a company limited by shares incorporated in Singapore on 16 May 1991, having its registered office at 4 Senoko Way, Singapore 758028. Prior to its acquisition by Lee Say on 31 October 2012, KSB was wholly-owned by Elite KSB Holdings Ltd.[21]

17. At present, KSB is wholly-owned by an investment holding company, ES Food International Pte. Ltd. ("ES Food")[22], which is in turn owned by Lee Say (75%) and Leong Hup Singapore Pte. Ltd. (25%).[23]

[15] Extracted from ACRA record *Business Profile of Leong Hup Singapore Pte. Ltd.* (on 31/8/2018).
[16] Information provided by Hup Heng dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, response to question 1.
[17] Answer to Question 15 of Tan Koon Seng (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[18] Answer to Question 4 of Toh Ying Seng (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[19] Answer to Question 4 of Tan Koon Seng (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[20] The rest of the infringement decision will refer to KSB as it was known then at the time of the infringement.
[21] Information provided by KSB dated 7 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, response to question 1.
[22] Extracted from ACRA record *Business Profile of Leong Hup Food Pte. Ltd.* (on 29/8/2018).
[23] Extracted from ACRA record *Business Profile of ES Food International Pte. Ltd.* (on 29/8/2018).

18. The key management figures in KSB at the material time included Chew Ghim Bok (former Chief Executive Officer from 2000 to October 2012)[24] and his brother Vincent Chew Gim Soon ("Vincent Chew"), the former Deputy General Manager from 12 April 1999 to end February 2014.[25]

Hup Heng Poultry Industries Pte. Ltd.

19. Hup Heng is a company limited by shares incorporated in Singapore on 7 September 1990, having its registered office at 30 Senoko Crescent, Singapore 758279. Its shareholders are Lee Say (67.2%), Ma Seow Juen (8.75%), Ma Chin Shun (8.75%), Tan Koon Seng (5%), and Ma Chin Chew (10.3%).[26]

20. Key management figures at the material time included Ma Chin Chew (Managing Director) and Tan Koon Seng (Director representing Lee Say). Ma Chin Chew had been employed by Hup Heng since 1996 and his responsibilities broadly included [✂].[27] Tan Koon Seng, being the representative of the majority shareholder Lee Say, was appointed as a director of Hup Heng since 18 April 2011 and [✂].[28]

Prestige Fortune (S) Pte. Ltd.

21. Prestige Fortune (S) Pte. Ltd. ("Prestige Fortune") is a company limited by shares incorporated in Singapore on 1 September 2011 and shares the same registered address as Lee Say. It is a wholly-owned subsidiary of Prestige Fortune Sdn. Bhd.[29], which was in turn, controlled by Lee Say ([✂]%) through a [✂] Malaysian subsidiary Lee Say Breeding Farm Sdn. Bhd at the material time.[30]

22. In March 2012, Prestige Fortune acquired the business of Poultry Development (S) Pte. Ltd. ("Poultry Development"), which was also in the business of trading

[24] Answer to Question 7 of Chew Ghim Bok (KSB) Notes of Information/Explanation Provided on 14 April 2015.
[25] Answer to Question 5 of Vincent Chew (KSB) Notes of Information/Explanation Provided on 29 April 2015.
[26] Extracted from ACRA record *Business Profile of Hup Heng Poultry Industries Pte. Ltd.* (on 29/8/2018).
[27] Answer to Question 4 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 13 August 2014.
[28] Answer to Question 6 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 13 August 2014.
[29] Extracted from ACRA record *Business Profile of Prestige Fortune (S) Pte. Ltd.* (on 29/8/2018).
[30] Information provided by Prestige Fortune dated 9 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to questions 1 and 2.

in fresh chickens.[31] Following the acquisition by Prestige Fortune, Poultry Development was struck off the company register.

23. The key management figures in Prestige Fortune at the material time included the directors Quek Cheaw Kwang and Tan Koon Seng.[32] Quek Cheaw Kwang was also a director and shareholder in Poultry Development.[33]

v. Ng Ai Food Industries Pte. Ltd.

24. Ng Ai Food Industries Pte. Ltd. (formerly Ng Ai Muslim Poultry Industries Pte. Ltd.) ("Ng Ai") is a company limited by shares incorporated in Singapore on 18 August 1989, having its registered office at 17 Wan Lee Road, Singapore 627947. Its shareholders are Tan Chee Kien (33.07%), Tan Bee Lay @Chng Bee Lay (0.38%), Tan Chee Keong (33.1%), Tan Chee Wan (33.07%) and Tan Bee Leng (0.38%).[34]

25. The key management figure at the material time was Tan Chee Kien (Managing Director). He had been employed by Ng Ai since 1989 and had decision making powers in relation to [✂].[35]

vi. Sinmah Poultry Processing (S) Pte. Ltd.

26. Sinmah Poultry Processing (S) Pte. Ltd. ("Sinmah") is a company limited by shares incorporated in Singapore on 16 January 1991, having its registered office at 27 Defu Lane 12, Singapore 539134. Its shareholders are Chiew Kin Huat (37.85%), Ong Huan Koo (1.4%), Chiew Hock You (36.4%), Chiew Hock Kee (10.35%), Chiew Hock Hin (9.3%), Chiew Poh Leng (3.6%) and Pauline Chiew (1.1%).[36]

27. The key management figures in Sinmah at the material time included Chiew Kin Huat (Executive Chairman) and Chiew Hock You (Managing Director). Chiew Kin Huat was assisted by his daughter-in-law Wu Xiao Ting (Chief Executive Officer) at the material time. Chiew Kin Huat and Chiew Hock You had been employed by Sinmah since 1991 and had decision making powers in

[31] Information provided by Prestige Fortune dated 9 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to questions 2 and 3.
[32] Extracted from ACRA record *Business Profile of Prestige Fortune (S) Pte. Ltd.* (on 29/8/2018).
[33] Extracted from ACRA record *Business Profile of Poultry Development (S) Pte. Ltd.* (on 30/8/2018).
[34] Extracted from ACRA record *Business Profile of Ng Ai Food Industries Pte. Ltd.* (on 29/8/2018).
[35] Answer to Question 4 of Tan Chee Kien (Ng Ai) Notes of Information/Explanation Provided on 28 April 2015.
[36] Extracted from ACRA record *Business Profile of Sinmah Poultry Processing (S) Pte. Ltd.* (on 29/8/2018).

relation to [✂].[37] Wu Xiao Ting had been employed by Sinmah since August 2007 and was in charge of [✂].[38]

vii. Toh Thye San Farm

28. Toh Thye San Farm ("Toh Thye San") is a sole-proprietorship registered in Singapore on 12 April 1979, with its registered address at 7A Lichfield Road, Serangoon Garden Estate, Singapore 556827. It was previously a partnership and the partners included Toh Ching Lim, Toh Cheng Hai ("Alex Toh") and Toh Ching Kang.[39] Toh Thye San Pte. Ltd. became the sole-properietor of Toh Thye San Farm on 1 April 2017.[40] Toh Thye San Pte. Ltd. is a company limited by shares incorporated in Singapore on 24 February 2017 and shares the same registered address as Toh Thye San Farm.[41]

29. The key management figure at the material time was Alex Toh, who was the manager and one of the partners of Toh Thye San. Alex Toh had been in charge of Toh Thye San since 1984 and made all decisions relating to [✂].[42]

viii. Tong Huat Group

30. Tong Huat Poultry Processing Factory Pte. Ltd. ("Tong Huat") is a company limited by shares incorporated in Singapore on 21 March 1991, having its registered office at 34 Senoko Crescent, Singapore 758281. Its shareholders are Cab Cakaran Corporation Berhad and Cab Cakaran Sdn. Bhd. (together 49%), Yam Boon Yin, Toh Chye Lam, Toh Eng Chuan, Toh Eng Hai, Toh Chai Hock, Too Siew Din and Toe Heng Choon (together 51%).[43]

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[37] Extracted from ACRA record *Business Profile of Sinmah Poultry Processing (S) Pte. Ltd.* (on 29/8/2018); Answer to Question 3 of Chew Hock You (Sinmah) Notes of Information/Explanation Provided on 13 August 2014; Answers to Questions 3 and 4 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 13 August 2014.
[38] Answers to Questions 2 and 11 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 13 August 2014.
[39] Extracted from ACRA record *Business Profile of Toh Thye San Farm* (on 29/8/2018).
[40] Extracted from ACRA record *Business Profile of Toh Thye San Farm* (on 29/8/2018).
[41] Extracted from ACRA record *Business Profile of Toh Thye San Pte. Ltd.* (on 31/8/2018).
[42] Answers to Questions 5 and 6 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[43] Extracted from ACRA record *Business Profile of Tong Huat Poultry Processing Factory Pte. Ltd.* (on 29/8/2018).

31. On 26 April 2013, several shareholders of Tong Huat, [✂] acquired a [✂]% stake in Ban Hong Poultry Pte. Ltd. ("Ban Hong").[44] On 27 February 2015, Ban Hong became a [✂] subsidiary of Tong Huat.[45]

32. The key management figures in Tong Huat at the material time included Too Siew Din (Managing Director) and Toh Eng Say (Manager). Too Siew Din had been employed by Tong Huat since 1994 and was responsible for the [✂].[46] Toh Eng Say had been employed by Tong Huat since 1993 and was responsible for [✂].[47]

Ban Hong Poultry Pte. Ltd.

33. Ban Hong is a company limited by shares incorporated in Singapore on 27 September 1993 and shares the same registered address as Tong Huat.[48]

34. Prior to the acquisition by Tong Huat, the managing director of Ban Hong was Ho Chong Hee, who was responsible for the business of Ban Hong generally including the purchase and selling prices of fresh chicken in Singapore.[49] At the material time, Ho Chong Hee was employed as a sales manager in Ban Hong and was responsible for [✂].[50]

B. Background of Relevant Industry

i. Supply of fresh chicken

35. Live chickens are imported from Johor, Perak and Malacca in Malaysia and slaughtered in Singapore. The types of live chickens imported include:

(i) pullets, which are young hens usually less than a year old;

(ii) capons, which are castrated roosters;

[44] Information provided by Ban Hong dated 9 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, response to Part I Annex A Question 1.
[45] *Ibid.*
[46] Answers to Questions 5 and 6 of Too Siew Din (Tong Huat) Notes of Information/Explanation Provided on 13 August 2014.
[47] Answer to Question 3 of Toh Eng Say (Tong Huat) Notes of Information/Explanation Provided on 13 August 2014.
[48] Extracted from ACRA record *Business Profile of Ban Hong Poultry Pte. Ltd.* (on 29/8/2018).
[49] Answers to Questions 3 and 4 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[50] Answer to Question 5 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.

(iii) kampong chickens, which are free range chickens;

(iv) layers or old fowls; and

(v) black chickens, amongst others.

36. Layers or old fowls may be sourced in Singapore but the vast majority of live chickens slaughtered in Singapore are imported from Malaysia. In 2014 alone, approximately 46,132,000 live chickens were slaughtered and distributed in Singapore.[51]

37. The fresh chicken industry in Singapore can be broadly divided into two segments, namely slaughtering and distribution. Fresh chicken distributors will import live chickens from farms in Malaysia and slaughter them in Singapore. Fresh chicken distributors with slaughtering facilities may offer slaughtering services to distributors without such facilities.[52] Fresh chicken distributors may also provide value-added services such as cutting and marinating. Some fresh chicken distributors such as Lee Say are vertically integrated, that is, they own chicken farms in Malaysia as well as slaughtering, processing and distribution facilities in Singapore.

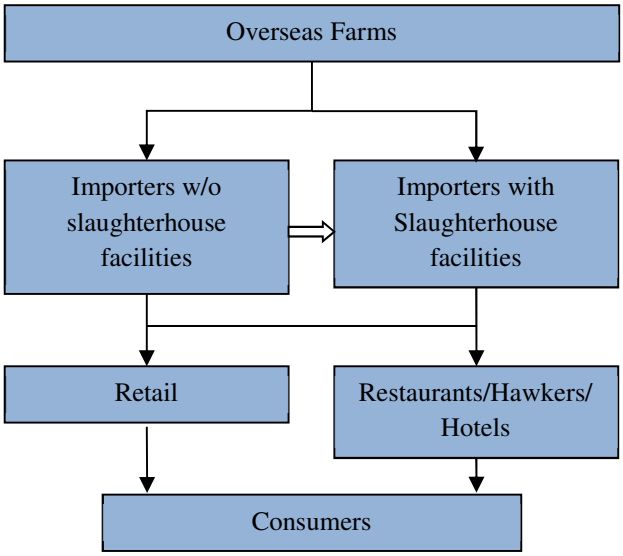
38. Thereafter, the distributors sell the fresh chicken products to restaurants, supermarkets, hotels and wet markets including hawker stalls. These products include whole fresh chickens, chicken parts and processed chickens. Fresh chicken prices are typically expressed as "price per kilogram".

39. A diagrammatic representation of the fresh chicken industry is set out in **Figure 2** below.

[51] Year Book of Statistics Singapore 2015, Department of Statistics, Ministry of Trade & Industry, Republic of Singapore at section 12.2.

[52] The parties with slaughtering facilities are Lee Say, Hup Heng, KSB (through a sister company Soonly Food Processing Industries Pte. Ltd.), Tong Huat, Kee Song, Gold Chic/Hua Kun, Hock Chuan Heng/Hy-fresh, Ng Ai and Sinmah.

Figure 2



ii. Cost and operational structure

40. The cost of live chickens generally makes up about 60% of total costs. The remaining 40% of total costs comprise costs associated with the slaughtering of live chickens, labour, distribution and marketing.[53]

41. Most of the fresh chicken distributors have sales staff whose responsibilities include making sales, collecting payment and resolving product-related problems raised by customers.[54]

iii. Parties' relationships and The Poultry Merchants' Association, Singapore

42. The Parties are members of The Poultry Merchants' Association, Singapore (the "Association") which is an association registered with the Registry of Societies since 10 December 1986.[55] The Association shares the same registered address as Sinmah.[56]

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[53] Answer to Question 68 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 27 November 2014.
[54] Answer to Question 3 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 August 2014; Answer to Question 3 of Li Kong (Hup Heng) Notes of Information/Explanation Provided on 13 August 2014; and Answer to Question 6 of Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[55] Registry of Societies record at https://app.ros.gov.sg/ui/Index/SearchSociety.aspx
[56] *Ibid*.

43. The object of the Association is to promote friendly relationships, goodwill, mutual help and common welfare among poultry merchants in Singapore.[57] The Association is also aware of the need to comply with competition law. This is evidenced by its constitution expressly prohibiting any recommendation or arrangement "*which has the purpose or is likely to have the effect of fixing or controlling the price or any discount*".[58]

44. The daily activities are organised by a Management Committee which is elected by the members during the annual general meeting. The key positions in the Management Committee include the Chairman/President and the Secretary. The Chairman/President has "*power over all matters of the Association and sign all important documents*"[59] whereas the Secretary "*shall conduct and sign on behalf of the management committee in negotiation and all matters generally*".[60]

45. According to the members list of 2014-2015, the Association has 20 members.[61] The Parties are represented in the Association by the following:

    (i) Lim Soh Hua – Gold Chic/Hua Kun joined the Association since 1989[62];

    (ii) Ng Lay Long – Hock Chuan Heng/Hy-fresh joined the Association since 1992[63];

    (iii) Ong Kian San – Kee Song joined the Association since 1990[64];

    (iv) Ong Pang Guan – Lee Say joined the Association since 1992[65];

    (v) Ma Chin Chew – Hup Heng joined the Association since 1992[66];

[57] Clause 3 of the Constitution of the Association as per the records of the Registry of Societies.
[58] Clause 17(c) of the Constitution of the Association as per the records of the Registry of Societies; Information provided by the Association dated 18 March 2015 pursuant to the section 64 Notice issued by CCCS dated 18 March 2015, page 130 of Exhibit WXT3-003.
[59] Clause 14 of the Constitution of the Association as per the records of the Registry of Societies.
[60] *Ibid*.
[61] Exhibit JH-001.
[62] Information provided by the Association dated 28 September 2015 pursuant to the section 63 Notice issued by CCCS dated 9 September 2015, response to Question 2.
[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*
[66] *Ibid.*

(vi) Quek Cheaw Kwang – Poultry Development, whose business was acquired by Prestige Fortune, joined the Association since 1992[67];

(vii) Chew Ghim Bok and Vincent Chew – KSB joined the Association in 2014 after it had been acquired by Lee Say. Prior to the acquisition, Chew Ghim Bok and Vincent Chew represented Elite KSB Holdings Ltd. from at least 2006 to the end of 2013[68];

(viii) Tan Chee Kien – Ng Ai joined the Association since 1989[69];

(ix) Chiew Kin Huat – Sinmah joined the Association since 1992[70];

(x) Alex Toh – Toh Thye San joined the Association since 1989[71];

(xi) Too Siew Din and Toh Eng Say – Tong Huat joined the Association since 1991[72]; and

(xii) Ho Chong Hee – Ban Hong joined the Association since 1993[73].

The persons named above were all key management figures in their respective companies.[74]

46. Most of the Parties are family-run businesses which have been in the line of fresh chicken distribution for decades and whose personnel know their counterparts in the other Parties well. Lim Soh Hua (*Gold Chic/Hua Kun*) stated that he is on very good terms with Tong Huat because he was good friends with the father of the present bosses of Tong Huat.[75] Lim Soh Hua further stated that there is an understanding between him and his "*good friends*" such as Chiew

[67] *Ibid.*
[68] Information provided by the Association dated 6 October 2015 pursuant to the Request for Further Information to the section 63 Notice issued by CCCS dated 9 September 2015. Refer also to Answers to Questions 8 and 9 of Vincent Chew (KSB) Notes of Information/Explanation Provided on 29 April 2015.
[69] Information provided by the Association dated 28 September 2015 pursuant to the section 63 Notice issued by CCCS dated 9 September 2015, Question 2.
[70] *Ibid*.
[71] *Ibid*
[72] *Ibid*.
[73] *Ibid*.
[74] *Supra* paragraphs 2 to 34.
[75] Answer to Question 23 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 29 April 2015.

Kin Huat (*Sinmah*) and Tong Huat, that they will not "*steal each other's customers*".[76]

47. Ma Chin Chew (*Hup Heng*) also indicated that he is close friends with Wu Xiao Ting (*Sinmah*) and that his family is very close to the "*Tan family that owns and runs Ng Ai*".[77] Wu Xiao Ting had, on several occasions, recommended potential customers to Ma Chin Chew.[78] Wu Xiao Ting also noted that Chiew Kin Huat is friends with both Tan Koon Seng (*Lee Say*) and Ma Chin Chew, who have known "*each other for a very long time*".[79]

48. The Parties also met frequently for social activities.[80] Indeed, the evidence will show that these social gatherings facilitated the anti-competitive discussions.

49. Furthermore, CCCS notes that the Parties also tend to cooperate through the Association. For instance, the Association decided and agreed that no slaughtering of live chickens should be carried out on Labour Day, 1 May 2013.[81] Chiew Kin Huat (*Sinmah*) explained that it was necessary for all fresh chicken distributors with slaughterhouses[82] to agree and keep to the agreement because:

> "*…companies who did not slaughter on 1 May 2013 may lose their customers as they are u[n]able to supply freshly slaughtered chickens*"[83]

50. In response to a question as to why it was necessary for all fresh distributors to agree to not slaughter live chickens on the same day, Ong Kian San (*Kee Song*) echoed that:

[76] Answer to Question 23 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 29 April 2015.
[77] Answers to Questions 88 and 90 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 27 November 2014.
[78] Answers to Questions 43 and 46 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 18 March 2015.
[79] Answers to Questions 259 and 260 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 25 November 2014.
[80] Answer to Question 19 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[81] See Exhibit JH-007.
[82] These parties are Lee Say, Hup Heng, KSB (through a related company Soonly Food Processing Industries Pte. Ltd.), Tong Huat, Kee Song, Gold Chic/Hua Kun, Hock Chuan Heng/Hy-fresh, Ng Ai and Sinmah.
[83] Answer to Question 25 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 25 November 2014.

"*Because those who chose to operation on 1 May would have better business and it would not [be] fair to those who did not slaughter chickens that day.*"[84]

51. The Parties also preferred to administer informal sanctions in the event of deviation from agreed practice. When Hup Heng did not keep to the agreement to not slaughter, they were chastised during an Association meeting held on 26 June 2013 because the Parties that kept to the agreement ran the risk of losing their customers to Hup Heng.[85] The intent of the agreement, as stated by the Parties, was to ensure a status quo with regard to competition; that no distributor will have better business at the expense of the others.

52. In light of the above, and as will be borne out by the evidence in this ID, the Parties share a spirit of cooperation with the object to both advance and protect each other's interests. It is in this same spirit of cooperation that the Parties participated in the anti-competitive discussions to coordinate price movements and not compete for each other's customers. While Parties do "cheat" and deviate from agreed practices from time to time, the other aggrieved Parties will seek to enforce the agreed practices promptly. Indeed, the evidence will show that the Parties have, on several occasions, chastised each other when they deviate from the anti-competitive agreements and/or practices.

C. Investigation and Proceedings

53. On 20 November 2013, [✂], an ex-employee of Lee Say, approached CCCS with information of alleged anti-competitive conduct between the Parties. CCCS subsequently conducted a preliminary enquiry into the fresh chicken industry.

54. On 7 March 2014, CCCS commenced investigations under section 62 of the Act into the fresh chicken distribution industry to ascertain whether or not there had been an infringement of section 34 of the Act.

55. On 13 August 2014, CCCS conducted simultaneous inspections without notice at the premises of Lee Say, Hup Heng, Kee Song, Sinmah, Tong Huat and the Association[86] pursuant to section 64 of the Act (the "First Inspection") and also

[84] Answer to Question 53 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 24 November 2014.
[85] Answer to Question 16 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 27 November 2014.
[86] The premises of the Association are at the same address as the premises of Sinmah.

conducted interviews with some key personnel at the same premises pursuant to section 63 of the Act. Further interviews with key personnel of these undertakings were subsequently conducted pursuant to section 63 of the Act.

56. On 18 March 2015, CCCS conducted another inspection without notice at the premises of Sinmah and the Association pursuant to section 64 of the Act (the "Second Inspection"). On the same day, an interview with Wu Xiao Ting (*Sinmah*) was also conducted at the premises of CCCS pursuant to section 63 of the Act.

57. In the course of the investigations, CCCS conducted interviews with key personnel from the Parties and customers of the Parties. CCCS carried out interviews with relevant personnel of the Parties and interviews with customers, as set out in **Annex A**. CCCS also sent notices pursuant to section 63 of the Act to customers including restaurants, hotels and supermarkets, to obtain documents and information relating to prices and correspondence with the Parties.

58. Between January 2015 and October 2015, CCCS sent further notices pursuant to section 63 of the Act to each Party requesting for documents and information relating to each Party's customer list, product prices and turnover for the past financial years.

59. Some of the original documents that CCCS relied on for the purpose of this ID are in the Chinese language. During the course of the investigation, the Parties provided CCCS with translations of the documents in the English language.[87] CCCS relied on the English translations provided by the Parties and where CCCS quotes from those documents, the quotations are from those English translations.

60. As [✂] had come forward with information on alleged anti-competitive conduct which led to the investigations by CCCS into the fresh chicken distribution industry under section 62 of the Act, on 31 December 2015, he was informed that he may be eligible for a financial reward under the CCCS Reward Scheme.[88] [✂].

[87] In accordance with Regulation 24 of the Competition Regulations 2007.

[88] Information relating to the CCCS Reward Scheme can be found at: https://www.cccs.gov.sg/faq/approaching-cccs-for-leniency-or-reward.

D. Further Investigations and Leniency

61. On 8 March 2016, CCCS sent notices of the Proposed Infringement Decision ("**PID**") to the Parties. On the same day, the documents in CCCS's file were made available to the Parties for inspection. Between 19 April 2016 and 6 May 2016, all the Parties submitted written representations to CCCS. Five of the Parties, namely, the Lee Say Group, the Tong Huat Group, Ng Ai, Sinmah, and Toh Thye San, requested for, and subsequently made, oral representations to CCCS.

62. On 27 September 2016, the Parties were informed that CCCS would be conducting further investigations on the basis of fresh allegations of fact brought up in their representations to CCCS. In this regard, CCCS informed the Parties of the availability of leniency under paragraph 3 of the *CCS Guidelines on Lenient Treatment for Undertakings coming forward with Information on Cartel Activity Cases 2009* ("CCS Leniency Guidelines").

63. On 12 October 2016, the Tong Huat Group, represented by Dentons Rodyk & Davidson LLP, applied for a marker relating to anti-competitive agreements between fresh chicken distributors for the distribution of whole and cut fresh chickens, [✂] under paragraph 3 of the CCS Leniency Guidelines. On the same day, the Tong Huat Group was granted a marker for leniency.

64. On 17 October 2016, Sinmah, represented by Drew & Napier LLC, applied for lenient treatment under paragraph 4 of the CCS Leniency Guidelines. On the same day, Sinmah was granted a place in the leniency queue.

65. On 26 October 2016, Kee Song, represented by Harry Elias Partnership LLP, applied for lenient treatment under paragraph 4 of the CCS Leniency Guidelines. On the same day, Kee Song was granted a place in the leniency queue.

66. On 10 November 2016, Hock Chuan Heng/Hy-fresh, represented by Aptus Law Corporation, applied for lenient treatment under paragraph 4 of the CCS Leniency Guidelines. On the same day, Hock Chuan Heng/Hy-fresh was granted a place in the leniency queue.

67. In the course of the further investigations, CCCS conducted interviews with key personnel and sent further notices pursuant to section 63 of the Act to each Party requiring the production of additional information and documents.

68. On 21 December 2017, CCCS sent notices of the Supplementary Proposed Infringement Decision ("**SPID**") to the Parties and the documents in CCCS's file relating to the further investigations were made available to the Parties for inspection. Between 8 February 2018 and 1 March 2018, all the Parties submitted written representations to CCCS. Two of the Parties, namely the Lee Say Group and Toh Thye San, requested and subsequently made oral representations to CCCS.

69. Between 20 and 25 June 2018, CCCS sent section 63 notices to the Parties to request financial information and received responses between 21 June 2018 and 23 July 2018. CCCS requested clarifications from Hup Heng, Prestige and Toh Thye San on 25 July 2018 and received responses between 26 and 27 July 2018.

70. After considering the evidence and representations made by the Parties, CCCS finds that there has been an infringement of section 34 of the Act.[89]

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

A. The Section 34 Prohibition

71. Section 34(1) 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 34 prohibition"). Section 34(2) of the Act states that:

> "*… agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they –*
> *(a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
> *(b) limit or control production, markets, technical development or investment;*
> *(c) share markets or sources of supply; …*".

[89] Joint representations were submitted by the following groups: (i) Lee Say, Hup Heng, Prestige, ES Food and KSB, (ii) Tong Huat and Ban Hong, (iii) Gold Chic and Hua Kun. CCCS has therefore considered each joint representation to apply to all entities within the corresponding group, except where the representation is only pertinent to specified entities.

i. Applicability of European Law

72. In *Pang's Motor Trading v CCS*[90], the Competition Appeal Board ("CAB") accepted 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 the relevant sections of their respective competition statutes. Specifically, the CAB stated that:

> "*33 …decisions from the UK and the EU are highly persuasive because the s 34 prohibition in our Act was modelled closely after Chapter I of the UK Competition Act 1998 and Art 101 of the Treaty of Functioning of the European Union (formerly Art 81 of the European Community Treaty). Indeed, the Board has previously stated that decisions from these jurisdictions were highly persuasive (Re Abuse of a Dominant Position by SISTIC.com Pte Ltd [2012] SGCAB 1 ("SISTIC") at [287])*".[91]

B. Application to Undertakings

73. 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(1) 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.[92] Each of the Parties carries on commercial or economic activities relating to, amongst other things, the distribution of fresh chicken products, and therefore constitutes an "undertaking" for the purposes of the Act.

i. *When Two or More Entities Form Part of the Same Undertaking/Economic Unit*

74. The section 34 prohibition does not apply to agreements where there is only one undertaking, that is, between entities which form a single economic unit. The

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[90] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1.

[91] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [33].

[92] Case C-41/90 *Hofner and Elser v Macrotron GmbH* [1991] ECR I-1979, at [21]. Also see in particular, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and others v European Commission* [2005] ECR I-5425, recital 112; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, recital 107; Case C-205/03 P *FENIN v Commission*, [2006] ECR I-6295, at [25] and Case C-97/08 P *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [54].

CCS Guidelines on the Section 34 Prohibition states that two entities – a parent and its subsidiary company or two companies which are under the control of a third company, form a single economic entity ("SEE") if the subsidiary has no real freedom to determine its course of action in the market and, although having a separate legal personality, enjoys no economic independence.[93]

75. In this connection, where there are several undertakings within a corporate group involved in an infringement of the section 34 prohibition, to identify the entity whose conduct is to be assessed, an assessment will be required as to whether two or more entities constitute an SEE. Should an SEE exist, agreements between the entities within the SEE fall outside the purview of section 34. The existence of an SEE can also render one entity liable for the anti-competitive conduct of another entity within the SEE. This section sets out in brief the legal framework for the application of the doctrine of an SEE followed by how liability can be attributed in the context of an SEE and in the context of succession.

76. The courts of the EU have recognised that while companies belonging to the same group may have distinct and separate natural or legal personalities, the term "undertaking" must be understood as designating an economic unit for the purpose of the subject-matter of the agreement in question even if in law, that economic unit consists of several persons, natural or legal.[94]

77. Undertakings have been further defined by the General Court (formerly the Court of First Instance ("CFI")) as "*economic units which consist of a unitary organisation of personal, tangible and intangible elements, which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement, which pursue a specific economic aim on a long-term basis and can contribute to the commission of an infringement of the kind referred to in that provision*".[95] The "undertaking" that participated in the infringement is therefore not necessarily the same entity as the precise legal entity within a group of companies whose representatives actually took part in the cartel conduct.[96]

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[93] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.7.
[94] Case 170/83 *Hydrotherm Gerätebau GmbH v Firma Compact del Dott. Ing. Mario Andreoli & C.Sas* [1984] ECR 2999, at [11]; and Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, at [40].
[95] Case T-11/89 *Shell v Commission* [1992] ECR II-757, at [311]; Case T-9/99 *HFB v Commission* [2002] ECR II-1487, at [54].
[96] Case COMP/39188 – *Bananas*, at [361].

78. The law on SEE applicable in Singapore has been neatly summarised in the CAB decision, *Express Bus Operators Appeal No.3*[97]:

> "67 *It is generally accepted that a single economic entity is a single undertaking between entities which form a single economic unit. In particular, an agreement between a parent and its subsidiary company, or between two companies which are under the control of a third company…if the subsidiary has no real freedom to determine its course of action in the market and although having a separate legal personality, enjoys no economic independence. Ultimately, whether or not the entities form a single economic unit will depend on the facts and circumstances of the case ([2.7]-[2.8] of the CCS Guidelines on the section 34 prohibition; see also Akzo Nobel v Commission of the European Communities, 11 December 2003, at [54]-[66])*".[98]

79. In *Akzo Nobel*, the European Court of Justice ("ECJ")[99] observed that the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and must be understood as designating an economic unit. It further stated:

> "58 *It is clear from settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company (see, to that effect, Imperial Chemical Industries v Commission, paragraphs 132 and 133; Geigy v Commission, paragraph 44; Case 6/72 Europemballage and Continental Can v Commission [1973] ECR 215, paragraph 15; and Stora, paragraph 26), having regard in particular to the economic, organisational and legal links between those two legal entities (see, by analogy, Dansk Rørindustri and Others v Commission, paragraph 117, and ETI and Others, paragraph 49).*

[97] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2.
[98] *Ibid*. at [67].
[99] Now known as the Court of Justice (as of 1 December 2009). For the purpose of this decision, the Court of Justice will be referred to the ECJ.

> *59 That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of the case-law mentioned in paragraphs 54 and 55 of this judgment. Thus, the fact that a parent company and its subsidiary constitute a single undertaking within the meaning of Article 81 EC enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement.*"

80. Under EU competition law, when a parent company has a 100% shareholding in a subsidiary, whether held directly or indirectly, the parent and subsidiary are an SEE unless proved otherwise.[100] The ECJ in *Akzo Nobel* stated that "*it follows from that case-law… that it is for the parent company to put before the Court any evidence relating to the economic and legal organisational links between its subsidiary and itself which in its view are apt to demonstrate that they do not constitute a single economic entity*".[101]

81. An SEE can also exist where the parent company does not have 100% shareholding in a subsidiary. For example, in *Commercial Solvents*[102], the parent company owned 51% of its subsidiary with a 50% representation on its decision-making board and committee, and held the right to appoint the subsidiary's Chairman, who held the casting vote. The ECJ ruled in *Commercial Solvents* that the parent and subsidiary are an SEE on account of the parent company's power of control over the subsidiary.[103]

82. The EU courts, in assessing parent-subsidiary relationships to determine whether a parent should be imputed with liability for the actions of its subsidiary, have evaluated whether the parent has exercised decisive influence over the subsidiary, such that they are an SEE. Indicia of decisive influence would include the parent's shareholding in the subsidiary[104], a parent being active on

[100] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [65]. See also Case C-90/09P *General Quimica SA and Others v Commission* [2011] ECR I-1, at [39] to [42].
[101] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [65].
[102] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 0223.
[103] Ibid. at [41].
[104] Case C-97/08 *P Akzo Nobel NV v Commission* [2009] ECR I-08237, at [60] to [62]; Case C-286/98 *P Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, at [23] and [27] to [29]; and Case 107/82 *AEG-Telefunken v Commission* [1983] ECR 3151. More recently, see *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6, at [22].

the same or adjacent markets to its subsidiary[105], direct instructions being given by a parent to a subsidiary[106] or the two entities having shared directors[107].

83. Importantly, the exercise of decisive influence can be "*indirect and may be established even if the parent does not interfere in the day to day business of the subsidiary and even if the influence is not reflected in instructions or guidelines emanating from the parent to the subsidiary.*"[108]

84. Operational details are also taken into account when determining the existence of an SEE. The CAB in the *Express Bus Operators Appeal No. 3*[109] accepted the parties' arguments based on *Minoan Lines*[110] that they were an SEE by reason of their agency relationship as well as other factors which included matters like sharing of the same general manager, the same registered address and business premises. In the *Freight Forwarding Case*[111], CCCS considered that companies formed an SEE when taking into consideration the reporting structure, arrangements with regard to profit sharing, common directorship, the right to nominate directors, and influence in commercial policies.

ii. Attribution of Liability

85. When an economic entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.[112]

86. As set out at paragraphs 74 to 84 above, an SEE exists when separate legal entities enjoy no economic independence having regard, *inter alia*, to the economic, organisational and legal links between them. Where an SEE

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[105] Opinion of Advocate-General Mischo in Case C-286/98 P *Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, at [49].
[106] Case 48/69 *ICI Limited v Commission* [1972] ECR 619, at [132] to [133]; Case 52/69 *J R Geigy AG v Commission* [1972] ECR 787, recitals 44 to 45; and Case C-73/95 P *Viho Europe BV v Commission* [1996] ECR I-5457, at [16].
[107] *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, at [77] to [80].
[108] *Durkan Holdings Ltd v Office of Fair Trading* [2011] CAT 6, at [22]. See also Case T-25/06 *Alliance One v Commission* [2011] ECR II-5741, at [138] and [139] which states that day to day management control is not required, and the power to define or approve certain strategic decisions is sufficient.
[109] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2, at [68] and [69].
[110] Case T-66/99 *Minoan Lines v Commission* ECR II 5515 [2005] 5 CMLR 7597.
[111] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore* at [527] to [561].
[112] Case C 49/92 P *Commission v Anic Partecipazioni* [1999] ECR I 4125, at [145]; Case C 279/98 P *Cascades v Commission* [2000] ECR I-9693, at [78]; and Case C-280/06 *Autorita Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA and Philip Morris* [2007] ECR I-10893, at [39].

infringes competition law, liability for any infringement can be attributed to the SEE as a whole.[113]

87. In *AKZO*[114], the European Commission ("EC") addressed the statement of objections to AKZO Chemie instead of limiting it only to its United Kingdom subsidiary. In explaining the attribution of liability to the parent company, the EC stated that:

> "*90 It may well be that in private law a parent company and its subsidiaries are separate legal persons. The relevant prohibitions in Articles 85 and 86 are directed to "undertakings", a concept not limited by the strict application of the doctrine of legal personality. The present case concerns an abuse of the dominant position held by AKZO in the organic peroxides market as a whole. AKZO Chemie and the subsidiary companies through which it operates in the different Member States form a single economic unit. In any case, the actions of AKZO UK on the flour additives market were carried out on the direction and with the knowledge of senior executives from the parent company AKZO Chemie. AKZO UK can in no way be said to conduct its business autonomously of its parent*".[115]

88. In parent-subsidiary relationships, liability can be imputed to the parent company even where the parent company does not directly participate in the infringement.[116] While a parent may not be directly involved in the infringing acts, it could have influenced the policies and conduct of their subsidiaries but failed to do so. Consequently, the EU courts held that where a presumption of an SEE arises or where the parent exercises "decisive influence" over the subsidiary, a parent can be liable for the actions of its subsidiaries. [117]

89. In view of the above, two or more entities can be considered an SEE in light of the economic, legal and organisational links between them in relation to their activities which relate to a finding of infringement. In the case of parent-subsidiary relationships, a parent may be liable for the conduct of the subsidiary even where it did not participate in the infringement when the presumption of

[113] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [77]; Case C-294/98 P *Metsä Serla and Others* v *Commission* , at [58] and [59].
[114] Case IV/30.698 *ECS/AZKO* [1985] OJ L374/1.
[115] *Ibid.* at [90].
[116] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [58].
[117] *Ibid*. at [77].

an SEE arises or where the parent exercises "decisive influence" over the subsidiary.

90. The characterisation of each of the Parties as an SEE is discussed in the "Decision of Infringement" section below.

iii. Succession of an infringing entity

91. Liability for an infringement cannot be avoided simply by reason that the original legal entity responsible for the anti-competitive conduct no longer exists. Where the original legal entity no longer exists it is necessary to consider whether there is functional and economic continuity between the original entity and any new entity which succeeded it.[118] In *Suiker Unie v Commission*[119], the court found that the applicant, Suiker Unie, must be treated as the successor of the old association because it had assumed "*all the rights and liabilities*" of the latter.

92. The ECJ has confirmed that restructurings, sales or other legal or organisational changes will not allow an undertaking to escape liability for competition law infringements. In *Autorita Garante della Concorrenza e del Mercato*[120], the ECJ stated:

> "*…it must be noted that if no possibility of imposing a penalty on an entity other than the one which committed the infringement were foreseen, undertakings could escape penalties by simply changing their identity through restructurings, sales or other legal or organisational changes. This would jeopardise the objective of suppressing conduct that infringes the competition rules and preventing reoccurrence by means of deterrent penalties…the legal forms of the entity that committed the infringement and the entity that succeeded it are irrelevant. Imposing a penalty for the infringement on the successor can therefore not be excluded simply because…the successor has a different legal status and is operated differently from the entity that it succeeded*".[121]

[118] Case IV/31.865 *PVC* [1989] OJ L74, at (42); and Joined Cases 40-48/73, 50/73, 54 -56/73, 111/73, 113/73 and 114/73 [1975] ECR-1663 *Suiker Unie v Commission* [1975] ECR 1663, at [75] to [87].
[119] Joined Cases 40-48/73, 50/73, 54 -56/73, 111/73, 113/73 and 114/73 [1975] ECR-1663, at [84].
[120] Case C-280/06 *Autorita Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA and Philip Morris* [2007] ECR I-10893.
[121] *Ibid*. at [41] and [43].

93. Where the undertaking that is responsible for the infringement is still in existence, it remains liable for the infringement rather than the acquirer. In the decision of *Zinc phosphate*[122], the EC stated that:

> "*238 When an undertaking committed an infringement…and when this undertaking later disposed of the assets that were the vehicle of the infringement and withdrew from the market concerned, the undertaking in question will still be held responsible for the infringement if it is still in existence*."[123]

94. In *Re Sodium Chlorate Cartel: Uralita v European Commission,*[124] the General Court found that liability can be attributed to the legal successor of a company found to have infringed competition law. In this regard, the General Court observed that:

> "*61 [G]iven the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, responsibility for committing those infringements was personal in nature, and a person, whether natural or legal, could be penalised only for acts imputed to it individually. In accordance with that principle, the Commission might not impute to the purchaser of a legal entity liability for that entity's conduct prior to the purchase, such liability having to be imputed to the company itself where that company still exists...*
>
> *62 It is not, however, incompatible with that principle to impute to a former parent company liability for its own conduct even if that means, where that parent company has ceased to exist as a legal person after the infringement was committed, that the penalty was imposed on the purchaser, who is unconnected with the infringement...*"[125]

95. In the context of this ID, CCCS is of the view that where certain Parties are concerned, the natural or legal person that engaged in the conduct investigated has been through organisational changes, such as mergers and business acquisitions. This would not absolve the relevant Parties of liability and their economic successors would be liable for any infringement. This is discussed in

[122] Case COMP/E-1/37.027 *Zinc Phosphate* [2003] OJ L153.
[123] *Ibid*. at [238].
[124] Case T0349/08 *Re Sodium Chlorate Cartel: Uralita v European Commission* [2012] 4 CMLR 4.
[125] *Ibid*. at [61] to [62].

Section A of Chapter 3 below, entitled "Addressees of CCCS's Infringement Decision".

C. Agreements and/or Concerted Practices

96. An agreement is formed when parties arrive at a consensus on the actions each party will, or will not, take. The section 34 prohibition applies to both legally enforceable and non-enforceable agreements, whether written or oral, and to 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.[126] The form of the agreement is irrelevant. An agreement may be found where it is implicit from the participants' behaviour. For an agreement to exist, it "*is sufficient if the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way*".[127]

97. The section 34 prohibition also applies to concerted practices. A concerted practice exists, if parties, even if they do not enter into an agreement (either express or implied), "*knowingly substitute for the risks of competition, practical cooperation between them*".[128]

98. CCCS has stated the principle in the *Pest Control Case*[129], and subsequently in the *Express Bus Operators Case*[130] and the *Electrical Works Case*[131]:

> "*the concept of a concerted practice must be understood in the light of the principle that each economic operator must determine independently the policy it intends to adopt on the market*".[132]

99. This principle was set out in the ECJ decision of *Suiker Unie v Commission*[133], where it was held that any contact, indirect or direct, between competitors where the object or effect is either to influence the conduct on the market of an actual competitor or to disclose to such a competitor the course of conduct which they

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[126] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.10.
[127] Case T-7/89 *SA Hercules Chemicals v Commission* [1991] ECR II-1711, at [2].
[128] Case 48/69 *ICI v Commission* [1972] ECR 619, at [64]; and *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [206 (iii)]. See also C*CS Guidelines on the Section 34 Prohibition*, paragraph 2.16.
[129] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [42].
[130] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [50].
[131] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [40].
[132] *Ibid.*
[133] Joined Cases 40-48/73, 50/73, 54 -56/73, 111/73, 113/73 and 114/73 *Suiker Unie v Commission* [1975] ECR-1663, at [26] and [173] to [174]. See also Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85 to C-129/85, *Ahlstrom Osakeyhtio and Others v Commission* [1993] ECR I-1307, at [63].

themselves have decided to adopt or contemplate adopting on the market, is strictly precluded.

100. In *Commission v Anic Partecipazioni*[134], the ECJ re-affirmed this principle. The ECJ found that the EC was correct in its decision that Anic had participated in an EU-wide cartel operating in the polypropylene production sector from 1977 to 1983. The ECJ also set out the presumption applicable to conduct that constitutes a concerted practice: [135]

> "*118 It follows that, as is clear from the very terms of Article [101(1)] of the Treaty, a concerted practice implies, besides undertakings' concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.*
>
> *….*
>
> *121 ... subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market, particularly when they concert together on a regular basis over a long period …*".[136]

101. In relation to the presumption set out in *Commission v Anic Partecipazioni*, the ECJ found in *T-Mobile Netherlands v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* [137] that a concertation can occur even where the exchange is only between parties at a single meeting. The ECJ held:

> "*59 Depending on the structure of the market, the possibility cannot be ruled out that a meeting on a single occasion between competitors, such as that in question in the main proceedings, may, in principle, constitute a sufficient basis for the participating undertakings to concert their market conduct and thus successfully substitute practical cooperation between them for competition and the risk that that entails.*
>
> *...*

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[134] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125.
[135] *Ibid.* at [118] and [121]. See also Case C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287, at [162].
[136] *Ibid.*
[137] Case C-8/08 *T-Mobile Netherlands BV and Others v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529.

> *61 In these circumstances, what matters is not so much the number of meetings held between the participating undertakings as whether the meeting or meetings which took place afforded them the opportunity to take account of the information exchanged with their competitors in order to determine their conduct on the market in question and knowingly substitute practical cooperation between them for the risks of competition. Where it can be established that such undertakings successfully concerted with one another and remained active on the market, they may be justifiably called upon to adduce evidence that that concerted action did not have any effect on their conduct on the market in question*".[138]

i. Not Necessary to Conclude whether Conduct is an Agreement and/or Concerted Practice

102. It is not necessary for the purposes of finding an infringement to characterise the conduct as exclusively an agreement or a concerted practice. It is established law in the EU that the conduct of undertakings is capable of being both a concerted practice and an agreement.[139] In *SA Hercules Chemicals v Commission*[140], the CFI found that Hercules took part, over a period of years, 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 characterise that single infringement as "an agreement and a concerted practice" since the infringement involved, at one and the same time, factual elements to be characterised as "agreements" and factual elements to be characterised as "concerted practices".

103. This position was endorsed and followed by CCCS in the *Pest Control Case*[141], *Express Bus Operators Case*[142], *Electrical Works Case*[143] and the *Freight Forwarding Case*[144].

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[138] Case C-8/08 *T-Mobile Netherlands BV and Others v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529, at [59] and [61].
[139] Case IV/37.614/F3 *Interbrew and Alken-Maes* [2003] OJ L200/1, at [223].
[140] Case T-7/89 [1991] ECR II-1711, at [264].
[141] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [44] to [47].
[142] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [55] to [58].
[143] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [45] to [47].
[144] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore* at [107] to [110].

104. Similarly, in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*[145], the United Kingdom Competition Appeal Tribunal ("UK CAT") stated at [644]:

> "*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…*"

105. For the purposes of this ID, CCCS has assessed whether the conduct of the Parties constitutes an agreement and/or concerted practice that has infringed the section 34 prohibition in Section J below, entitled "Evidence relating to the Agreements and/or Concerted Practices".

D. Party to an Agreement and/or Concerted Practice

106. In *Aalborg Portland AS v Commission*[146], the ECJ stated that:

> "*81 According to settled case-law, it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs*".[147]

107. The reason underlying the above principle of law is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking has given the other participants to believe that it subscribed to what was decided there and would comply with it. The ECJ further explained in *Aalborg*[148]:

> "*84 In that regard, a party which tacitly approves of an unlawful initiative,* ***without publicly distancing itself from its content or***

[145] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17.
[146] 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 *Aalborg Portland AS v Commission* [2004] ECR I-0123, at [81].
[147] *Ibid*.
[148] *Ibid*. at [84] to [86].

> ***reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable in the context of a single agreement.***
>
> *85* ***Nor is the fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose such as to relieve it of responsibility for the fact of its participation in a cartel, unless it has publicly distanced itself from what was agreed in the meeting.***
>
> *86* ***Neither is 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 material to the establishment of the existence of an infringement on its part.*** *Those factors must be taken into consideration only when the gravity of the infringement is assessed and if and when it comes to determining the fine*". [Emphasis added]

108. Likewise, in *Sarrio SA v Commission*[149], the CFI held 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 does not 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. In particular, where public distancing is concerned, the CFI in *Adriatica v Commission*[150] held that:

> "*135 the requirement that an undertaking publicly distance itself, is part of a legal principle, according to which, where an undertaking attends meetings involving illegality, it may be exonerated where the evidence shows that it formally distanced itself from the content of those meetings*".

109. In this respect, the legal position is that mere participation by an undertaking in a meeting with an anti-competitive purpose, without expressing manifest opposition to or publicly distancing itself from the same, is tantamount to a tacit

[149] C-291/98P *Sarrio SA v Commission* [2000] ECR I-9991, at [50].
[150] Case T-61/99 *Adriatica v Commission* [2003] ECR II-5349, at [135].

approval of that unlawful initiative. Further, the ECJ in *Total Marketing Services SA v European Commission* ("*Total Marketing Services*")[151] has affirmed that the lack of direct evidence of an undertaking's participation during a specific period of time does **not** preclude the participation from being established if there are objective and consistent indicia:

> "*27 As regards, in particular, an infringement extending over a number of years, the Court has held that the fact that direct evidence of an undertaking's participation in that infringement during a specified period has not been produced does not preclude that participation from being regarded as established also during that period, provided that that finding is based on objective and consistent indicia.*"[152]

i. What Constitutes Public Distancing in order to exclude liability

110. In *Westfalen Gassen Nederland BV v Commission*[153] the CFI clarified that the notion of public distancing as a means of excluding liability should be interpreted narrowly. Otherwise, it would be impossible to prevent infringements of competition law committed by cartels if it were to be accepted that undertakings may attend such meetings with impunity.[154] To this end the CFI held that silence at a meeting, during which undertakings colluded unlawfully on a precise question of pricing policy, was not tantamount to an expression of firm and unambiguous disapproval.[155]

111. Further, an undertaking's disagreement with what was proposed at the meeting is not sufficient to amount to public distancing. This position was endorsed by the CFI in *LR AF 1998 v Commission*[156] and by the UK CAT in *JJB Sports Plc v Office of Fair Trading*[157]. CCCS thus notes that silence at a meeting or disagreement with the substance of the proposal does not constitute an unequivocal communication that the undertaking disagrees with the unlawful initiative.[158]

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[151] Case C-634/13P *Total Marketing Services v Commission*, at [27].
[152] *Ibid.* at [27].
[153] Case T-303/02 [2007] 4 CMLR 334, at [103].
[154] See the Opinion of Advocate General Mischo in Case C-291/98 P *Sarrio SA v Commission* [2000] ECR I-9991, at [45].
[155] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334, at [124].
[156] Case T-23/99 *LR AF v Commission* [2002] ECR II-1705, at [55].
[157] *JJB Sports Plc v Office of Fair Trading* [2004] CAT 17, at [879].
[158] *Re Price fixing of monthly salaries of new Indonesian Foreign Domestic Workers by Employment Agencies* [2011] SGCCS 4, at [57].

ii. Limited Participation or cheating does not equate to Public Distancing

112. Further, the mere fact that an undertaking may have played only a limited part 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 was not party to the agreement or concerted practice.[159] Active steps should be taken by the undertaking that receives the information to distance itself from the conduct.

113. In *Tréfileurope Sales SARL v Commission*[160], Tréfileurope argued that it was offered a quota of 1300 tonnes a month at a meeting on 20 October 1981 but did not accept it. In respect of the Benelux market, Tréfileurope admitted to participating in the meetings at which agreements were concluded on the prices of standard and catalogue mesh but maintained that it attended them only to familiarise itself with market conditions and that it played a purely passive role.

114. The CFI concluded that Tréfileurope had participated in the agreements on prices concerning the Benelux market and was of the view that:

> "*85 In any event, even if it is assumed that the applicant refrained, at least in part, from participating actively in the meetings, the Court considers that, having regard to the manifestly anti-competitive nature of the meetings, …, the applicant, by taking part without publicly distancing itself from what occurred at them, gave the impression to the other participants that it subscribed to the results of the meetings and would act in conformity with them*".[161]

115. Similarly, a participant who "cheats" by attempting to gain market share at the expense of other participants through acting differently from the cartel's agreement is still liable for the infringement. In *Re Polypropylene*[162], the EC held that the fact that on some occasions producers might not have maintained their initial resolve and gave concessions to customers on price which undermined the price initiatives agreed upon did not preclude an unlawful agreement having been reached.

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[159] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.11.
[160] Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791.
[161] Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791.
[162] Case 86/398 *Re Polypropylene* [1986] OJ L230/1, at [85].

116. In the *Pest Control Case*[163], one of the infringing parties, Aardwolf, claimed that it had never intended to abide by the agreement to submit cover bids in support of the designated winner. Aardwolf had claimed that it gave the other parties the impression that it was participating in the agreement so that it could use the information on the tender it received from the other pest control operators to gain a competitive advantage over the others. In rejecting Aardwolf's argument, CCCS found:

> "*…that an agreement would still be caught under the section 34 prohibition even if it was not the intention of an undertaking so agreeing to implement or adhere to the terms of the agreement*".[164]

iii. Mere receipt of Information can lead to Liability

117. Liability can be attributed even where a party is a mere recipient of the information, unless the party distances itself from the unlawful initiative. In *Cimenteries v Commission*[165], the appellants had argued that mere receipt by a competitor of its intention could not have amounted to a concerted practice. In rejecting this argument, the CFI held that:

> "*1852 ...**In order to prove that there has been a concerted practice, it is not therefore necessary to show that the competitor in question has formally undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have colluded over their future conduct on the market. …. It is sufficient that, by its statement of intention, the competitor should have eliminated, or at the very least, substantially reduced uncertainty as to the conduct** [on the market to be expected on his part]*".[166] [Emphasis added]

118. The fact that only one of the participants at the meetings in question revealed its intentions is not sufficient, by itself, to exclude the possibility of an agreement or concerted practice. Hence, in *Tate & Lyle plc v Commission*[167], a case which concerned a series of meetings between British Sugar and its competitors, Tate & Lyle and Napier Brown, the CFI held that:

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[163] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1. There was no appeal to the CAB.
[164] *Ibid.* at [120] to [128].
[165] Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491.
[166] *Ibid.* at [1852].
[167] Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035 (upheld by the ECJ in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission* [2004] ECR I-4933).

> "*58 In Case T-1/89 Rhône-Poulenc v Commission [1991] ECR II -867, in which the applicant had been accused of taking part in meetings at which information was exchanged amongst competitors concerning, inter alia, the prices which they intended to adopt on the market, the Court of First Instance held that an undertaking by its participation in a meeting with an anti-competitive purpose, not only pursued the aim of eliminating in advance uncertainty about the future conduct of its competitors but could not fail to take into account, directly or indirectly, the information obtained in the course of those meetings in order to determine the policy which it intended to pursue on the market (Rhône-Poulenc, paragraphs 122 and 123).* ***This Court considers that that conclusion also applies where, as in this case, the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their market competitors***".[168] [Emphasis added]

119. In summary, a competitor should not, directly or indirectly, disclose information to another competitor that could influence its future conduct on the market. Such disclosure and corresponding receipt of the same information, significantly reduce, and may indeed eliminate, uncertainty as to competitors' future conduct on the market and thereby allow an undertaking to alter its behaviour accordingly. As a result of the disclosure or exchange of information, the participating undertakings are likely to behave differently on the market than if they were required to rely only on their own perceptions, predictions and experience of the market. Accordingly, the likely outcome of such an exchange of information is that the market will not be as competitive as it might otherwise have been.[169]

E. Single Continuous Infringement

120. An infringement of the section 34 prohibition may result not only from a single isolated act, but also from a series of acts or from continuous conduct. Where it can be established that a set of individual agreements are interlinked in terms of pursuing the same object or as part of a plan, they can be characterised as constituting a single continuous infringement.

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[168] Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035, at [58].
[169] *Tesco & Ors v Office of Fair Trading* [2012] CAT 31, at [51]. See also D. Bailey. "*Publicly Distancing Oneself From a Cartel*", 2008 World Competition Journal 31(2), at pages 189 to190.

121. In *Re Polypropylene*[170], the EC found that the producers of polypropylene were party to a whole complex of schemes, arrangements and measures decided in the framework of a system of regular meetings and continuous contact which constituted a single continuing agreement. The producers, by subscribing to a common plan to regulate prices and supply in the polypropylene market, had participated in an overall framework agreement that was manifested in a series of more detailed sub-agreements which were worked out from time to time. The EC stated:

> "83 *The essence of the present case is the combination over a long period of the producers towards a common end, and each participant must take responsibility not only for its own direct role but also for the operation of the agreement as a whole.* ***The degree of involvement of each producer is not therefore fixed according to the period for which its pricing instructions happened to be available but for the whole of the period during which it adhered to the common enterprise***".[171] [Emphasis added]

122. The concept of a single continuous infringement was explained by the CFI in *Rhône-Poulenc v Commission*[172] (whose judgment was confirmed by the ECJ on appeal) as follows:

> "*125 As regards the question whether the Commission was entitled to find that* there *was a single infringement, described in Article 1 of the Decision as "an agreement and concerted practice", the Court points out that, in view of their identical purpose, the various concerted practices followed and agreements concluded formed part of schemes of regular meetings, target-price fixing and quota fixing.*
>
> *126 Those schemes were part of a series of efforts made by the undertakings in question in pursuit of a single economic aim, namely to distort the normal movement of prices on the market in polypropylene. It would thus be artificial to split up such continuous conduct, characterized by a single purpose, by treating it as consisting of a number of separate infringements. The fact is that the applicant took part - over a period of years - in an integrated set of schemes constituting a single infringement,*

[170] Case 86/398 *Re Polypropylene* [1986] OJ L230/1.
[171] *Ibid*. at [83].
[172] Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II -867, at [125] to [126].

which progressively manifested itself in both unlawful agreements and unlawful concerted practices".[173]

123. The *Choline Chloride* case at both the EC[174] and CFI[175] levels illustrates the concept that the unequal and differing roles of each participant and the presence of internal conflict would not defeat the finding of a common unlawful enterprise.

124. The EC reiterated the principle set out in *Re Polypropylene* and went on further to state at [146] to [147]:

> "*146 Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role.* ***Some participants may have a more dominant role than others. Internal conflicts and rivalries, or even cheating may occur, but that will not prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the Treaty where there is a single common and continuing objective.***
>
> *147 The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants* ***but which share the same unlawful purpose and the same anti-competitive effect.*** *An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible,* ***for the whole period of its adherence to the common scheme,*** *for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question* ***was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk***."[176] [Emphasis added]

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[173] *Ibid.*
[174] Case COMP/E-2/37.533 *Choline Chloride* [2005] OJ L190/1.
[175] Joined Cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission of European Communities* [2007] ECR-4949, at [159].
[176] Case COMP/E-2/37.533 *Choline Chloride* [2005] OJ L190/1, at [146] and [147]. Also followed in *Re CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5, at [59].

125. In the appeal from the EC's decision, the CFI clarified that in order for the "common objective" to provide a sufficiently unifying umbrella such that the various activities can be said to comprise a single complex continuous infringement, the activities must be complementary in nature and contribute jointly towards the realisation of that common objective.[177]

126. In this ID at paragraphs 431 to 444, CCCS finds that the discussions between, and actions undertaken by, the Parties constituted a single continuous infringement.

F. Object or Effect of Preventing, Restricting or Distorting Competition

127. 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 this regard, the words "object" and "effect" are alternative and not cumulative requirements.[178]

128. It is well-established in 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.[179] This is also reflected at paragraph 2.20 of the *CCS Guidelines on the Section 34 Prohibition* – agreements involving restrictions of competition by object, for example, an agreement involving price-fixing, bid-rigging, market-sharing or output limitations, will always have an appreciable adverse effect on competition. This is because such types of coordination between undertakings are regarded by their very nature as being harmful to the proper functioning of normal competition.

129. European jurisprudence has also 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 an effect on the market. In *Tréfilunion SA v Commission*[180], the CFI said:

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[177] Joined Cases T-10l/05 and T-ll1/05 *BASF AG and UCB SA v Commission of European Communities* [2007] ECR-4949, at [179] to [181]. In Case T-446/05 *Amann & Söhne GmbH & Co KG v European Commission* [2010] 5 C.M.L.R. 14 at [93] to [106], the General Court set out several factors to be considered in whether a single infringement had taken place. These are: (1) the products were identical, (2) the cartel members were the same, (3) the cartel subject matter and modus operandi were similar, (4) the meetings were held on the same day and (5) the participating undertakings were represented at the same meetings by the same persons.
[178] For example: *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [48]; and *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [70].
[179] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [50].
[180] Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063.

> "*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) 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*".[181]

130. Similarly, the ECJ has held that there can be a concerted practice even if there is no actual effect on the market. In *P. Hüls AG v Commission*[182], the appellant had regularly participated in meetings where prices were fixed and sales volume targets were set. The ECJ held that it was not necessary for the competition authority to adduce evidence that the concerted practice had manifested itself in actual conduct on the market or that it had effects restrictive of competition. It followed from the actual text of Article 101(1) (then Article 81(1)) that concerted practices were prohibited, regardless of their effect, when they have an anti-competitive object.[183]

131. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*[184], the UK CAT 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*".[185]

[181] Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].
[182] Case C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287.
[183] Case C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287, at [164] to [168].
[184] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24.
[185] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [357].

132. There are certain types of conduct, such as price-fixing and market-sharing, that have such deleterious effects on the state of competition in the market that they are regarded as restrictive of competition by "object", without a need to analyse the effects of such agreements. It is only where the conduct does not clearly demonstrate a sufficient degree of harm that it may be necessary to examine the effects of the conduct. This was the decision of the ECJ in *Groupement des cartes bancaires v Commission* ("*Cartes Bancaires*"),[186] where the concept of an "object" infringement was examined in further detail. The case concerned a fee structure established by the nine main members of a payment card system. The ECJ annulled the General Court's finding that the fee structure restricted competition by object (i.e. preventing the entry of new banks into the sector) on the basis that it had erred in law on the meaning of "object". The ECJ held:

> "*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).*
>
> *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) 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 poor allocation of resources to the detriment, in particular, of consumers.*
>
> *52 Where the analysis of a type of coordination between undertakings does not reveal a sufficient degree of harm to competition, the effects of the coordination should, on the other hand, be considered and, for it to be caught by the prohibition, it is necessary to find that factors are present which show that competition has in fact been prevented, restricted or distorted to an appreciable extent…*

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

> *58 …[the] concept of restriction by competition by object can be applied only to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects…*"

133. Further, the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into the agreement, but rather on:

> "*49 …the objective meaning and purpose of the agreement considered in the economic context in which it is to be applied. Where an agreement has as its object the restriction of competition,* ***it is unnecessary to prove that the agreement would have an anti-competitive effect in order to find an infringement of section 34***".[187] [Emphasis added]

134. In this connection, an agreement may be regarded to have as its object the restriction of competition even if the agreement by the undertakings seeks to remedy the effects of a crisis in their industry. In *Competition Authority v Beef Industry Development Society*[188]*,* the parties 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 in order to make it more competitive through a reduction in production overcapacity. Expressly rejecting this argument, the ECJ held that:

> "*21 In fact, to determine whether an agreement comes within the prohibition laid down in Art.81(1) EC, 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***

[187] *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [49].
[188] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6.

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)*". [189] [Emphasis added]

G. Appreciably Prevent, Restrict or Distort Competition

135. In this case, the agreements and/or concerted practices in question involve market-sharing and price-fixing.

i. Market-sharing

136. Market-sharing may involve the apportionment of markets whether by territory, or type or size of customer. An agreement between competitors to not compete for each other's customers has been found to be a market-sharing agreement. In *Interbrew and Alken-Maes* [190], where the undertakings entered into a non-aggression pact to "*respect current agreements*", "*no attacks on each other's customers*" and "*consult on new customers*", the EC found that:

> "*262 …the agreement to respect each other's ties and national customers, must be regarded as an agreement to share customers on the on-trade market and hence, as a market-sharing agreement, which is expressly considered by Article 81(1) of the EC Treaty as restrictive of competition.*"[191]

137. In *Methylglucamine*, the EC similarly found that parties had sought to share the market through customer allocation, by preventing their respective customers from switching to another supplier through the quotation of higher list prices and agreeing not to compete for each other's main customers.[192]

138. CCCS regards such market-sharing agreements to be, by their very nature, restrictive of competition to an appreciable extent.[193]

ii. Price-fixing

139. Price-fixing agreements may involve fixing either the price itself or an element or component of a price. This principle was applied in the *Express Bus*

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[189] *Ibid.* at [21].
[190] Case IV/37.614/F3 *Interbrew and Alken-Maes* [2003] OJ L200/1.
[191] *Ibid.* at [262].
[192] Case COMP/E-2/37.978 *Methylglucamine* [2004] OJ L38/18, at [90] to [97].
[193] *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.9.

Operators Case[194], where CCCS found that the agreement to impose a uniform surcharge (the fuel and insurance charge agreement), constituted a component of the total coach ticket price and was a "*clear price-fixing agreement*" because it amounted to an agreement to introduce a uniform increase in price.[195] On appeal, the CAB held that the parties who participated in the price-fixing agreements must have been aware, or could not have been unaware, that the agreements had the object or would have the effect of restricting competition.[196]

140. This principle has also been applied in *Ferry operators – Currency surcharges*[197] and *Bolloré Sa and Others v Commission of the European Communities*[198]. In *Ferry operators – Currency surcharges*, five ferry operators arranged to bring about the imposition of a common currency surcharge on freight being transported on United Kingdom-Continent routes following the devaluation of the pound sterling in September 1992. Identical surcharges with a common introduction date and common method of calculation were subsequently announced. The EC found that the arrangement between the ferry operators amounted to a concerted practice to introduce a uniform increase in price notwithstanding that the surcharges were not implemented at all or that they were only partially implemented.[199]

141. Furthermore, the CFI in *Bolloré v Commission* clarified that where undertakings agree to increase prices, and announce to their customers what those increases will be, it is irrelevant to a finding of infringement that prices are subsequently negotiated with individual customers that differ from what was agreed:

> "*451. The fact that the undertakings actually announced the agreed price increases and that the prices so announced served as a basis for fixing individual transaction prices suffices in itself for a finding that the collusion on prices had both as its object and effect a serious restriction of competition (Case T-308/94 Cascades v Commission [1998] ECR 11-925, paragraph 194).* ***The Commission was not therefore required to examine the details of the parties' arguments seeking to establish that the agreements in question did not have the effect of increasing***

[194] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [77] and [78].
[195] *Ibid.* at [294].
[196] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [143].
[197] IV/34.503 – *Ferry operators – Currency surcharges* [1997] OJ L 26/23.
[198] Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Re Carbonless Paper Cartel: Bollore Sa and Others v Commission of the European Communities* [2007] 5 CMLR 2.
[199] V/34.503 – *Ferry operators – Currency surcharges* [1997] OJ L 26/23, at [59] and [65].

prices beyond those which would have been observed under normal conditions of competition and to respond point by point to those arguments*…*

452. Furthermore, ***the fact that certain applicants' price instructions did not always strictly correspond to the target prices set at the meetings is not such as to undermine the finding that there was an impact on the market*** *through the taking into account of the agreed price announcements when individual prices were set…*

453. That finding of an impact on the market through the announcement of agreed prices and the fact that those prices impacted on clients cannot be called in question by the fact that the relevant documentary evidence gathered by the Commission does not cover the entire period referred to…"[200] [Emphasis added]

142. CCCS regards direct or indirect price-fixing to be, by their very nature, restrictive of competition to an appreciable extent.[201]

iii. Disclosure and/or Exchange of Price Information

143. The disclosure and/or exchange of price information may also serve to reinforce a single overall agreement or concerted practice. For example, the CFI in *Cimenteries CBR SA v Commission*[202] held that the purpose of exchanging price information was to reinforce the general agreement and that, as the general agreement had the object of restricting competition, the exchange of price information also had the object of restricting competition.

144. The disclosure and/or exchange of future pricing intentions can also amount to an infringement of the section 34 prohibition. In *JJB Sports plc and Allsports Limited v Office of Fair Trading* [203], the UK CAT held that:

"*873 …even if the evidence had established only that JJB had unilaterally revealed its future pricing intentions to Allsports and*

[200] Joined Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 *Re Carbonless Paper Cartel: Bollore Sa and Others v Commission of the European Communities* [2007] 5 CMLR 2, at [451] to [453].
[201] *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.2.
[202] Joined Case T-25/95 etc *Cimenteries CBR SA v Commission* [2000] 5 C.M.L.R. 204.
[203] *JJB Sports plc v Office of Fair Trading* [2004] CAT 17.

Sports Soccer a concerted practice falling within the Chapter I prohibition would thereby have been established. ***The fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition****, which strictly precludes any direct or indirect contact between competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions...*".[204] [Emphasis added]

145. The threat to effective competition is especially obvious where an arrangement involves the regular and systematic exchange of specific information as to future pricing intentions between competitors. The exchange of such information reduces uncertainties inherent in the competitive process and facilitates the coordination of the parties' conduct on the market.[205] Furthermore, and as the UK CAT confirmed in *JJB Sports plc and Allsports Limited v Office of Fair Trading*[206], the law presumes that a recipient of information about the future conduct of a competitor cannot fail to take that information into account when determining its own future policy on the market.

146. In light of the foregoing, the disclosure and/or exchange of future pricing intentions or price information can restrict competition by object and can serve to reinforce a single overall agreement and/or concerted practice.

iv. The agreements and/or concerted practices in the present case constitute market-sharing and price-fixing

147. In the present case, the evidence indicates that the Parties have participated in agreements and/or concerted practices relating to not competing for each other's customers (the "Non-Aggression Pact") and to the quantum and timing of price movements in relation to the sale and distribution of fresh chickens in Singapore (the "Price Discussions"). The Price Discussions also include the exchange of price information and future pricing intentions.

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[204] *Ibid.* at [873].

[205] OFT 408, *Trade Associations, Professions and Self-regulating Bodies*, December 2004, paragraph 3.10. This guidance, originally published by the OFT, has been adopted by the Competition Markets Authority ("CMA") when it acquired its powers on 1 April 2014. The original text has been retained.

[206] [2004] CAT 17, at [873], citing Cases T-202/98 etc *Tate and Lyle* [2001] ECR II-2035, at [56] to [58] and Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II-867, at [122] to [123]; confirmed by the Court of Appeal in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2006] EWCA Civ 1318, at [21].

148. Per paragraphs 136 to 142 above, the Non-Aggression Pact and Price Discussions constitute market-sharing and price-fixing respectively. CCCS further notes that mere disclosure and/or exchange of future pricing intentions is restrictive of competition by object and can serve to reinforce the agreements and/or concerted practices. The evidence analysis and the scope of the affected product market will be discussed in the sections entitled "Evidence relating to the Agreements and/or Concerted Practices" and "The Relevant Market".

H. Burden and Standard of Proof

149. CCCS bears the burden of proving that an infringement has been committed. The standard of proof to be applied is the civil standard, commonly known as the balance of probabilities. This follows from the structure of the Act, that is, the decisions by CCCS follow an administrative procedure, and directions and financial penalties are enforceable by way of civil proceedings under section 85 of the Act by registering the directions in a District Court in accordance with the Rules of Court.

150. The civil standard of burden of proof was applied by the CAB in *Express Bus Operators Appeals Nos. 1 and 2*.[207] The CAB stated:

> "*85 There is no dispute that the burden of proof is on the CCS to establish, on a balance of probabilities, the existence and the duration of any alleged infringement*".[208]

151. The civil standard burden of proof has likewise been affirmed by the UK CAT. In *Napp Pharmaceutical Holdings Limited v Director General of Fair Trading* ("*Napp Pharmaceuticals*")[209], the UK CAT held that whilst the standard of proof was the civil standard and that the OFT had to produce strong and compelling evidence to prove the infringement, the approach did not prevent the OFT, in discharging the burden of proof, from relying on inferences or presumptions that would, in the absence of countervailing indications, normally flow from a given set of facts.[210]

152. Likewise, European jurisprudence has also set out that in order to prove an infringement, the EC will require convincing proof in the form of a "*firm,*

[207] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [85].
[208] *Ibid*.
[209] [2002] CAT 1, [2002] Comp AR 13.
[210] *Ibid*, at [110] – [111].

precise and consistent body of evidence".[211] Notably, however, the CFI in *JFE Engineering Corp v Commission of the European Communities*[212] has clarified that it is "*not necessary*" for every item to satisfy this criterion of precision and consistency, and it would suffice "***if the body of evidence relied on by the institution, viewed as a whole, meets that requirement***". [213] The ECJ in *Sumitomo Metal Industries Ltd and others v Commission* ("Sumitomo")[214], upon an appeal from the CFI, examined the paragraphs setting out the principles governing the burden of proof and the taking of evidence which the CFI applied, including the paragraphs cited above, and held that the reasoning by the CFI was in accordance with the law.

i. Evidence must be assessed as a whole and not in isolation

153. The ECJ emphasised in *Dyestuffs*[215] that the assessment of evidence must be done holistically:

> "*68 …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.*"[216]

154. In other words, an assessment of a piece of evidence cannot be done in isolation but must be conducted in relation to other pieces of evidence. The reliability of a piece of evidence therefore, may be measured as a function of consistency with other known facts.

155. In *Westfalen Gassen Nederland BV v Commission*[217], the CFI was of the view that given the clandestine nature of cartels, where little or nothing may be committed in writing, depending on the particular context and the particular circumstances, even a single piece of evidence or wholly circumstantial evidence may be sufficient to meet the required standard. This position was set out earlier in *Aalborg Portland v Commission*[218] where the ECJ stated:

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[211] Cases 29 and 30/83 *CRAM and Rheinzink v Commission* at [16] to [20]; Cases C-89/85 etc *Ahlström Osakeyhtiö and others v Commission* [1993] ECR I-1307 at [127].
[212] *JFE Engineering Corp v Commission of the European Communities* (T-67/00, T-68/00, T-71/00 and T-78/00) [2004] E.C.R. II-2501; [2005] 4 C.M.L.R. 2.
[213] *Ibid*, at [180].
[214] Joined Cases C-403/04P and C-405/04P *Sumitomo Metal Industries Ltd and others v Commission*, at [41] to [45].
[215] Case 48/69 *ICI v Commission* [1972] ECR 619.
[216] *Ibid*. at [68].
[217] Case T-303/02 [2007] *Westfalen Gassen Nederland BV v Commission* 4 CMLR 334, at [106] to [107].
[218] Cases C-204/00 P etc *Aalborg Portland v Commission* [2004] ECR I-0123. See also *Durkan Holdings Ltd & Ors v Office of Fair Trading*, [2011] CAT 6, at [96].

"*56 Even if the Commission discovers evidence explicitly showing unlawful contact between traders, such as the minutes of a meeting, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction.*

57 In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules". [219]

156. Additionally, the UK CAT in *JJB Sports plc and Allsports Limited v Office of Fair Trading*[220] stated that:

"*206 As regards price fixing cases under the Chapter I prohibition, the Tribunal pointed out in Claymore Dairies that* ***cartels are by their nature hidden and secret; little or nothing may be committed to writing. In our view 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****: see Claymore Dairies at [3] to [10]*".[221] [Emphasis added]

157. In assessing whether the evidence is sufficient to meet the required standard, it is noteworthy that it is not necessary to prove the specific mechanism by which the anti-competitive object was attained. In *Bavaria NV v European Commission (Re Dutch Beer Cartel)*[222], the applicant argued that a statement from a leniency applicant was general and vague, and hence unreliable. The General Court rejected the argument:

"*69 As regards the allegedly general character of the statement, it must also be pointed out that, in practice, the Commission is often obliged to prove the existence of an infringement under conditions which are hardly conducive to that task, in that several years may have elapsed since the time of the events constituting the infringement and a number of the undertakings covered by the*

[219] Cases C-204/00 P etc *Aalborg Portland v Commission* [2004] ECR I-0123, at [55] to [57].
[220] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17.
[221] *Ibid.* at [206].
[222] Case T-235/07 *Bavaria NV v European Commission (Re Dutch Beer Cartel)* [2013] 4 CMLR 37.

> *investigation have not actively cooperated therein. Whilst it is necessarily incumbent upon the Commission to establish that an illegal market-sharing agreement was concluded …* ***it would be excessive also to require it to produce evidence of the specific mechanism by which that object was attained… Indeed, it would be too easy for an undertaking guilty of an infringement to escape any penalty if it was entitled to base its argument on the vagueness of the information produced regarding the operation of an illegal agreement in circumstances in which the existence and anticompetitive purpose of the agreement had nevertheless been sufficiently established****…*"[223] [Emphasis added]

ii. Principles of Evidence Assessment

158. As regards the probative value of evidence, CCCS notes that the only relevant criterion for the purposes of evaluating the evidence produced is its reliability.[224]

159. In this regard, it is trite law that statements which run counter to the interests of the declarant are in principle regarded as particularly reliable evidence.[225] This principle was reiterated by the General Court in *Toshiba Corp v European Commission*:

> "*48. Where a person admits that he committed an infringement and thus admits the existence of facts going beyond those whose existence could be directly inferred from the documentary evidence, that implies, a priori, in the absence of special circumstances indicating otherwise, that that person had resolved to tell the truth. Thus, statements which run counter to the interests of the declarant are in principle regarded as particularly reliable evidence*."[226]

160. The same principle has also been affirmed by the ECJ. In *Siemens AG v European Commission (Re Insulated Switchgear Products Cartel)* ("*Siemens AG*")[227], the ECJ dismissed as inadmissible a complaint that the General Court

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[223] *Ibid*. at [69].
[224] *Dalmine v Commission of the European Communities* (T-50/00) [2004] E.C.R. II-2395, at [72].
[225] *JFE Engineering Corp v Commission of the European Communities* (T-67/00, T-68/00, T-71/00 and T-78/00) [2004] E.C.R. II-2501; [2005] 4 C.M.L.R. 2 at [211]; *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8, at [48].
[226] *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8, at [48].
[227] *Joined Cases C 239/11P, C-489/11P and C-498/11P* [2014] C.M.L.R.18.

should not have relied on the statement of a leniency applicant because of "*established knowledge relating to the functioning of the memory and the psychology of witnesses*",[228] and the possibility that an individual may have had an interest in maximising the unlawful conduct of competitors and minimising their own liability.[229] The ECJ upheld the General Court's conclusion that the leniency applicant's evidence was credible - more credible than the other cartelists which had sought to deny the existence of the common understanding.[230]

> "*138 However, the General Court rightly stated, in [107] of the judgment in Mitsubishi Electric v Commission , that, although it is possible that the representative of an undertaking which has applied for leniency may submit as much incriminating evidence as possible, the fact remains, as is correctly stated in [88] and [89] of that judgment, that such a representative will also be aware of the potential negative consequences of submitting inaccurate information, which could, inter alia, lead to a loss of immunity after it has been granted. Moreover, the General Court was also correct to point out that the risk of the inaccurate nature of those statements being detected and leading to those consequences is increased by the fact that such statements must be corroborated by other evidence.*
>
> …
>
> *140 More generally, the Court has already had the opportunity to point out that a statement made by a person acting in the capacity of a representative of a company and admitting the existence of an infringement by that company entails considerable legal and economic risks (Sumitomo Metal Industries at [103]).*
>
> *141 Among those risks is that of actions for damages being brought before the national courts, in the context of which the Commission's establishment of a company's infringement may be invoked.*"
>
> …

[228] *Siemens AG*, at [33].
[229] *Ibid*. at [34].
[230] *Ibid*. at [138] to [141].

> "*144 Third, in so far as concerns the complaint raised by Mitsubishi against paragraph 192 of the judgment in Mitsubishi Electric v Commission, the Court notes, first of all, that, contrary to what Mitsubishi submits, in paragraphs 193 and 194 of that judgment, the General Court substantiated its finding that* ***lower probative value had to be granted to the statements made by Siemens, Mitsubishi, Toshiba, Hitachi and VA Tech*** *than to ABB's statements and witness statements, Fuji's statements on the common understanding and Hitachi's statements on the notification and project loading mechanism.*
>
> *145 In those paragraphs, the General Court considered,* ***without committing any error of law,*** *that,* ***unlike the statements and witness statements of ABB, Fuji and Hitachi, the statements of Siemens, Mitsubishi, Toshiba, Hitachi and VA Tech respectively were not contrary to the interests of those undertakings, since they sought to contest the existence of any infringement****, but it could not be considered that those undertakings had no interest in contesting the existence of the common understanding*."

161. Similarly, when examining the probative value of evidence, it is relevant to consider the consequences if the declarant was found to have provided false or misleading information. In *JFE Engineering Corp v Commission of the European Communities*[231] concerning a market-sharing agreement between eight seamless steel tubes manufacturers consisting of European and Japanese producers, the CFI stated that evidence given before a public prosecutor is more valuable, as would be evidence given under oath, due to the requirement to answer the questions in view of the adverse consequences of perjury.[232] In this regard, it is relevant to note that the consequences of providing false or misleading information to CCCS are severe; attracting a fine of up to S$10,000 and/or imprisonment of up to one year upon conviction.[233]

162. On assessing the reliability of a witness's statement, the case of *JFE Engineering* is instructive. The CFI agreed that the statement of a Mr. Verluca, the Chairman of the leniency applicant Vallourec, which was relied on by the

[231] *JFE Engineering Corp v Commission of the European Communities* (T-67/00, T-68/00, T-71/00 and T-78/00) [2004] E.C.R. II-2501; [2005] 4 C.M.L.R. 2, at [211].
[232] *JFE Engineering* at [219] and [220], *Sasol v European Commission (Re Candle Wax Cartel) (Spain, Greece, Italy, Austria, Poland and European Commission, intervening* (T-541-08) [2014] 5 C.M.L.R. 16, at [312].
[233] Sections 75 to 83 of the Act.

Commission to establish the infringement in that case, had great probative value as it was given on behalf of an undertaking and thus carried more weight than that of an employee.[234] The CFI noted that Mr. Verluca was obligated to act in the interests of the company and could not lightly confess to an infringement without having weighed the consequences.[235] In any case, Mr. Verluca was also a direct witness of the circumstances, having participated in the anti-competitive meetings.[236] Further, the CFI noted that the statement was given after 18 months post-investigation stage, where the witness had the opportunity to reflect on the reply he would be giving to the EC. In the circumstances, the CFI agreed that the witness had made his statements deliberately and after mature reflection, which made his statements "*particularly credible*".[237]

163. Notably, the criteria for assessing reliability of statements as set out by the CFI in *JFE Engineering* was subsequently adopted by a differently constituted CFI in *Toshiba Corp*:[238]

> "*47. On the contrary, particularly high probative value may be attached to statements which (i) are reliable, (ii) are made on behalf of an undertaking, (iii) are made by a person under a professional obligation to act in the interests of that undertaking, (iv) go against the interests of the person making the statement, (v) are made by a direct witness of the circumstances to which they relate, and (vi) were provided in writing deliberately and after mature reflection.*"

164. In addition, the CFI in *JFE Engineering* also clarified that assessing alternative, plausible explanations are only required where the Commission "*relies solely on the conduct of the undertakings in question on the market in finding that an infringement has been committed*".[239] Specifically, the CFI held that an alternative, plausible explanation offered by the Japanese undertakings was irrelevant as the Commission in that case had relied on documentary evidence in support of its finding of the existence of an anti-competitive agreement.[240]

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[234] *Ibid*. at [205].
[235] *Ibid*. at [206].
[236] *Ibid*. at [207].
[237] *Ibid*. at [209] and [210].
[238] *Toshiba Corp,* at [47].
[239] *JFE Engineering,* at [186].
[240] *Ibid*.

165. Further, the CFI in *JFE Engineering* also held that there was no prohibition against the Commission relying on statements made by other incriminated undertakings:[241]

> "*192. In that connection, no provision or any general principle of Community law prohibits the Commission from relying, as against an undertaking, on statements made by other incriminated undertakings (PVC II, cited in paragraph 61 above, paragraphs 109 and 512).* **If that were not the case, the *burden of proving conduct contrary to Article 81 EC and Article 82 EC, which is borne by the Commission, would be unsustainable and incompatible with the task of supervising the proper application of those provisions which is entrusted it by the EC Treaty*** *(PVC II, cited in paragraph 61 above, paragraph 512).*"

166. On the requirement of corroboration, the CFI in *JFE Engineering* also noted that whilst the statement of a witness had to be corroborated by other evidence to establish the existence of an infringement, the degree of corroboration required is "*lesser, in terms both of precision and of depth, in view of the reliability of Mr. Verluca's statements*".[242]

167. More significantly, the ECJ in *Siemens AG* upheld the conclusion that evidence corroborating the contents of a leniency statements does **not** have to be contemporaneous documentation but can comprise other statements made with a view to obtaining leniency:

> "*191 It follows that, contrary to what Toshiba maintains, it cannot be submitted that, in principle, statements made with a view to benefiting under the Leniency Notice, cannot be corroborated by other statements of that nature, but solely by other evidence contemporaneous with the facts at issue, namely evidence dating from the time of the infringement.*"

168. The European courts have also upheld the position that the economic benefits of submitting a leniency application would not necessarily undermine the credibility of a statement made by the leniency applicant. In *Dole Food Company v Commission*[243], the appellant Dole Food Company had argued that

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[241] *Ibid*. at [192].
[242] *Ibid*. at [220].
[243] *Case T-588/08* (General Court); Case C-286/13P; [2015] 4 C.M.L.R. 967 (ECJ).

the leniency application had been made in order to secure the completion of an acquisition by the leniency applicant of another company, as the banks that had been asked to finance the acquisition had expressed concerns about the leniency applicant's operations and only agreed to provide the financing once immunity had been granted. The General Court rejected the argument that this undermined the leniency applicant's credibility. The General Court held that: [244]

> "*91 The Court observes that the applicants' argument does not correspond to the inherent logic of the procedure provided for in the Leniency Notice.* ***The fact of seeking to benefit from the application of the Leniency Notice in order to obtain a reduction in the fine does not necessarily create an incentive for the other participants in the offending cartel to submit distorted evidence.*** *Indeed, any attempt to mislead the Commission could call into question the sincerity and the completeness of cooperation of the person seeking to benefit, and thereby jeopardise his chances of benefiting fully under the Leniency Notice (Case T 120/04 Peróxidos Orgánicos v Commission [2006] ECR II 4441, paragraph 70).*
>
> *92 On the assumption that the applicants' claims as to the motives for the immunity application submitted by Chiquita are correct, they are not such as to remove all credibility from the statements of that undertaking.* ***The existence of a personal interest in reporting the existence of a concerted practice does not necessarily mean that the person doing so is unreliable.***
>
> *93 Moreover, and above all, the applicants' portrayal of the action taken by Chiquita on 8 April 2005 as being solely to Chiquita's advantage is misleading since it disregards a certain and potentially negative consequence relating to Chiquita's recognition of its participation in a cartel. Although the application for immunity gave Chiquita grounds for hoping that it would escape any punishment by the Commission, its admission of its participation and the Commission's subsequent decision finding an infringement of Article 81 EC* ***exposes that undertaking to an action for damages by third parties in order to compensate the loss suffered on account of the anti-***

[244] The ECJ in *Dole Food Company v Commission* Case C-286/13P; [2015] 4 C.M.L.R. 967 (ECJ) dismissed the appellant's case on other grounds.

competitive conduct in issue, which may lead to serious financial consequences for Chiquita."

169. On the probative value of statements made by undertakings which are *not* leniency applicants, the CFI in *Toshiba Corp.* has previously stated that testimonies given by undertakings' employees at a time where the undertakings are aware of ongoing investigations (and who had not submitted a leniency application at the material time) may limit the probative value of the statements:[245]

> "*150 However, in the present case, first, it must be stated that the testimonies of the applicant's employees were collected at a time when the applicant already knew that the Commission had begun to suspect a cartel infringement and the undertakings concerned had therefore received a warning. That fact limits their probative value (Case T-59/02 Archer Daniels Midland v Commission [2006] ECR II-3627, paragraphs 277 and 290, and Lafarge v Commission, paragraph 36 above, paragraph 379).*
>
> *151 Secondly, the fact that the applicant had not submitted a leniency application and therefore had no interest in admitting the existence of an unlawful cartel must be taken into account.*"

170. In assessing the evidence, CCCS notes that where collusion is sufficiently demonstrated, it is not necessary to establish the date or, *a fortiori*, the place of the meetings between the participants of the cartel.[246] This principle was applied in *Limburgse Vinly Maatschappij and others v Commission,*[247] where the ECJ found that the existence of the meetings was nonetheless established because four of the participants had admitted to participating in such meetings even though the EC was unable to obtain any written records or minutes of meetings between the participants.[248]

171. CCCS is of the view that infringements of the Act have occurred as set out below in Chapter 3 of this ID. The evidence that CCCS relies on in support of its decision against the Parties is set out in Section J and Section K below.

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[245] *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8, at [150].
[246] *Limburgse Vinly Maatschappij and others v Commission* (T-305/94) [1999] ECR II-931, at [675].
[247] *Ibid.*
[248] *Ibid.* at [675] to [686].

I. The Relevant Market

172. Market definition in the context of the section 34 prohibition serves two purposes. First, it acts as the first step in a full competition analysis to assist in determining if an agreement and/or concerted practice would have an appreciable effect on competition.[249] Second, where liability has been established, market definition can help to determine the turnover of the business of the undertaking in Singapore for the relevant product and relevant geographical markets that are affected by the infringement and therefore, the appropriate amount of penalty.[250]

173. In the present case, a distinct market definition is not necessary for the purpose of establishing an infringement of the section 34 prohibition. This is because the present investigation concerns agreements and/or concerted practices that involve market-sharing and price-fixing. Agreements and/or concerted practices that have as their object the prevention, restriction and/or distortion of competition by way of price-fixing, collusive tendering or bid-rigging, market-sharing or output limitations, are, by their very nature, regarded as being restrictive of competition to an appreciable extent.[251]

174. In the *Pest Control Case,*[252] CCCS adopted the position taken by the UK CAT in *Argos Limited & Littlewoods Limited v Office of Fair Trading*[253] that market definition is not intrinsic to the determination of liability in a price-fixing case. The UK CAT held that:

> "*178 In our judgment, it follows that in Chapter I cases involving price-fixing it would be inappropriate for the OFT to be required to establish the relevant market with the same rigour as would be expected in a case involving the Chapter II prohibition. In a case such as the present, definition of the relevant product market is not intrinsic to the determination of liability, as it is in a Chapter II case. In our judgment, it would be disproportionate to require the OFT to devote resources to a detailed market analysis, where the only issue is the penalty.*

[249] *CCS Guidelines on Market Definition,* paragraphs 1.6 and 1.7.
[250] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.1.
[251] *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.2.
[252] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [67].
[253] *Argos Limited & Littlewoods Limited v Office of Fair Trading* [2005] CAT 13.

179 … In our view, it is sufficient for the OFT to show that it had a reasonable basis for identifying a certain product market for the purposes of Step 1 of its calculation".[254]

175. The above position is equally applicable in the present case. CCCS found that the focal market segment of the agreements and/or concerted practices is for the sale of whole fresh chickens, whether cut or not, but excluding black chickens, kampong chickens, speciality chickens of the Parties[255], marinated or cooked chickens and chicken parts, in Singapore ("Fresh Chicken Products"). For the purposes of calculating the appropriate level of financial penalties in this case, CCCS has determined that the relevant market comprises the Fresh Chicken Products as stated above.

J. Evidence relating to the Agreements and/or Concerted Practices

176. CCCS established that there were meetings between the Parties and meetings took place in social settings at eating places, coffee houses at hotels such as Riverview Hotel and karaoke lounges ("KTVs") such as Las Vegas and Tiananmen from 2000 to 2014. These meetings used to take place two to three times a week but became infrequent after 2014 and took place only about three times from January 2014 and 13 August 2014, the date of CCCS's First Inspection.[256] The last known meeting took place on 29 October 2014 in Malaysia between representatives of the Parties including Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*), Lim Soh Hua (*Gold Chic/Hua Kun*), Tan Chee Kien (*Ng Ai*), Tan Koon Seng (*Lee Say*), Ma Chin Chew (*Hup Heng*), Ong Kian San (*Kee Song*) and Alex Toh (*Toh Thye San*).

177. During some of these meetings, the Parties participated in the discussions relating to the Non-Aggression Pact and Price Discussions (the "Anti-Competitive Discussions").

178. The Anti-Competitive Discussions took place in social settings and as such, no minutes or notes relating to the content of the Anti-Competitive Discussions

[254] *Ibid.* at [178] and [179].
[255] Speciality chickens include but are not limited to "Sakura" chickens and "An Xin" chickens.
[256] Answer to question 19 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.

were recorded by the Parties.[257] The Parties also preferred phone calls and face-to-face discussions.[258]

179. Listed in the table below are the main attendees for each of the Parties at meetings where the Anti-Competitive Discussions took place.

Table 1: Main Representatives at the Anti-Competitive Discussions

Parties	Parties' representatives at the Anti-Competitive Discussions
Sinmah	Mr. Chiew Kin Huat [Executive Chairman]
Kee Song	Mr. Ong Kian San [Managing Director]
Hock Chuan Heng/Hy-fresh	Mr. Ng Lay Long [Senior Director]
Toh Thye San	Mr. Alex Toh Cheng Hai [General Manager]
Poultry Development (formerly) / Prestige Fortune	Mr. Quek Cheaw Kwang [Director]
Gold Chic / Hua Kun	Mr. Lim Soh Hua [Manager]
Lee Say	Mr. Tan Koon Seng [Executive Director], Mr. Ong Pang Guan [Director]
Hup Heng	Mr. Ma Chin Chew [Managing Director]
KSB	Mr. Vincent Chew [Deputy General Manager]
Tong Huat	Mr. Toh Eng Say [Manager]
Ban Hong	Mr. Ho Chong Hee [Sales Manager (formerly the Managing Director)]
Ng Ai	Mr. Tan Chee Kien [Chief Executive Officer]

180. Three of the representatives, namely Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) admitted that the Anti-Competitive Discussions had taken place between the Parties. Another three of the representatives, namely Alex Toh (*Toh Thye San*), Quek Cheaw

[257] Answer to question 1 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015; Answer to Question 1 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[258] Answer to question 3 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.

Kwang (*Prestige Fortune formerly Poultry Development*) and Ma Chin Chew (*Hup Heng*) corroborated the statements by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*).

Evidence provided by Sinmah

181. Chiew Kin Huat represented Sinmah at the meetings since 2000 until the cessation of the meetings.

182. On 18 March 2015, CCCS conducted a second unannounced inspection at the premises of Sinmah and the Association. During the interview with Wu Xiao Ting (*Sinmah*) conducted on the same day, she admitted that Sinmah had an understanding with other fresh chicken distributors to not compete for each other's customers and she had been made aware of the understanding through discussions between Chiew Hock You (*Sinmah*) and Chiew Kin Huat.[259] On 9 April 2015, after Wu Xiao Ting's admission was put to Chiew Kin Huat, he admitted that:

> "*Sometime in 2000, there was a discussion and an understanding struck that we will not compete for each other's customers. I don't remember who went. In 2007, there was a restatement of the same understanding. The same people named in question 14 went.*[260] *I have not heard them reiterate the same understanding recently.*[261]
> …
> *We met at Riverview Hotel. Ban [Hong] was selling below cost so we came together to try to keep the prices stable… At the same time, we reiterated the understanding not to steal each other's customers. However, the understanding was not kept to because people still kept taking my customers.*"[262]

183. Chiew Kin Huat further stated that he had resolved to tell the truth because:

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[259] Answers to Questions 31 and 32 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 18 March 2015.
[260] Ong Kian San (*Kee Song*), Ma Chin Chew (*Hup Heng*), Tan Chee Kien (*Ng Ai*), Toh Eng Say (*Tong Huat*), Tan Koon Seng (*Lee Say*), Ong Pang Guan (*Lee Say*), Alex Toh (*Toh Thye San*), Lim Soh Hua (*Gold Chic/Hua Kun*), Vincent Chew (*KSB*), Wang Li Ye (*Hock Chuan Heng/Hy-fresh*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ho Chong Hee (*Ban Hong*).
[261] Answer to Question 32 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015. See also Answer to Question 77 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015, where Alex Toh stated that the discussions took place because "*competition then was very fierce*".
[262] Answer to Question 34 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.

"*…I decided that I should not lie.* [✂] *I cannot lie*".[263]

184. In relation to the Non-Aggression Pact, Chiew Kin Huat stated that it pertained to all of the Parties' customers:

> "*…the understanding was to not compete for each other's customers and it included all customers*".[264]

185. In response to a question as to whether the Non-Aggression Pact continued from 2007, he stated that:

> "*No one said that the understanding is no longer effective. But the understanding was not kept to; they still kept taking my customers*".[265]

186. Further, Chiew Kin Huat admitted that the Price Discussions covered the agreement to increase prices by an agreed amount at an agreed date[266] since 2007[267] and that such discussions occurred frequently[268]. He stated that:

> "*We do not discuss prices every time. However, when prices were discussed, we would talk about when to increase prices and how much to increase prices by. For example, they will say "let's raise prices by $0.20 next day". These price discussions occur frequently*[269]
> …
> *On average, the price discussions take place maybe once every one to two months.*[270]
> …

[263] Answer to Question 30 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[264] Answer to Question 14 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[265] Answer to Question 33 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[266] Answer to question 21 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[267] Answer to question 19 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[268] Answer to question 20 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[269] Answer to question 20 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[270] Answer to question 20 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.

We verbally agreed to increase the prices by a agreed amount on an agreed date. Sometimes we also agree to decrease prices by an agreed amount on an agreed date…[271]

…

The price discussions relate to all fresh chickens except for black chickens and kampong chickens because the sale quantities for these chickens was very little. The price discussions also did not include chicken parts though because the pricing for chicken parts was very messy."[272]

187. Chiew Kin Huat also stated that the Parties subsequently agreed not to increase prices on the same day to avoid detection:

"*…Subsequently we agreed to not increase prices on the same day because it was very obvious when all the fresh chicken distributors increased their prices on the same day. There was however still an agreement to increase the prices by the same amount. I cannot remember when the agreement changed*".[273]

188. After 2014, when the meetings became infrequent, Chiew Kin Huat stated that Tan Koon Seng (*Lee Say*) would call to instruct him on when the increases should take place and by how much.[274] In the event that Sinmah did not follow the instructions to increase prices, Lee Say, Kee Song and Tong Huat would call to berate Sinmah.[275] The relevant parts of Chiew Kin Huat's statements are set out as follows:

"*Tan Koon Seng from Lee Say started to call me to increase prices; the instructions include when the increases will take place and by how much. He will for example, say "raise prices by $0.30 tomorrow"…*[276]

…

[271] Answer to Question 21 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[272] Answer to Question 27 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[273] Answer to Question 21 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[274] Answer to Question 22 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[275] Answer to Question 23 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[276] Answer to Question 22 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.

Distributors supplying to supermarkets will call to scold me or Chiew Hock You because the supermarket prices are very transparent and it is very obvious when one supplier does not raise prices and the others do. These distributors are Kee Song, Lee Say and Tong Huat

...

Distributors of other segments like wet market, hotels and restaurants do not call me because the prices are different to begin with anyway so customers find it hard to make a direct comparison unlike supermarket prices which are more transparent."[277]

189. In response to a question relating to why the price agreement came about in 2007, Chiew Kin Huat explained that:

> "*A lot of the companies were making huge losses and they had difficulties surviving. There was an agreement to increase prices together because if only one company increases prices unilaterally the customers will not pay up and will stop their orders*".[278]

Participants to Anti-Competitive Discussions

190. Chiew Kin Huat further stated that the participants to the Anti-Competitive Discussions include Ong Kian San (*Kee Song*), Ma Chin Chew (*Hup Heng*), Tan Chee Kien (*Ng Ai*), Toh Eng Say (*Tong Huat*), Tan Koon Seng (*Lee Say*), Ong Pang Guan (*Lee Say*), Alex Toh (*Toh Thye San*), Lim Soh Hua (*Gold Chic/Hua Kun*), Vincent Chew (*KSB*), Wang Li Ye (*Hock Chuan Heng/Hy-fresh*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ho Chong Hee (*Ban Hong*):

> "*Ong Kian San, Ma Chin Chew, Tan Chee Kien, Toh Eng Say, Tan Koon Seng (sometimes Ong Pang Guan), Alex Toh, Lim Soh Hua, Vincent Chew, Wang Li Ye (from Hock Chuan Heng) used to go whereas his brother Ng Lay Long went only a few times,*

[277] Answer to Question 23 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[278] Answer to Question 25 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.

Quek Cheaw Kwang and Ho Chong Hee... All the participants may not always be there for every single meeting.[279]

…

Q12 Are the fresh chicken distributors that attended the meetings part of or listened to the Discussions?
A: Yes".[280]

191. In response to a question on the frequency of meetings between the Parties, Chiew Kin Huat stated that:

> "*The meetings took place frequently until about 2014. Before 2014, the meetings could take place 4-5 times a week or minimally 2-3 times a week. After 2014, the meetings were quite infrequent and took place only about 3 times from Jan 2014 to August 2014 when CCS's investigation took place.*"[281]

192. CCCS notes that Chiew Kin Huat also admitted that neither he nor any of the participants to the meetings present publicly distanced themselves from the Anti-Competitive Discussions:

> "*Q35. Did anyone say during the meeting that they do not wish to be involved in the price and market sharing discussions?*
> *A: No.*"[282]

Evidence provided by Kee Song

193. Ong Kian San represented Kee Song at the meetings since 2006 until the cessation of the meetings.

194. On 23 April 2015, CCCS put to Ong Kian San the information that CCCS had obtained about the meetings between the Parties. He then admitted that:

> "*I have heard discussions amongst fresh chicken suppliers about not actively competing for each other customers during the gatherings to have coffee/at bars. The discussions were in my*

[279] Answer to Question 8 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[280] Answers to Question 12 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[281] Answer to Question 19 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[282] Answer to Question 35 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.

presence. The same people named at question 16 were present.[283] *My own position is that I would need to compete for business and I did not join the discussion. I do not know whether the people who discussed this actually compete for each other's customers. I also heard arguments amongst fresh chicken suppliers about stealing each other's customers.*[284]

…

Q30. When did the discussions to not compete for each other's' customers start?
A: About 2007/2008."[285]

195. Ong Kian San also stated that the Non-Aggression Pact pertains to all customers across the market segments.[286] The relevant statements are set out as follows:

"*Q34. Which market segment did the discussions pertain to?*
A: All customers.[287]

Q35. Which product market did the discussions pertain to?
A: Fresh and frozen chicken products".[288]

196. Ong Kian San further admitted that the Price Discussions took place during the meetings that started in about 2008. He stated that Chiew Kin Huat (*Sinmah*), Lim Soh Hua (*Gold Chic/Hua Kun*) and Tan Koon Seng (*Lee Say*) would announce their intentions to increase the sale price of fresh chickens in Singapore.[289] Ma Chin Chew (*Hup Heng*) would initiate discussions indirectly by saying that "*business is hard to do*" and ask "*what can be done with costs going up*".[290] Ong Kian San stated that "*nobody wants to be the only one to raise*

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[283] Ma Chin Chew (*Hup Heng*), Tan Koon Seng (*Lee Say*), Lim Soh Hua (*Gold Chic/Hua Kun*), Chiew Kin Huat (*Sinmah*), Alex Toh (*Toh Thye San*), Toh Eng Say (*Tong Huat*), Tan Chee Kien (*Ng Ai*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*), Vincent Chew (*KSB*) and Ho Chong Hee (*Ban Hong*).
[284] Answer to question 28 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[285] Answer to question 30 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[286] Answer to question 34 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[287] Answer to Question 34 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[288] Answer to Question 35 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[289] Answer to Question 38 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[290] Answer to Question 38 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.

prices because then the business would suffer".[291] The relevant statements are as follows:

> "*Q37. Has any of the market players told you about their intention to increase the selling prices of fresh chicken in Singapore before they increased prices?*
> *A: Yes.*
>
> *Q38. Name the market players that did so.*
> *A: Chiew Kin Huat (Sinmah), Lim Soh Hua (Gold Chic/Hua Kun), Tan Koon Seng (Lee Say). Ma Chin Chew (Hup Heng) does not outright announce a price increase but sometimes would say that business is hard to do and ask what can be done with costs going up.*
> *…*
> *Q40. Who were present when the market players announced their intentions?*
> *A: ... Generally the people present would be the same people named at question 16*
>
> *Q41. Does anyone openly object when a supplier announces their intention to increase prices?*
> *A: No. No one objects and will just listen. Nobody wants to be the only one to raise price because then the business would suffer. So everyone will wait and if Lee Say is the one raising prices then everyone will follow.*
> *…*
> *Q43. Which market segment does the price discussions pertain to?*
> *A: The market players won't say specifically which market segment but my understanding is that it applies to all customers*
>
> *Q44. Which product markets does the price discussions pertain to?*
> *A: Fresh chickens.*
>
> *Q45. Please state when the market players started telling you about their intention to increase the selling prices of fresh chicken in Singapore*

[291] Answer to Question 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.

A: About 2008".[292]

197. Ong Kian San added that while he could not remember the last time someone announced their intention to increase prices, he recalled that Chiew Kin Huat (*Sinmah*) had complained about low prices during an Association meeting.[293] The details of the Association meeting, which was held on 26 June 2013, are discussed below at paragraphs 273 to 275.

Participants to Anti-Competitive Discussions

198. In response to a question relating to the location and frequency of the meetings, Ong Kian San stated that:

> "*In the past, sometime after 2006 and before December 2012, we would sometimes have gatherings at bars such as Las Vegas, which has shut down.*[294]
> *I took part after 2006. Takes place about 1-2 times a month. The meetings are irregular. Sometimes I only go once in 3 months.*"[295]

199. Ong Kian San stated that the participants to these meetings include Ma Chin Chew (*Hup Heng*), Tan Koon Seng (*Lee Say*), Lim Soh Hua (*Gold Chic/Hua Kun*), Chiew Kin Huat (*Sinmah*), Alex Toh (*Toh Thye San*), Toh Eng Say (*Tong Huat*), Tan Chee Kien (*Ng Ai*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*), Vincent Chew (*KSB*) and Ho Chong Hee (*Ban Hong*).[296] Ong Kian San added that while not everyone would attend all the meetings, the named parties would generally be present during the Anti-Competitive Discussions.[297]

> "*Q16. Name the people that participated in these gatherings.*
> *A:Ma Chin Chew, Tan Koon Seng, Lim Soh Hua, Chiew Kin Huat, Toh Cheng Hai (less often), Toh Eng Say (less often), Tan Chee Kien (less often), Quek Cheaw Kwa[n]g (Prestige Fortune),*

[292] Answer to Questions 37, 38, 40 to 45 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[293] Answer to Question 46 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[294] Answer to Question 12 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[295] Answer to Question 15 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[296] Answer to Question 16 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[297] Answers to Questions 32 and 40 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.

Vincent Chew (Elite KSB), Ho Chong Hee (Ban Hong) (less often)… Chew Ghim Bok does not go. Toh Siew Din does not go. Not everyone goes all the time but I usually see some of these people when I go.

…

Q28…I have heard discussions amongst fresh chicken suppliers about not actively competing for each other customers during the gatherings to have coffee/at bars. The discussions were in my presence. The same people named at question 16 were present...[298]

…

Q37. Has any of the market players told you about their intention to increase the selling prices of fresh chicken in Singapore before they increased prices?
A: Yes.[299]

Q40. Who were present when the market players announced their intentions?
A: I cannot remember who because different people will attend any particular gathering. Generally the people present would be the same people named at question 16."[300]

200. CCCS notes that Ong Kian San admitted that neither he nor any of the participants to the meetings present publicly distanced themselves from the Anti-Competitive Discussions:[301]

"*Q29. Did you object openly to what was discussed by the others about not actively competing for each other's customers?*
A: No.[302]

…

Q33. Did anyone object openly to these discussions?
A: No.[303]

…

[298] Answer to Question 28 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[299] Answer to Question 37 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[300] Answer to Question 40 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[301] Answers to Questions 29, 33 and 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[302] Answer to Question 29 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[303] Answer to Question 33 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.

Q41. Does anyone openly object when a supplier announces their intention to increase prices?
A: No. No one objects and will just listen. Nobody wants to be the only one to raise price because then the business will suffer. So everyone will wait and if Lee Say is the one raising prices then everyone will follow."[304]

Evidence from Hock Chuan Heng/Hy-fresh

201. Ng Lay Long represented Hock Chuan Heng/Hy-fresh at the meetings since 2004. He admitted that there were discussions to not actively compete for each other's customers in or around 2004 following the first bird flu outbreak.[305] He also stated that the "*fresh chicken distributors will mention the understanding not to compete for each other's customers ocassionally [sic] (but not frequently) all the way till 2014*".[306] However, he added that he would still compete for their customers.[307] The relevant statements are as follows:

"*Q31. What do the other fresh chicken distributors talk about?*
A: They talk about prices and about not stealing each other's customers. I did steal others' customers and they called to scold me...[308]

Q32. Is there an understanding between fresh chicken distributors not to compete for each other's' customers?
A: Yes, but I go ahead to steal their customers anyway. [309]
…
Q37. Who were present during these gatherings with [sic] *where such discussions were held?*

[304] Answer to Question 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[305] Answer to Question 35 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[306] Answer to Question 11 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[307] Answer to Question 32 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[308] Answer to Question 31 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[309] Answer to Question 32 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.

A: The same people mentioned in the response to question 29[310]*.*[311] *…I cannot remember the exact year the understanding started but it was after the bird flu episode in 2004. The fresh chicken distributors will mention the understanding not to compete for each other's customers ocassionally [sic] (but not frequently) all the way till 2014. I cannot remember when in 2014 was the last time they mentioned the understanding.*"[312]

202. Ng Lay Long stated that representatives from Lee Say, Sinmah, Hup Heng, KSB, Kee Song and Toh Thye San have, sometime after 2004, called to scold him when he attempted to compete for their customers. Ng Lay Long added that these representatives continued to call and berate him for competing for customers until December 2014.[313] The relevant statements are as follows:

"*Q41. Which are these other fresh chicken distributors who called you and scolded you for stealing their customers?*
A: Lee Say, Sinmah, Hup Heng, KSB, Kee Song and Toh Thye San…[314]

Q42 Who from these companies will call you, and what will they say?
A: Toh Ying Seng, one of the directors from Lee Say would call me to ask me why I was stealing his customers and would tell me that "this customer is mine, return the customer to me". Mr Chiew Kin Huat and Ah Ben from Sinmah would also call me to scold me for stealing their customers. Mr Chiew might say "don't steal my customer, I will buy you a drink" while Ah Ben will scold vulgarities. Both of them will tell me to return the customers to them. Ma Chin Chew from Hup Heng would also ask me to return his customers to them. Vincent Chew (Zhou Zi Hui) from KSB would call me and shout at me to return his customer to him. Ong

[310] These are Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ma Chin Chew (*Hup Heng*), Tan Koon Seng and Ong Pang Guan (*Lee Say*), Wang Li Ye (*Hock Chuan Heng*), Vincent Chew (*KSB*), Toh Eng Say (*Tong Huat*) and Toh Cheng Hai (*Toh Thye San*). He was unable to recall whether Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*), Tan Chee Kien (*Ng Ai*), Lim Soh Hua (*Gold Chic/Hua Kun*) or Ho Chong Hee (*Ban Hong*) attended the gatherings.
[311] Answer to Question 37 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[312] Answer to Question 11 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[313] Answer to Question 13 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[314] Answer to Question 41 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.

Kian San from Kee Song would call me to ask my boss whether my boss wanted to release the customer and even if my boss refused to release the customer it did not matter. Toh Cheng Hai…would call me and ask me to release their customer. When I did not release his customer, they stole [✂] *from me.*[315]

…

… They started calling me to ask for the return of customers after the bird flu in 2004, but I cannot remember the exact year. They started calling me to return their customers before … 2010, and the calls continued till December 2014."[316]

203. In response to a question on how fresh chicken distributors would try and stop customers from switching, Ng Lay Long stated that:

> "*A: They may call each other to find out whether a particular customer is already being supplied by each other. They may quote prices way higher than the market price to chase the customer away.*"[317]

204. Ng Lay Long further admitted that during the meetings, the Parties discussed and agreed to increase prices.[318] He stated that Parties, represented by Ma Chin Chew (*Hup Heng*) and Vincent Chew (*KSB*), have told him that "*prices of fresh chicken will be increased by S$0.20 two days later*".[319] The instructions were passed to him during the meetings or through phone calls. He admitted it was understood that he was to increase his prices by the proposed amount and that all Parties would increase their prices by the same amount.[320] Ng Lay Long added that the last time he received a call instructing him to increase prices was sometime in 2013.[321]

> "*Q49. Do the fresh chicken distributors discuss and agree to increase prices?*

[315] Answer to Question 42 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[316] Answer to Question 14 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[317] Answer to Question 48 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[318] Answer to Question 49 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[319] Answers to Questions 51 and 52 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[320] Answer to Question 51 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[321] Answer to Question 54 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.

A: Yes.[322]

…

They would call and tell me that "prices of fresh chickens will be increased by S$0.20 two days later." There is an understanding that I am supposed to increase my prices by the proposed amount, and there is also an understanding that they are going to increase their prices by the proposed amount. Sometimes, instead of calling me they may ask me down for meal and tell me of this during the meal.[323]

…Mr Ma Chin Chew will call me. Sometimes, Vincent Chew (Zhou Zi Hui) will call me...[324]

… I think the last time they called me was in 2013."[325]

Participants to Anti-Competitive Discussions

205. Ng Lay Long stated that the participants to these Anti-Competitive Discussions included Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ma Chin Chew (*Hup Heng*), Tan Koon Seng and Ong Pang Guan (*Lee Say*), Wang Li Ye (*Hock Chuan Heng*), Vincent Chew (*KSB*), Toh Eng Say (*Tong Huat*) and Alex Toh (*Toh Thye San*). He was unable to recall whether Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*), Tan Chee Kien (*Ng Ai*), Lim Soh Hua (*Gold Chic/Hua Kun*) or Ho Chong Hee (*Ban Hong*) participated in the Anti-Competitive Discussions.[326] Ng Lay Long also confirmed that no minutes were taken during the Anti-Competitive Discussions and that all the representatives who attended the meetings had listened to and/or participated in the Anti-Competitive Discussions. The relevant statements are as follows:

"*Q1. You have previously informed CCS that the discussions on prices and the understanding to not compete for each other's customers occurred during meetings (the "Discussions"). Please confirm that no minutes were taken during these meetings.*

[322] Answer to Question 49 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[323] Answer to Question 51 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[324] Answer to Question 52 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[325] Answer to Question 54 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[326] Answers to Question 29 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015; Answers to Question 4 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.

A: Yes, I confirm that no minutes were taken.[327]

…

Q4. Who were the regular participants of the Discussions?
A: Ma Chin Chew, Zhou Zi Hui [Vincent Chew], Tan Koon Seng, Ong Kian San, Toh Cheng Hai [Alex Toh], Chiew Kin Huat, Ong Pang Guan, Toh Eng Say and Wang Li Ye, my brother, used to participate in these Discussions. I am not sure if Quek Cheaw Kwang, Ho Chong Hee, Tan Chee Kien and Lim Soh Hua participated in these Discussions.[328]

…

Q7. Can you confirm that all the fresh chicken distributors that attended the meetings listened [sic] to and/or participated in the Discussions?
A: Yes."[329]

206. CCCS notes that at no point in time did Ng Lay Long publicly distance himself from the Anti-Competitive Discussions.

"*Q38. What was your response to these discussions about the understanding not to steal each other's customers?*
A: I just stay silent and listen.[330]

…

Q64. What was your response when they call you to ask you to increase prices?
A: I will just say ok to appease them, even though I don't intend to increase prices. But they will give up after a few calls if I stick to my prices".[331]

207. From the statements at paragraphs 176 to 192; 193 to 200; and 201 to 206, above, Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) clearly agree that the Anti-Competitive Discussions had taken place during the meetings between the Parties, and that none of the Parties publicly distanced themselves from the Anti-Competitive Discussions.

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[327] Answer to Question 1 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[328] Answer to Question 4 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[329] Answer to Question 7 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[330] Answer to Question 38 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[331] Answer to Question 64 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.

208. These facts are further corroborated by three other participants, namely Alex Toh (*Toh Thye San*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ma Chin Chew (*Hup Heng*).

Evidence from Toh Thye San

209. Alex Toh admitted that he was aware of discussions amongst the fresh chicken distributors to not compete for each other's customers before and after 2007.[332] These discussions pertained generally to customers belonging to the fresh chicken industry.[333] He also admitted that the fresh chicken distributors agreed that "*it is better to have no competition*" because competition then was "*very fierce*".[334] Alex Toh claimed that he was unable to remember who participated in the discussions to not compete. The relevant statements are as follows:

> "*Q74. Have you heard your competitors discussing not competing for each other's business?*
> *A: Yes, very long ago.*[335]
>
> *Q75. What do these businesses pertain to?*
> *A: The fresh chicken industry.*[336]
> …
> *Q77. Under what circumstances was this discussed?*
> *A: Usually, when we see each other in a social setting, we will discuss such matters because competition then was very fierce.*[337]
>
> *Q78. Was it before or after the bird flu outbreak in 2007?*
> *A: I remember there were discussions before the bird flu outbreak. There were also discussions after the bird flu outbreak.*[338]

[332] Answers to Questions 74, 77 and 78 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[333] Answer to Question 75 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[334] Answers to Questions 77 and 79 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[335] Answer to Question 74 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[336] Answer to Question 75 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[337] Answer to Question 77 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[338] Answer to Question 78 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.

Q79. Do you remember who told you about it?
A: I cannot remember… They told me it is better to have no competition, but I told them it is up to the customers."[339]

210. Alex Toh further admitted that fresh chicken distributors have called sometime after 2007 to inform him that they were going to increase prices of fresh chicken.[340] While Alex Toh claimed that he was unable to remember the identities of the fresh chicken distributors who informed him of the proposed price increases, he was able to recall that "*this rarely happens*".[341] The relevant statements are as follows:

"*Q82. Have you heard of your competitors inform you of their intentions to increase prices at a future date?*
A: Usually, my competitors will call me to tell me that other competitors are going to increase prices. There are also cases where my competitors call me to tell me that they are going to increase prices. However, this happens very rarely.[342]

Q83. What are the products that these price discussions relate to?
A: Fresh chicken products.[343]

Q84. When was this?
A: After the bird flu outbreak in 2007.[344]

Q85. Who are the competitors who told you?
A: I cannot remember. This rarely happens."[345]

[339] Answer to Question 79 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[340] Answer to Question 82 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[341] Answer to Question 85 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[342] Answer to Question 82 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[343] Answer to Question 83 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[344] Answer to Question 84 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[345] Answer to Question 85 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.

Evidence from Prestige Fortune (Lee Say Group)

211. Quek Cheaw Kwang admitted that there were discussions between fresh chicken distributors to not compete for each other's customers in 2004 during one of the meetings at the Riverview Hotel but the understanding was not kept to because the fresh chicken distributors still continued to compete for each other's customers.[346] The relevant statements are set out as follows:

> "*…In 2004 during one of the gatherings, I heard discussions about fresh chicken distributors cooperating and not compete too hard such that no one can make a profit because business was bad during the bird flu crisis in 2004.*[347]
>
> *…the fresh chicken distributors verbally said that they will not steal each other's' customers, but later on they still continued to snatch each others' customers*."[348]

212. In response to a question on the product segments affected by the understanding to not compete, Quek Cheaw Kwang stated that:

> "*What I understand is that the understanding to not compete hard was not specifically limited to any customer or product.*"[349]

213. While Quek Cheaw Kwang was not sure which of the fresh chicken distributors were involved in the discussion, he stated that "*most of the market players should be involved*" in his interview on 30 April 2015.[350] In a further interview on 5 June 2015, Quek Cheaw Kwang stated that:

> "*…For discussion about cooperating and not competing so hard between each other, I heard this from the 5-6 people at the same table as me. Chiew Kin Huat, Zhou Zihui [Vincent Chew], Ho*

[346] Answers to Questions 21 and 22 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 30 April 2015.
[347] Answer to Question 6 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 5 June 2015.
[348] Answer to Question 21 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 30 April 2015.
[349] Answer to Question 9 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 5 June 2015.
[350] Answer to Question 25 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 30 April 2015.

Chong Hee were at the same table as me. I cannot remember the rest."[351]

214. CCCS notes that Quek Cheaw Kwang participated in the 2004 discussion in his capacity as a representative of Poultry Development.

Evidence from Hup Heng (Lee Say Group)

215. On 5 June 2015, when information obtained by CCCS was put to Ma Chin Chew, he admitted that there were discussions between himself, Toh Eng Say (*Tong Huat*), Lim Soh Hua (*Gold Chic/Hua Kun*), Ong Kian San (*Kee Song*), Vincent Chew (*KSB*) and Tan Chee Kien (*Ng Ai*) regarding the increase of prices of fresh chickens in Singapore. Ma Chin Chew also recounted a meeting where he agreed to stop the price war with Lee Say and eventually adjusted his prices upwards.[352] The relevant statements are set out below[353]:-

"*Q15. We have evidence that fresh chicken distributors will discuss prices during social meetings. For example, the distributors may say "lets increase prices by $0.20 the day after next". We also have evidence that you were present during those discussions. What is your response?*
A: They might have discussed but we do not agree to increase prices at a set amount.[354]

Q17. Who were involved in these discussions?
A: Tong Huat (Toh Eng Say), GoldChic (Lim Soh Hua), Kee Song (Ong Kian San), KSB (Vincent Chew) and me. Lee Say (Tan Koon Seng) also doesn't want to get involved at that point in time. I was on very bad terms with Lee Say at that time, we were fighting a price war. I think at that point either Lim Soh Hua or Tan Chee Ki[e]n tried to be the mediator to stop the price war…they asked me to stop fighting and to adjust the prices. They said that if we stopped the war then the price may adjust upwards by at least 20 cents. At that point in time, I was unable to sustain the price war

[351] Answer to Question 8 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 5 June 2015.
[352] Answer to Question 17 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[353] Answers to Questions 15, 17, 18 and 19 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[354] Answer to Question 15 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

any longer but didn't want to lose face. Since they asked me to stop the war, I took the opportunity to stop. I agreed not to price below cost.[355]

Q18. When did these discussions take place?
A: 2007-2008.[356]

Q19. Where?
A: Riverview hotel.[357]"

216. Ma Chin Chew recounted another related incident between 2007 to 2008 where the Price Discussions took place:

"*The next major incident was when the price of chickens from Malaysia increased drastically. This was in 2007/08 when the live chicken prices were at the highest. One of the suppliers who is also with the Malaysian association* [✂] *came to Singapore to convince us to increase our prices because we were also squeezing the prices of suppliers. They came down to ask us to stop fighting and raise prices.*[358]

…I met with [✂] *and Lee Say at the canteen outside the Lee Say factory…*"[359]

217. Ma Chin Chew further admitted that he stopped the price war after the meetings with Toh Eng Say (*Tong Huat*), Lim Soh Hua (*Gold Chic/Hua Kun*), Ong Kian San (*Kee Song*), Vincent Chew (*KSB*) and Tan Chee Kien (*Ng Ai*) at Riverview Hotel and the canteen near Lee Say:

"*Q22. So after the meetings at Riverview Hotel and the Lee Say canteen, did you stop fighting?*

[355] Answer to Question 17 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[356] Answer to Question 18 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[357] Answer to Question 19 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[358] Answer to Question 20 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[359] Answer to Question 21 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

A: Yes I could not sustain the fighting. The major fighting where the whole market is affected (i.e. a price war) stopped."[360]

218. Ma Chin Chew also recounted further instances of Price Discussions between 2007 to 2009:

"*I cannot remember the exact period. Maybe 2007-2009. While Lee Say and I stopped our price war, other players were undercutting. I think it was Hock Chuan Heng (Ng Lay Long) that who was undercutting because they were trying to get market share. They would then shout to increase price but I would ignore them. Mr Lim Soh Hua would also ask to raise prices. Mr Chiew Kin Huat might occasionally suggest raising prices but we don't normally listen to what he says. Lim Soh Hua will suggest how much to raise price by. Others will not specify how much to increase by. Vincent Chew also asks whether prices can be adjusted.*"[361]

219. CCCS also notes that Ma Chin Chew did not, at any point in time, publicly distance himself from the Price Discussions.

"*Q.30. After you heard the discussions to raise prices, what did you do or say?*
A: I did not say anything."[362]

i. CCCS's analysis and conclusion on the Reliability of the Statements

220. The incriminating statements provided by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ma Chin Chew (*Hup Heng*) are self-incriminating and run counter to the interests of the undertakings they represent. CCCS thus considers the statements to be reliable.

[360] Answer to Question 22 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[361] Answer to Question 25 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.
[362] Answer to Question 30 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

221. CCCS considers the substance of the statements to be consistent, corroborating the existence of agreements and/or concerted practices in respect of the Anti-Competitive Discussions.

222. CCCS notes that the other Parties, namely Lee Say, KSB, Tong Huat, Ban Hong, Ng Ai and Gold Chic/Hua Kun have denied that the Anti-Competitive Discussions took place, whether during or outside of the meetings. However, there is, strong corroboration across the six incriminating statements set out above at paragraphs 181 to 219, and CCCS is therefore satisfied that there is adequate evidence to find that the Parties have infringed the section 34 prohibition.

223. While CCCS is of the view that the statements constitute adequate proof of infringement, there are further indicia supporting the existence of agreements and/or concerted practices in respect of the Anti-Competitive Discussions. These indicia, which are discussed at the paragraphs below, not only corroborate the existence of these discussions, but also show that they were implemented in practice.

ii. Evidence in support of the Non-Aggression Pact

224. As mentioned at paragraph 138, market-sharing is regarded to be restrictive of competition by object. It is therefore not necessary, under the section 34 prohibition, to show that the Non-Aggression Pact was actually implemented or had an effect on competition in Singapore.[363]

225. However, CCCS notes that there is evidence from documents and statements from customers and sales staff of the Parties indicating the implementation of the Non-Aggression Pact. The evidence when taken in totality with the statements from Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*) and Quek Cheaw Kwang (P*restige Fortune, formerly Poultry Development*) establish that the discussions relating to the Non-Aggression Pact had been implemented and had, as a result, stifled competition in the fresh chicken industry in Singapore.

iii. Evidence showing general implementation of the Non-Aggression Pact

226. It is a general industry practice for fresh chicken distributors to focus on their own customers rather than actively competing for customers belonging to other

[363] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [120] to [128].

fresh chicken distributors. Koh Yeok Boon, a sales manager who has been employed at Lee Say for 18 years stated that it is industry practice to focus on their own customers and not accost customers belonging to other distributors. His statement is set out as follows[364]:

> "*Q44. Will you try to steal someone who you know has a supplier?*
> *A: Usually we will not try to…*[365]
>
> *Q45. You will focus on your own customers?*
> *A: … It is better to maintain our customer base and take good care of them. There is no need to aggressively go after other suppliers' customers.*"[366]

227. Steven Tan Soon Teck, the vice-president of sales and marketing in KSB, supported the statement by Koh Yeok Boon:

> "*Q19. So there is a practice not to steal other players' customers?*
> *A: Yes. We do not steal other people's customers. We focus on our own customers.*[367]
>
> *Q20. Why?*
> *A: We have our business, which our own sales to take care of. If customers open new outlets, they will come to us. Our sales staff only do customer service and not really sales. They only make referral sales.*[368]
>
> *Q21. In your 15 years in the industry, is this practice to focus on your own customers consistent throughout the industry?*
> *A: … from what I am aware no one has competed for KSB's customers. I have lost some business before but it might be for other reasons like hawker stalls going out of business.*"[369]

[364] Answer to Question 45 of Koh Yeok Boon (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[365] Answer to Question 44 of Koh Yeok Boon (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[366] Answer to Question 45 of Koh Yeok Boon (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[367] Answer to Question 19 of Steven Tan Soon Teck (KSB) Notes of Information/Explanation Provided on 14 July 2015.
[368] Answer to Question 20 of Steven Tan Soon Teck (KSB) Notes of Information/Explanation Provided on 14 July 2015.
[369] Answer to Question 21 of Steven Tan Soon Teck (KSB) Notes of Information/Explanation Provided on 14 July 2015.

228. It is also general industry practice for sales persons to ask potential customers for the identity of their existing suppliers.[370] In this regard, Wu Xiao Ting (*Sinmah*) explained during her first interview on 13 August 2014 that:

> "*A: …First I would check if it is an existing customer or new customer in the market. If it is a new customer in the market, I will set up an appointment to meet them ….*
> *If it [sic] an existing customer in the market but a new potential customer of the company, I will check who is their existing distributor and their reasons for switching distributors. If this enquirer is an existing customer of a competiting [sic] distributor, we will not provide them with a quote. The reason is in all likelihood the chicken come from the same farm anyway and the prices would not differ much, so why bother*
>
> *Q12. Why not get profit from this new customer, even if the prices are around the same?*
> *A: If I take other distributors' customers, the other distributors will take my customers as well. Thus the end result will be the same, so what is the point.*"[371]

229. CCCS notes that there was a broad consensus across the customers contacted by CCCS[372] that fresh chicken distributors do not approach them to promote their existing products or convince them to switch from their existing distributor.

230. In addition, some customers commented that it was difficult to switch distributors as the distributors did not seem interested in pursuing their business. These customers noted that they had to actively source for alternative distributors should they wish to switch.[373] In response to questions pursuant to a section 63 notice issued by CCCS, Arnold's Fried Chicken (S) Pte. Ltd. stated that:

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[370] Answer to Question 16 of Li Kong (Hup Heng) Notes of Information/Explanation Provided on 13 August 2014; Answer to Question 20 of Neo Cheng Hai (Kee Song) Notes of Information/Explanation Provided on 13 August 2014; Answer to Question 33 of Koh Yeok Boon (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.

[371] Answers to Question 11 and 12 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 13 August 2014.

[372] CCCS had requested for information pursuant to a section 63 notice, from fresh chicken customers including 10 hotels, 14 restaurants and 5 supermarkets.

[373] Answers to Questions 10, 11, 20 and 27 of [✂] (Jumbo) Provided on [✂]; Information provided by Arnold's Fried Chicken (S) Pte Ltd dated 22 January 2015 pursuant to the section 63 Notice issued by CCCS dated 16 January 2015, response to Questions 4, 5 and 8; and Information provided by BonChon Singapore Pte Ltd dated 20 January 2015 pursuant to the section 63 Notice issued by CCCS dated 16 January 2015, response to Questions 4 and 13.

"*…it is rather difficult switching supplier for fresh chicken because either other suppliers are not interested or they are not hungry. 30 years, no one come and see us to switch…*
…Personally, I believe there is NO competiveness [sic] in the fresh chicken supplies among suppliers in Singapore…"[374]

231. CCCS is of the view that the industry practice of not competing for customers belonging to other fresh chicken distributors, taken together with customer feedback stating that distributors generally do not approach them to encourage switching, corroborates the Non-Aggression Pact described by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*) and Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*).

232. In the next part of the ID, CCCS will set out the evidence indicating some specific instances where the Non-Aggression Pact was implemented.

iv. Specific instances where the Non-Aggression Pact was implemented

Email correspondences between Wu Xiao Ting (Sinmah) and Ma Chin Chew (Hup Heng)

233. On 23 July 2014, [✂] from [✂] contacted Wu Xiao Ting of Sinmah to obtain a quote for the supply of fresh chicken. On 29 July 2014, Wu Xiao Ting forwarded the request email from [✂] to Ma Chin Chew of Hup Heng and asked whether [✂] was an existing customer of Hup Heng. Ma Chin Chew replied on the same day that [✂] was not Hup Heng's customer and thanked Wu Xiao Ting for "checking". The email correspondence titled WXT-003 is set out as follows:

"*From Ma Chin Chew Tuesday July 29 2014 3.11pm*

Dear Xiao Ting,

No! this is not our customer. Thank for checking, really appreciated

[374] Information provided by Arnold's Fried Chicken (S) Pte Ltd dated 22 January 2015 pursuant to the section 63 Notice issued by CCCS dated 16 January 2015, response to Questions 8 and 13.

From Wu Xiao Ting Tuesday July 29 2014 2.41pm

CEO Ma,

Please see below email. Is this your customer?

From: … Wednesday, July 23 2014 11.36am

Hi Ms Ting…

We have been using other suppliers for a while and exploring other suppliers. [✂].
Please send me your catalog and pricing.
Maybe we can meet up?

Regards,
…"

234. Shortly *after* Ma Chin Chew's confirmation that [✂] was not an existing customer, Wu Xiao Ting followed up on the request from [✂] through both a phone call and email. The email correspondence titled WXT2-001 is set out as follows:

"*From: Wu Xiao Ting Tuesday July 29 2014 3.11pm*

Hi …,

Just call you and you didn't pick up.
You find your new supplier already?
Let me know if you still interested in [✂].
Hope to hear from you soon"

235. In response to a question on why the email dated 29 July 2014 was sent to Ma Chin Chew, Wu Xiao Ting informed CCCS during the first interview on 13 August 2014 that:

"*If* [✂] *is Mr Ma's existing customer, Sinmah would not provide a quote and ask Mr Ma to handle the request...*"[375]

[375]Answer to Question 54 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 13 August 2014.

236. During the second interview of 25 November 2014 however, Wu Xiao Ting changed tack and asserted that she sent the email to check with Ma Chin Chew whether he was able to supply the product to Sinmah because Sinmah was not able to supply the requisite product to [✂].[376] CCCS notes that her later explanation contradicts her earlier statement provided on 13 August 2014 where she stated that she only realised that she was unable to supply the product *after* Ma Chin Chew replied her on 29 July 2014, 3:11 p.m.[377]

237. From the email correspondence, it is clear that Wu Xiao Ting wanted to know whether [✂] was an existing customer of Hup Heng and if they were, she would not have provided a quote to [✂]. The fact that Wu Xiao Ting immediately followed up with a quote after Ma Chin Chew's confirmation that [✂] was not an existing customer, indicates that Wu Xiao Ting was waiting for a green light to proceed. Tellingly, Ma Chin Chew thanked Wu Xiao Ting for "*checking*" and that her efforts were "*really appreciated*".

238. Moreover, [✂] stated that [✂] had asked for the identity of his existing distributors and was initially unwilling to supply [✂] because she "*was very close*" to the incumbent distributors. However, [✂] eventually agreed to supply the fresh chickens after [✂] assured her that they would continue to obtain part of its supply from its existing distributors.[378] The relevant statement is as follows:

> "*A:* [✂] *asked me where I got the supply. When I said the supplier, she knew the name and was very close to them.* [✂] *were abit reluctant initially but one of my staff liaised with her and explained that usually purchase from more than one supplier so we are not switching supplier in that sense. That was when* [✂] *agreed to supply chicken to us.*"[379]

239. In the light of the evidence above, the email correspondence between Wu Xiao Ting (*Sinmah*) and Ma Chin Chew (*Hup Heng*), and the statement by [✂] of [✂], constitute clear evidence that the Non-Aggression Pact described by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*) and Quek Cheaw Kwang

[376] Answers to Questions 132 and 137 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 25 November 2014.
[377] Answers to Questions 53 and 55 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 13 August 2014.
[378] Answer to Question 23 of [✂] [✂] Notes of Information/Explanation Provided on [✂].
[379] Answer to Question 23 of [✂] [✂] Notes of Information/Explanation Provided on [✂].

(*Prestige Fortune, formerly Poultry Development*) had been implemented in at least this specific instance.

Policy to not compete for customers belonging to other fresh chicken distributors

240. [✂] stated that when [✂] called [✂] to request for a quote to supply fresh chickens, [✂] asked for the identity of the existing supplier and informed them that they were unable to supply because they will not "*steal customers from another supplier*".[380] The relevant statement is as follows:

> "*…some suppliers mentioned that they do not "backstab" each other. When we called* [✂] *to ask for a quote earlier this year, they asked for our current supplier and told us that they were unable to supply us because they would not steal customers from another supplier. One of the suppliers also told us that they were unable to supply us because we already have an existing supplier.*"[381]

241. [✂] statement is corroborated by statements from both Azmira Binte Mohamed Bejaramin ("Azmira"), a sales executive employed by Lee Say since June 2007, and [✂], a sales executive employed by Lee Say [✂]. Azmira stated that:

> "*…If another supplier undercut my price to customers, Koh Yeok Boon would call the other supplier and ask them not to take my customer. Similarly, if I quote to another supplier's customer, the other supplier would call Koh Yeok Boon and ask him not to touch their customer. We try to be friendly in the industry.*[382]
> *…My company's policy is to check which supplier the customer is using and we try to avoid taking each other's customers, unless the other supplier is willing to share the customers with us. Sometimes if the other suppliers are not happy about us taking their customers then we will avoid doing so.*" [383]

242. When Azmira was asked to explain how she would avoid "*taking each other's customers*", she stated that:

[380] Answer to Question 6 of [✂] [✂] Notes of Information/Explanation Provided on [✂].
[381] Answer to Question 6 of [✂] [✂] Notes of Information/Explanation Provided on [✂].
[382] Answer to Question 6 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 April 2015.
[383] Answer to Question 7 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 April 2015.

"*…I will create my own excuse to the customer so that I do not sell to the other supplier's customers, e.g. say that we have no stock...*"[384]

243. In response to a question on when she first learnt of this policy to not compete, she stated:

"*Within a few months after I joined Lee Say, Koh Yeok Boon and my other colleagues taught me the ropes. When I was learning the business, if I accidentally take another supplier's customers, Koh Yeok Boon and my colleagues would highlight to me not to do so.*"[385]

244. Azmira further stated that the policy of not competing for customers belonging to other fresh chicken distributors was continuing at the time of the interview and that "*everyone in my company knows this policy*". [386]

245. Azmira's account of the policy to not compete was corroborated by [✂] (formerly *Lee Say*), who stated that:

"*…We can only take new customers if they have a new stall and do not have an existing supplier.*[387]
…I reduced price to one customer before, [✂]*, who switched to buying more fresh chicken from me. Toh Ying Seng told me that the other supplier of* [✂] *– KSB, complained to him and Toh Ying Seng asked me what price I offered. Over time, the price of fresh chickens was adjusted upwards subsequently for this customer together with other customers.*
We had sales meetings on Monday and during these meetings, Toh Ying Seng emphasised that we should not take other fresh chicken suppliers' customers. I was aware of this policy when I joined Lee Say.
I heard market talk that fresh chicken suppliers agreed not to compete for one another's customers after bird flu crisis. I was not in this trade before joining Lee Say so I don't know when the bird flu crisis was."[388]

[384] Answer to Question 8 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 April 2015.
[385] Answer to Question 10 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 April 2015.
[386] Answer to Question 12 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 April 2015.
[387] Answer to Question 19 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[388] Answer to Question 6 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.

246. When asked whether other fresh chicken distributors shared the same policy to not compete, [✂] stated that:

> "*A: Toh Ying Seng told us to keep secret that we cannot take other fresh chicken suppliers' customers because it is illegal. I observed that other fresh chicken suppliers do not take my customers.*[389]
>
> *Q21. What would happen if other fresh chicken distributors competed for customers belonging to Lee Say?*
> *A: We would tell Toh Ying Seng and he would settle the issue. Toh Ying Seng sometimes call the other fresh chicken distributor and ask what price the other chicken distributor offered the customer. From what I noticed, if the other fresh chicken distributor lowered prices to compete for the customer belonging to Lee Say, the other fresh chicken distributor would increase the price back after Toh Ying Seng speaks to him.*[390]
>
> *Q23.Please state the identities of the fresh chicken distributors that have the same policy to not compete for other fresh chicken distributors*
> *A: Kee Song…Hup Heng and Hua Kun.*[391]
>
> *Q24. How do you know they have the same policy to not compete for other fresh chicken suppliers?*
> *A: …I have customers that also obtained supplies of fresh chickens from these … suppliers and Lee Say's share of these customers remained stable.*"[392]

247. [✂] also recounted an incident where he was instructed to specifically compete for customers belonging to Tong Huat after several customers belonging to Lee Say switched to Tong Huat:

> "*When Lee Say bought Hup Heng, some of Hup Heng's customers switched to Tong Huat. So shortly after, all Lee Say sales staff were asked to compete for Tong Huat's customers. I was instructed by Koh Yeok Boon to compete for Tong Huat's customers. Toh Ying Seng and Koh Yeok Boon would ask in sales*

[389] Answer to Question 7 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[390] Answer to Question 21 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[391] Answer to Question 23 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[392] Answer to Question 24 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.

meetings why we have not tried to get Tong Huat's customers but they stopped asking after a while about six months later. The policy to not compete did not change for other fresh chicken distributors' customers."[393]

248. The company policy described by Azmira and [✂] not only corroborates each other but is also consistent with the Non-Aggression Pact described by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*) and Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*).

249. Further, the incident where [✂] was instructed to specifically compete for customers belonging to Tong Huat appears to indicate that the Non-Aggression Pact was enforced through informal sanctions. Such informal sanctions are consistent with the body of evidence, including where Ng Lay Long explained that Parties would call him and attempt to pressure him into returning customers he obtained in violation of the Non-Aggression Pact.[394] When Ng Lay Long did not comply, some other Parties exacted retribution by actively competing for his customers.[395] Similarly, when Ho Chong Hee (*Ban Hong*) attempted to sell fresh chickens at a lower price, the Parties would call to "*complain and scold*" him.[396]

Statement by [✂]

250. [✂] from [✂], which is a customer of one of the Parties, stated that [✂] attempted to switch from its existing supplier, [✂] to a rival supplier, [✂] but was informed by the then-deputy general manager of [✂] to continue obtaining supply from [✂]. This attempted switch did not go through after [✂] quarrelled with [✂] during an Association meeting regarding the potential switch.[397] The relevant statement is set out as follows:

"*…There was another incident where I wanted to switch my supplier from* [✂] *for one of the outlet…After I attempted to change the supplier to* [✂] *for that particular outlet,* [✂] *informed me that* [✂] *had a quarrel with* [✂] *at their association*

[393] Answer to Question 20 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[394] Answer to Question 42 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[395] *Ibid.*
[396] Answer to Question 9 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided in 5 May 2015.
[397] Answers to Questions 12 and 13 of [✂] [✂] Notes of Information/Explanation Provided on [✂].

meeting and suggested that I continue to use [✂] *for that outlet.*"[398]

251. [✂] statement corroborates both the existence of the Non-Aggression Pact and the statement from Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) stating that the Parties employed pressure tactics through phone calls to demand the return of customers.[399]

CCCS's conclusion on the supporting evidence relating to the Non-Aggression Pact

252. In the light of the above, CCCS is of the view that taking all the indicia together, namely the:

(i) general industry practice of not competing for each other's customers;

(ii) statements from customers stating that fresh chicken distributors do not approach them to encourage switching;

(iii) specific incidents involving refusals to compete as recounted by [✂] of [✂] and [✂] of [✂];

(iv) policy not to compete for customers belonging to other fresh chicken distributors; and

(v) the enforcement of the Non-Aggression Pact through informal sanctions by the Parties,

there is sufficient evidence to show that the Non-Aggression Pact was implemented in the fresh chicken industry. The indicia taken together also comprise a consistent body of evidence that further corroborates the Non-Aggression Pact described in the statements by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*) and Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*).

253. In addition, CCCS has considered the alternative explanation presented by Koh Yeok Boon (*Lee Say*) regarding the general industry practice of not competing

[398] Answer to Question 12 of [✂] [✂] Notes of Information/Explanation Provided on [✂].
[399] Answer to Questions 42 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.

aggressively – that fresh chicken distributors have reached production capacity – and found the explanation to be unconvincing. If the industry practice arose because of capacity constraints, CCCS is of the view that there would be no reason for Lee Say to *consciously* avoid competing for customers belonging to other fresh chicken distributors and yet specifically go after customers belonging to Tong Huat as punishment when some customers switched to Tong Huat.[400] In addition, if the industry indeed faced capacity constraints, the industry should be unable to take on any new customers, which is clearly not the case.[401]

254. CCCS is of the further view that the Lee Say policy to not compete, as described by Azmira (*Lee Say*) and [✂] (*formerly from Lee Say*), is unlikely to be a unilateral policy, for three reasons.

255. First, the statements from Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) identified an agreement and/or concerted practice in relation to the Non-Aggression Pact between the Parties including Lee Say. The implementation of the policy to not compete is therefore consistent with the tenor of the Non-Aggression Pact.

256. Second, a unilateral policy to not compete goes against commercial sense. Unless there is reciprocity, there is no reason for Lee Say to tie its hands and refuse to compete. Indeed, Azmira stated that if she encountered competition from another fresh chicken distributor, "*Koh Yeok Boon would call the other supplier and ask them not to take my customer*".[402] Likewise, [✂] stated that he would inform the Deputy Managing Director, Toh Ying Seng, if other fresh chicken distributors competed for his customers and Toh Ying Seng "*would settle the issue*" through phone calls.[403] [✂] from [✂] and [✂] from [✂] have also provided examples of instances where Parties have refused to compete for customers belonging to other fresh chicken distributors.[404]

257. Third, had the policy to not compete been a unilateral policy from Lee Say, it would not have been necessary for Toh Ying Seng to charge his sales staff to keep the policy a "*secret*" because "*it is illegal*".[405] Indeed, the clandestine nature of the policy indicates that it was likely to have been made pursuant to

[400] Answer to Question 20 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[401] Answer to Question 19 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[402] Answer to Question 6 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 April 2015.
[403] Answer to Question 21 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[404] Answers to Questions 12 and 13 of [✂] [✂] Notes of Information/Explanation Provided on [✂]; Answer to Question 6 of [✂] [✂] Notes of Information/Explanation Provided on [✂].
[405] Answer to Question 7 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.

the Non-Aggression Pact described by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*).

v. Evidence in support of discussions relating to Price Discussions

258. Sales staff at Lee Say indicated that price increases across the industry generally happens concurrently or within a short span of time. Azmira (*Lee Say*) explained that:

> "*Sometimes customers come to me when there is a price increase for fresh chickens at their existing supplier. But the price would also increase at my company so I can only offer the same price as their supplier, as all the prices in the industry have increased at the same price. Prices increase for fresh chickens across the industry within 1 to 2 days.*" [406]

259. Similarly, [✂] (*formerly from Lee Say*) recounted that:

> "*Other fresh chicken distributors increased prices shortly after Lee Say increased prices and by the same amount. They always increased prices when Lee Say increased prices. I observe this from the market. These price increases took place about one to two times a year while I was at Lee Say. In some cases, Lee Say increased prices shortly after other fresh chicken distributors by the same amount.*[407]
> *…from my market observation the price increases by different fresh chicken distributors are at about the same time and same amount.*[408]
> …
> *I believe I observed this pattern of price increases from the first year I joined Lee Say.*" [409]

260. It is pertinent that [✂] (*formerly from Lee Say*) also recalled an incident where his sales manager, Koh Yeok Boon, displayed fore-knowledge that other fresh chicken distributors would increase prices soon after Lee Say had increased prices:

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[406] Answer to Question 24 of Azmira (Lee Say) Notes of Information/Explanation Provided on 13 August 2014.
[407] Answer to Question 12 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[408] Answer to Question 13 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[409] Answer to Question 14 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.

"*I recall once when customers told me that other fresh chicken distributors have not increased prices even though Lee Say had increased prices, Koh Yeok Boon told me that other fresh chicken distributors would increase prices soon.*"[410]

261. Likewise, [✂] from Crystal Jade stated that price increases of fresh chicken tend to take place concurrently:

> "*There were occasions where I found out that there was a price increase from one of the existing supplier. In such instances I will call the other existing suppliers to check their prices and usually the other suppliers also have increased prices.*[411]
> …
> *…One time when the price of old chickens increased, one of the suppliers informed me that since all the fresh chickens came in from the farms in Malaysia, the suppliers in Singapore all faced the same conditions and had already discussed the price increase.*"[412]

262. Over and above these general statements, CCCS notes that there was evidence of several specific instances where prices and/or price increases were discussed between the Parties.

vi. Specific instances where prices or price movements were discussed

Circular TSD-011 dated 19 September 2007

263. During the inspection on 13 August 2014, CCCS obtained TSD-011 which is a circular from the Association signed by the Chairman Joseph Heng on behalf of the Management Committee. The Management Committee in 2007 comprised of representatives from Sinmah, Tong Huat, Gold Chic/Hua Kun, Ban Hong, Lee Say, Hup Heng, Kee Song, Toh Thye San, Ng Ai and KSB. While TSD-011 does not specify an addressee, it is clear that TSD-011 is a formal request, sanctioned by the Chairman of the Association, to increase the prices of fresh chicken in Singapore. An excerpt of TSD-011 is set out as follows:-

[410] Answer to Question 14 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[411] Answer to Question 8 of [✂] (Crystal Jade) Notes of Information/Explanation Provided on [✂].
[412] Answer to Question 10 of [✂] (Crystal Jade) Notes of Information/Explanation Provided on [✂].

"*We write to inform you of the live chicken supply situation and appeal to you for your help.*

…

In view of the critical situation, we would like to appeal to you to help the industry by reviewing your selling prices of fresh chickens to ensure that they are at levels that would not require the industry to supply below their costs. Your kind understanding would be much appreciated and your generous gesture in this matter would go a long way to help the industry tide over this critical period."

264. In this respect, Ho Chong Hee (*Ban Hong*) stated that an Association meeting at the Imperial Court restaurant led to TSD-011.[413] He further stated that TSD-011 was meant for [✂] because the other [✂] would not agree to increase prices of fresh chicken unless [✂] did so.[414] He added that some members wanted to issue a letter from the Association to push [✂] to increase prices because the members were suffering heavy losses. However, some members were against the idea and preferred to write to [✂] on an individual basis rather than under the aegis of the Association.[415] The relevant statements are as follows:

"*Q33. Do you know the background of this circular?*
A: It was meant for [✂] *because if* [✂] *does not raise prices, the other* [✂] *would not raise prices.*[416]

Q34. Do you know the discussion leading to the circular?
A: I was present at the discussion. It was an Association meeting at Imperial Court. Some people said we should write the circular, some people said we should not write the circular. Those people who wanted to write the circular said that if we did not write the circular, everyone would suffer heavy losses and close down. Those people who did not want to write the circular said that members should write to the supermarket individually and not use the Association's name."[417]

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[413] Answer to Question 34 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[414] Answer to Question 33 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[415] Answer to Question 34 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[416] Answer to Question 33 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[417] Answer to Question 34 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.

265. Crucially, Ho Chong Hee admitted that many fresh chicken distributors in Singapore suffered heavy losses and the market situation rendered it necessary to request [✂] to increase their selling prices of fresh chicken so that fresh chicken distributors could, in turn, increase their selling prices.[418] The relevant statement is as follows:

> "*Q43. Can you confirm that the purpose of writing this circular was to ask* [✂] *to increase prices so that fresh chicken suppliers in Singapore can increase prices?*
> *A: Yes, at that point in time, many fresh chicken suppliers in Singapore were suffering heavy losses and we need to ask* [✂] *to increase their selling prices because otherwise we cannot increase prices.*"[419]

266. While Ho Chong Hee stated that there were at least 10 people at the meeting, he was only able to remember representatives from Lee Say and Tong Huat.[420] He also stated that the Chairman of the Association, Joseph Heng, together with Chiew Kin Huat (*Sinmah*) and Lim Soh Hua (*Gold Chic/Hua Kun*) were among those involved in the discussion and drafting of TSD-011.[421]

267. CCCS is of the view that the version of events stated by Ho Chong Hee vis-à-vis the background of TSD-011 is likely to be reliable because Ho Chong Hee was present at the meeting where TSD-011 was discussed and had first-hand knowledge of the proceedings. In this regard, the statement of Ho Chong Hee indicates that the Parties had met and discussed the market situation. While they disagreed on the exact method employed, they agreed that a collective and coordinated increase in prices was necessary. After these discussions, TSD-011 was created and signed off by the Chairman on behalf of the Management Committee, for the Association.

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[418] Answer to Question 43 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[419] Answer to Question 43 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[420] Answers to Questions 39 and 44 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[421] Answer to Question 35 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.

268. Furthermore, the evidence shows that Sinmah had issued letters that are almost identical to TSD-011 to its customers.[422] The metadata of these letters[423] indicate that the author was Shiny Tan Sze Nee ("Shiny Tan"), the niece and personal assistant of Tan Chee Kien (*Ng Ai*). In this connection, it is likely that Sinmah (by virtue of the letters similar to TSD-011 issued to customers) and Ng Ai (by virtue of Shiny Tan being listed as the author of those letters issued by Sinmah) were involved in the drafting of TSD-011. The relevant statements from Shiny Tan are set out as follows:

> "*Q37. Please confirm that the content of [TSD-011] is exactly the same as that of WXT2-004?*
> *A: By comparing both documents, the content of the letter is exactly the same as that of WXT2-004.*[424]
> …
> *Q40. Please confirm that WXT2-005 and WXT2-006 are edited versions of TSD-011.*
> *A. From what I feel, yes, they are edited versions of TSD-011.*[425]
>
> *Q41. Please look at the first page of WXT2-005 and the second page of WXT2-006. Can you confirm that you are listed as the author of these two documents?*
> *A. Yes, I am listed as the author.*[426]"

269. In the circumstances, CCCS is of the view that TSD-011 represents a clear instance where the named Parties had discussed how price increases should be implemented in the fresh chicken industry in Singapore.

Price increase in 2007 pursuant to TSD-011

270. Following from TSD-011 which was dated 19 September 2007, CCCS notes that The Straits Times reported on 21 October 2007 that prices of fresh chicken in Singapore increased by 30 to 90 cents per kilogram due to a 20% increase in prices of live birds from Malaysia. Furthermore, figures from the Department

[422] WXT2-004, WXT2-005 and WXT2-006 of Wu Xiao Ting (Sinmah) Notes of Information/Explanation Provided on 18 March 2015.
[423] *Ibid.*
[424] Answer to Question 37 of Shiny Tan (Ng Ai) Notes of Information/Explanation Provided on 9 April 2015.
[425] Answer to Question 40 of Shiny Tan (Ng Ai) Notes of Information/Explanation Provided on 9 April 2015.
[426] Answer to Question 41 of Shiny Tan (Ng Ai) Notes of Information/Explanation Provided on 9 April 2015.

of Statistics ("DOS") showed an increase in the retail prices of fresh chickens in Singapore[427]:

Period	2007 Jul	2007 Aug	2007 Sep	2007 Oct	2007 Nov	2007 Dec
Retail Price (S$)	4.85	4.77	4.85	5.18	5.24	5.48

271. As can be seen from the data, retail prices from September 2007 to October 2007 climbed 6.8% compared to 1.7% from August 2007 to September 2007. According to available evidence, prices of fresh chicken products sold by the Parties also appear to have generally increased from September 2007 to October 2007.[428]

272. In light of the above, CCCS is satisfied that the indicia described, when taken together, show that the price increase in 2007 is consistent with the result of collusion rather than independent actions by the Parties.[429]

Association minutes dated 26 June 2013

273. During an Association meeting on 26 June 2013, Chiew Kin Huat (*Sinmah*) reminded participants that while setting sale prices low may reap short-term rewards, it is not likely to have long-term benefits. He also pointed out that participants should "*pay more attention*" to the fresh chicken sale prices in Singapore. This is recorded in the Association minutes dated 26 June 2013.[430] CCCS notes that representatives from Toh Thye San, Hock Chuan Heng/Hy-fresh, KSB, Tong Huat, Gold Chic, Hup Heng, Ng Ai, Kee Song and Sinmah were present at the said meeting and did not object to the statement by Chiew Kin Huat.

274. In this respect, CCCS notes that the retail prices of fresh chickens in Singapore increased by about 4.9%[431] from June 2013 to November 2013[432]:-

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[427] Data obtained from the Department of Statistics at http://www.tablebuilder.singstat.gov.sg/publicfacing/mainMenu.action. The retail prices relate to fresh pullets and were obtained from supermarkets and wet markets. Fresh pullets are part of the relevant product market in the present case.

[428] Responses from Lee Say, KSB, Hup Heng and Gold Chic to CCCS section 63 notice dated 9 January 2015.

[429] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 at [118].

[430] See Exhibit JH-007. Information provided by the Association dated 28 September 2015 pursuant to the section 63 Notice issued by CCCS dated 9 September 2015.

[431] Most of the quantum of increase in prices (4.1%) was accounted for in the first three months after June 2013, i.e., by September 2013.

[432] Data obtained from the Department of Statistics at http://www.tablebuilder.singstat.gov.sg/publicfacing/mainMenu.action. The retail prices relate to fresh pullets

Period	2013 Mar	2013 Apr	2013 May	2013 Jun	2013 Jul	2013 Aug	2013 Sep	2013 Oct	2013 Nov
Retail Price (S$)	5.92	5.89	5.82	5.85	5.79	5.98	6.09	6.11	6.14

275. CCCS is therefore of the view that events recorded in the Association minutes dated 26 June 2013 represent an occasion where Parties tried to influence each other's pricing policies pursuant to the agreement and/or concerted practice in relation to the Price Discussions. While CCCS is not required to show that Chiew Kin Huat's appeal was acted upon, the retail price data provided by DOS shows that prices had generally increased after June 2013.

Statements by Kee Song sales staff

276. In a news article, dated 17 February 2014[433], which discussed the shortage of chickens in Singapore, Chiew Kin Huat stated, on behalf of the Association that "*it will observe the situation for three months before deciding whether to adjust prices*".

277. In this connection, Fung Chiew Chen, who is an assistant sales manager at Kee Song, stated that the Association had asked its members, including Kee Song, to increase the price of fresh chicken in February 2014.[434] The relevant statements are set out as follows:

> "*Q76. I refer to exhibit marked CCSMP-001. Have you read this article?*
> *A: Yes.*[435]
>
> *Q77. Were there changes in prices in February 2014?*
> *A: Yes. We are actually under the Poultry Association. At that time, the Association had asked its members to increase prices.*"[436]

and were obtained from supermarkets and wet markets. Fresh pullets are part of the relevant product market in the present case.

[433] MyPaper article dated 17 February 2014 titled "Chickens fall prey to dry spell". See CCSMP 001 exhibited at Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.

[434] Answer to Question 77 of Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.

[435] Answer to Question 76 of Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.

[436] Answer to Question 77 of Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.

278. He further stated that the instruction to increase prices was passed down to him by the senior marketing and sales manager, Neo Cheng Hai, during a routine sales meeting on a Monday morning "*a few days before Chinese New Year*".[437]

279. Fung Chiew Chen confirmed that Kee Song complied with the request of the Association to increase prices, and that the other fresh chicken distributors such as Lee Say, KSB and Toh Thye San also increased prices within one or two days.[438]

280. While CCCS is not required to show that the request to increase prices was acted upon, CCCS notes that the retail prices of fresh chickens in Singapore increased by 4.2% from December 2013 to March 2014.[439] In particular, there was a slight increase in prices by 0.6% from February 2014 to March 2014[440]:

Period	**2013 Dec**	**2014 Jan**	**2014 Feb**	**2014 Mar**
Retail Price (S$)	6.09	6.30	6.31	6.35

281. The statement by Fung Chiew Chen is further corroborated by Sim Ah Soon, who is a sales manager at Kee Song. He stated that "*there is an association that discusses about prices and when they want to raise the prices*".[441] He stated that Ong Kian San is involved in the discussions and will instruct Neo Cheng Hai about the outcome of the discussions who will in turn instruct sales staff on when to increase the sale prices.[442]

[437] Answer to Question 82 to 84 of Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[438] Answer to Questions 81, 87 and 88 of Fung Chiew Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[439] As the evidence indicates that the planning for price increases took place before Chinese New Year, i.e., before 31 January 2014, the price in the month before Chinese New Year (December 2013) has been included for comparison.
[440] Data obtained from the Department of Statistics at http://www.tablebuilder.singstat.gov.sg/publicfacing/mainMenu.action. The retail prices relate to fresh pullets and were obtained from supermarkets and wet markets. Fresh pullets are part of the relevant product market in the present case.
[441] Answer to Question 36 of Sim Ah Soon (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[442] Answer to Question 37 of Sim Ah Soon (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.

282. During the first interview on 13 August 2014, Neo Cheng Hai denied that there were Price Discussions at the Association level.[443] He stated that he did not instruct sales staff to increase prices pursuant to said Price Discussions.[444] However, during the second interview on 24 November 2014, when statements by Fung Chiew Chen and Sim Ah Soon were put to him, Neo Cheng Hai admitted that:

> "*My boss Ong Kian San told me that there was no need to follow prices recommended by the Association. He told me this 4-5 years ago I think. I cannot remember exactly when.*[445]
> …
> *I am just an employee so I only know so much. I know that Ong Kian San did tell me not to follow prices by the Association. As to whether the Association indeed discussed prices, I leave that to CCS to draw its own conclusions*."[446]

283. CCCS notes that all the Parties were either members of or were represented in the Association in 2014.[447] In this regard, CCCS is of the view that the statements by Fung Chiew Chen, Sim Ah Soon and Neo Cheng Hai corroborate each other and is evidence of Price Discussions between the Parties.

CCCS's conclusion on the supporting evidence relating to the Price Discussions

284. In light of the above, CCCS is of the view that taking all the indicia together, namely the:

(i) Statements by Lee Say staff, Azmira and [✂], indicating that price increases in the fresh chicken industry tend to take place concurrently, usually within one or two days;

(ii) Statement by Crystal Jade indicating that price increases take place concurrently and may be the result of an agreement between the fresh chicken distributors;

[443] Answer to Question 33 of Neo Cheng Hai (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[444] Answer to Question 45 of Neo Cheng Hai (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[445] Answer to Question 51 of Neo Cheng Hai (Kee Song) Notes of Information/Explanation Provided on 24 November 2014.
[446] Answer to Question 52 of Neo Cheng Hai (Kee Song) Notes of Information/Explanation Provided on 24 November 2014.
[447] See Exhibit JH 001.

(iii) Circular TSD-011, dated 19 September 2007, which was an appeal by the Association on behalf of the Parties to increase prices of fresh chicken in Singapore;

(iv) Actual increase in prices of fresh chicken in Singapore between September 2007 to October 2007;

(v) Association minutes, dated 26 June 2013, where Chiew Kin Huat (*Sinmah*) reminded members not to set prices too low coupled with an actual increase in prices of fresh chicken in Singapore between June 2013 to November 2013; and

(vi) Statements by three Kee Song sales staff indicating that Parties had discussed price increases and made price recommendations through the Association sometime in February 2014, coupled with an actual increase in prices of fresh chicken in Singapore from December 2013 to March 2014,

there is sufficient supporting evidence to show that the Price Discussions did, in fact, take place and that the Price Discussions were likely to have been implemented in at least three instances:

(i) Between September 2007 to October 2007 after the issuance of circular TSD-011;

(ii) Between June 2013 to November 2013 after the Association meeting on 26 June 2013; and

(iii) Between February 2014 to March 2014 after price recommendations by the Parties through the Association.

The indicia taken together also comprise of a consistent body of evidence which corroborates the agreement and/or concerted practice of Price Discussions described in the statements of Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Alex Toh (*Toh Thye San*) and Ma Chin Chew (*Hup Heng*).

285. Having considered the direct and supporting evidence of discussions relating to the Non-Aggression Pact and Price Discussions, CCCS will, in this part of the

ID, consider the *potential* exculpatory evidence obtained during the investigation.

vii. Potential exculpatory evidence on participation in the Anti-Competitive Discussions

286. CCCS notes that while Tan Koon Seng (*Lee Say*), Vincent Chew (*KSB*), Toh Eng Say (*Tong Huat*), Ho Chong Hee (*Ban Hong*), Tan Chee Kien (*Ng Ai*) and Lim Soh Hua (*Gold Chic/Hua Kun*) do not dispute having participated in meetings and social gatherings amongst the Parties, they do dispute having participated in or even having any knowledge of the Anti-Competitive Discussions.

287. However, CCCS notes that the direct evidence by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*), Ma Chin Chew (*Hup Heng*) and Alex Toh (*Toh Thye San*) corroborate the existence of the Anti-Competitive Discussions between the Parties.

288. The statements by the above-named Parties do not state precise dates of meetings or minute notes detailing the attendees and content of discussions. However, CCCS is of the view that the lack of such details does not lessen the reliability or probative value of the said statements for five reasons.

289. First, Chiew Kin Huat (*Sinmah*) stated that the meetings happened frequently, at about two to three times a week, since 2000 to 2014. The commonplace nature of the meetings suggests that participants are not likely to remember the exact dates of the Anti-Competitive Discussions. It is also noteworthy that not all the representatives attended all of meetings when the Anti-Competitive Discussions took place. In this regard, vagueness in the statements as to the identities of the participants is to be expected.

290. Crucially, taking the evidence as a whole, there is ***concurrence*** on the identities of the participants of the Anti-Competitive Discussions. In this regard, Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) were able to provide the identities of the participants of the Anti-Competitive Discussions and from the statements the following were named:

Table 2

Parties who participated in the Anti-Competitive Discussions	**Identified by**
Chiew Kin Huat (*Sinmah*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Ong Kian San (*Kee Song*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Ng Lay Long (*Hock Chuan Heng/Hy-fresh*)	Chiew Kin Huat and Ng Lay Long
Alex Toh (*Toh Thye San*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Quek Cheaw Kwang (*Prestige Fortune formerly Poultry Development*)	Chiew Kin Huat and Ong Kian San. Ng Lay Long was unable to recall if Quek Cheaw Kwang participated in the Anti-Competitive Discussions.
Tan Koon Seng (*Lee Say*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Ma Chin Chew (*Hup Heng*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Vincent Chew (*KSB*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Toh Eng Say (*Tong Huat*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long
Ho Chong Hee (*Ban Hong*)	Chiew Kin Huat and Ong Kian San. Ng Lay Long was unable to recall if Ho Chong Hee participated in the Anti-Competitive Discussions.
Tan Chee Kien (*Ng Ai*)	Chiew Kin Huat and Ong Kian San. Ng Lay Long was unable to recall if Tan Chee Kien participated in the Anti-Competitive Discussions.
Lim Soh Hua (*Hua Kun/Gold Chic*)	Chiew Kin Huat and Ong Kian San. Ng Lay Long was unable to recall if Lim Soh Hua participated in the Anti-Competitive Discussions.

291. All the representatives set out above were named by at least two of the three named witnesses. CCCS notes that the statements from Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-*

fresh) were obtained during separate interviews and is therefore satisfied that the statements were made independently. Pertinently, these statements corroborate one another and concur that the Parties named were present during the meetings when the Anti-Competitive Discussions took place.

292. Second, a number of the Anti-Competitive Discussions in the present case took place in a social context and at times during KTV sessions where minutes were unlikely to be taken.[448] Therefore, it is unsurprising that there is no documentary evidence relating to the Anti-Competitive Discussions when they took place in such settings.

293. Third, from statements by Chiew Kin Huat (*Sinmah*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and Alex Toh (*Toh Thye San*), it is clear that if some Parties did not attend a particular Anti-Competitive Discussion, phone calls would be made between the Parties informing each other of the discussed price increases. On occasions, calls would also be made demanding the return of customers poached in contravention of the Non-Aggression Pact.[449] Therefore, the Anti-Competitive Discussions during the meetings were only one of the means by which the Parties disseminated information and communicated in relation to the Anti-Competitive Discussions.

294. Fourth, CCCS notes that statements by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) are self-incriminating and produced at the point in time when details of the Anti-Competitive Discussions, such as the location of meetings and identities of participants, could not be inferred from any documentary evidence. As mentioned at paragraph 220 above, the named parties have no incentive to provide CCCS with statements that run counter to the interest of the undertakings which they represent. CCCS therefore considers these statements to be particularly reliable and hence highly probative.

295. Last, it is also pertinent that Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) were each able to recount specific details including:

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[448] Answer to Question 1 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015; Answer to Question 1 of Ng Lay Long (Hock Chuan Heng) Notes of Information/Explanation Provided on 3 June 2015.

[449] Answers to Questions 22 and 23 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015; Answers to Questions 42 and 51 of Ng Lay Long (Hock Chuan Heng) Notes of Information/Explanation Provided on 4 May 2015; Answer to Question 82 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.

(i) the locations where the Anti-Competitive Discussions were held, eg. Riverview Hotel and KTVs such as Las Vegas[450]; and

(ii) the specific phrasing of the announcement of future price increases, for example, "*raise prices by $0.30 tomorrow*" or "*prices of fresh chickens will be increased by S$0.20 two days later*".[451]

These are factual details that are consistent across the independently recorded statements from the three witnesses and unlikely to have been fabricated.

296. In this connection, the independently recorded statements of Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) are unanimous in confirming that there were discussions on the Non-Aggression Pact amongst the Parties. These statements are also corroborated by Alex Toh (*Toh Thye San*) and Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*). The supporting evidence from customers and staff of the Parties also indicate that the Non-Aggression Pact was, in fact, implemented.

297. With respect to the Price Discussions, there is strong corroboration amongst the statements by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) that Parties would announce their intentions to increase prices by a set amount. Chiew Kin Huat and Ng Lay Long admitted it was understood that they were to increase prices by the proposed amount and the Parties would follow suit and increase their prices by the same amount.[452] Ma Chin Chew (*Hup Heng*) also recounted a specific incident where he agreed to change his pricing strategy following a discussion with some of the Parties.[453]

298. Furthermore, supporting evidence shows that prices of fresh chicken in Singapore did increase after September 2007 and the increases coincided with the issue of TSD-011 in September 2007. The Association minutes dated 26 June 2013 also indicated that Parties did exert pressure on each other to prevent price competition. Likewise, there was a recorded increase in retail prices of

[450] Answer to Question 34 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015; Answer to Question 12 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015; Answers to Question 19 of Ng Lay Long (Hock Chuan Heng) Notes of Information/Explanation Provided on 4 May 2015.
[451] Answer to Question 22 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015; Answers to Question 51 of Ng Lay Long (Hock Chuan Heng) Notes of Information/Explanation Provided on 4 May 2015.
[452] Answers to Question 51 of Ng Lay Long (Hock Chuan Heng) Notes of Information/Explanation Provided on 4 May 2015.
[453] Answer to Question 22 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

fresh chicken from June 2013 to November 2013. Statements from Kee Song staff also indicate that the Parties, through the Association, had recommended price increases sometime in February 2014. Again, there was a recorded increase in retail prices of fresh chicken after February 2014.

299. Taking all direct and supporting evidence in its entirety, CCCS is satisfied that on the balance of probabilities, the Parties had participated in agreements and/or concerted practices relating to the Anti-Competitive Discussions.

viii. Potential exculpatory evidence by Quek Cheaw Kwang and Ma Chin Chew

300. Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ma Chin Chew (*Hup Heng*) have admitted to participating in discussions relating to the Non-Aggression Pact and Price Discussions respectively. However, Quek Cheaw Kwang denied participating in the Price Discussions[454] and Ma Chin Chew denied participating in any discussions relating to the Non-Aggression Pact.[455]

301. CCCS is of the view that the potential exculpatory statements by Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ma Chin Chew (*Hup Heng*) should be read in light of the direct evidence in the form of admissions by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*). In this connection, CCCS considers it pertinent that Quek Cheaw Kwang was specifically identified by Chiew Kin Huat and Ong Kian San to have participated in the Anti-Competitive Discussions. Likewise, Ma Chin Chew was specifically identified by Chiew Kin Huat, Ong Kian San and Ng Lay Long to have participated in the Anti-Competitive Discussions.

302. Furthermore, the statement by [✂] and the email correspondence between Ma Chin Chew (*Hup Heng*) and Wu Xiao Ting (*Sinmah*), when taken together, indicate that Ma Chin Chew and Wu Xiao Ting had implemented the Non-Aggression Pact, at least, between Hup Heng and Sinmah.

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[454] Answer to Question 40 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 30 April 2015; Answer to Question 21 of Quek Cheaw Kwang (Poultry Development / Prestige Fortune) Notes of Information/Explanation Provided on 5 June 2015.

[455] Answers to Questions 8 to 13 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

303. There is a consistent body of supporting evidence, as set out between paragraphs 226 to 285 that corroborates the existence of agreements and/or concerted practices relating to the Anti-Competitive Discussions. As such, CCCS is of the view that the potential exculpatory statements by Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) and Ma Chin Chew (*Hup Heng*) run counter to the weight of direct and supporting evidence.

ix. Potential exculpatory evidence in relation to the Price Discussions

304. While Ong Kian San (*Kee Song*) and Ma Chin Chew (*Hup Heng*) have admitted to participating in discussions relating to the Price Discussions, they denied that an agreement had been reached amongst the Parties to increase prices by the agreed amount at an agreed date.[456]

305. Foremost, CCCS is of the view that the potential exculpatory statements must be read in light of the statements by Chiew Kin Huat (*Sinmah*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) who both stated that there was an agreement between Parties to increase prices by the agreed amount and on an agreed date. Prima facie, statements by Chiew Kin Huat and Ng Lay Long are particularly reliable because the statements made are self-incriminating and run counter to the interests of the undertakings which they represent.

306. Next, it is established law that CCCS is not required to prove that a formal agreement was entered into. A concerted practice exists if Parties, even if they do not enter into an agreement (either express or implied), "*knowingly substitutes for the risks of competition, practical cooperation between them*".[457]

307. In this regard, Ong Kian San (*Kee Song*) admitted that the Anti-Competitive Discussions took place because "*nobody wants to be the only one to raise prices because then the business would suffer*".[458] Ma Chin Chew (*Hup Heng*) also admitted that he stopped the price war and consequently increased prices after discussions with some of the Parties.[459] It is thus patently clear that the Parties had intentionally substituted the risks of competition with practical cooperation

[456] See Answers to Questions 8 to 13 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015 and Answers to Questions 19 to 22 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 3 June 2015.
[457] Case 48/69 *ICI v Commission* [1972] ECR 619, at [64]; and *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [206 (iii)]. See also *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.16.
[458] Answer to Question 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[459] Answers to Questions 22 and 36 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

and hence participated in, at the very least, a concerted practice to coordinate price movements.

308. Furthermore, even if CCCS were to accept that there was no agreement or concerted practice to coordinate price movements, the mere fact that the Parties had exchanged or disclosed future pricing intentions to each other, is restrictive of competition by object and hence sufficient to establish liability. This is explained in further detail below at paragraphs 377 and 378.

309. Apart from the statements by Chiew Kin Huat (*Sinmah*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*), there is cogent supporting evidence at paragraphs 263 to 285 stating that price increases of fresh chicken in Singapore tend to occur concurrently. CCCS notes that the evidence demonstrates three separate occasions where prices of fresh chicken in Singapore increased *after* the meetings between the Parties where prices were discussed.

310. In light of the above, CCCS is of the view that the potential exculpatory statements by Ong Kian San (*Kee Song*) and Ma Chin Chew (*Hup Heng*) run counter to the weight of direct and supporting evidence.

K. Additional Evidence from the Further Investigations

311. The Tong Huat Group, Sinmah, Kee Song and Hock Chuan Heng/Hy-fresh admitted that the Anti-Competitive Discussions had indeed taken place and confirmed that their representatives, together with representatives from the other Parties, were present during the Anti-Competitive Discussions.[460]

Non-Aggression Pact

312. In relation to the Non-Aggression Pact, Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and Toh Eng Say (*Tong Huat Group*) admitted that the discussions relating to not competing for customers belonging to each other did take place. Toh Eng Say (*Tong Huat Group*) further stated that these discussions revolved around "*not destroying relationships*".

313. As set out at paragraphs 42 to 52 above, the Parties have long-standing relationships and share a spirit of cooperation with the object to both advance

[460] Paragraph 1.3 of Leniency Statement (Tong Huat Group) dated 24 October 2016; Paragraph 4 of Leniency Statement (Kee Song) dated 30 November 2016; Paragraph 1.1 of Leniency Statement (Sinmah) dated 9 December 2016; and Page 1 of Leniency Statement (Hock Chuan Heng/Hy-fresh) dated 13 December 2016.

and protect each other's interests. In this connection, Chiew Kin Huat (*Sinmah*) admitted to exchanging friendly calls with Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and on occasion, asking for the return of customers poached.[461] While Chiew Kin Huat (*Sinmah*) averred that the Non-Aggression Pact was not adhered to in the general course, it is pertinent to note that implementation is not necessary for a finding of liability for infringing section 34 of the Act. In any event, as set out at paragraphs 233 to 257, there is evidence to show that the Non-Aggression Pact was generally adhered to and implemented in specific instances.

Price Discussions

314. In relation to the Price Discussions, Tong Huat Group provided *detailed* information on ***agreed*** price increases as set out in **Table 3** below, including the quantum and dates of the implementation.

Table 3: Price increases by Tong Huat Group

Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chicken Products (whether cut or not) (cents)
24 July 2008	20
9 May 2009	20
20 August 2010	10
18 January 2011	20
17 March 2011	30
1 January 2013	30
24 September 2013	20
21 January 2014	20

315. The Price Discussions applied to fresh whole chicken products, whether cut or not, and were general in its application such that no customer or group of customers were expressly or specifically excluded from the Price Discussions.[462] In this connection, Toh Eng Say (*Tong Huat Group*) admitted that the agreed price increases would be applied across the board although some

[461] Paragraph 6.1 of Leniency Statement (Sinmah) dated 9 December 2016.
[462] Paragraph 3 of Leniency Statement (Tong Huat Group) dated 3 February 2017.

customers were not affected by the price increases due to non-implementation.[463]

316. Toh Eng Say (*Tong Huat Group*) admitted that the Parties would meet and agree to the price increases indicated in the table above, approximately three to five working days prior to the dates of implementation. Toh Eng Say (*Tong Huat Group*) would communicate the agreed price increases to his delivery personnel who would then issue delivery orders reflecting the price increases for the relevant products. The sales clerks of the Tong Huat Group would also scribble the price increases on the price lists as they input the revised prices of the relevant products into the Tong Huat Group's accounting system.[464]

317. Toh Eng Say (*Tong Huat Group*) added that the Parties would stagger the implementation of the agreed price increases in order to avoid detection. For similar reasons, no written agreement was ever made to record the Parties' understanding arising from the Price Discussions.[465]

Parties' participation

318. In relation to the Parties' participation, Toh Eng Say (*Tong Huat Group*) recalled that Vincent Chew (*KSB*), Tan Koon Seng (*Lee Say*), Toh Ying Seng (*Lee Say*), Ma Chin Chew (*Hup Heng*), Chiew Kin Huat (*Sinmah*), Neo Cheng Hai (*Kee Song*), Lim Soh Hua (*Gold Chic/Hua Kun*), Tan Chee Kien (*Ng Ai*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) attended the meetings where the Price Discussions took place.[466] While these representatives may not have attended every single Price Discussion, Toh Eng Say (*Tong Huat Group*) confirmed that the agreed price increases would nonetheless be communicated to the absentees by the attendees.[467]

319. Toh Eng Say (*Tong Huat Group*) added that representatives of Toh Thye San and Prestige Fortune were not present at the Price Discussions after 2007 because sometime in 2007, it was decided that fresh chicken distributors who did not own a slaughterhouse should not attend the Price Discussions.[468] The reason for the decision was to enable the Price Discussions to be organised easily.[469] Nonetheless, Toh Eng Say (*Tong Huat Group*) confirmed that Toh

[463] Paragraph 2.3.2 of Leniency Statement (Tong Huat Group) dated 17 November 2016.
[464] Paragraph 3.1.2 of Leniency Statement (Tong Huat Group) dated 24 October 2016.
[465] Paragraph 2.3.2 of Leniency Statement (Tong Huat Group) dated 17 November 2016.
[466] Paragraph 3.3.1 of Leniency Statement (Tong Huat Group) dated 24 October 2016.
[467] Paragraph 2.1.3 of Leniency Statement (Tong Huat Group) dated 17 November 2016.
[468] Paragraph 1(a) of Leniency Statement (Tong Huat Group) dated 3 February 2017.
[469] Paragraph 1(a) of Leniency Statement (Tong Huat Group) dated 3 February 2017.

Thye San and Prestige Fortune participated in the Price Discussions prior to 2007. After 2007, Toh Thye San and Prestige Fortune were informed of the agreed price increases by representatives of the slaughterhouse at which they had their live chickens slaughtered, namely, KSB (for Toh Thye San) and Tong Huat (for Prestige Fortune who subsequently had its chickens slaughtered by Lee Say after the acquisition by Lee Say).[470]

320. In relation to the duration of the Price Discussions, Toh Eng Say (*Tong Huat Group*) stated that prior to 2007, the Parties would "*meet when necessary to talk about prices*".[471] While the last occasion of the Price Discussions took place in January 2014, no decision was made to cease the Price Discussions in January 2014.[472]

321. In relation to the inner workings of the cartel, Toh Eng Say (*Tong Huat Group*) explained that the meetings of the Price Discussions were organised by phone calls, with Vincent Chew (*KSB*), Tan Koon Seng (*Lee Say*) and Ma Chin Chew (*Hup Heng*), being the most active participants.[473] While no specific formula was used in determining the agreed price increases, the Parties would consider the cost price of live chickens. In this regard, Toh Eng Say (*Tong Huat Group*) noted that the Price Discussions usually took place when there was a significant increase in cost prices.[474]

322. While CCCS is not required to prove that the Price Discussions were implemented by the Parties in order to establish liability for infringing section 34 of the Act, CCCS notes that the price information obtained from the Parties revealed that the agreed price increases were in fact implemented by the Parties. The paragraphs below set out the implementation dates and agreed price quantum provided by the Tong Huat Group compared against each of the Parties, bearing in mind that the Parties intentionally staggered the implementation of price increases in order to avoid detection.

Sinmah

323. Sinmah submitted that while it did not adjust its prices as a direct consequence of the Price Discussions, it may have taken the discussions into account when

[470] Paragraph 2.1.2 of Leniency Statement (Tong Huat Group) dated 17 November 2016.
[471] Paragraph 1(b) of Leniency Statement (Tong Huat Group) dated 3 February 2017.
[472] Paragraph 4(b) of Leniency Statement (Tong Huat Group) dated 3 February 2017.
[473] Paragraph 2.2.1 of Leniency Statement (Tong Huat Group) dated 17 November 2016.
[474] Paragraph 4 of Leniency Statement (Tong Huat Group) dated 3 February 2017.

making its pricing decisions.[475] With respect to the dates provided by the Tong Huat Group at **Table 3** above, Sinmah informed that based on a sampling of regular customers including supermarkets, wet markets and hawker stalls, price increases took place on the following dates (set out in **Table 4**):

Table 4: Price increases by Sinmah

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Sinmah	Quantum of price increase by Sinmah on Fresh Whole Chickens (cents)
1	24 July 2008	20	No records available	No records available
2	9 May 2009	20	1 June 2009	10
3	20 August 2010	10	24 August 2010	10
4	18 January 2011	20	20 January 2011	10 to 30
5	17 March 2011	30	18 March 2011	20 to 30
6	1 January 2013	30	6 February 2013	10
7	24 September 2013	20	No increase	No increase
8	21 January 2014	20	21 January 2014	10

324. It is clear from items 3, 4, 5 and 8 of **Table 4** that Sinmah had implemented *four out of eight price increases* within four days of the dates documented by the Tong Huat Group.

325. With respect to item 1 of **Table 4**, while the Tong Huat Group implemented a price increase of 20 cents for fresh whole chicken products on 24 July 2008, Sinmah did not provide price data for the period in July 2008. However, information provided by a customer, [✂], revealed that all of its fresh chicken suppliers, namely [✂], collectively implemented a 20 cents price increase effective 1 August 2008 for at least three fresh whole chicken products namely, chicken pullets, spring chickens and old chickens.[476]

[475] Paragraph 2.9 of Leniency Statement (Sinmah) dated 9 December 2016.
[476] Refer to exhibit marked [✂]-009 submitted by [✂].

326. With respect to item 2 of **Table 4**, while the Tong Huat Group implemented a price increase of 20 cents for fresh whole chicken products on 9 May 2009, Sinmah informed that the price increase was implemented on 1 June 2009. However, information provided by the same customer, [✂], revealed otherwise - that [✂] had collectively implemented a 20 cents price increase between 12 and 14 May 2009 for at least one fresh whole chicken product namely, chicken pullets.[477]

327. In summary, Sinmah had implemented *four out of eight* price increases within four days of the price increases documented by the Tong Huat Group and *six out of eight* price increases within one week of the price increases documented by the Tong Huat Group.

Kee Song

328. Ong Kian San (Kee Song) admitted that "*nobody wants to be the only one to raise price because then the business would suffer. So everyone will wait and if Lee Say is the one raising prices then everyone will follow.*"[478] Kee Song further submitted that while it would use the information obtained from the Price Discussions to decide on its pricing, it would also consider a variety of factors such as the prices of live chickens and cost of operations amongst other things.[479] In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by Kee Song in relation to a sample of 16 customers, including but not limited to, supermarkets, restaurants and wet markets, Kee Song had implemented price increases in the following months (set out in **Table 5**):

Table 5: Price increases by Kee Song

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Kee Song[480]	Quantum of average price increase by Kee Song on Fresh Whole Chickens (cents)
1	24 July 2008	20	August 2008	20 to 30

[477] *Ibid.*
[478] Answer to Question 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[479] Paragraph 11 of Leniency Statement (Kee Song) dated 3 February 2017.
[480] Price movements that occur after the first week of each given month will be reflected in the subsequent month.

2	9 May 2009	20	June 2009	10 to 20
3	20 August 2010	10	September 2010	10
4	18 January 2011	20	February 2011	20
5	17 March 2011	30	April 2011	10 to 30
6	1 January 2013	30	January 2013	30
7	24 September 2013	20	No increase	No increase
8	21 January 2014	20	February 2014	20

329. While Kee Song did not provide the exact date of the price increases, it submitted that price changes that occur after the first week of each given month are reflected only in the *subsequent* month, i.e. a price increase effected on 24 July 2008 would be reflected only in August 2008. Taking this information, Kee Song had implemented *seven out of eight price increases* within the *same month* of the price increases documented by the Tong Huat Group.

Hock Chuan Heng/Hy-fresh

330. Hock Chuan Heng/Hy-fresh admitted that it increased the prices of fresh chicken following the Price Discussions although not consistently in accordance with the Price Discussions.[481] With respect to the dates provided by the Tong Huat Group at **Table 3** above, Hock Chuan Heng/Hy-fresh provided that price increases took place on the following months (set out in **Table 6**):

Table 6: Price increases by Hock Chuan Heng/Hy-fresh

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Hock Chuan Heng/Hy-fresh	Quantum of price increase by Hock Chuan Heng/Hy-fresh on Fresh Whole Chickens (cents)
1	24 July 2008	20	No records available	No records available
2	9 May 2009	20	No records available	No records available

[481] Page 4 of Leniency Statement (Hock Chuan Heng/Hy-fresh) dated 13 December 2016.

3	20 August 2010	10	August 2010	10
4	18 January 2011	20	January 2011	10 to 20
5	17 March 2011	30	March 2011	10 to 20
6	1 January 2013	30	January 2013	10 to 30
7	24 September 2013	20	No increase	No increase
8	21 January 2014	20	January 2014	10 to 20

331. It is clear from **Table 6** that Hock Chuan Heng/Hy-fresh had implemented *five out of eight price increases* within the *same month* of the price increases documented by the Tong Huat Group. Of the three dates where no price increase was observable or observed, two of those, in 2008 and 2009, had no available records. In this connection, it is noted that Hock Chuan Heng/Hy-fresh had implemented *five out of six price increases* during time periods where records were available.

Toh Thye San

332. Other than the Tong Huat Group, Kee Song, Sinmah and Hock Chuan Heng/Hy-fresh, CCCS obtained comprehensive price data on fresh chicken products sold to customers by each of the Parties, stating the exact date of each instance of price change.[482] Specifically, for each date set out in **Table 3**, CCCS obtained the price data for the month of implementation, as well as the month before and after. For example, for the implementation date of 24 July 2008, CCCS had obtained price data for the months of June, July and August 2008. Information such as the quantum of price increase, the number of customers affected, the number of fresh chicken products affected[483], the number of instances of price increase and the percentage of price increase occurring within a specific time period were then extracted and/or computed from the price data for the analysis set out below.

333. In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by Toh Thye San, Toh Thye San had implemented price increases in the following months (set out in **Table 7**):

[482] Ng Ai was the only fresh chicken distributor that was unable to provide the exact date of price increases for its products.
[483] CCCS considered each sale of single fresh chicken product as one count of fresh chicken product, i.e. the same fresh chicken product sold to two distinct customers in the same month constituted 2 counts of fresh chicken products.

Table 7: Price increases by Toh Thye San

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Toh Thye San	Quantum of price increase by Toh Thye San on Fresh Whole Chickens (cents)
1	24 July 2008	20	No records available	No records available
2	9 May 2009	20	No records available	No records available
3	20 August 2010	10	No records available	No records available
4	18 January 2011	20	No records available	No records available
5	17 March 2011	30	No records available	No records available
6	1 January 2013	30	January 2013	10 to 60
7	24 September 2013	20	Negligible increase[484]	N.A.
8	21 January 2014	20	January 2014	10 to 20

334. Toh Thye San was unable to provide records for five out of eight occasions of price increases documented by the Tong Huat Group. However, the information provided by Toh Thye San indicates that price increases were implemented in the months of January 2013 and January 2014. Affected customers included, but were not limited to, restaurants, hotels, wet markets and hawker stalls. Specifically, in:

(i) January 2013, Toh Thye San implemented price increases on fresh chicken products for at least [✂] customers, in relation to [✂] fresh chicken products. More than [✂]% of the price increases were implemented from 1 to 4 January 2013 i.e. within three days of 1 January 2013, being the date of the price increase documented by Tong Huat Group; and

(ii) January 2014, Toh Thye San implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken

[484] Only [✂] customers were affected.

products. Although the number of customers affected appear to be small, it is noted that out of the number of price increases for fresh chicken products between 1 December 2013 and 28 February 2014 (being the time period in which the price information pertained to), more than [✂]% of the price increases took place in January 2014. There were no price increases in December 2013. Pertinently, more than [✂]% of the price increases were implemented from 21 to 22 January 2013 i.e. within *one* day of 21 January 2014, being the date of price the increase documented by Tong Huat Group.

335. In the foregoing, Toh Thye San had implemented *two out of three price increases* during time periods where records were available.

Gold Chic/Hua Kun

336. In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by Gold Chic/Hua Kun, Gold Chic/Hua Kun had implemented price increases in the following months (set out in **Table 8**):

Table 8: Price increases by Gold Chic/Hua Kun

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Gold Chic/Hua Kun	Quantum of price increase by Gold Chic/Hua Kun on Fresh Whole Chickens (cents)
1	24 July 2008	20	July 2008	9 to 24
2	9 May 2009	20	May 2009	10 to 20
3	20 August 2010	10	August 2010	10 to 30
4	18 January 2011	20	January 2011	10 to 40
5	17 March 2011	30	March 2011	20 to 50
6	1 January 2013	30	January 2013	10 to 33
7	24 September 2013	20	Negligible increase[485]	N.A.
8	21 January 2014	20	January 2014	10 to 20

[485] Only [✂] customers were affected.

337. Gold Chic/Hua Kun implemented price increases on fresh chicken products for between [✂] customers, across [✂] fresh chicken products, during ***each*** of the periods documented by Tong Huat Group. Affected customers included, but were not limited to, restaurants, wet markets and hawker stalls. These instances are set out at items 1 to 6 and 8 of **Table 8** above. Specifically, in:

(i) July 2008, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In July 2008, more than [✂]% of the price increases were implemented from 24 to 27 July 2008 (i.e. within three days of 24 July 2008, being the date of the price increase documented by Tong Huat Group);

(ii) May 2009, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In May 2009, more than [✂]% of the price increases were implemented from 9 to 12 May 2008, i.e. within three days of 9 May 2009, being the date of the price increase documented by Tong Huat Group;

(iii) August 2010, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In August 2010, more than [✂]% of the price increases were implemented from 20 to 23 August 2010, i.e. within three days of 20 August 2010, being the date of the price increase documented by Tong Huat Group;

(iv) January 2011, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2011, more than [✂]% of the price increases were implemented from 18 to 21 January 2011, i.e. within three days of 18 January 2011, being the date of the price increase documented by Tong Huat Group;

(v) March 2011, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In March 2011, more than [✂]% of the price increases were implemented from 17 to 20 March 2011, i.e. within three days of 17 March 2011, being the date of the price increase documented by Tong Huat Group;

(vi) January 2013, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2013, more than [✂]% of the price increases were implemented from 1 to 4 January 2013, i.e. within three days of 1 January 2013, being the date of the price increase documented by Tong Huat Group; and

(vii) January 2014, Gold Chic/Hua Kun implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2014, more than [✂]% of the price increases were implemented from 21 to 24 January 2014, i.e. within three days of 21 January 2014, being the date of the price increase documented by Tong Huat Group.

338. Gold Chic/Hua Kun had implemented *seven price increases,* within contemporaneous proximity of the eight instances in which the Tong Huat Group stated that the agreed price increases were implemented.

Ng Ai

339. In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by Ng Ai, CCCS observed that Ng Ai had implemented price increases in the following months:

Table 9: Price increases by Ng Ai

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Ng Ai[486]	Quantum of price increase by Ng Ai on Fresh Whole Chickens (cents)
1	24 July 2008	20	July 2008	5 to 60
2	9 May 2009	20	May 2009	10 to 40
3	20 August 2010	10	August 2010	5 to 10
4	18 January 2011	20	January 2011	10 to 20
5	17 March 2011	30	March 2011	5 to 50

[486] Ng Ai was unable to provide the specific day on which the price increase was implemented.

6	1 January 2013	30	Negligible increase[487]	N.A.
7	24 September 2013	20	Negligible increase[488]	N.A.
8	21 January 2014	20	January 2014	5 to 10

340. Ng Ai implemented price increases on fresh chicken products for [✂] customers, [✂] fresh chicken products, during ***each*** of the periods documented by Tong Huat Group set out at items 1 to 5 and 8 of the table above. Affected customers included, but were not limited to, restaurants and hotels. Specifically, in:

(i) July 2008, Ng Ai implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. Out of the number of price increases for fresh chicken products between 1 June 2008 and 30 August 2008 (being the time period in which the price information pertained), more than [✂]% of the price increases took place in July 2008;

(ii) May 2009, Ng Ai implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. Out of the number of price increases for fresh chicken products between 1 December 2009 and 30 June 2009 (being the time period in which the price information pertained), more than [✂]% of the price increases took place in May 2009;

(iii) August 2010, Ng Ai implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. Out of the number of price increases for fresh chicken products between 1 July 2010 and 30 September 2010 (being the time period in which the price information pertained), more than [✂]% of the price increases took place in August 2010;

(iv) January 2011, Ng Ai implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. Out of the number of price increases for fresh chicken products between 1 December 2010 and 28 February 2011 (being the time period in which the

[487] Only [✂] customers were affected.
[488] Only [✂] customers were affected.

price information pertained), more than [✂]% of the price increases took place in January 2011;

(v) March 2011, Ng Ai implemented price increases on fresh chicken products for at least [✂] customers, across [✂] fresh chicken products. Out of the number of price increases for fresh chicken products between 1 February 2011 and 30 April 2011 (being the time period in which the price information pertained), more than [✂]% of the price increases took place in March;

(vi) January 2014, Ng Ai implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. Out of the number of price increases for fresh chicken products between 1 December 2013 and 28 February 2014 (being the time period in which the price information pertained), more than [✂]% of the price increases took place in January 2014. It is again, noteworthy however, that *all* of the price increases were recorded on or after January 2014 i.e. after the date of the price increase documented by Tong Huat Group. No price increases were recorded in December 2013.

341. Ng Ai had implemented *six out of eight instances of price increases* during time periods where the Tong Huat Group stated that the agreed price increases were implemented.

Hup Heng

342. In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by Hup Heng, Hup Heng had implemented price increases on the following months:

Table 10: Price increases by Hup Heng

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Hup Heng	Quantum of price increase by Hup Heng on Fresh Whole Chickens (cents)
1	24 July 2008	20	July 2008	10 to 40

2	9 May 2009	20	May 2009	10 to 20
3	20 August 2010	10	August 2010	10
4	18 January 2011	20	January 2011	10 to 30
5	17 March 2011	30	March 2011	10 to 30
6	1 January 2013	30	January 2013	10 to 30
7	24 September 2013	20	Negligible increase[489]	N.A.
8	21 January 2014	20	January 2014	4 to 20

343. Hup Heng implemented price increases on fresh chicken products for [✂] customers, [✂] fresh chicken products, during ***each*** of the periods documented by Tong Huat Group set out at items 1 to 6 and 8 of the table above. Affected customers included, but were not limited to, supermarkets, restaurants, wet markets and hawker stalls. Specifically, in:

(i) July 2008, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In July 2008, more than [✂]% of the price increases were implemented from 24 to 27 July 2008, i.e. within three days of 24 July 2008, being the date of the price increase documented by Tong Huat Group;

(ii) May 2009, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In May 2009, more than [✂]% of the price increases were implemented from 9 to 12 May 2008, i.e. within three days of 9 May 2009, being the date of the price increase documented by Tong Huat Group;

(iii) August 2010, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In August 2010, more than [✂]% of the price increases were implemented from 20 to 23 August 2010, i.e. within three days of 20 August 2010, being the date of the price increase documented by Tong Huat Group;

(iv) January 2011, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In

[489] Only [✂] customers were affected.

January 2011, more than [✂]% of the price increases were implemented from 18 to 21 January 2011, i.e. within three days of 18 January 2011, being the date of the price increase documented by Tong Huat Group;

(v) March 2011, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In March 2011, more than [✂]% of the price increases were implemented from 17 to 20 March 2011, i.e. within three days of 17 March 2011, being the date of the price increase documented by Tong Huat Group;

(vi) January 2013, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2013, more than [✂]% of the price increases were implemented from 1 to 4 January 2013, i.e. within three days of 1 January 2013, being the date of the price increase documented by Tong Huat Group; and

(vii) January 2014, Hup Heng implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2014, more than [✂]% of the price increases were implemented from 21 to 24 January 2014, i.e. within three days of 21 January 2014, being the date of the price increase documented by Tong Huat Group.

344. Hup Heng had implemented *seven price increases,* within contemporaneous proximity of the eight instances in which the Tong Huat Group stated that the agreed price increases were implemented.

Lee Say

345. In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by Lee Say, Lee Say had implemented price increases on the following months:

Table 11: Price increases by Lee Say

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Lee Say	Quantum of average price increase by Lee Say on Fresh Whole Chickens[490] (cents)
1	24 July 2008	20	July 2008	5 to 120 with an average of 24
2	9 May 2009	20	May 2009	10 to 110 with an average of 19
3	20 August 2010	10	August 2010	10 to 110 with an average of 11
4	18 January 2011	20	January 2011	10 to 130 with an average of 20
5	17 March 2011	30	March 2011	10 to 140 with an average of 30
6	1 January 2013	30	January 2013	10 to 120 with an average of 27
7	24 September 2013	20	Negligible increase[491]	N.A.
8	21 January 2014	20	January 2014	10 to 120 with an average of 20

346. Lee Say implemented price increases on fresh chicken products for [✂] customers, [✂] fresh chicken products, during ***each*** of the periods documented by Tong Huat Group set out at items 1 to 6 and 8 of the table above. Affected customers included, but were not limited to, supermarkets, restaurants, hotels, wet markets and hawker stalls. Specifically, in:

(i) July 2008, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In July 2008, more than [✂]% of the price increases were implemented from 24 to 27

[490] Average price increases are presented because the variance in price increases is too large to be meaningful.
[491] Only [✂] customers were affected.

July 2008, i.e. within three days of 24 July 2008, being the date of the price increase documented by Tong Huat Group;

(ii) May 2009, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In May 2009, more than [✂]% of the price increases were implemented from 9 to 12 May 2008, i.e. within three days of 9 May 2009, being the date of the price increase documented by Tong Huat Group;

(iii) August 2010, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In August 2010, more than [✂]% of the price increases were implemented from 20 to 23 August 2010, i.e. within three days of 20 August 2010, being the date of the price increase documented by Tong Huat Group;

(iv) January 2011, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2011, more than [✂]% of the price increases were implemented from 18 to 21 January 2011, i.e. within three days of 18 January 2011, being the date of the price increase documented by Tong Huat Group;

(v) March 2011, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In March 2011, more than [✂]% of the price increases were implemented from 17 to 20 March 2011, i.e. within three days of 17 March 2011, being the date of the price increase documented by Tong Huat Group;

(vi) January 2013, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2013, more than [✂]% of the price increases were implemented from 1 to 4 January 2013, i.e. within three days of 1 January 2013, being the date of the price increase documented by Tong Huat Group; and

(vii) January 2014, Lee Say implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2014, about [✂]% of the price increases were implemented from 21 to 24 January 2014, i.e. within three days of 21 January 2014, being the date of the price increase documented by Tong Huat Group.

347. Lee Say had implemented *seven price increases,* within contemporaneous proximity of the eight instances in which the Tong Huat Group stated that the agreed price increases were implemented.

KSB

348. In respect of the dates provided by the Tong Huat Group at **Table 3** above and based on price data provided by KSB, KSB had implemented price increases on the following months:

Table 12: Price increases by KSB

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by KSB	Quantum of average price increase by KSB on Fresh Whole Chickens (cents) [492]
1	24 July 2008	20	No records available	No records available
2	9 May 2009	20	May 2009	5 to 200 with an average of 19
3	20 August 2010	10	August 2010	10 to 90 with an average of 11
4	18 January 2011	20	January 2011	10 to 50 with an average of 16
5	17 March 2011	30	March 2011	10 to 80 with an average of 27
6	1 January 2013	30	January 2013	6 to 80 with an average of 21
7	24 September 2013	20	Negligible increase[493]	N.A.
8	21 January 2014	20	January 2014	8 to 133 with an average of 15

[492] Average price increases are presented because the variance in price increases is too large to be meaningful.
[493] While more than [✂] customers were affected, less than [✂]% of the increases took place between 24 to 27 September 2013.

349. KSB implemented price increases on fresh chicken products for [✂] customers, [✂] fresh chicken products, during ***each*** of the periods documented by Tong Huat Group set out at items 1 to 6 and 8 of the table above. Affected customers included, but were not limited to, restaurants, hotels, wet markets and hawker stalls. Specifically, in:

(i) May 2009, KSB implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In May 2009, more than [✂]% of the price increases were implemented from 9 to 12 May 2008, i.e. within three days of 9 May 2009, being the date of the price increase documented by Tong Huat Group;

(ii) August 2010, KSB implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In August 2010, more than [✂]% of the price increases were implemented from 20 to 23 August 2010, i.e. within three days of 20 August 2010, being the date of the price increase documented by Tong Huat Group;

(iii) January 2011, KSB implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2011, more than [✂]% of the price increases were implemented from 18 to 21 January 2011, i.e. within three days of 18 January 2011, being the date of the price increase documented by Tong Huat Group;

(iv) March 2011, KSB implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In March 2011, more than [✂]% of the price increases were implemented from 17 to 20 March 2011, i.e. within three days of 17 March 2011, being the date of the price increase documented by Tong Huat Group;

(v) January 2013, KSB implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2013, more than [✂]% of the price increases were implemented from 1 to 4 January 2013, i.e. within three days of 1 January 2013, being the date of the price increase documented by Tong Huat Group; and

(vi) January 2014, KSB implemented price increases on fresh chicken products for at least [✂] customers and [✂] fresh chicken products. In January 2014, more than [✂]% of the price increases were implemented

from 21 to 24 January 2014, i.e. within three days of 21 January 2014, being the date of the price increase documented by Tong Huat Group.

350. KSB had implemented *six price increases,* within contemporaneous proximity of the seven instances in which the Tong Huat Group stated that the agreed price increases were implemented, where records were available.

Prestige Fortune

351. In respect of the dates provided by the Tong Huat Group at **Table 3** above, Prestige Fortune supplied fresh chicken products to only [✂] customers. While a price analysis in this regard is not likely to be meaningful, Prestige Fortune had implemented one price increase as follows:

Table 13: Price increases by Prestige Fortune

No.	Date of increase implemented by Tong Huat Group	Parties' agreed price increase on Fresh Whole Chickens (cents)	Date of increase implemented by Prestige Fortune	Quantum of price increase by Prestige Fortune on Fresh Whole Chickens (cents)
1	24 July 2008	20	No records available	No records available
2	9 May 2009	20	No records available	No records available
3	20 August 2010	10	No records available	No records available
4	18 January 2011	20	No records available	No records available
5	17 March 2011	30	No records available	No records available
6	1 January 2013	30	No increase	No increase
7	24 September 2013	20	No increase	No increase
8	21 January 2014	20	24 January 2014	10

352. While the available price data is too limited to be meaningful, it is noted that Prestige Fortune increased the price of fresh chicken to [✂] customers on 24

January 2014, with the increase taking place within three days of 21 January 2014, being the date of the price increase documented by the Tong Huat Group.

Conclusion on price analysis

353. It is clear from **Table 14** below that the Parties implemented most, if not all of the price increases documented by the Tong Huat Group, ***where records are available***:

Table 14: Summary of Implementation of Price Increases

	24 Jul 2008	9 May 2009	20 Aug 2010	18 Jan 2011	17 Mar 2011	1 Jan 2013	24 Sept 2013	21 Jan 2014
Tong Huat Group	✓	✓	✓	✓	✓	✓	✓	✓
Sinmah	✓	✓	✓	✓	✓			✓
Kee Song	✓	✓	✓	✓	✓	✓		✓
Hock Chuan Heng/ Hy-fresh	N.A.	N.A.	✓	✓	✓	✓		✓
Toh Thye San	N.A.	N.A.	N.A.	N.A.	N.A.	✓		✓
Gold Chic/Hua Kun	✓	✓	✓	✓	✓	✓		✓
Ng Ai	✓	✓	✓	✓	✓			✓
Lee Say	✓	✓	✓	✓	✓	✓		✓
Hup Heng	✓	✓	✓	✓	✓	✓		✓
KSB	N.A.	✓	✓	✓	✓	✓		✓
Prestige Fortune	N.A.	N.A.	N.A.	N.A.	N.A.			✓
Total	**7**	**8**	**9**	**9**	**9**	**8**	**1**	**11**

354. Turning to the time period around 24 September 2013, the Tong Huat Group stated that the price increases may have been agreed earlier,[494] which explains why no concurrent price increases were observed. Nonetheless, it is noted that where records are available, there are at least seven concurrent price increases for each of the other price increases documented by the Tong Huat Group.

[494] Footnote 3 of Leniency Statement (Tong Huat Group) dated 24 October 2016.

355. Given the contemporaneous proximity of the dates of price increases read together with the evidence provided by the Tong Huat Group, Sinmah, Kee Song and Hock Chuan Heng/Hy-fresh, CCCS is of the view that the Parties had implemented the price increases as documented by the Tong Huat Group.

i. Potential exculpatory evidence arising from the Further Investigations

Tan Koon Seng (Lee Say) and Tan Chee Kien (Ng Ai)

356. During the interviews conducted pursuant to the further investigations, Tan Koon Seng (*Lee Say*) and Tan Chee Kien (*Ng Ai*) continued to deny participation in the Anti-Competitive Discussions. CCCS is of the view that the denials by Tan Koon Seng (*Lee Say*) and Tan Chee Kien (*Ng Ai*) should be read in light of the direct evidence in the form of admissions by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and Toh Eng Say (*Tong Huat Group*), who have specifically identified them to be present at the Anti-Competitive Discussions.

357. In relation to the Price Discussions, it is shown at paragraphs 340 to 350 above that Lee Say and Ng Ai had implemented the price increases documented by the Tong Huat Group on seven and six occasions respectively. For instance, Lee Say had, together with [✂], collectively implemented a 20 cent price increase effective 1 August 2008 for fresh whole chicken products sold to at least one customer, [✂].[495]

358. Furthermore, the evidence suggests that both Lee Say and Ng Ai had implemented the Non-Aggression Pact. Azmira (*Lee Say*) again confirmed, during the interview conducted pursuant to the further investigations that she was instructed by Koh Yeok Boon (*Lee Say*) not to compete for customers belonging to other fresh chicken distributors as they were his friends.[496] Indeed, it is on the same basis of preserving relationships that Tan Chee Kien (*Ng Ai*) would not actively compete for customers belonging to friends such as Gold Chic/Hua Kun and Hock Chuan Heng/Hy-fresh.[497]

[495] Refer to exhibit marked [✂]-009 submitted by [✂].
[496] Answers to Questions 9 to 12 of Azmira (Lee Say) Notes of Information/Explanation Provided on 25 October 2016.
[497] Answer to Question 4 of Tan Chee Kien (Ng Ai) Notes of Information/Explanation Provided on 20 October 2016.

359. In light of the above, CCCS is of the view that the denials by Tan Koon Seng (*Lee Say*) and Tan Chee Kien (*Ng Ai*) run counter to the weight of direct and supporting evidence.

360. Lim Soh Hua (*Gold Chic/Hua Kun*) and Alex Toh (*Toh Thye San*) had, in the course of the further investigations, also denied participation in the Anti-Competitive Discussions and attempted to depart from and/or re-characterise the evidence provided in their previous interviews.

Alex Toh (Toh Thye San)

361. Alex Toh (*Toh Thye San*) had, in his interview of 19 October 2016, attempted to explain and, on some instances, recant on the answers provided at his interview of 23 April 2015 as follows:

(i) On 23 April 2015, when Alex Toh was asked whether he heard his competitors discussed "*not competing for each other's businesses*", he responded "*Yes, very long ago*" and when questioned on when he heard these discussions, Alex Toh responded "*I cannot remember*", though he did recall that there were discussions before and after the bird flu outbreak in 2007. [498] On 19 October 2016, Alex Toh explained that the discussions before the bird flu outbreak about "*not competing for each other's businesses*" took place only in the 1980s whereas the discussions after the bird flu outbreak do not pertain to discussions between competitors but are comments from "*other industries who commented that the fresh chicken industry is very good as [they] do not compete for each other business*".[499]

CCCS considers that the explanations provided by Alex Toh on 19 October 2016 are after-thoughts. The time period of the 1980s, to which the discussions to not compete were purportedly limited to, was not mentioned by Alex Toh during his interview on 23 April 2015. In fact, when Alex Toh was queried on 23 April 2015 about when he heard of the discussions, his response was that he could not remember.[500] It is unconvincing that Alex Toh's recollection of events that purportedly

[498] Answers to Questions 74, 76 and 78 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[499] Answer to Question 27 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 19 October 2016.
[500] Answer to Question 76 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.

happened in the 1980s was *more accurate* on 19 October 2016 as compared to 23 April 2015.

(ii) On 23 April 2015, when Alex Toh was asked about the identities of the competitors who told him about "*not competing for each other's businesses*", he replied that he did not remember who told him but he remembered that "*they told me it is better to have no competition*" and these tend to be from the "*smaller competitors*".[501] On 19 October 2016, when Alex Toh was queried again on the identities of the "*smaller competitors*" who told him it is better to have no competition, Alex Toh was able to recall that these "*smaller competitors*" were "*stallholders at wet markets who also supply to customers*".[502] CCCS considers it inexplicable that Alex Toh was unable to recall who these "*smaller competitors*" were on 23 April 2015 but, on 19 October 2016, was surprisingly able to recall that those "*smaller competitors*" were actually ***customers*** of Toh Thye San.

(iii) On 23 April 2015, when Alex Toh was asked whether his competitors had informed him of their intentions to increase prices at a future date, he responded that there were instances where his competitors would call him to inform that other competitors were going to increase prices and that his competitors would call him to inform that they were going to increase prices too.[503] Alex Toh further informed that this happened ***after*** the bird flu outbreak in 2007 and that he was unable to remember the competitors who informed him of the intended price increases.[504] On 19 October 2016, Alex Toh explained that the term "*competitors*" used in the context of his answers to the questions asked on 23 April 2015 above, referred to his competitors with slaughtering facilities who would inform him of their intention to increase prices of fresh chicken supplied by them to Toh Thye San.[505]

The explanations provided by Alex Toh on 19 October 2016 were afterthoughts intended to limit his involvement in the Anti-Competitive

[501] Answers to Questions 79 and 80 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[502] Answer to Question 44 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 19 October 2016.
[503] Answer to Question 82 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[504] Answers to Questions 84 and 85 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[505] Answers to Questions 47 and 53 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 19 October 2016.

Discussions. Indeed, it is clear from the above that Alex Toh's usage of the term "*competitors*" appears to shift to suit his interests. The unreliability of Alex Toh is further underlined when he asserted that he could not remember the identities of the slaughterhouses which informed him of the price increases despite the fact that these slaughterhouses are competitors that provide Toh Thye San with slaughtering services. Furthermore, Alex Toh's attempt to explain that these communications were conducted pursuant to a supplier-customer relationship is untenable for the reason that Alex Toh had, on 23 April 2015, informed CCCS that the said competitors would also call to inform him that *other competitors* were going to increase prices. These clearly were not innocuous communications between a supplier and a customer. Indeed, the evidence from Toh Eng Say (*Tong Huat Group*) indicates that even if Alex Toh (*Toh Thye San*) did not personally attend the Anti-Competitive Discussions, KSB, the slaughterhouse engaged by Toh Thye San to slaughter the latter's live chickens, would inform Alex Toh of the price movements agreed pursuant to the Price Discussions.

362. Alex Toh (*Toh Thye San*) was specifically identified by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) to have participated in the Anti-Competitive Discussions. Indeed, as can be seen from **Table 7** above, Toh Thye San had implemented *two out of three price increases* during the time periods documented by the Tong Huat Group where records were available.

363. Furthermore, Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) confirmed, pursuant to the further investigations, that Alex Toh had called him sometime in 2014 to request for the return of customers.[506] When confronted with this evidence, Alex Toh made a bare assertion that Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) had provided false and misleading information. However, he was unable to give any convincing reason as to why Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) would intentionally provide false information.[507]

364. In light of the above, CCCS is of the view that the denials, back-tracking and bare assertions by Alex Toh (*Toh Thye San*) run counter to the weight of direct and supporting evidence.

[506] Answer to Question 6 of Leniency Statement (Hock Chuan Heng/Hy-fresh) dated 13 December 2016.
[507] Answer to Question 74 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 19 October 2016.

Lim Soh Hua (Gold Chic/Hua Kun)

365. On 29 April 2015, when Lim Soh Hua (*Gold Chic/Hua Kun*) was queried on whether he would "*steal other companies' customers*", he responded that:

> "*Q.23 Would you steal other companies' customers?*
> *A. I believe that between good friends there may be an understanding that we do not steal each other's customers, for example between Chew Kin Huat (Sinmah) and myself or Tong Huat and myself. I am on good terms with the bosses from Tong Huat because I was on very good terms with their father. But we cannot stop our employees from snatching customers from each others' companies. However, my employees know that I am on good terms with the bosses of Sinmah and Tong Huat, and they understand they should not steal Sinmah and Tong Huat's customers. If their customers approach us, we may still conduct business with them*"[508]

366. However, on 19 October 2016 (more than one year after the interview on 29 April 2015), Lim Soh Hua (*Gold Chic/Hua Kun*) recanted and insisted that the translation to his response was erroneous and that he had only said that "*my employees know that I am on good terms with the bosses of Sinmah and Tong Huat and they would not purposely steal Sinmah and Tong Huat's customers*."[509] By implication, Lim Soh Hua averred that CCCS had wrongly or falsely recorded three whole sentences i.e. "*I believe…Tong Huat and myself*", "*I am on good terms…with their father…*" and "*If their customers approach…conduct business with them*". It ought to be noted that Lim Soh Hua (*Gold Chic/Hua Kun*) was legally represented on 29 April 2015. Gold Chic/Hua Kun's legal representative was present during the interview and verification of the notes of interview, and in particular, Lim Soh Hua (*Gold Chic/Hua Kun*) had personally amended the notes of interview by way of an inclusion of a sentence to his answer to Question 23. These actions clearly indicate that he understood the contents of his answer as recorded in the note of interview.

367. Lim Soh Hua (*Gold Chic/Hua Kun*) was also specifically identified by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Toh Eng Say (*Tong Huat*

[508] Answer to Question 23 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 29 April 2015. Underlined sentence was included by Lim Soh Hua at the verification stage.
[509] Answer to Question 6 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 19 October 2016.

Group) to have participated in the Anti-Competitive Discussions. Indeed, as seen from **Table 8** above, Gold Chic/Hua Kun had implemented *seven price increases,* within contemporaneous proximity of the eight instances in which the Tong Huat Group stated that the agreed price increases were implemented.

368. In light of the above, CCCS is of the view that the denials by Lim Soh Hua (*Gold Chic/Hua Kun*) run counter to the weight of direct and supporting evidence.

Scope of the Anti-Competitive Discussions

369. Hock Chuan Heng/Hy-fresh and the Tong Huat Group have submitted that wholesale customers and supermarket customers were not affected by the Price Discussions.[510] Nonetheless, both Hock Chuan Heng/Hy-fresh and the Tong Huat Group have also stated that none of the said customers, or any groups of customers, were expressly excluded in the course of the Price Discussions.[511] Indeed, they informed that the Price Discussions and the Non-Aggression Pact relate to product types rather than customer groups. As admitted by Chiew Kin Huat (*Sinmah*) and Ong Kian San (*Kee Song*), the Price Discussions applied to whole fresh chicken products generally. Similarly, Chiew Kin Huat (*Sinmah*) and Ong Kian San (*Kee Song*) admitted that the Non-Aggression Pact applied to "*all customers*".[512]

370. In this connection, CCCS is of the view that the relevant market within the scope of the Anti-Competitive Discussions remains as the sale of Fresh Chicken Products in Singapore.

L. CCCS's Conclusions on the Evidence

i. CCCS's conclusions on the evidence from the Investigations

371. From the statements obtained from the Parties and supporting evidence from staff and customers, CCCS finds, on the balance of probabilities, that the Anti-Competitive Discussions had taken place. The Anti-Competitive Discussions stem from the close relationships between the Parties, whose representatives

[510] Page 2 of Leniency Statement (Hock Chuan Heng/Hy-fresh) dated 27 January 2017; and Paragraph 3 of Leniency Statement (Tong Huat Group) dated 3 February 2017.
[511] *Ibid.*
[512] Answer to Question 14 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015; Answer to Question 34 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.

have known each other for decades. Indeed, these discussions generally took place in social settings at KTVs or coffee houses in hotels.

372. CCCS further notes that the object of the Anti-Competitive Discussions was to restrict or distort competition in the relevant market, which comprise the Fresh Chicken Products. This is evidenced by Alex Toh (*Toh Thye San*) who stated the Anti-Competitive Discussions took place because "*competition then was very fierce*".[513] Ong Kian San (*Kee Song*) further admitted that "*no one wanted to be the only one to increase prices because then the business would suffer*".[514] Chiew Kin Huat (*Sinmah*) also admitted that "*if only one company increases prices unilaterally the customers will not pay up and will stop their orders*".[515]

373. To ensure compliance, the Parties engaged in pressure tactics by calling each other to either demand the return of customers or increase of selling prices.[516] When Ban Hong attempted to sell fresh chickens at a lower price, Ho Chong Hee stated that the Parties would "*complain and scold*" him.[517] The Parties also implemented policies not to actively compete for customers belonging to other distributors.

374. Given the clear object of the Anti-Competitive Discussions and that the Parties had, in fact, taken actions to further the anti-competitive object of these discussions, CCCS is of the view that the Parties had participated in the agreements and/or concerted practices and were aware or could not have been unaware that the agreements and/or concerted practices had the object or would have the effect of preventing, restricting or distorting competition in the relevant market.

375. While some of the Parties have insisted that the Non-Aggression Pact was never adhered to, *Tréfilunion SA v Commission*[518] makes it clear that where the object being pursued is to prevent, restrict or distort competition, it is immaterial whether or not the agreement and/or concerted practice would have an effect on

[513] Answer to Question 77 of Alex Toh (Toh Thye San) Notes of Information/Explanation Provided on 23 April 2015.
[514] Answer to Question 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[515] Answer to Question 25 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[516] Answer to Question 22 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015; Answer to Question 42 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[517] Answer to Question 9 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015.
[518] Case T-148/89, *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].

the market. Liability can be found even if the participation of any of the Parties in the Anti-Competitive Discussions, which have an anti-competitive purpose, is passive in that it is limited to the mere receipt of information concerning the future conduct of any of the other Parties who are their market competitors.[519] The fact that the Parties have discussed the Non-Aggression Pact and failed to publicly distance themselves from the unlawful initiative is tantamount to a tacit approval of that unlawful initiative, which is therefore capable of rendering the Parties liable.[520]

376. In any event, CCCS has established at paragraphs 226 to 257 that the Non-Aggression Pact was implemented in the market and has stifled competition as a result. The agreements and/or concerted practices were so deeply entrenched that staff of the Parties would, as a matter of practice, induct newcomers by instructing them to not compete for customers belonging to other fresh chicken distributors.[521]

377. Some of the Parties also stated that while discussions relating to price increases have taken place, there was no agreement to increase prices of Fresh Chicken Products by the agreed amount and at an agreed time. Such denials are unsupported by the evidence described in the paragraphs above. In any event, it is trite law that the Parties may be presumed, as in the case of *Commission v Anic Partecipazioni*[522], to "*take account of the information exchanged with their competitors when determining their conduct on that market*". Indeed, receipt by a competitor of a Party's intention, whether to increase prices or to adopt a certain course of action in the market, could amount to a concerted practice.[523] Consequently, subject to proof to the contrary, which the Parties have, thus far, failed to adduce, the presumption must be that the Parties taking part in the concerted action and remaining active on the market took account of the information exchanged with their competitors for the purposes of determining their conduct on that market.[524]

378. Furthermore, the fact that the Parties had discussed prices and their intent to increase prices, would, in itself, constitute a disclosure and/or exchange of future pricing intentions or price information, which can restrict competition by

[519] Case T-202/98, T-204/98 and T-207/98 [2001] ECR II-2035 (upheld by the ECJ in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission*).
[520] *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123, at [84] to [86].
[521] Answer to Question 10 of Azmira (Lee Say Group) Notes of Information/Explanation Provided on 13 April 2015.
[522] *Commission v Anic Partecipazioni* Case C-49/92 [1999] ECR I-4125, at [125].
[523] Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491, at [1852].
[524] Case C-199/92 *P. Hüls AG v Commission* [1999] ECR I-4287.

object and can serve to reinforce the agreement and/or concerted practice. This is because the exchange of such information reduces uncertainties inherent in the competitive process and facilitates the coordination of the Parties' conduct on the market. Indeed, the body of evidence at paragraphs 263 to 285 indicates that the Parties tend to increase prices concurrently.

379. CCCS also notes that some of the Parties have sought to argue that they were passive participants to the Anti-Competitive Discussions. Participation by an undertaking in discussions that have an anti-competitive object has the effect *de facto* of creating or strengthening a cartel, and the fact that an undertaking does not act on the outcome of those discussions 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.[525] In this respect, silence by participants was not tantamount to public distancing.[526] CCCS notes that none of the Parties publicly distanced themselves from the Anti-Competitive Discussions.

380. Further, the fact that one or more Parties did not attend every Anti-Competitive Discussion does not exculpate them from a finding of infringement. It is established law that a concerted practice can occur even if the exchange is only between parties at a single meeting.[527] In the circumstances of the present case, a single meeting would suffice to establish the Non-Aggression Pact, which was enforced through bilateral contacts between the Parties. Likewise, it is not necessary for all the Parties to attend every Price Discussion because, as illustrated by the evidence, the Parties would inform each other of the price movements through phone calls.

381. Finally, CCCS notes that the unequal and differing roles of each participant and the presence of internal conflict would not defeat the finding of an infringement. As set out in the *Choline Chloride* case, "*[a]lthough a cartel is a joint enterprise, each participant in the agreement may play its own particular role. Some participants may have a more dominant role than others. Internal conflicts and rivalries, or even cheating may occur, but that will not prevent the arrangement from constituting an agreement/concerted practice*".[528]

[525] C-291/98P *Sarrio SA v Commission* [2000] ECR I-9991, at [50].
[526] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334, at [124].
[527] Case C-8/08 *T-Mobile Netherlands BV and Others v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529, at [59] and [61].
[528] Case COMP / E-2 / 37.533 - *Choline Chloride*, at [146].

ii. CCCS's conclusions on the additional evidence arising from the Further Investigations

382. The additional evidence obtained from the further investigations corroborates the existence of the Anti-Competitive Discussions and the participation of the Parties in the said discussions.

383. Notwithstanding the clandestine manner in which the Parties conducted the Anti-Competitive Discussions, the incriminating facts provided by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and Toh Eng Say (*Tong Huat Group*) are consistent. In particular, these individuals corroborate the existence of the Non-Aggression Pact and Price Discussions, and the mode through which the discussions took place (summarised in **Table 15**):

Table 15

	Mode of information dissemination
Chiew Kin Huat (*Sinmah*)	Verbally at meetings and also through phone calls[529]
Ong Kian San (*Kee Song*)	Verbally at meetings[530]
Ng Lay Long (*Hock Chuan Heng/ Hy-fresh*)	Verbally at meetings and also through phone calls[531]
Toh Eng Say (*Tong Huat Group*)	Verbally at meetings and also through phone calls[532]
	Non-Aggression Pact
Chiew Kin Huat (*Sinmah*)	"*…the understanding was to not compete for each other's customers and it included all customers*".[533]

[529] Answer to Question 22 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[530] Answer to Question 4 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 3 June 2015.
[531] Answer to Question 51 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[532] Paragraph 3.1.3 of Leniency Statement (Tong Huat Group) dated 24 October 2016.
[533] Answer to Question 14 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.

Ong Kian San (*Kee Song*)	"*…I have heard discussions amongst fresh chicken suppliers about not actively competing for each other customers...*"[534] "*Q34. Which market segment did the discussions pertain to? A: All customers.*"[535]
Ng Lay Long (*Hock Chuan Heng/ Hy-fresh*)	"*…The fresh chicken distributors will mention the understanding not to compete for each other's customers occasionally [sic] (but not frequently) all the way till 2014...*"[536]
Toh Eng Say (*Tong Huat Group*)	"*In relation to the Non-Aggression Pact, Mr. Toh recalls there being general discussions by the Parties about "not-destroying relationships"* "[537]
	Price Discussions
Chiew Kin Huat (*Sinmah*)	"*We do not discuss prices every time. However, when prices were discussed, we would talk about when to increase prices and how much to increase prices by. For example, they will say "let's raise prices by $0.20 next day". These price discussions occur frequently*[538] *We verbally agreed to increase the prices by an agreed amount on an agreed date. Sometimes we also agree to decrease prices by an agreed amount on an agreed date…*[539] *A lot of the companies were making huge losses and they had difficulties surviving. There was an agreement to increase prices together because if only one company increases prices unilaterally the customers will not pay up and will stop their orders*".[540]
Ong Kian San (*Kee Song*)	"*Q37. Has any of the market players told you about their intention to increase the selling prices of fresh chicken in Singapore before they increased prices?*

[534] Answer to question 28 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[535] Answer to Question 34 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[536] Answer to Question 11 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[537] Paragraph 4.1 of Leniency Statement (Tong Huat Group) on 24 October 2016.
[538] Answer to question 20 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[539] Answer to Question 21 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[540] Answer to Question 25 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.

	A: Yes. *Nobody wants to be the only one to raise price because then the business would suffer. So everyone will wait and if Lee Say is the one raising prices then everyone will follow.* ".[541]
Ng Lay Long (*Hock Chuan Heng/Hy-fresh*)	"*They would call and tell me that "prices of fresh chickens will be increased by S$0.20 two days later." There is an understanding that I am supposed to increase my prices by the proposed amount, and there is also an understanding that they are going to increase their prices by the proposed amount…*"[542]
Toh Eng Say (*Tong Huat Group*)	"*… chicken suppliers had agreed to increase or decrease prices of the relevant Products by the agreed amounts indicated*"[543] "*…parties to the Price Discussions will consider the price of live birds when deciding on price increases or decreases…any decision on price must however be approved by Tan Koon Seng*"[544]

384. The participants in the Anti-Competitive Discussions identified by Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and Toh Eng Say (*Tong Huat Group*) are also consistent with each of the participants identified by *at least* three out of the four aforesaid individuals (**Table 16**):

Table 16: Participants in Anti-Competitive Discussions

Parties who participated in the Anti-Competitive Discussions	**Identified by**
Chiew Kin Huat (*Sinmah*)	Chiew Kin Huat, Ong Kian San, Ng Lay Long and Toh Eng Say
Ong Kian San/Neo Cheng Hai (*Kee Song*)	Chiew Kin Huat, Ong Kian San, Ng Lay Long and Toh Eng Say

[541] Answer to Questions 37 and 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[542] Answer to Question 51 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[543] Paragraph 3.1.2 of Leniency Statement (Tong Huat Group) dated 24 October 2016.
[544] Paragraph 2.3.1 of Leniency Statement (Tong Huat Group) dated 17 November 2016.

Ng Lay Long (*Hock Chuan Heng/Hy-fresh*)	Chiew Kin Huat, Ng Lay Long and Toh Eng Say
Alex Toh (*Toh Thye San*)	Chiew Kin Huat, Ong Kian San and Ng Lay Long Toh Eng Say stated that even if Toh Thye San was unrepresented, it would nonetheless be informed of the agreed price movements pursuant to the Price Discussions
Quek Cheaw Kwang (*Prestige Fortune formerly Poultry Development*)	Chiew Kin Huat and Ong Kian San. Ng Lay Long was unable to recall if Quek Cheaw Kwang participated in the Anti-Competitive Discussions Toh Eng Say stated that even if Prestige Fortune (formerly Poultry Development) was unrepresented, it would nonetheless be informed of the agreed price movements pursuant to the Price Discussions.
Tan Koon Seng (*Lee Say*)	Chiew Kin Huat, Ong Kian San, Ng Lay Long and Toh Eng Say
Ma Chin Chew (*Hup Heng*)	Chiew Kin Huat, Ong Kian San, Ng Lay Long and Toh Eng Say
Vincent Chew (*KSB*)	Chiew Kin Huat, Ong Kian San, Ng Lay Long and Toh Eng Say
Toh Eng Say (*Tong Huat*)	Chiew Kin Huat, Ong Kian San, Ng Lay Long and Toh Eng Say
Ho Chong Hee (*Ban Hong*)	Chiew Kin Huat and Ong Kian San. Ng Lay Long was unable to recall if Ho Chong Hee participated in the Anti-Competitive Discussions. Toh Eng Say stated that even if Ban Hong was unrepresented, it would nonetheless be informed of the agreed price movements pursuant to the Price Discussions.

Tan Chee Kien (*Ng Ai*)	Chiew Kin Huat, Ong Kian San and Toh Eng Say. Ng Lay Long was unable to recall if Tan Chee Kien participated in the Anti-Competitive Discussions.
Lim Soh Hua (*Hua Kun/Gold Chic*)	Chiew Kin Huat, Ong Kian San and Toh Eng Say. Ng Lay Long was unable to recall if Lim Soh Hua participated in the Anti-Competitive Discussions.

385. Furthermore, price information obtained from the Parties evidences the implementation of the Price Discussions during at least seven periods, namely: July 2008, May 2009, August 2010, January 2011, March 2011, January 2013 and January 2014.

386. In light of the above, CCCS is of the view that the results of the further investigations reinforced its findings on liability pertaining to the Parties.

iii. Representations to CCCS's conclusions

Representations on relevant considerations and reliability of evidence

387. The Lee Say Group submitted in its written representations that CCCS should have defined the relevant market[545] and assessed the "counterfactual"[546] – i.e., how competition would have operated in the relevant market in the absence of the agreement and/or concerted practices – so as to examine the effects of the agreements on the market to determine if the agreements had the object of restricting competition. It also submitted that the nature of the fresh chicken market meant that the Parties were incentivised to price competitively and independently to ensure the viability of their business and that there was no economic incentive to participate in the Anti-Competitive Discussions.[547] In a similar vein, the Lee Say Group submitted that CCCS adopted an overly broad interpretation of restrictions by object and that CCCS should have examined whether the agreements had appreciable adverse effects and whether the features of the market support the formation of a cartel.[548] In this regard, the

[545] Paragraphs 3.1 to 3.8 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 5.1 to 5.7 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[546] Paragraphs 4.2 to 4.4 and 6.10 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[547] Paragraphs 3.14 to 3.15, 3.25 to 3.28 and 4.2 to 4.4 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 6.1 to 6.2 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[548] Paragraphs 4.17 to 4.21 of written representations (Lee Say Group) dated 3 May 2016 to PID.

Lee Say Group has relied on the case of *Cartes Bancaires*[549] to underscore the point that it was necessary for CCCS to establish that there was a sufficient degree of harm. Similarly, Toh Thye San submitted that to determine liability, it is necessary to define the market and ascertain whether the agreement has an object or effect of restricting competition in the market as defined, not just in the calculation of financial penalties.[550] CCCS has considered these arguments and finds that they have no merit.

388. First, it bears reiteration that on the basis of the evidence canvassed at paragraphs 176 to 383 above, CCCS has found that the Anti-Competitive Discussions restricts competition by object. Where there is a restriction by object, it is well-established in case law that there is no necessity to examine the effects of the agreement because such agreements will always be regarded to appreciably restrict competition. As highlighted above, establishing the relevant market is therefore necessary only for the calculation of financial penalties.

389. Second, the reliance on CCCS's reference to the "counterfactual" is a mischaracterization of CCCS's decision. CCCS had referred to the "counterfactual" in the context of determining the appropriate amount of penalties vis-à-vis a comparison with the actual that would have been charged if the agreements had not existed (see paragraph 521 below), and not for the purposes of establishing liability. A counterfactual is unnecessary in object cases where the clear objective of the agreements, *viz*, the Anti-Competitive Discussions in this case, was to restrict competition in the market.

390. Third, the reliance on *Cartes Bancaires* is misconceived. The ECJ has stated that in assessing whether agreements had the object of restricting competition, regard must be had to the "*content of its provisions, its objectives and the economic and legal context of which it forms a part*"[551] - the ECJ did not mean that there is a necessity to assess whether the agreements have the effect of restricting competition. In *Cartes Bancaires*, it was clear that the ECJ had only found that there was a need to examine the effects of the agreement because the General Court had failed to show how the pricing measures adopted in a payment system in the context of two-sided markets revealed a sufficient degree of harm to competition. What is more noteworthy is that, the ECJ in *Cartes Bancaires* had reaffirmed CCCS's position – categorically acknowledging in

[549] Paragraph 4.17 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraph 5.5 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[550] Paragraphs 5.1.1 to 5.1.7 of written representations (Toh Thye San) dated 19 April 2016 to PID.
[551] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25 at [36].

the decision that there are certain types of coordination between undertakings, such as price-fixing by cartels, which reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects[552]: see paragraph 132 above. As CCCS has noted above, market-sharing agreements and price-fixing agreements, by their very nature, restrict competition to an appreciable extent.[553] That being the case, there is no requirement for CCCS to assess the effects on competition arising from such conduct in order to find an infringement of the section 34 prohibition.

391. In its written representations to CCCS, Lee Say submitted multiple allegations regarding CCCS's reliance on the incriminating statements – specifically, that CCCS had mistakenly relied on *JFE Engineering* (on the reliability of statements)[554], and consequently, failed to establish the truthfulness and accuracy of the witness statements[555], failed to establish to the requisite degree the corroboration of witness statements relied upon[556], as well as failed to establish motives behind the statements given (in particular for [✂] as a reward seeker)[557]. Specific instances were also cited, such as Chiew Kin Huat being hostile towards Tan Koon Seng and Ma Chin Chew[558], Ng Lay Long and Ong Kian San being unreliable witnesses[559], and the statements from Azmira and [✂] being unreliable[560]. Further, Lee Say also submitted that CCCS had ignored the corroborating statements of the non-leniency applicants.[561] Some other Parties raised similar objections in their representations.[562] CCCS is of the view that these arguments are misguided.

392. First, CCCS has set out above at paragraphs 176 to 385 as to how the statements by the various parties corroborate the fact that prices were discussed amongst competitors and Lee Say's participation in the discussions. In this regard, it is

[552] *Cartes Bancaires* at 51.
[553] See paragraphs 136 to 142.
[554] Paragraph 6.13 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[555] Paragraphs 6.16 to 6.17 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[556] Paragraphs 6.18 to 6.23 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[557] Paragraphs 6.24 to 6.29 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[558] Paragraphs 7.5 to 7.8 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[559] Paragraphs 7.9 to 7.12 and 7.23 to 7.31 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[560] Paragraphs 12.16 to 12.17 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[561] Paragraphs 8.12 to 8.26, 8.50 to 8.59, 8.65 to 8.66, 9.1 to 9.2 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraph 3.7 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[562] Paragraphs 6 and 39 to 63 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Paragraphs 7 to 12 of written representations (Gold Chic/Hua Kun) dated 8 February 2018 to SPID; Paragraphs 20 to 21 of written representations (Kee Song) dated 3 May 2016 to PID; Paragraphs 2.1.1 to 2.1.12, 2.2.1 to 2.2.16 and 3.1.1 to 3.1.7 of written representations (Toh Thye San) dated 19 April 2016 to PID; Paragraphs 3.1.3, 3.2.1 to 3.2.17 and 3.3.3 to 3.3.5 of written representations (Toh Thye San) dated 8 February 2018 to SPID.

pertinent to note the ECJ has affirmed that it is not necessarily the case that corroboration can only be established by contemporaneous documents – in fact, corroboration can be established by other leniency applicants' statements as well.[563]

393. CCCS reiterates the comments of the CFI in *JFE Engineering* that the degree of corroboration may be lesser where more reliable statements are concerned. In the present case, CCCS finds that the statements of Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*) and Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) meet all the criteria for assessing the reliability of witness statements established in *JFE Engineering*:[564]

(i) These parties were direct participants to the Anti-Competitive Discussions, and their recollection of the content of the Discussions and the identities of the participants were first-hand accounts;

(ii) Chiew Kin Huat, Ong Kian San and Ng Lay Long hold important positions in their respective undertakings. Chiew Kin Huat is the Executive Chairman of Sinmah, Ong Kian San is the Managing Director of Kee Song and Ng Lay Long is the Senior Director of Hock Chuan Heng/Hy-Fresh. These witnesses, by virtue of their directorships, have the professional obligation to act in the interests of the undertakings and also represent their respective undertakings;

(iii) The admissions from the parties emerged only in April 2015, close to seven months after the First Inspections. Further, Chiew Kin Huat, Ong Kian San and Ng Lay Long confirmed the existence and content of the Anti-Competitive Discussions at two separate interviews. Notably, one of the witnesses, Chiew Kin Huat, was accompanied by his legal advisor for both of the interviews.[565] All three parties also admitted the conduct again in subsequent leniency applications. There is no doubt that these admissions were made after ample opportunity for deliberate thought and reflection, and were made against their interests;

(iv) In addition, Chiew Kin Huat, Ong Kian San and Ng Lay Long were able to offer substantive information about the cartel, which could not be deduced from any documentary evidence. For instance, these

[563] *Siemens AG* at [191] to [192].
[564] *JFE Engineering* at [205] to [210]; *Toshiba Corp* at [47].
[565] The interviews took place on 9 April 2015 and 2 June 2015.

witnesses were able to pinpoint locations where the Anti-Competitive Discussions took place as well as provide the content of the Anti-Competitive Discussions;

(v) CCCS notes that Lee Say had argued that the testimonies are inherently inconsistent because despite the admissions, the witnesses have, at the start of the interview denied or tried to hide the existence of the Anti-Competitive Discussions.[566] On the contrary, CCCS is of the view that the shift in the witnesses' testimonies suggests that the witnesses have decided to tell the truth. Indeed, the witnesses only admitted to incriminating conduct after incriminating evidence was put to them. For example, it was highlighted above at paragraph 183 that Chiew Kin Huat had, at a later interview, resolved to tell the truth because he decided that he should not lie.[567]

394. Additionally, the written submissions provided by the leniency applicants, including further corroboration provided by the Tong Huat Group's leniency submissions, painted a consistent picture that price discussions took place during the Anti-Competitive Discussions. Given that the statements are self-incriminating and run counter to the interests of the undertakings that they represent, CCCS is of the view that this makes the statements more credible and reliable.

395. The corroboration required is, as the ECJ in *Siemens AG* puts it, "to confirm the existence and essential content of the common understanding".[568] Based on the evidence set out above from paragraphs 176 to 385, CCCS is of the view that there is sufficient corroboration on the existence and essential content of the Anti-Competitive Discussions, which were all in pursuit of the common objective to distort the normal movement of prices of Fresh Chicken Products.

396. Second, it is well-established in case law that statements of leniency applicants are no less credible and there is no bar against CCCS relying on these statements. As held by the ECJ in *Siemens AG*, even though leniency applicants can expect a penalty reduction for providing the statements, they run the risk of negative consequences of submitting inaccurate information, and the applicant had acted against its own interests in applying for leniency because of the risk of damages

[566] Paragraphs 7.5 to 7.12 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[567] Answer to Question 30 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[568] *Siemens AG* at [196].

actions being brought against it in national courts.[569] On the contrary, the case law is also clear that one had to be circumspect about statements made by *non-leniency* applicants who challenge liability and therefore did not have incentive to admit the truth. [570] In this respect, whilst the denials of Lee Say were considered by CCCS, the statements had to be viewed in this context and therefore accorded lesser probative value.

397. Third, it is plainly not the case that CCCS had ignored statements of the non-leniency applicants in coming to its decision. It is evident from paragraphs 176 to 385 above that CCCS had devoted a significant amount of attention to the submissions and found them to be wholly devoid of any merit after due consideration. Contrary to the Lee Say Group's submissions that CCCS had "solely" based its decisions on the corroborative statements made by the leniency applicants,[571] CCCS had taken into account the potential exculpatory evidence provided by the Lee Say Group at several parts above but found those statements to be self-serving and not credible (see paragraphs 176 to 385 above). In addition, the participation of entities from the Lee Say Group was also identified positively multiple times by not only the leniency applicants (see paragraph 384 above), but also by one of its own entities – Hup Heng (see paragraph 215 to 219 above).

398. Finally, Lee Say's criticisms about the case of *JFE Engineering* are unfounded. As the CCCS has noted above, the principle in *JFE Engineering* that statements which run counter to the declarant's interests are particularly reliable was adopted by the ECJ in its analysis in the cases of *Sumitomo* and in *Siemens AG*: see paragraph 160 above.

399. In its written representations, Lee Say submitted that CCCS had to be held to a "higher evidential standard" and that in the present case, CCCS had "held itself to a lower evidentiary standard" or a "arbitrarily low burden of proof".[572] CCCS is of the view that[573] the applicable standard of proof in competition cases is the civil standard of proof. Whilst cogent evidence should be adduced in order to make out an infringement, this does not mean that there is any intermediate "higher" evidentiary standard – in fact, this was recognised as well by the UK CAT in the case of *Napp Pharmaceuticals*:[574]

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[569] See paragraph 160 above.
[570] *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8 at [150].
[571] Paragraph 3.7 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[572] Paragraphs 6.3 to 6.8 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 4.1 to 4.2 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[573] See paragraphs 149 and 150.
[574] *Napp Pharmaceuticals* at [107].

> "*107. In our view it follows from the speech of Lord Nicholls (with whom Lord Goff and Lord Mustill agreed) in Re H, cited above, at pp.586 to 587, that* ***under the law of England and Wales there are only two standards of proof, the criminal standard and the civil standard; there is no 'intermediate' standard****. The position is the same in the law of Scotland and Northern Ireland. Within the civil standard, however, the more serious the allegation, the more cogent should be the evidence before the court concludes that the allegation is established on the preponderance of probability: see Lord Nicholls speech in Re H, citing notably In re Dellow's Will Trusts [1964] 1 WLR 451, 455 and Hornal v Neuberger Products Ltd [1957] 1 QB 247, 266.*"

400. This civil standard of proof has patently been met as the evidence relied upon has been sufficiently strong and compelling. As case law has established, in a cartel case such as this, direct evidence showing details of the cartel will usually be "fragmentary" and "sparse".[575] As such, competition authorities often have to rely on "a number of coincidences or indicia" in order to establish its case.[576] Contrary to what the Lee Say Group has submitted, CCCS did not place undue reliance on circumstantial evidence or on "isolated" minutes and circulars.[577] As has been set out above comprehensively, CCCS took into account, *inter alia*, direct and indirect evidence and the corroborations between these before concluding that the Lee Say Group had taken part in the Price Discussions and Non-Aggression Pact, some of which are set out below:

(i) accounts by multiple parties (both leniency and non-leniency applicants) corroborating the fact of the Lee Say Group's participation in meetings relating to Price Discussion or Non-Aggression Pact;

(ii) the statements made by Lee Say's own employees, [✂] and Azmira on Lee Say's policy of non-compete; and

(iii) the statements made by [✂] from [✂] on Lee Say's policy of non-compete.

[575] Cases C-204/00 P etc *Aalborg Portland v Commission* [2004] ECR I-0123]. See also *Durkan Holdings Ltd & Ors v Office of Fair Trading*, [2011] CAT 6, at [96].
[576] *Ibid.*
[577] Paragraphs 4.1, 10.11.2 and 11.6 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraph 2.1 of supplementary written representations (Lee Say Group) dated 6 May 2016 to PID.

401. The fact that there were little contemporaneous documents is of little relevance given the probative value of the statements by the witnesses. CCCS reiterates again that there is no rule that only contemporaneous documents can have corroborative value.

402. Further, CCCS had also compared the actual price increases and found that Lee Say had implemented at least seven concurrent price increases for each of the other price increases documented by the Tong Huat Group (see paragraph 353 above). CCCS also notes the CFI's comments in *Toshiba Corp* that testimonies given by undertakings' employees at a time where the undertakings are aware of ongoing investigations (and who had not submitted a leniency application at the material time) may limit the probative value of the statements (see paragraph 169 above). On the totality of the evidence, CCCS is of the view that given the objective and consistent indicia pointing to Lee Say's participation and implementation of the infringing conduct, limited probative value should be accorded to the exculpatory evidence submitted by Lee Say.

403. The Lee Say Group submitted in its representations that CCCS had erroneously found that there was an implementation of the "alleged" Price Discussions[578] and Non-Aggression Pact[579] and submitted that price increases were in part due to the increase in the cost of live birds in Malaysia.[580] The Lee Say Group further submitted that the price analysis was insufficiently rigorous and does not prove the existence of the price discussions.[581] Gold Chic/Hua Kun, Ng Ai and Toh Thye San made similar representations.[582]

404. First, CCCS is not required to prove the actual implementation and effect of the Anti-Competitive Discussions to find an infringement. The mere fact that an undertaking may have played only a limited part in setting up the agreement or concerted practice, or may not be fully committed to its implementation, does not mean that it was not a party to the agreement or concerted practice. Second, as the CFI in *JFE Engineering* has held, there is no requirement for CCCS to consider alternative explanations [583] given that the object of the Anti-Competitive Discussions was to restrict competition and this has been

[578] Paragraphs 11.1 to 11.3 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[579] Paragraph 11.4 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[580] Paragraph 11.1 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 7.1 to 7.9 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[581] Paragraphs 7.1 to 7.13 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[582] Paragraphs 14 to 21 of written representations (Gold Chic/Hua Kun) dated 8 February 2018 to SPID; Paragraphs 7 to 12 of written representations (Ng Ai) dated 22 February 2018 to SPID; Paragraphs 3.2.8 and 3.2.9 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[583] *JFE Engineering* at [196].

established on the basis of direct and indirect evidence, including direct evidence provided by Parties who had personally attended the Anti-Competitive Discussions. Industry practice and contemporaneous price movements in the infringement period provides further support that the Anti-Competitive Discussions occurred and were implemented. Further, where anti-competitive discussions have been established, there is a presumption in law of a causal connection between the anti-competitive discussions and the conduct adopted by the undertakings on the market. In this instance, CCCS notes that the Parties have not rebutted that presumption of causal connection.

405. Hock Chuan Heng/Hy-fresh, in its representations, submitted that the Price Discussions did not have the object or effect of preventing, restricting and/or distorting competititon. According to Hock Chuan Heng/Hy-fresh, due to the dire losses of suppliers in 2007, the Price Discussions instead had the object of increasing prices so that the suppliers would be able to continue with their business of importing fresh chicken from Malaysia and supplying the same to Singapore. Hock Chuan Heng/Hy-fresh further submitted that the Price Discussions may be an excluded agreement under section 35 of the Act as it was an agreement that contributed to the improving of production or distribution.[584] As already noted above, it is well-established that price-fixing agreements have the object of preventing, restricting and/or distorting competition, and there is no requirement for CCCS to assess the effects on competition arising from such conduct. Moreover, as noted in paragraph 134, an agreement may be regarded to have as its object the restriction of competition even if the agreement by the undertakings seeks to remedy the effects of a crisis in their industry. Further, Hock Chuan Heng/Hy-fresh has also not provided any evidence to support that the Price Discussions qualifies as an excluded agreement under section 35 of the Act.

Representations on participation

Gold Chic/Hua Kun

406. Gold Chic/Hua Kun denied participation at Anti-Competitive Discussions.[585] Gold Chic/Hua Kun submitted that the allegations against Gold Chic/Hua Kun were vague, unparticularised and lacked credibility and disputed the evidence against it. Furthermore, there was a high probability that Lim Soh Hua was not

[584] Pages 4 to 5 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID.
[585] Paragraph 5 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Paragraph 5 of written representations to SPID (Gold Chic/Hua Kun) dated 8 February 2018 to SPID.

present since the Anti-Competitive Discussions were sporadic.[586] Gold Chic also submitted that Lim Soh Hua had not participated in meeting between the Parties in social settings since he stepped down as the Association's Chairman in 2006, and Lim Soh Hua's mediation to resolve a price war between Hup Heng and Lee Say took place on or before 2006.[587] Additionally, Gold Chic/Hua Kun submitted that any Anti-Competitive Discussions would only have taken place between the larger market players supplying [✂], which are customers that Gold Chic/Hua Kun does not supply.[588]

407. CCCS first notes that the evidence from multiple leniency applicants corroborates Gold Chic/Hua Kun's participation in Anti-Competitive Discussions, as summarised in **Table 16** above. Furthermore, Lim Soh Hua's active participation is corroborated by Ma Chin Chew (*Hup Heng*), despite Hup Heng being a non-leniency applicant (paragraphs 215 to 218). Lim Soh Hua himself has admitted that "*there may be an understanding that we do not steal each other's customers*" in an interview with CCCS.[589] Although Lim Soh Hua has subsequently attempted to recharacterise his answer,[590] his change of answer, as explained in paragraph 366, is unconvincing.

408. Gold Chic/Hua Kun also submitted that it had focused on the [✂] business since 2006 and hence, it did not have an incentive to participate in Anti-Competitive Discussions in relation to Fresh Chicken Products.[591] Gold Chic/Hua Kun further submitted that it was not feasible to increase prices uniformly across its customers and therefore it could not have been a participant in the Price Discussions.[592] It highlighted that it had been actively competing with an independent pricing policy, explained that its pricing decisions are generally based on the [✂]and also information from customers [✂], and that this explains the price increases in **Table 8** above.[593]

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[586] Paragraphs 6, 33, 39, 41 to 42, 44 to 46, 49, 51 to 52, 58 to 61 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Paragraphs 7 to 12 of written representations (Gold Chic/Hua Kun) dated 8 February 2018 to SPID;
[587] Paragraphs 30 to 31, 53 to 57 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.
[588] Paragraphs 34, 36, 46, 47 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.
[589] Answer to Question 23 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 29 April 2015.
[590] Paragraphs 13 to 14 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Answer to Question 6 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 19 October 2016.
[591] Paragraphs 16 to 17 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.
[592] Paragraph 38 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.
[593] Paragraphs 64 to 72 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Paragraphs 14 to 21 of written representations (Gold Chic/Hua Kun) dated 8 February 2018 to SPID.

409. CCCS reiterates that actual implementation is not necessary for CCCS to find that the section 34 prohibition has been infringed. Furthermore, as the CFI in *JFE Engineering* has held, there is no requirement for CCCS to consider alternative explanations[594] given that the object of the Price Discussions and Non-Aggression Pact was to restrict competition and Gold Chic/Hua Kun's participation has been established on the basis of the direct evidence. CCCS also notes that, regardless of any shift in focus to [✂], Gold Chic/Hua Kun remained in the business of supplying the Fresh Chicken Products in Singapore and would accordingly derive benefits from participating in the Anti-Competitive Discussions. Its admission (in its representations) that it would need to [✂] revealed that Gold Chic/Hua Kun would benefit from reduced competitive pressure by coordinating price increases with its competitors.[595]

Hock Chuan Heng/Hy-fresh

410. In its representations to the PID, Hock Chuan Heng/Hy-fresh initially denied participation in the Non-Aggression Pact despite confirming its existence. Hock Chuan Heng/Hy-fresh submitted that it was too small to be included in the Non-Aggression Pact, and that the information it received was too general to eliminate uncertainty.[596] CCCS notes, however, that Hock Chuan Heng/Hy-fresh subsequently applied for leniency and confirmed its attendance at meetings that related to both the Non-Aggression Pact and Price Discussions.[597]

Kee Song

411. In its representations to the PID, Kee Song initially submitted that while it was present at the Anti-Competitive Discussions, it did not attend the social gatherings with the intention to participate in such discussions and was simply a passive participant.[598] CCCS notes, however, that Kee Song has subsequently applied for leniency and confirmed its attendance at the Anti-Competitive Discussions.[599] CCCS also reiterates that passive participation without public distancing does not absolve an undertaking from a finding of liability.

[594] *JFE Engineering* at [196].
[595] Paragraph 19 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.
[596] Pages 1 to 4 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID.
[597] Pages 1 to 2 of Leniency Statement (Hock Chuan Heng/Hy-fresh) dated 13 December 2016.
[598] Paragraphs 11 to 17 of written representations (Kee Song) dated 3 May 2016 to PID; Paragraph 9 of written representations (Kee Song) dated 22 February 2018 to SPID.
[599] Paragraph 4 of Leniency Statement (Kee Song) dated 30 November 2016.

Lee Say

412. Lee Say submitted that it was not part of the Anti-Competitive Discussions as Tan Koon Seng rarely participated in the social gatherings[600] and that in any event Ma Chin Chew's evidence demonstrates that Tan Koon Seng had publicly distanced himself.[601] As already set out in the evidence from paragraphs 176 to 385, there is sufficient evidence to demonstrate Lee Say's participation in the Anti-Competitive Discussions. For example, Chew Kin Huat (*Sinmah*) stated that Tan Koon Seng would call him to instruct him on the quantum and timing of the price increases[602], Ong Kian Seng (*Kee Song*) named Tan Koon Seng as one of the people who would announce their intention to increase prices before doing so,[603] and Toh Eng Say (*Tong Huat*) indicated that any decision on price must be approved by Tan Koon Seng and Parties are unlikely to implement any agreed price changes without Tan Koon Seng's approval.[604] Even Ma Chin Chew, who is from an entity in the Lee Say Group and whose statement Lee Say has relied (to demonstrate that Tan Koon Seng had publicly distancing himself), has stated that Lee Say and Hup Heng stopped a price war after they had discussions. Moreover, Lee Say's submission that Tan Koon Seng had publicly distanced Lee Say is unconvincing, given that he had been clearly identified as an active participant by multiple infringing Parties.

413. The Lee Say Group also submitted that it had observed that smaller distributors, such as [✂] have "friendly groupings or pairings", and the alleged anti-competitive discussions may have been implemented within these legacy alliances of which the Lee Say Group is not a part of.[605] CCCS has already found that the named distributors participated in the Anti-Competitive Discussions, and the Lee Say Group's submission does not provide any additional information. Furthermore, the Anti-Competitive Discussions are not confined to smaller players, and included larger players such as the Tong Huat Group and Kee Song.

[600] Paragraph 12.10 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraph 6.5 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[601] Paragraphs 12.11 to 12.14 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[602] Answer to Question 22 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[603] Answer to Question 38 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[604] Paragraph 2.3.1 of Leniency Statement (Tong Huat Group) dated 17 November 2016.
[605] Paragraph 6.9 of written representations (Lee Say Group) dated 8 February 2018 to SPID.

Prestige Fortune

414. The Lee Say Group submitted that Prestige Fortune should be excluded on the basis that it does not trade in Fresh Chicken Products. However, in contradiction, the Lee Say Group admitted in the same representations that Prestige Fortune *does* supply Fresh Chicken Products.[606] Whilst the turnover from Fresh Chicken Products sold by Prestige Fortune is [✂], sales of Fresh Chicken Products still constituted part of its revenue and it would have continued to benefit from participation in the Anti-Competitive Discussions. The EC cases cited by the Lee Say Group[607] do not assist Prestige Fortune because in those cases, the company in question did not supply taps and fittings (which the anti-competitive discussions related to) at all. Furthermore, Prestige became part of the Lee Say Group with effect from 31 March 2012 and the Lee Say Group is liable for the Anti-Competitive Discussions as an SEE. In any event, the small volume supplied by Prestige Fortune would already be reflected in the relevant turnover used to determine its penalties.

Hup Heng

415. The Lee Say Group submitted that (i) Hup Heng did not participate in the Anti-Competitive Discussions as Hup Heng focuses on (i) [✂], (ii) any initiation of Price Discussions by Ma Chin Chew was when he was intoxicated and he could not have held any anti-competitive intent, (iii) Hup Heng's cessation of the price war with Lee Say just meant that Hup Heng and Lee Say ceased pricing below cost to target each other customers' in a predatory manner, (iv) there was a plausible alternative explanation to the emails between Ma Chin Chew and Wu Xiao Ting (*Sinmah*), and (v) the sales staff of Hup Heng only knew about competitors' prices from customers.[608] Considering all the evidence holistically as set out in paragraphs 176 to 385, it is clear that Hup Heng participated in the Anti-Competitive Discussions. It is also clear that Hup Heng did compete in the market for the Fresh Chicken Products and whether or not it competed on [✂] as well does not preclude its infringement. Moreover, the cessation of the price war with Lee Say after discussions is in fact a clear indication that there *was* anti-competitive price-fixing.

[606] Paragraphs 5.1 to 5.5 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 6.8 and 8.1 to 8.4 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[607] Case T-380/10 *Wabco Europe v Commission*; Joined cases T-379/10 and T-381/10 *Keramag Keramische Werke AG and Others and Sanitec Europe Oy v European Commission.*
[608] Paragraphs 12.6 to 12.8 of written representations (Lee Say Group) dated 3 May 2016 to PID.

416. The Lee Say Group also submitted that Hup Heng had publicly distanced itself by being the one to slaughter chickens on 1 May 2013.[609] This fact alone is not sufficient to prove that Hup Heng was considered to have publicly distanced itself by 1 May 2013 and in any event, there is no indication that any Party considered that Hup Heng had publicly distanced itself by 1 May 2013. Furthermore, Hup Heng became part of the Lee Say Group with effect from 18 April 2011 and the Lee Say Group is liable for the Anti-Competitive Discussions as an SEE.

KSB

417. The Lee Say Group submitted that KSB did not participate in the Anti-Competitive Discussions and that the presumption that Vincent Chew's contact with the other fresh chicken distributors has influenced the conduct of KSB on the supply of fresh chicken products has been rebutted in this case.[610]

418. Foremost, it must be noted that the presumption of causal connection (i.e. that the market players would have taken into account of the information exchanged in their conduct) is stronger where the undertakings concert together on a regular basis over a long period of time; in this case, close to seven years.[611] In order to rebut the presumption of causal connection therefore, strong evidence must be provided.

419. CCCS notes that, as demonstrated by the evidence in paragraph 176 to 385, Vincent Chew actively participated in the Anti-Competitive Discussions. Not only is his participation corroborated by multiple Parties, Vincent Chew was also identified by Ng Lay Long to have called him for the return of customers and to have given instructions on price increases, and by Ma Chin Chew to have asked for prices to be adjusted during Price Discussions. Clearly, Vincent Chew did not merely passively receive information but also actively contributed to and facilitated the Anti-Competitive Discussions.

420. Furthermore, actual implementation is not required for a finding of infringement. The mere fact that an undertaking may not be fully committed to its implementation does not mean that it was not party to the agreement or concerted practice.[612] As noted earlier in *Tréfileurope Sales SARL v*

[609] Paragraph 12.9 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[610] Paragraphs 12.18 to 12.21 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[611] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 at [121].
[612] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.11.

Commission, the CFI concluded that Tréfileurope had participated in the agreements on prices concerning the Benelux market and was of the view that:

> "*85 In any event, even if it is assumed that the applicant refrained, at least in part, from participating actively in the meetings, the Court considers that, having regard to the manifestly anti-competitive nature of the meetings, …, the applicant, by taking part without publicly distancing itself from what occurred at them,* ***gave the impression to the other participants that it subscribed to the results of the meetings and would act in conformity with them.***"[613] [Emphasis added]

421. In this regard, it is noted that as with the other fresh chicken distributors, KSB was a family run company. Given that Vincent Chew is the brother of both Chew Ghim Bok and Chew Keng Wah, and held the position of Deputy General Manager in KSB, his participation in the Anti-Competition Discussions would have given the impression that KSB subscribed to the results of the discussions and would act in conformity with them. Indeed, Chiew Kin Huat believed that Vincent Chew may influence KSB's prices and he is named as one of the most active participants by Toh Eng Say. Furthermore, KSB became part of the Lee Say Group with effect from 31 October 2012 and the Lee Say Group is liable for the Anti-Competitive Discussions as an SEE.

422. The Lee Say Group had argued that there are various plausible explanations for references to price discussions in statements, e.g., that the price discussions related to live chicken prices rather than slaughtered chickens or that prices were affected by live chicken prices, and that CCCS has failed to consider these.[614] In this respect, CCCS has reviewed the evidence holistically and finds, on a balance of probabilities, that the evidence indicates participation by the Lee Say Group entities in the Anti-Competitive Discussions.

Ng Ai

423. Ng Ai submitted that the additional facts set out in the SPID raise doubts as to Ng Ai's liability as well as the extent of Ng Ai's liability[615] and highlighted that statistics on Ng Ai's price changes support Ng Ai's submission that it was not

[613] Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791.
[614] For example, paragraphs 10.22.3 and 15.1.7 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[615] Paragraph 3 of written representations (Ng Ai) dated 22 February 2018 to SPID.

part of the Anti-Competitive Discussions.[616] As already stated above, CCCS is not required to prove the actual implementation and effect of the Anti-Competitive Discussions to find an infringement. The mere fact that an undertaking may have played only a limited part in setting up the agreement or concerted practice, or may not be fully committed to its implementation, does not mean that it was not party to the agreement or concerted practice. In this case, there is direct evidence indicating that Ng Ai participated in the Anti-Competitive Discussions and the price data further supports that Ng Ai had implemented the infringing conduct.

Toh Thye San

424. Toh Thye San, in its representations, submitted that the clarifications and further explanations provided by Alex Toh in his second interview on 19 October 2016 were not an attempt to recant on the responses provided in his first interview on 23 April 2015, but were due to a lack of understanding of the English language.[617] CCCS reiterates its observations on Alex Toh's second interview set out in paragraphs 361 to 364 above.

425. Toh Thye San also submitted in its representations that Alex Toh is a simple, reserved and honest man who hardly attended social gatherings, and it is extremely unlikely that he was present at the Anti-Competitive Discussions.[618] In this regard, Toh Thye San claimed that Alex Toh had "*constantly denied that he had ever participated in any discussions relating to NAP or in the Price Discussions*".[619] Toh Thye San also pointed to Chiew Kin Huat's acknowledgement that Alex Toh was an occasional attendee at social gatherings[620] and pointed out that Alex Toh had not been named explicitly as a participant of the gatherings by Lim Soh Hua and Tan Koon Seng.[621]

426. CCCS reiterates the evidence set out in paragraphs 176 to 385 above in relation to Alex Toh's attendance of the gatherings and Anti-Competitive Discussions. Alex Toh's participation in the Anti-Competitive Discussions was explicitly corroborated by Chiew Kin Huat, Ong Kian San and Ng Lay Long. Further, Ng Lay Long has confirmed that the "Toh Cheng Hai" he was referring to in his

[616] Paragraphs 7 to 12 of written representations (Ng Ai) dated 22 February 2018 to SPID.
[617] Paragraphs 1.2.1(a) and 2.1 to 2.11 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[618] Paragraph 3.1.1 to 3.1.9 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[619] Paragraph 3.1.3 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[620] Paragraphs 3.1.5 and 3.1.6 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[621] Paragraphs 3.1.1 to 3.17 of written representations (Toh Thye San) dated 19 April 2016 to PID; Paragraphs 3.1.7 and 3.1.8 of written representations (Toh Thye San) dated 8 February 2018 to SPID.

interview was Alex Toh.[622] Alex Toh had also corroborated that [✂] was not originally Toh Thye San's customer but became its customer at some point.[623]

427. CCCS also reiterates its findings set out in paragraphs 319 and 361 above in relation to the Tong Huat Group's submission that fresh chicken distributors with no slaughterhouses did not attend discussions after 2007. CCCS notes that the document titled "Estimed Slaughtering Time Table for Year 2018 – Before Chinese New Year"[624] does not show, and Toh Thye San has not submitted any other evidence of, the alleged customer-supplier relationship with Toh Thye San and KSB in relation to the supply of fresh chickens or to support its claim that KSB had communicated the outcome of the Pricing Discussions to Toh Thye San solely pursuant to such customer-supplier relationship between Toh Thye San and KSB. Alex Toh's answers in his first interview on 23 April 2015 regarding the receipt of price increase information from competitors fit Toh Eng Say's description of how information is passed to Parties without slaughtering facilities.

428. Toh Thye San represented that CCCS should consider that Toh Thye San had implemented two out of the eight price increases documented by the Tong Huat Group (minority of the time) instead of Toh Thye San having implemented two out of three instances of the price increases during the periods where records were available (majority of the time) and submitted that CCCS had improperly drawn a negative inference in this regard.[625] Toh Thye San also noted that the price increases could be due to a variety of reasons, such as an increase in the costs of live chickens.[626]

429. CCCS reiterates its observations at paragraph 404, and its factual observation at paragraph 335 that during the periods where records were available, Toh Thye San had implemented two out of three instances of the price increases documented by the Tong Huat Group. Contrary to Toh Thye San's submission, CCCS did not draw a negative inference for the period during which Toh Thye San's records were not available. Instead, CCCS had considered Toh Thye San's price data favourably – as noted above, although the price data in the time period around 24 September 2013 may not accurately reflect when the Parties agreed on price increases, CCCS still included the data to reflect that Toh Thye

[622] Page 2 of Leniency Statement (Hock Chuan Heng/Hy-fresh) dated 27 January 2017.
[623] Questions 67 to 72 of Notes of Information of Toh Cheng Hai (Toh Thye San) dated 19 October 2016.
[624] BOD 1 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[625] Paragraphs 3.2.5 to 3.2.9 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[626] Paragraph 3.2.8 of written representations (Toh Thye San) dated 8 February 2018 to SPID.

San's records did not show implementation for one instance of the price increases.

430. To summarize, the evidence canvassed in the paragraphs above at 176 to 385 demonstrates that CCCS had relied upon both **direct evidence** such as admissions from the relevant undertakings and their respective employees on participation in the Anti-Competitive Discussions, documentary evidence such as the Association minutes and the circular TSD-011, and **indirect evidence** such as observations of contemporaneous price increases and customer statements corroborating the general industry practice of non-compete, in arriving at its conclusion. In this regard, the evidence, "viewed as a whole"[627] and in a holistic fashion,[628] is sufficiently cogent and consistent in setting out the anti-competitive conduct. Further, it was clear that CCCS had also considered the potential exculpatory evidence before coming to its conclusion (see paragraphs 176 to 385 above).

iv. Single Continuous Infringement by the Parties

431. A common plan to achieve certain anti-competitive purpose(s) over a period of time, albeit achieved through different conduct, may nonetheless constitute a single continuous infringement. In determining whether the present case constitutes a single continuous infringement, CCCS has considered the various factors borne out in case law which include whether:

(i) the activities contribute towards the realisation of a common objective;

(ii) the activities are complementary in nature;

(iii) the products involved are the same;

(iv) the activities had similar modus operandi;

(v) the participants were the same; and

(vi) the participants were represented at the same meetings by the same persons.

[627] *Sumitomo* at [41] – [45].
[628] *Dyestuffs* at [68].

432. In this regard, the evidence sufficiently proves that each Party had participated in both the Price Discussions and Non-Aggression Pact, which could stand as two distinct infringements. Notwithstanding this, CCCS is of the further view that they constitute a single continuous infringement for the reasons set out below.

433. First, the agreements and/or concerted practices, namely the Price Discussions and Non-Aggression Pact that made up the single continuous infringement were all in pursuit of the common objective to distort the normal movement of prices of Fresh Chicken Products (the "Common Objective"). CCCS recognises that the method by which the Parties pursued the Common Objective may have evolved over time. For instance, Chiew Kin Huat (*Sinmah*) stated that the Parties subsequently agreed to increase prices on different days to avoid detection.[629] However, at all times, the Common Objective remained the same, with the various actions taken based on the prevailing market circumstances.

434. Second, each Party intended to contribute by its own conduct to the Common Objective of the single continuous infringement. This is evident from the participation of the Parties in the Anti-Competitive Discussions as demonstrated by the witnesses to these discussions who have been interviewed by CCCS and the notes of information of those interviews. In furtherance of the Common Objective, the Parties coordinated price increases and actively prevented customer switching by quoting higher prices than normal and pressurised each other to not compete for customers. Chiew Kin Huat (*Sinmah*) admitted that "*there was an agreement to increase prices together because if only one company increases prices unilaterally, the customers will not pay up and will stop their orders*."[630] Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) also admitted that the Parties would enforce the Non-Aggression Pact by chastising him when he poached their customers, and deter switching by "*quot[ing] prices way higher than the market price to chase the customer away*."[631] Ma Chin Chew (*Hup Heng*) also admitted to changing his pricing strategies and increasing prices following discussions with some of the Parties.[632] Therefore, CCCS is of the view that each Party was aware of or could have reasonably

[629] Answers to Question 21 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[630] Answer to question 25 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 2 June 2015.
[631] Answer to Question 48 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[632] Answer to Question 22 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

foreseen the actual conduct planned or put into effect by other Parties in pursuit of the Common Objective.

435. Third, the agreements and/or concerted practices establishing the single continuous infringement are complementary. The Price Discussions aimed to coordinate the prices of the Fresh Chicken Products which in turn, strengthened the Non-Aggression Pact as customers were unable and/or unwilling to switch due to the coordinated price movements. Correspondingly, the Non-Aggression Pact distorted the competition landscape thereby allowing the Price Discussions to be implemented with impunity. The complementary nature of the Non-Aggression Pact and Price Discussions is exemplified in the statement of [✂] (*formerly Lee Say*) where he explained that Parties would avoid competing on prices in adherence to the Non-Aggression Pact.[633] Thus, CCCS is of the view that the Price Discussions and Non-Aggression Pact complemented each other to attain the common objective to distort the normal movement of prices of Fresh Chicken Products in Singapore.

436. Fourth, the Price Discussions and the Non-Aggression Pact pertained to the same Fresh Chicken Products. CCCS also considers it relevant that the Anti-Competitive Discussions – which resulted in both the Price Discussions and Non-Aggression Pact – functioned in a similar manner, in that meetings were flexibly organised without any written agreement and enforced through informal sanctions in the event of non-compliance by any Party. The Anti-Competitive Discussions were mostly casual and took place under similar circumstances, specifically at social gatherings.

437. Last, CCCS notes that the Parties to the single continuous infringement remained the same throughout the entire infringement period, with the exception of Poultry Development which was, in any event, succeeded by Prestige Fortune and became part of the Lee Say Group.[634] CCCS further notes that the Parties were generally represented by the same people throughout the entire infringement period which spanned close to seven years.

438. Hock Chuan Heng/Hy-fresh submitted in its representations that there was no single continuous infringement on the basis that the objective of the Price Discussions and the Non-Aggression Pact were different[635], and that there was

[633] Answer to Question 21 of [✂] (Lee Say Group) Notes of Information/Explanation Provided on 24 June 2015.
[634] The details of duration and attribution of liability due to succession are discussed at paragraphs 478 to 490and 496 to 497 respectively.
[635] Page 6 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID.

no commonality of implementation or timeline between the two conducts.[636] Toh Thye San submitted that there was no common objective and that it was highly plausible the Price Discussions and the Non-Aggression Pact related to separate markets (retail segment for the Price Discussions and catering segment for the Non-Aggression Pact).[637] Toh Thye San also submitted that the Common Objective is pitched at a far too general level.[638]

439. CCCS notes that the Price Discussions and Non-Aggression Pact were complementary and mutually enforcing. The Non-Aggression Pact enhanced the Parties' ability to implement the Price Discussions by insulating the Parties from competition, while the Price Discussions strengthened the impact of the Non-Aggression Pact as customers would have less incentive to switch due to the coordinated price movements. This clear complementarity between the Price Discussions and the Non-Aggression Pact is an objective indicia of the overall objective.[639] Contrary to what Hock Chuan Heng/Hy-fresh submitted, the evidence revealed that both the Price Discussions and the Non-Aggression Pact continued throughout the period of infringement. Furthermore, given that the Price Discussions and the Non-Aggression Pact provided complementary but different mechanisms to achieve the Common Objective, there was no necessity for both to have the same rules of implementation or to be discussed with the same frequency. In particular, the Non-Aggression Pact was an on-going conduct that did not require discussions with the same frequency as the Price Discussions. Toh Thye San's contention that the Price Discussions and the Non-Aggression Pact related to separate markets for retail and catering is also inaccurate. The statements of Chiew Kin Huat, Ong Kian San and Ng Lay Long and their leniency submissions showed that there is no distinction between the Price Discussions and the Non-Aggressions Pact in terms of customers. The price data provided by the Parties also showed price increases affected by *both* the retail *and* catering segments that Toh Thye San has defined.

440. Toh Thye San submitted in its representations that there is no evidence to show that it "intended to contribute by its own conduct" to the Common Objective.[640] As already noted above in CCCS's assessment of Toh Thye San's representations regarding participation, the evidence sufficiently demonstrates that Toh Thye San participated in the Anti-Competitive Discussions.

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[636] Page 6 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID.
[637] Paragraph 4.5 of written representations (Toh Thye San) dated 19 April 2016 to PID.
[638] Paragraph 4.6 of written representations (Toh Thye San) dated 19 April 2016 to PID.
[639] *Masco v Commission* T-378/10 at [23].
[640] Paragraph 4.9 of written representations (Toh Thye San) dated 19 April 2016 to PID.

441. In its representations to the PID, the Tong Huat Group had raised contentions against CCCS' finding that there had been a single continuous infringement.[641] However, the Tong Huat Group subsequently applied for leniency and confirmed the continuous nature of the Anti-Competitive Discussions and its continued participation in the same.

442. In its written representations, the Lee Say Group submitted that there was no single continuous infringement as it would not have been possible for the Lee Say Group to have pursued the Common Objective given the difficult market conditions, and further, that Lee Say had also competed blatantly and aggressively on the market such that it publicly distanced itself from the Price Discussions and Non-Aggression Pact.[642] The Lee Say Group and Toh Thye San had also argued that CCCS should take into account *Total Marketing Services*[643] for the principle that other factors should be considered in addition to the lack of public distancing when deciding whether an undertaking has continued to participate in an infringement.[644]

443. CCCS notes that what amounts to public distancing must be clear and unequivocal such as to amount to an expression of firm and unambiguous disapproval.[645] As highlighted by the cases which were cited above,[646] what constitutes as public distancing must also be interpreted narrowly to prevent parties from attending cartel meetings with impunity, and in this vein, the courts have held that participation at a single meeting with an anti-competitive meeting can lead to liability or that mere receipt of information can amount to participation. Even taking into account that other factors can be equivalent to public distancing, there is no evidence that the Lee Say Group has given the other Parties any reason to believe it had ceased to "*subscribe to what was decided*"[647] in the Anti-Competitive Discussions. In this regard, it bears reiteration that representatives from the Parties, including from the Lee Say Group, were positively identified as participants at the Anti-Competitive Discussions. In addition, there was objective and consistent indicia corroborating the presence and participation of the Parties at the various Anti-Competitive Discussions, which was to distort the normal movement of prices of Fresh Chicken Products as per the Common Objective. There is also no clear

[641] Paragraphs 5.32 to 5.57 of written representations (Tong Huat Group) dated 19 April 2016 to PID.
[642] Paragraph 13.5 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[643] Case C-634/13 P *Total Marketing Services v Commission.*
[644] Paragraphs 12.1 to 12.4 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraph 5.3.9 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[645] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334, at [124].
[646] See paragraphs 107 to 114.
[647] Paragraph 12.3 of written representations (Lee Say Group) dated 3 May 2016 to PID.

and compelling evidence of active disapproval of the content of the Anti-Competitive Discussions. While Lee Say has tried to characterize its attendance at the Anti-Competitive Discussions as sporadic and infrequent[648], the law is clear - only an umambiguous expression of disapproval will suffice for the purposes of public distancing.

444. CCCS also notes that the evidence does not demonstrate aggressive competition engaged in by Lee Say as described. On the contrary, the Parties' customers have provided feedback that it was difficult to switch suppliers,[649] and given that these are statements offered by objective third parties, these observations should be accorded significant weight. The point is further buttressed by the Parties' own employees' statements that they do not actively compete for customers belonging to other fresh chicken distributors.[650]

CHAPTER 3: INFRINGEMENT DECISION

A. Addressees of CCCS's Infringement Decision

445. The relevant case law on SEE and attribution of liability as a consequence of a finding of SEE has been discussed at paragraphs 74 to 90.

446. As set out above, it is established case law that an undertaking can consist of several persons, natural and legal.[651] Whether persons constitute an SEE is dependent on the circumstances of a case.

447. Key facts and evidence for each Party and CCCS's conclusions on whether they form an SEE are set out below. In summary, CCCS is of the view that while each of the Parties consists of different natural and legal persons, these persons together formed an SEE for each Party, given their economic, legal and organisational links.

Gold Chic and Hua Kun

448. CCCS notes that Gold Chic and Hua Kun have identical directors, namely Lim Soh Koon and Yap Ah Tee, with Lim Soh Koon as the person in charge of [✂],

[648] Paragraph 13.8 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[649] See paragraphs 229 to 230.
[650] See paragraphs 226 to 228.
[651] Case C 217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I 11987, at [40].

while Mdm Yap Ah Tee [✂] at the material time.[652] These directors are also the majority (90%) and all (100%) shareholders in Gold Chic and Hua Kun respectively, with Lin Yuqun – son of Lim Soh Hua and Yap Ah Tee – holding the remaining 10% shares in Gold Chic. When separately queried by CCCS whether Gold Chic and Hua Kun were marketed as one and the same in the industry, both companies answered to the affirmative.[653]

449. Gold Chic and Hua Kun similarly provided identical responses when queried separately by CCCS on multiple questions, and generally represented itself as a single undertaking consisting of related companies during the administrative process. CCCS notes that Gold Chic and Hua Kun were both represented by Lim Soh Hua in the Anti-Competitive Discussions and understood to be so by other participants in the Anti-Competitive Discussions.[654]

450. Operationally, [✂].[655] This arrangement had been in place since [✂].[656] Lim Soh Hua, who represented Gold Chic and Hua Kun in the Anti-Competitive Discussions, is Lim Soh Koon's brother, who served as the decision-maker for [✂] for both Gold Chic and Hua Kun in Singapore.[657]

451. In light of the above, CCCS finds that Gold Chic and Hua Kun constitute an SEE since [✂] even though Gold Chic and Hua Kun are separate legal persons in law.

Hock Chuan Heng/Hy-fresh

452. CCCS notes that Hy-fresh is the functional and economic successor of Hock Chuan Heng. Indeed, [✂].[658] Moreover, CCCS notes that as at 30 November

[652] Information provided by Gold Chic dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, Question 5; Information provided by Hua Kun dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, Question 5.
[653] Information provided by Gold Chic dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, Question 6; Information provided by Hua Kun dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, Question 6.
[654] Answer to Question 14 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015; Answer to Question 5 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 25 November 2014; Answer to Question 17 of Toh Eng Say (Tong Huat) Notes of Information/Explanation Provided on 24 April 2014.
[655] Information provided by Gold Chic dated 23 January 2015 pursuant to the section 63 Notice issued by CCCS dated 9 January 2015, Question 1b.
[656] Information provided by Gold Chic dated 10 September 2015 pursuant to Requests for Further Information issued by CCCS dated 4 September 2015, Question 2.
[657] Answer to Question 4 of Lim Soh Hua (Gold Chic/Hua Kun) Notes of Information/Explanation Provided on 29 April 2015.
[658] Information provided by Hock Chuan Heng/Hy-fresh dated 23 January 2015 pursuant to the section 63 Notice issued by CCCS dated 9 January 2015.

2016, Hock Chuan Heng ceased its registration on ACRA.[659] Following the principle in *Autorita Garante della Concorrenza e del Mercato* that the legal form of the infringing entity and the entity that succeeded it are irrelevant[660], and given that Hock Chuan Heng as an entity has ceased to exist, Hy-fresh is responsible for any competition law infringements committed by Hock Chuan Heng.

453. Hy-fresh was also the sole proprietor of Hock Chuan Heng prior to the cessation of its registration.[661] This means that Hy-fresh was liable for all the acts of Hock Chuan Heng. CCCS further considers that Hy-fresh, being the sole proprietor, exercised decisive influence over Hock Chuan Heng when Hock Chuan Heng still existed. CCCS therefore finds that Hock Chuang Heng and Hy-fresh constituted an SEE prior to the cessation of Hock Chuan Heng's registration.

454. In its written representations, Hy-fresh submitted that for the period of infringement prior to Hy-fresh becoming a partner in Hock Chuan Heng, the then partners of Hock Chuan Heng should be liable for the infringement as the partnership was "*merely an organisational form for the partners to carry on commercial or economic activities relating to goods*".[662] CCCS rejects this argument as a fundamental misunderstanding of the concept of an undertaking under competition law.

455. The concept of an "undertaking" in section 2(1) 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. Therefore, a partnership may be considered an undertaking[663], rather than each of its partners individually, where the economic activity is carried out by the partnership.[664] Hock Chuan Heng was the organisational form through which the relevant economic activity was carried out, as expressly acknowledged by Hy-fresh, and is therefore an undertaking that can be held liable for the infringement of the section 34 prohibition in this case.

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[659] Information provided by Hock Chuan Heng/Hy-fresh dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Extracted from ACRA record *Business Profile of Hock Chuan Heng Farm (on 31/8/2018).*

[660] Case C-280/06 *Autorita Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA and Philip Morris*, judgment of 11 December 2007, at [41] and [43].

[661] Extracted from ACRA record *Business Profile of Hock Chuan Heng Farm (on 31/8/2018).*

[662] Pages 3 to 8 of written representations (Hock Chuan Heng/Hy-fresh) dated 8 February 2018 to SPID.

[663] Paragraph 2.5 of the *CCS Guidelines on the Section 34 Prohibition.*

[664] *Breeders' Rights: Roses* OJ [1985] L369/09.

456. Furthermore, contrary to Hy-fresh's contention[665], the economic succession of Hock Chuan Heng is similar to the factual scenario in *Suiker Unie*. ECJ held that "*as the applicant assumed all the rights and liabilities of the four cooperatives of the old association, it must be treated as the economic successor both of the old association and of its members, which indeed is what those members intended.*"[666] It is not disputed that Hy-fresh had [✂], and was, in fact, the sole proprietor of Hock Chuan Heng prior to its cessation of registration. Further, given that Hock Chuan Heng as an entity has ceased to exist, Hy-fresh is the economic successor to Hock Chuan Heng and is liable for the latter's infringement as well as its own.

Tong Huat and Ban Hong

457. On 26 April 2013, several shareholders of Tong Huat, namely [✂][667] acquired a [✂]% stake in Ban Hong (the "First Acquisition"). [✂].[668]

458. Operationally, the decisions relating to [✂] in Tong Huat and Ban Hong were made by Toh Eng Say. Decisions relating to [✂] in Tong Huat and Ban Hong were made by Too Siew Din.[669]

459. On 27 February 2015, Ban Hong became a wholly-owned subsidiary of Tong Huat (the "Second Acquisition"). The decision makers in relation to [✂] in Tong Huat and Ban Hong did not change after the Second Acquisition.

460. From 26 April 2013, when shareholders of Tong Huat acquired [✂]% of the shares in Ban Hong, CCCS considers that Tong Huat became the effective parent of Ban Hong and therefore exercised decisive influence over the latter. Indeed, the First Acquisition took place for the sole purpose of [✂]. In particular, the then-Managing Director of Ban Hong, Ho Chong Hee, gave up executive control over the company, becoming a sales manager instead.[670] Too Siew Din and Toh Eng Say, who were the decision makers relating to [✂] in

[665] Page 5 of written representations (Hock Chuan Heng/Hy-fresh) dated 8 February 2018 to SPID.
[666] *Suiker Unie* at [84].
[667] Answer to Question 56 of Too Siew Din (Tong Huat) Notes of Information/Explanation Provided on 16 April 2015.
[668] Information provided by Tong Huat dated 17 September 2015 pursuant to Requests for Further Information issued by CCCS dated 25 August 15 and 14 September 2015, QA.
[669] Information provided by Tong Huat dated 17 September 2015 pursuant to Requests for Further Information issued by CCCS dated 25 August 2015 and 14 September 2015, QB; Answer to Question 3 of Toh Eng Say (Tong Huat) Notes of Information/Explanation Provided on 13 August 2014; Answer to Question 6 of Too Siew Din (Tong Huat) Notes of Information/Explanation Provided on 13 August 2014.
[670] Answers to Questions 2 to 5 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation provided on 5 May 2015.

Tong Huat, became the decision makers relating to the same aspects in Ban Hong after the First Acquisition.

461. In the light of the above, CCCS considers Tong Huat and Ban Hong to be an SEE from 26 April 2013, being the date of the First Acquisition.

Lee Say Group

462. As set out at paragraph 11 above and in the systemic diagram in Figure 1, the Lee Say Group comprises of Lee Say, Lee Say Poultry, KSB, ES Food, Hup Heng and Prestige Fortune. Additional factors also demonstrate the economic and legal links between the entities, including shareholdings, common directorships, and the manner in which the entities functioned operationally.

Lee Say and Lee Say Poultry

463. Lee Say is the sole proprietor of Lee Say Poultry.[671] CCCS further considers that Lee Say, being the sole proprietor, exercises decisive influence over Lee Say Poultry. CCCS also notes that two of the directors of Lee Say at the material time, namely Ng Eng Wah and Ong Pang Teck, were also managers of Lee Say Poultry.[672]

Lee Say, ES Food and KSB

464. As set out at paragraph 14 above, Lee Say acquired a [✂]% stake in KSB through its [✂] subsidiary, ES Food[673], on 31 October 2012. ES Food functioned solely [✂].[674] Three of the directors in Lee Say at the material time, namely Ong Pang Guan, Tan Koon Seng, Lau Boon Wong and Ng Eng Wah, were also directors of ES Food. Lau Chia Nguang was a common director of both KSB and Lee Say at the material time.

[671] Extracted from ACRA record *Business Profile of Lee Say Poultry Industrial* (on 29/8/2018).
[672] Extracted from ACRA record *Business Profile of Lee Say Poultry Industrial* (on 15/1/2014). Extracted from ACRA record *Business Profile of Lee Say Group Pte. Ltd.* (on 15/1/2014).
[673] Information provided by ES Food dated 3 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to question 2.
[674] Information provided by ES Food dated 3 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to questions 7 and 8.

465. [✂].[675] Instructions in relation to [✂] were provided by Lee Say and ES Food.[676] The annual budget of KSB was presented at [✂].[677] [✂] were provided by KSB to Lee Say and/or ES Food on a [✂] basis for consolidation purposes. Additionally, [✂] are also submitted to Lee Say and/or ES Food for [✂].[678]

466. In light of the above, CCCS considers that Lee Say, ES Food and KSB constitute an SEE from 31 October 2012. A rebuttable presumption that Lee Say exercised decisive influence over ES Food, and in turn over KSB, arises with the existence of the [✂]% ownership over KSB through ES Food at the material time. Moreover, CCCS considers that other factors demonstrate the economic and legal links between Lee Say, ES Food and KSB that support the finding of an SEE. These factors include the reporting structure between the entities and the existence of common directors.

Lee Say and Hup Heng

467. Lee Say bought a controlling stake of [✂]% in Hup Heng on 18 April 2011 and increased its shareholding to [✂]% on 22 March 2012. Out of five directors in Hup Heng at the material time, four were also directors in Lee Say. These common directors were:

(i) Tan Sri Francis Lau Tuang Nguang;

(ii) Toh Ying Seng;

(iii) Ong Pang Teck; and

(iv) Tan Koon Seng.

468. While Ma Chin Chew was in charge of day-to-day decision making in Hup Heng[679], three of the common directors in both Hup Heng and Lee Say at the

[675] Information provided by ES Food dated 3 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 12; Information provided by KSB dated 7 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 7.
[676] Information provided by KSB dated 7 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 7.
[677] Information provided by KSB dated 7 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 8.
[678] Information provided by KSB dated 7 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 10.
[679] Answer to Question 6 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 15 April 2015.

material time, namely, Tan Sri Francis Lau Tuang Nguang, Tan Koon Seng and Ong Pang Teck acted as [✂] for Hup Heng.[680] [✂].[681] CCCS further notes that [✂].[682] [✂].[683]

469. On an operational level, Hup Heng provided [✂] to Lee Say.[684] [✂] were prepared by Hup Heng and reviewed by Lee Say.

470. In light of the above, CCCS considers that Lee Say and Hup Heng constitute an SEE from 18 April 2011. First, in view of the ownership structure between Lee Say and Hup Heng, Lee Say had a controlling interest in Hup Heng. Second, CCCS considers that other factors demonstrate the economic and legal links between Lee Say and Hup Heng that support a finding of an SEE. These factors include common directorships, Lee Say's influence over the board of directors and financial aspects of the business, and the reporting structure between Lee Say and Hup Heng.

Lee Say and Prestige Fortune

471. Prestige Fortune is a wholly-owned subsidiary of the Malaysian-registered Prestige Fortune Sdn. Bhd., in which Lee Say acquired a controlling stake of [✂]% on 31 March 2012 through a [✂] Malaysian subsidiary, Lee Say Breeding Farm Sdn. Bhd. at the material time.[685] [✂].[686]

472. As part of the acquisition, Prestige Fortune acquired [✂] Poultry Development in March 2012. In this respect, CCCS notes that Prestige Fortune took over [✂] of Poultry Development when taking over the company. The director and shareholder of Poultry Development, Quek Cheaw Kwang, was also a shareholder in the holding company, Prestige Fortune Sdn. Bhd., and was appointed as a director at Prestige Fortune.

[680] Information provided by Hup Heng dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 5.
[681] Answer to Question 7 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 15 April 2015.
[682] Information provided by Hup Heng dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 6.
[683] Information provided by Hup Heng dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 11.
[684] Information provided by Hup Heng dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 10.
[685] Information provided by Prestige Fortune dated 9 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to questions 1 and 2.
[686] Information provided by Prestige Fortune dated 9 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, response to question 3.

473. The common directors between Prestige Fortune and Lee Say at the material time were:

(i) Ong Pang Guan; and

(ii) Tan Koon Seng.

474. Ong Pang Guan and Tan Koon Seng were responsible for [✂] respectively.[687] [✂].[688] [✂].[689]

475. In light of the above, CCCS considers that Lee Say and Prestige Fortune constitute an SEE from 31 March 2012. First, in view of the ownership structure of Lee Say and Prestige Fortune, Lee Say had a controlling interest in Prestige Fortune. Second, CCCS considers that other factors demonstrate the economic and legal links between Lee Say and Prestige Fortune that support a finding of an SEE. These factors include common directorships and Lee Say's direct control over financial aspects of the business including [✂].

476. CCCS further finds that Prestige Fortune in acquiring [✂] Poultry Development [✂], has become the economic and functional successor of Poultry Development. Following the principle in *Autorita Garante della Concorrenza e del Mercato*[690], Prestige Fortune is responsible for any competition law infringements committed by Poultry Development.

477. As set out above, Lee Say had economic and legal links with Lee Say Poultry, KSB, Hup Heng, ES Food and Prestige Fortune, which demonstrate the decisive influence Lee Say had over the five entities. CCCS therefore finds that Lee Say, Lee Say Poultry, ES Food, KSB, Hup Heng and Prestige Fortune form an SEE in respect of the infringement and are jointly and severally liable for participation in the Anti-Competitive Discussions. The durations of infringement for which the undertakings will be responsible, whether individually or jointly and severally, are discussed in the paragraphs below.

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[687] Information provided by Prestige Fortune (S) Pte. Ltd. dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 7.
[688] Information provided by Prestige Fortune (S) Pte. Ltd. dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Question 8.
[689] Information provided by Prestige Fortune (S) Pte. Ltd. dated 8 July 2015 pursuant to the section 63 Notice issued by CCCS dated 17 June 2015, responses to Questions 12 and 13.
[690] Case C-280/06 *Autorita Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA and Philip Morris*, judgment of 11 December 2007, at [41] and [43].

B. Duration of Infringement

478. The duration of an infringement is of importance in so far as it may have an impact on the penalty that may be imposed for that infringement.[691] Where there is no direct evidence establishing the duration of an infringement, evidence of facts sufficiently proximate in time should be adduced to show that the infringement continued between two specific dates.

479. In the case of an agreement which had ceased to be in force, it sufficed that they produced their effects beyond the date on which they formally came to an end. In *Coats Holdings Ltd v European Commission*[692], the General Court stated:

> "*162. …It followed that the duration of an infringement had to be appraised not by reference to the period during which an agreement was in force, but by reference to the period during which the undertakings concerned adopted [the] conduct prohibited...*"

480. It has been established, at paragraphs 431 to 444, that the participation by the Parties in the Price Discussions and Non-Aggression Pact comprise a single continuous infringement. On the basis of the evidence set out at paragraphs 176 to 219, these discussions had taken place as early as 2004 after the bird flu outbreak, which took place around August 2004.[693] There is no concrete evidence as to when exactly the discussions took place in 2004.

481. Be that as it may, CCCS finds that the single continuous infringement had taken place, at the latest, on 19 September 2007 which is the date of circular TSD-011 issued by the Association imploring recipients of the said circular to increase the selling prices of fresh chicken in Singapore. It has been further established that selling prices of fresh chicken in Singapore did increase between September 2007 and October 2007.

482. This approach is in line with case precedent. In *Heineken Nederland BV v European Commission*[694] ("*Dutch Beer Cartels Case*"), the EC found that the start date of the infringement was 27 February 1996, even though it had evidence suggesting that discussions had begun as early as 1987. The General Court dismissed the arguments made by the appellants that the start date of the infringement was wrong, finding that: "*the fact that the* [Commission] *did not*

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[691] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraphs 2.1, 2.7 and 2.8.
[692] Case T-439/07 *Coats Holdings Ltd v European Commission* [2012] 5 C.M.L.R. 11 at [162].
[693] *Prevention and Control of Avian Influenza in Singapore*, Ann Acad Med Singapore 2008, at page 505.
[694] Case T-240/07.

determine ***the existence of an infringement before that date actually constitutes a concession to the addressees of the contested decision****…*" (emphasis added).

483. In their written representations, some of the Parties have denied knowledge of TSD-011. [695] However, Ng Ai, Sinmah and the Lee Say Group have corroborated the creation of TSD-011.[696] The Lee Say Group argues that the purpose of TSD-011 was merely to inform the Parties' customers that the price of live chickens had increased and request that the customers review their selling prices, given the context of many fresh chicken distributors suffering heavy losses at the time due to the prevailing market conditions.[697] Sinmah submitted that TSD-011 was meant to be addressed to [✂], requesting an increase in fresh chicken prices to levels "*that would not require the industry to supply below their costs*".[698] However, CCCS notes that the objective was clearly to collectively push fresh chicken prices up. Moreover, as noted in paragraph 134, an agreement may be regarded to have as its object the restriction of competition even if the agreement by the undertakings seeks to remedy the effects of a crisis in their industry.

484. Chiew Kin Huat and Ho Chong Hee admitted that the industry met up to discuss the situation of rising costs in 2007. During the discussion, the Parties agreed that there was a need for an increase in prices. Indeed, had there been no discussion amongst the Parties, TSD-011 could not have been conceived. After TSD-011 was produced, prices of fresh chicken products did increase.

485. It was also clear that the impact of TSD-011 related to more than just the [✂] customers. Ho Chong Hee explained that TSD-011 was required so that [✂] would raise prices, which would in turn enable a general price increase for all other customers, and as noted above, this is corroborated by Sinmah's representations.[699] Indeed, it was undisputed that there was a price increase in fresh chicken products in 2007. The general economic conditions provided an incentive for the Parties to discuss the price increases.

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[695] Paragraphs 58 to 63 of written representations (Gold Chic) dated 19 April 2016 to PID; Paragraphs 23 to 26 of written representations (Kee Song) dated 3 May 2016 to PID; Paragraphs 3.3.9 to 3.3.15 of written representations (Toh Thye San) dated 19 April 2016 to PID.

[696] Paragraph 4.30 of written representations (Sinmah) dated 3 May 2016 to PID; Paragraph 11.7 of written representations (Lee Say Group) dated 3 May 2016 to PID; Answer to Questions 20 and 21 of Tan Chee Kien (Ng Ai) Notes of Information/Explanation Provided on 20 October 2016.

[697] Paragraph 11.7 of written representations (Lee Say Group) dated 3 May 2016 to PID.

[698] Paragraph 4.30 of written representations (Sinmah) dated 3 May 2016 to PID.

[699] Answer to Question 43 of Ho Chong Hee (Ban Hong) Notes of Information/Explanation Provided on 5 May 2015; Paragraphs 4.29 to 4.30 of written representations (Sinmah) dated 3 May 2016 to PID.

486. As such, CCCS is of the view that the single continuous infringement started, at the latest, on 19 September 2007.

487. With respect to the duration of the single continuous infringement, the body of evidence indicates that the effects of the Non-Aggression Pact and Price Discussions continued to be felt from 19 September 2007 to 2015.

488. In relation to the Price Discussions, Chiew Kin Huat (*Sinmah*) stated that they took place on average once every one to two months since 2007 until 2014 after which there were three more meetings before the First Inspections on 13 August 2014.[700] Furthermore, documentary evidence in TSD-011 and JH-007 revealed that discussions relating to prices took place on or before 19 September 2007 and on 26 June 2013, respectively. The statement by Fung Chien Chen (*Kee Song*) also indicates that there were price discussions sometime in early 2014 before Chinese New Year.[701]

489. Turning to the Non-Aggression Pact, Chiew Kin Huat (*Sinmah*), Ong Kian San (*Kee Song*), Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) and Quek Cheaw Kwang (*Prestige Fortune, formerly Poultry Development*) have stated that the Non-Aggression Pact was never expressly ceased. The continuation of the Non-Aggression Pact is also supported by these facts:

(i) the broad consensus across various customers that none of the Parties have approached them to promote their existing products or encouraged them to switch from their existing distributor; [702]

(ii) the email correspondence in July 2014 between Wu Xiao Ting (*Sinmah*) and Ma Chin Chew (*Hup Heng*) where Wu Xiao Ting sought Ma Chin Chew's confirmation that a potential customer was not his existing customer before she would provide a quote;[703]

[700] Answer to question 19 of Chiew Kin Huat (Sinmah) Notes of Information/Explanation Provided on 9 April 2015.
[701] Answer to question 84 of Fung Chien Chen (Kee Song) Notes of Information/Explanation Provided on 13 August 2014.
[702] CCCS had requested for information pursuant to a section 63 notice, from fresh chicken customers including 10 hotels, 14 restaurants and 5 supermarkets. See also Answers to Questions 10, 11, 20 and 27 of [✂] (Jumbo) Provided on [✂]; Information provided by Arnold's Fried Chicken (S) Pte Ltd dated 22 January 2015 pursuant to the section 63 Notice issued by CCCS dated 16 January 2015, response to Questions 4, 5 and 8; and Information provided by BonChon Singapore Pte Ltd dated 20 January 2015 pursuant to the section 63 Notice issued by CCCS dated 16 January 2015, response to Questions 4 and 13.
[703] Email correspondence between Wu Xiaoting and Ma Chin Chew marked "WXT2-001".

(iii) Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) stated that the Parties continued to discuss the Non-Aggression Pact from sometime after 2004 to end 2014.[704] During the same period, Ng Lay Long received calls from some of the Parties to demand that he return customers that have switched to him[705]; and

(iv) Azmira from Lee Say confirmed that the company policy to not compete for the customers belonging to other Parties has been in place since she joined Lee Say in June 2007 and continued to be in force on the date of her interview on 13 April 2015.[706]

490. In light of the above, it is clear that the effects of the single continuous infringement continued beyond 19 September 2007 to 2015. Given that there is no conclusive evidence as to when exactly the single continuous infringement ended in 2015, CCCS shall, in the circumstances of the present case, take the end date of the infringement to be 13 August 2014, which is the date of the First Inspections. In this regard, CCCS notes that on 13 August 2014, the parties subject to the inspections were advised to cease all alleged anti-competitive activities.

491. Toh Thye San's representations state that CCCS "*has not identified a distinct start date for the violation…with any degree of clarify or certainty at all*". Toh Thye San submitted that it would clearly not have been part of an agreement relating to TSD-011 since Toh Thye San does not supply any of the Fresh Chicken Products to any [✂] and therefore would not have participated in or benefitted from such an agreement. Further, the span of time between issuance of TSD-011 and JH-007 is a long one of almost six years and it is not reasonable for the CCCS to infer that during this period of six years, there was a single continuous infringement, and Toh Thye San's participation could not have been earlier than 1 January 2013. The Lee Say Group submitted in its representations that there was insufficient evidence sufficiently proximate in time to demonstrate the infringement from 2007 to 2014 had been uninterrupted.[707]

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[704] Answer to Question 37 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015.
[705] Answer to Question 14 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015.
[706] Answer to Question 12 of Azmira (Lee Say Group) Notes of Information/Explanation Provided on 13 April 2015.
[707] Paragraphs 6.5.1 to 6.5.14 of written representations (Toh Thye San) dated 19 April 2016 to PID; Paragraphs 5.3.4 to 5.3.15 of written representations (Toh Thye San) dated 8 February 2018 to SPID; Paragraphs 13.10 to 13.12 and 14.2 to 14.3 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 9.33 to 9.37 of written representations (Lee Say Group) dated 8 February 2018 to SPID.

492. At this juncture, it is worth highlighting the case of *Siemens AG*, where the ECJ held that the fact that evidence of the existence of a continuous infringement was not adduced for certain specific periods does not preclude the infringement from being established during a more extensive overall period provided that there was an objective and consistent indicia:[708]

> "*The fact that the evidence of the existence of a continuous infringement was not adduced for certain specific periods does not preclude the infringement from being regarded as having been established during a more extensive overall period than those periods, provided that such a finding is based on objective and consistent indicia. In the context of an infringement extending over a number of years, the fact that the agreement is shown to have applied during different periods, which may be separated by longer or shorter periods, has no effect on the existence of the agreement, provided that the various actions which form part of the infringement pursue a single purpose and fall within the framework of a single and continuous infringement (see, inter alia, Commission v Verhuizingen Coppens, paragraph 72).*"

493. It must be stressed that cartels are by nature secretive and clandestine. Unsurprisingly, this was the same in the present case, where it was attested by various parties that the meetings usually took place at informal gatherings where no minutes were recorded and verbal discussions were preferred. In fact, the wrongful nature of such Anti-Competitive Discussions was also acknowledged by Toh Ying Seng (*Lee Say*) who directed Lee Say's sales staff to keep the policy to not compete a "*secret*" because "*it is illegal*".[709]

494. The evidence canvassed above from paragraphs 176 to 385 clearly shows that there were a series of objective and consistent indicia which points to the existence of the understanding to adhere to the Common Objective, and the participation of Toh Thye San and the Lee Say Group, from at least 2007 to 2014. In fact, it was patently clear even from Lee Say's own employees that the practice of not competing for customers was in place since 2007 into at least 2015.[710] In addition, the preceding paragraphs above also demonstrate that there

[708] *Siemens AG* at [264].
[709] Answer to Question 7 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[710] Answer to Question 37 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 4 May 2015; Answer to Question 14 of Ng Lay Long (Hock Chuan Heng/Hy-fresh) Notes of Information/Explanation Provided on 3 June 2015; Answer to Question 12 of Azmira (Lee Say Group) Notes of Information/Explanation Provided on 13 April 2015.

were multiple instances of price discussions and associated price increases spanning the period.[711] Further, as highlighted above, the customers that provided feedback at the time of CCCS's investigations in 2014 and 2015 also confirmed that there was little competition in the industry for fresh chicken products for the Parties' respective customers.[712] The evidence also indicates that Anti-Competitive Discussions had taken place as early as, or even before, 2004, and similar to the *Dutch Beer Cartels Case*, CCCS's finding that the the single continuous infringement started, at the latest, on 19 September 2007, "*actually constitutes a concession to the addressees of the contested decision*".

495. In the premises, CCCS is of the view that the uninterrupted infringement between 2007 and 2014 has been established on the weight of the evidence.

496. Following the principle in *Re Sodium Chlorate Cartel: Uralita v European Commission*[713], where an undertaking responsible for the infringement is still in existence, it remains liable for the infringement rather than the acquirer. Consequently, the following undertakings remain responsible for their participation in the Anti-Competitive Discussions:

(i) Hy-fresh is responsible for its and Hock Chuan Heng's infringement from 19 September 2007 to 13 August 2014 (82 months or 6.83 years);

(ii) Ng Ai is responsible for its infringement from 19 September 2007 to 13 August 2014 (82 months or 6.83 years);

(iii) Toh Thye San is responsible for its infringement from 19 September 2007 to 13 August 2014 (82 months or 6.83 years);

(iv) Kee Song is responsible for its infringement from 19 September 2007 to 13 August 2014 (82 months or 6.83 years);

(v) Sinmah is responsible for its infringement from 19 September 2007 to 13 August 2014 (82 months or 6.83 years);

[711] See paragraph 488.
[712] See paragraph 489.
[713] Case T0349/08 *Re Sodium Chlorate Cartel: Uralita v European Commission* [2012] 4 C.M.L.R. 4 at [61] and [62].

(vi) Lee Say/Lee Say Poultry is responsible for its infringement from 19 September 2007 to 17 April 2011 (18 April 2011 being the date of acquisition by Lee Say of Hup Heng) (42 months or 3.5 years);

(vii) KSB remains responsible for its infringement from 19 September 2007 to 30 October 2012 (31 October 2012 being the date of acquisition by Lee Say) (61 months or 5.08 years);

(viii) Hup Heng remains responsible for its infringement from 19 September 2007 to 17 April 2011 (18 April 2011 being the date of acquisition by Lee Say) (42 months or 3.5 years);

(ix) Prestige Fortune remains responsible for its infringement and the infringement by Poultry Development from 19 September 2007 to 30 March 2012 (31 March 2012 being the date of acquisition by Lee Say) (54 months or 4.5 years);

(x) Tong Huat is responsible for its infringement from 19 September 2007 to 25 April 2013 (26 April 2013 being the date of acquisition of Ban Hong by Tong Huat) (67 months or 5.58 years); and

(xi) Ban Hong remains responsible for its infringement from 19 September 2007 to 25 April 2013 (26 April 2013 being the date of acquisition of Ban Hong by Tong Huat) (67 months or 5.58 years).

497. The following undertakings are jointly and severally liable for their participation in the Anti-Competitive Discussions:

(i) Gold Chic and Hua Kun from 19 September 2007 to 13 August 2014 (82 months or 6.83 years);

(ii) Lee Say and Hup Heng from 18 April 2011 to 30 March 2012 (11 months or 0.91 year);

(iii) Lee Say, Hup Heng and Prestige Fortune from 31 March 2012 to 30 October 2012 (six months or 0.5 year); and

(iv) Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB from 31 October 2012 to 13 August 2014 (21 months or 1.75 years); and

(v) Tong Huat and Ban Hong from 26 April 2013 to 13 August 2014 (15 months or 1.25 years).

CHAPTER 4: CCCS'S ACTION

A. Directions

498. Section 69(1) of the Act provides that where CCCS has made a decision that an agreement has infringed the section 34 prohibition, CCCS may give to such person directions it considers appropriate to bring the infringement to an end. Pursuant to this, CCCS directs the Parties to provide a written undertaking that they will cease and desist from using the Association, as a platform or front, for anti-competitive activities. CCCS considers it appropriate to do so because the evidence indicates that the Parties have habitually used the Association as a front to discuss, implement and perpetuate the Anti-Competitive Discussions. The direction is set out at **Annex B**.

B. Financial Penalties – General Points

499. Pursuant to section 69(2)(d), read with section 69(4) of the Act, where CCCS has made a decision that an agreement has infringed the section 34 prohibition, CCCS may impose on any party to that infringement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

500. Before exercising the power to impose a financial penalty, CCCS must be satisfied that the infringement has been either committed intentionally or negligently.[714] This is similar to the position in the EU and the UK. Both the EC and the UK Office of Fair Trading ("UK OFT") (now, the UK Competition and Markets Authority ("UK CMA")) are not required to decide whether the infringement was committed intentionally or negligently, as long as they are satisfied that the infringement was either intentional *or* negligent.[715]

[714] Section 69(3) of the Act and *CCS Guidelines on Enforcement*, paragraphs 4.3 to 4.11.
[715] Case C-137/95P *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and Others v Commission of the European Communities* [1996] ECR I-1611; and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [452] to [458].

501. The CAB's decisions in the *Pest Control Case*[716], the *Express Bus Operators Case*[717] and the *Electrical Works Case*[718], established that the circumstances in which CCCS may find that an infringement has been committed intentionally include the following:

(i) the agreement has as its object, the restriction of competition;

(ii) the undertaking in question is aware that its actions will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or

(iii) 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.

502. Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act.[719]

503. As for negligent infringement, 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 or conduct would result in a restriction or distortion of competition.[720]

504. In this case, CCCS finds that the Anti-Competitive Discussions had the object of preventing, restricting or distorting competition in Singapore. There is evidence that the Parties were aware that the objective of the Anti-Competitive Discussions was to restrict competition between them. For example, Ong Kian San (*Kee Song*) admitted that discussions took place because "*nobody wants to be the only one to raise prices because then the business would suffer*."[721] Ma Chin Chew (*Hup Heng*) admitted that he stopped a price war and consequently increased prices after discussions with some of the Parties.[722] Toh Ying Seng

[716] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[717] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[718] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[719] *CCS Guidelines on Enforcement*, paragraph 4.8.
[720] *CCS Guidelines on Enforcement*, paragraph 4.10.
[721] Answer to Question 41 of Ong Kian San (Kee Song) Notes of Information/Explanation Provided on 23 April 2015.
[722] Answer to Question 22 of Ma Chin Chew (Hup Heng) Notes of Information/Explanation Provided on 5 June 2015.

(*Lee Say*) directed Lee Say's sales staff to keep the policy to not compete a "*secret*" because "*it is illegal*".[723]

505. It is clear that the Parties were aware that their participation in the single continuous infringement restricted competition. CCCS considers that the evidence establishes that the Parties had infringed the section 34 prohibition intentionally. At the very least, the Parties ought to have known that participating in the Anti-Competitive Discussions would result in a restriction or distortion of competition. CCCS is therefore satisfied that each Party intentionally or negligently infringed the section 34 prohibition.

C. Calculation of Penalties

506. The *CCS Guidelines on the Appropriate Amount of Penalty* provides that the twin objectives in imposing financial penalties are to reflect the seriousness of the infringement, and to deter undertakings from engaging in anti-competitive practices.[724] In calculating the amount of penalty to be imposed, CCCS will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product, the geographic markets affected by the infringement ("the relevant turnover") in the undertaking's last business year, the duration of the infringement and other relevant factors such as deterrent value, and any aggravating and mitigating factors. CCCS previously adopted this approach in the *Pest Control Case*[725], the *Express Bus Operators Case*[726], the *Electrical Works Case*[727] and the *Freight Forwarding Case*[728] and similarly adopts this approach for the present case.

507. CCCS notes that both the EC and the UK CMA[729] adopt similar methodologies in the calculation of penalties. The starting point is a base figure, which is determined 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

[723] Answer to Question 7 of [✂] (Lee Say) Notes of Information/Explanation Provided on 24 June 2015.
[724] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 1.6.
[725] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[726] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[727] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[728] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore* [648].
[729] The CMA acquired its powers on 1 April 2014 when it took over many of the functions of the Competition Commission and the OFT, see https://www.gov.uk/government/organisations/competition-and-markets-authority/about.

adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

i. Seriousness of the Infringements and Relevant Turnover

508. CCCS considers that the seriousness of the infringement and the relevant turnover of each Party would be taken into account by setting the starting point for calculating the base penalty amount as a percentage rate of each Party's relevant turnover in the infringement.

Relevant turnover

509. In this case, the relevant turnover for each Party would be the turnover arising from the sale and distribution of Fresh Chicken Products in Singapore.

510. CCCS notes that some of the Parties constitute an SEE and have obtained turnover from the sale and distribution of Fresh Chicken Products to Parties within the same SEE. In such circumstances, CCCS excludes the relevant turnover of the Parties received from sales within an SEE. This acknowledges the fact that sale and distribution of Fresh Chicken Products within an SEE would have been taken into account in the subsequent sale and distribution of Fresh Chicken Products by Parties within the said SEE to third parties. Accordingly, CCCS has assessed the applicable turnover for the calculation of the statutory maximum penalty on the same basis.

511. Where a Party is unable or unwilling to provide information to determine its relevant turnover, CCCS will, in order to achieve the twin objectives of imposing a financial penalty, impose a penalty that will reflect both the seriousness of the infringement and with a view to deterring that undertaking as well as other undertakings from engaging in similar practices.[730]

512. The relevant turnover in the last business year will be considered when CCCS assesses the impact and effect of the infringement on the market.[731] The "last business year"[732] would be the date preceding the date on which CCCS's

[730] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 1.6.
[731] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.4.
[732] Competition (Financial Penalties) Order 2007 defines a "business year" as a period of more than 6 months in respect of which an undertaking publishes accounts or, if no such accounts have been published for the period, prepares accounts.

decision is taken, or if figures are not available for that business year, the one immediately preceding it.[733]

513. Toh Thye San submitted in its representations that CCCS should use the turnover from the year before the infringement ended as the relevant turnover, in line with the *CCCS Guidelines on the Appropriate Amount of Penalty 2016* ("**2016 Penalty Guidelines**"). Toh Thye San submitted that the SPID appears to replace the PID and the 2016 Penalty Guidelines should apply.[734] CCCS notes that for substantive matters, the 2016 Penalty Guidelines would apply to cases where, on 1 December 2016, CCCS had yet to issue a proposed infringement decision. As CCCS had already issued the PID before 1 December 2016, the prior guidelines will apply.

514. Hock Chuan Heng/Hy-fresh submitted in its representations that wholesale and supermarket customers should be excluded from the relevant market/turnover since the exclusion of these customers from the Anti-Competitive Discussions was implied – these were savvy customers that had long-term contracts and bargaining power, and were not affected by the infringing conduct.[735] The Lee Say Group submitted that the customer segments of wholesalers/intermediary distributors[736], supermarkets, hotels, customers with tender/long term contracts should be excluded from the relevant market/turnover because they could not have been the intended target of the Anti-Competitive Discussions or the Anti-Competitive Discussions would not impact them. The Lee Say Group further submitted that sales to intermediary distributors are excluded under the vertical agreement exclusion in the Act.[737] Ng Ai submitted that the relevant market/turnover should exclude sales to customers with a tender or quotation review process as such customers are more sophisticated and have greater bargaining power.[738] Toh Thye San submitted that customers in the catering sector (e.g., restaurants) and customers in the retail sector (e.g., supermarkets and wet markets) are not in the relevant market/turnover in relation to the Price Discussions and Non-Aggression Pact respectively.[739]

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[733] Competition (Financial Penalties) Order 2007, paragraph 3 and *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.5.
[734] Paragraphs 5.1.2 to 5.1.8 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[735] Pages 9 to 10 of written representations (Hock Chuan Heng/Hy-fresh) dated 8 February 2018 to SPID.
[736] The Lee Say Group had provided wet market stalls as an example of an intermediary distributor.
[737] Paragraphs 3.1 to 3.8, 3.18 to 3.23 and 14.29 to 14.32 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraphs 5.10 to 5.17 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[738] Paragraphs 18, 19 and 28 to 35 of written representations (Ng Ai) dated 19 April 2016 to PID; Paragraphs 16 and 17 of written representations (Ng Ai) dated 22 February 2018 to SPID.
[739] Paragraphs 5.2.1 to 5.2.21 and 6.1.1 to 6.1.10 of written representations (Toh Thye San) dated 19 April 2016 to PID.

515. CCCS first highlights that relevant turnover is not necessarily equivalent to turnover that is obtained directly as a result of the infringing conduct, but is the entire turnover derived from the relevant market. That the Parties did not, or could not, impose the agreed price increases on some customers does not mean that the relevant turnover should be similarly limited. Further, the Anti-Competitive Discussions did not explicitly exclude certain types of customers; on the contrary, the evidence indicates that all customers were included. The price data gathered during further investigations also does not support that certain types of customers could consistently resist price increases. For example, amongst the customers impacted by the price increases were supermarkets and hotels, which are allegedly more sophisticated customers who have greater bargaining power. In relation to the Lee Say Group's representation that sales to intermediary distributors are excluded under the vertical agreement exclusion in the Act, CCCS highlights that the infringing conduct is not with regards to vertical agreements between the Lee Say Group and intermediary distributors.

516. The Lee Say Group and the Tong Huat Group submitted in its representations that sales to affiliated customers should be excluded from the relevant market/turnover since they could not have been the target of the Anti-Competitive Discussions.[740] CCCS has already excluded relevant sales between entities within the SEE found to have infringed the Act. Excluding sales to other affiliated customers would not accurately reflect the undertaking's importance on the relevant market. This is also in line with case precedent. In *Guardian Industries Corp v European Commission*, the ECJ stated that "*A distinction must not therefore be drawn between those sales depending on whether they are to independent third parties or to entities belonging to the same undertaking. To ignore the value of the sales belonging to that latter category would inevitably give an unjustified advantage to vertically integrated companies by allowing them to avoid the imposition of a fine proportionate to their importance on the product market to which the infringement relates*".[741] To properly reflect each undertaking's importance on the relevant market, CCCS considers that sales to affiliated customers should be included in the relevant turnover.

[740] Paragraphs 5.14 to 5.16 of written representations (Lee Say Group) dated 8 February 2018 to SPID; Paragraphs 5.63.7 and 5.64 of written representations (Tong Huat Group) dated 19 April 2016 to PID.
[741] C-580/12 *Guardian Industries Corp v European Commission* at [59].

Seriousness

517. Paragraph 2.2 of the *CCS Guidelines on the Appropriate Amount of Penalty*, provides that the amount of the financial penalty will depend in particular upon the nature of the infringement and how serious and widespread it is.[742] In assessing the seriousness of the infringement, CCCS will consider a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement 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.[743]

518. The seriousness of the infringement may also depend on the nature of the infringement and this will be taken into consideration when fixing the starting point of the relevant turnover of the Parties in the calculation of financial penalties. To this end, CCCS considers that agreements and/or concerted practices regarding the Non-Aggression Pact and Price Discussions, which had as their object the prevention, restriction and distortion of competition, to be, by their nature, very serious infringements of the Act.

519. Nature of the product – The relevant market referred to in this decision is the provision of Fresh Chicken Products in Singapore. The relevant geographic market is Singapore.

520. Structure of the market and market shares of the Parties – There are a number of fresh chicken distributors providing Fresh Chicken Products in Singapore. Based on the quantity of live chickens imported, the Parties' combined market share in the provision of Fresh Chicken Products in Singapore is estimated to be above 90%.[744] However, CCCS notes that due to the [✂].

521. Effect on customers, competitors and third parties – It is difficult to quantify the amount of any loss caused by the agreement and/or concerted practice to customers in the relevant market. This is due to the unavailability of information on the actual prices paid by the customers under the "counterfactual" scenario.[745]

[742] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.2.
[743] *Ibid.*, paragraph 2.3.
[744] The figures are based on the quantity of live chickens imported by fresh chicken distributors in Singapore in 2013.
[745] The counterfactual scenario is one where the infringing conduct did not occur, i.e., a scenario in which the Parties did not engage in the Non-Aggression Pact and Price Discussions.

522. Thus, having regard to the nature of the infringement, the nature of the product, the structure of the market and the market shares of the Parties, CCCS considers it appropriate to determine the starting point at [✂] of relevant turnover for each of the Parties. CCCS highlights that the starting percentage would have been much higher but for the consideration set out at paragraph 520 above.

523. Lee Say submitted that the Anti-Competitive Discussions were not carried out and not the entire market was affected. Sinmah submitted that the Anti-Competitive Discussions did not have a significant effect since they were not always adhered to, price increases have not been significant and there is buyer power.[746] As stated above, CCCS has considered the seriousness of the infringement on setting its starting percentage, including the nature of the infringement, the nature of the product, structure of market, market share of undertakings involved and the effect on competitors and third parties. Moreover, the evidence shows that there has been implementation of the infringing conduct. Taking all factors into account, CCCS considers that [✂] is an appropriate starting point.

524. Ng Ai submitted that the Non-Aggression Pact was not as serious as a market-sharing agreement. Due to close relations between the Parties, to varying degrees, they would likely not have actively poached customers of competitors independent of any Non-Aggression Pact, and the Non-Aggression Pact was not necessarily industry-wide and, at best, a reflection of an attitude of respect and friendliness between individual groupings of the Parties.[747] CCCS reiterates that an agreement and/or concerted practice amongst competitors not to compete for the same customers is a form of market-sharing, which is, by its very nature, one of the most serious forms of anti-competitive conduct.

525. Hock Chuan Heng/Hy-fresh, Ng Ai, Toh Thye San and Tong Huat submitted that they played minor roles and/or did not participate in all aspects of the Anti-Competitive Discussions. Toh Thye San also submitted that the Price Discussions and Non-Aggression Pact should be considered separate infringements, and the seriousness of each infringement and the involvement of Toh Thye San in each infringement should be considered separately.[748] CCCS is of the view that the starting percentage should not reflect individual

[746] Paragraphs 9.18 to 9.29 of written representations (Lee Say Group) dated 8 February 2018 to SPID; Paragraphs 4.3 to 4.36 of written representations (Sinmah) dated 3 May 2016 to PID.
[747] Paragraphs 8 to 17 of written representations (Ng Ai) dated 19 April 2016 to PID.
[748] Pages 7 to 9 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID; Paragraphs 22 to 30 of written representations (Ng Ai) dated 22 February 2018 to SPID; Paragraphs 6.3.1 to 6.3.12 and 6.4.1 to 6.4.11 of written representations (Toh Thye San) dated 19 April 2016 to PID; Paragraphs 5.61 to 5.63 of written representations (Tong Huat Group) dated 19 April 2016 to PID.

circumstances, as seriousness relates to the gravity of the infringement as a whole. Individual circumstances will be considered when CCCS assesses mitigating and aggravating factors. Further, the relative size of each Party and its market share is reflected in the individual relevant turnover to which the starting percentage is applied.

ii. Duration of the Infringement

526. CCCS will next consider whether to take into account the duration of the single continuous infringement. The duration for which the Parties infringed the section 34 prohibition will depend on when they became a party to the agreement and/or concerted practice, and when they ceased to be a party to the same.[749]

527. CCCS considers it appropriate that a financial penalty for an infringement which lasts for more than one year be multiplied by the number of years of the infringement. This means that the base penalty sum will be multiplied for as many years as the infringement remains in place. This ensures that there is sufficient deterrence against cartels operating undetected for a protracted length of time.

528. Although an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of the infringement,[750] in this case, CCCS has decided to round down the period to the nearest month. Therefore, where the infringement period is less than a year, CCCS will round down the duration to the nearest month, subject to a minimum of one month. Similarly, for infringements over a year, the duration used will be the actual length of the infringement rounded down to the nearest month. This approach provides an incentive to undertakings to terminate their infringements as soon as possible.

529. All the Parties were involved in the single continuous infringement from 19 September 2007 to 13 August 2014. The duration applicable to each Party for the infringement ranges from six to 82 months as set out in paragraphs 496 and 497 above.

[749] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.8.
[750] *Ibid.*

iii. Aggravating and Mitigating Factors

530. CCCS will next consider the presence of aggravating and mitigating factors and make discretionary adjustments when assessing the amount of financial penalty,[751] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

531. CCCS considers cooperation, which enables the enforcement process to be concluded more effectively and/or speedily[752], as a mitigating factor. The amount of the penalty will be adjusted downwards to reflect cooperation by an undertaking during CCCS's investigation. The quantum of mitigating discount given will depend on the extent of cooperation by each Party.

532. In their representations, Gold Chic/Hua Kun, the Lee Say Group and the Tong Huat Group submitted that they operate in a high turnover, low margin industry and that this should be considered a mitigating factor.[753] CCCS notes that the evidence does not support that the industry *as a whole* is high turnover, low margin. Different Parties had significantly different net profit margins, and even for the same Party, the net profit margins differ significantly from year to year. CCCS therefore does not accept that the Parties operate in a high turnover, low margin industry.

533. In their representations, Gold Chic/Hua Kun, Hock Chuan Heng/Hy-fresh, Ng Ai, Toh Thye San, Tong Huat/Ban Hong and Kee Song submitted that their respective roles in the Anti-Competitive Discussions amounted to passive participation and that CCCS should consider these as mitigating factors.[754] CCCS is of the view is that a merely passive or follower role is not a mitigating factor.

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[751] *Ibid*., paragraph 2.10.
[752] *Ibid*., paragraph 2.12.
[753] Paragraphs 75 to 76 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Paragraphs 5.66.1 to 5.66.6 of written representations (Tong Huat Group) dated 19 April 2016 to PID; Paragraphs 14.53 to 14.58 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[754] Paragraph 74 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID; Pages 7 to 9 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID; Paragraphs 38 to 42, 47 to 50 and 52 to 56 of written representations (Ng Ai) dated 19 April 2016 to PID; Paragraphs 22 to 30 of written representations (Ng Ai) dated 22 February 2018 to SPID; Paragraphs 5.4.1 to 5.4.5 of written representations (Toh Thye San) dated 8 February 2018 to SPID; Paragraphs 5.68.1 to 5.68.6 of written representations (Tong Huat Group) dated 19 April 2016 to PID; Paragraphs 36 to 53 of written representations (Kee Song) dated 3 May 2016 to PID; Paragraphs 7 to 17 of written representations (Kee Song) dated 22 February 2018 to SPID.

534. Toh Thye San refers to CCCS' infringement decision relating to capacitor manufacturers ("Capacitors Manufacturers Case") [755] to argue that "*CCS acknowledged that the fact that an undertaking had played a minor and predominantly passive role in the infringing conduct was a mitigating factor that warranted a reduction in penalties.*"[756] This is a misreading of CCCS's decision in the Capacitors Manufacturers Case.

535. In the Capacitors Manufacturers Case, CCCS referred to the infringing undertakings' representations that they played minor and passive roles[757] and refuted the arguments that they were minor or passive. This does not amount to an acknowledgement that a minor and predominantly passive role is a mitigating factor.

536. It is worth noting that the European Commission deliberately tightened their policy in relation to "*passive participation*" when it revised its guidelines in 2006.[758] This was recognised by the General Court in *Panasonic Corp and anor v European Commission*:[759]

> "*181. Even if, by their arguments, the applicants seek to establish that their role in the cartel was exclusively passive, it must be observed, first, that, as the Commission states in the rejoinder, although that circumstance was expressly cited as a possible mitigating circumstance in the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) [CS] (OJ 1998 C 9, p.3), it is no longer one of the mitigating circumstances which can be taken into account under the 2006 Guidelines.* ***That therefore manifests a deliberate political choice to no longer 'encourage' passive conduct by those participating in an infringement of the competition rules. That choice falls within the discretion of the Commission in determining and implementing competition policy***." [Emphasis added]

[755] Infringement of the Section 34 Prohibition in relation to the market for the sale, distribution and pricing of Aluminium Electrolytic Capacitors in Singapore.
[756] Paragraph 5.4.1 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[757] *Capacitor Manufacturers Case* at [285] to [297] and [308] to [310].
[758] Paragraph 29 of *Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 ("****the 2006 EC Guidelines****")* compared to Paragraph 3 of *Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty.*
[759] T-82/13 (Decided 9 September 2015).

537. CCCS is therefore cognisant that European decisions made prior to the 2006 EC Guidelines have to be viewed in context of "*passive participation*" being mitigating *simpliciter*, as compared to the 2006 EC Guidelines where the undertaking claiming "*substantially limited*" involvement has to demonstrate that it "*actually avoided applying* [the anti-competitive] *agreement by adopting competitive conduct in the market.*"[760] Importantly, the General Court recognised that the choice of whether to encourage passive participation by considering it a mitigating factor "*falls within the discretion of the Commission in determining and implementing competition policy*".

538. Toh Thye San also referred to *Cheil Jedang v Commission*[761] to support its proposition that an exclusively passive role should be a mitigating factor. However, *Cheil Jedang* was decided on 9 July 2003, before the 2006 EC Guidelines were issued. *Cheil Jedang* is therefore of no assistance to Toh Thye San.

539. The more recent case of *Eni SpA v European Commission*[762] was also cited to support its proposition, highlighting that "t*he parties share the view that the concept of 'substantially limited involvement' in the 2006 Guidelines most be interpreted in a manner analogous to that of the 'exclusive passive role' in the 1998 Guidelines*" [763] . However, the court recognised that the *2006 EC Guidelines* envisaged a different regime from the 1998 EC Guidelines:[764]

> "*It should be noted that 'substantially limited involvement' in the infringement and the avoidance of its application are cumulative conditions of the mitigating circumstance referred to in the third indent of Section 29 of the 2006 Guidelines.*"

540. Kee Song refers to the Ball Bearings Cartel Case[765] to argue that passive participation can be a mitigating factor[766]. However, the passage quoted is not inconsistent with CCCS's position that a merely passive role is not a mitigating factor.

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[760] Paragraph 29 of the 2006 EC Guidelines.
[761] Case T 220/00 Cheil Jedang v Commission [2003] ECR II 2473, Paragraph 5.4.2 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[762] GC 12.12.2014 T-558/08; Paragraph 5.4.3 of written representations (Toh Thye San) dated 8 February 2018 to SPID.
[763] *Ibid.* at [191].
[764] *Ibid.* at [241].
[765] Infringement of the Section 34 Prohibition in relation to the supply of ball and roller bearings.
[766] Paragraph 40 of written representations (Kee Song) dated 3 May 2016 to PID.

541. Kee Song also chooses to cite the *Amino Acids* decision[767]. As with *Cheil Jedang*, this decision was prior to the 2006 EC Guidelines and therefore has little precedential value. It is also worth noting that *Cheil Jedang* is the appeal from the *Amino Acids* decision.

542. In light of the foregoing reasons, CCCS rejects these arguments of Gold Chic/Hua Kun, Hock Chuan Heng/Hy-fresh, Ng Ai, Toh Thye San, Tong Huat/Ban Hong and Kee Song.

543. The adjustments for mitigating and aggravating factors, if any, will be dealt with below for each Party.

iv. Other Relevant Factors

544. CCCS considers that the penalty may be adjusted as appropriate to achieve policy objectives, in particular the deterrence of the Parties and other undertakings from engaging in anti-competitive practices.

545. To this end, if CCCS considers that the financial penalty imposed against any of the Parties after the adjustment for aggravating and mitigating factors is insufficient to meet the objective of deterrence, CCCS will adjust the penalty to meet the objective of deterrence. In *Express Bus Operators Appeal No. 3*[768], the CAB revised upwards the financial penalty against Regent Star to $10,000 to achieve the objective of deterrence.

546. This practice is in line with the position in other competition regimes. For instance, the UK CMA refers to "*The OFT's Guidance as to the Appropriate Amount of Penalty*" which adopts a similar approach.[769]

v. Maximum statutory penalty

547. Pursuant to section 69(2)(d), read with section 69(4) of the Act, where CCCS has made a decision that an agreement has infringed the section 34 prohibition, CCCS may impose on any party to that infringement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years. For the purpose of

[767] *Ibid.* at [42].
[768] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2, at [106].
[769] OFT 423, *OFT's Guidance as to the Appropriate Amount of Penalty*, September 2012, paragraph 2.11. This guidance, originally published by the OFT, has been adopted by the CMA when it acquired its powers on 1 April 2014. The original text has been retained unamended.

calculating the maximum statutory penalty, CCCS has excluded the turnover of the Parties received from sales within an SEE.

D. Penalty for Gold Chic and Hua Kun as an SEE

548. Starting point: Gold Chic and Hua Kun as an SEE, was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

549. The financial year of Gold Chic and Hua Kun commences on 1 January and ends on 31 December. The relevant turnover figure of Gold Chic and Hua Kun for the financial year 2016 was S$[✂].[770]

550. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Gold Chic and Hua Kun is therefore S$[✂].

551. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 6.83. Therefore, the penalty after adjustment for duration is S$[✂].

552. Adjustment for aggravating and mitigating factors: CCCS considers that Gold Chic and Hua Kun did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]%. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

553. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Gold Chic and Hua Kun and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

554. Adjustment to prevent maximum penalty being exceeded:[771] The turnover figures of Gold Chic and Hua Kun for the financial year 2016 for the purpose

[770] Information provided by Gold Chic/Hua Kun dated 13 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Gold Chic/Hua Kun dated 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[771] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial

of calculation of the maximum financial penalty is S$[✂][772]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

555. Gold Chic and Hua Kun submitted in its representations that [✂] are specialty chickens and should be excluded from the relevant turnover.[773] CCCS notes that the evidence does not indicate that these were explicitly excluded from the Anti-Competitive Discussions and insufficient evidence has been provided to substantiate Gold Chic and Hua Kun's claims.

556. Gold Chic and Hua Kun submitted in its representations that it had avoided applying any offending anti-competitive agreement or practice by adopting competitive conduct in the market, since it had actively provided quotes to potential customers and any price increases are subject to customers accepting the prices.[774] CCCS is of the view that a merely passive or follower role, and the lack of implementation, is not a mitigating factor. Further, CCCS notes that Gold Chic and Hua Kun cannot be said to have played passive roles. Besides attending the Anti-Competitive Discussions, Lim Soh Hua (*Gold Chic*) was named by Ong Kian San (*Kee Song*) as one of the chicken distributors who announced intentions to increase prices and by Ma Chin Chew (*Hup Heng*) as one of those who suggested increasing prices. That price increases were subject to customers' acceptance is also not indicative of Gold Chic and Hua Kun applying competitive behaviour.

557. Gold Chic and Hua Kun also represented that any infringement was unintentional and that they were unaware that they had to publicly distance themselves from any anti-competitive agreement or practice. Further, Gold Chic and Hua Kun submitted that they had implemented a compliance programme.[775] CCCS notes that the conduct had the object of preventing, restricting or distorting competition and was injurious to competition by its very nature. There is no real uncertainty that the conduct was anti-competitive. Furthermore, the Association, of which Gold Chic/Hua Kun is a member, was aware of the need to comply with competition law. This is evidenced by its constitution expressly prohibiting any recommendation or arrangement "*which*

penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[772] Information provided by Gold Chic/Hua Kun dated 13 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Gold Chic/Hua Kun dated 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[773] Paragraph 26 of written representations (Gold Chic/Hua Kun) dated 8 February 2018 to SPID.

[774] Paragraph 74 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.

[775] Paragraphs 77 to 79 of written representations (Gold Chic/Hua Kun) dated 19 April 2016 to PID.

has the purpose or is likely to have the effect of fixing or controlling the price or any discount". In relation to the compliance programme, CCCS notes that the described compliance programme was put in place after investigations had started and Gold Chic/Hua Kun is therefore not eligible for a further mitigating discount.

558. Accordingly, CCCS concludes that a financial penalty of S$1,771,111 is to be imposed on Gold Chic and Hua Kun jointly and severally.

E. Penalty for Hock Chuan Heng/Hy-fresh

559. Starting point: Hock Chuan Heng/Hy-fresh was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

560. Hock Chuan Heng/Hy-fresh's financial year commences on 1 December and ends on 30 November. Hock Chuan Heng/Hy-fresh's relevant turnover figure for the financial year 2017 was S$[✂].[776]

561. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Hock Chuan Heng/Hy-fresh is therefore S$[✂].

562. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 6.83. Therefore, the penalty after adjustment for duration is S$[✂].

563. Adjustment for aggravating and mitigating factors: CCCS considers that Hock Chuan Heng/Hy-fresh was cooperative and forthcoming during the interviews, which allowed CCCS to complete the investigations efficaciously. Having taken into consideration the degree of cooperation rendered by Hock Chuan Heng/Hy-fresh, CCCS reduces the penalty by [✂] in mitigation of the infringing conduct. CCCS is of the further view that there are no aggravating factors to be applied.

[776] Information provided by Hock Chuan Heng/Hy-fresh dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Hock Chuan Heng/Hy-fresh dated 4 July 2018 pursuant to the section 63 Notice issued by CCCS dated 22 June 2018.

564. Adjustment for leniency: Hock Chuan Heng/Hy-fresh applied for leniency on 10 November 2016 after the conducting of further investigations was announced to the Parties. CCCS considers that Hock Chuan Heng/Hy-fresh has provided sufficient information and evidence to fulfil the conditions of leniency.

565. Having taken into consideration all the facts and circumstances of this case including the stage at which the undertaking came forward, the evidence already in CCCS's possession and the quality of the information provided by Hock Chuan Heng/Hy-fresh, CCCS reduces the penalty by [✂].

566. Having taken into consideration all the facts and circumstances of this case, and after taking into account the mitigating factor and leniency, the penalty is S$[✂].

567. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Hock Chuan Heng/Hy-fresh and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

568. Adjustment to prevent maximum penalty being exceeded:[777] Hock Chuan Heng/Hy-fresh's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂][778]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

569. Hock Chuan Heng/Hy-fresh submitted in its representations that it was not an initiator of the infringing conduct and only played a minor role, and competed actively. Hock Chuan Heng/Hy-fresh also submitted that it had a small market share.[779] In determining financial penalties, CCCS considers that an undertaking's role as a leader in, or an instigator of, the infringement can be an aggravating factor. In calculating Hock Chuan Heng/Hy-fresh's financial penalties, this aggravating factor is not applicable because Hock Chuan Heng/Hy-fresh is not a leader or instigator of the infringing conduct. However,

[777] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[778] Information provided by Hock Chuan Heng/Hy-fresh dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Hock Chuan Heng/Hy-fresh dated 4 July 2018 pursuant to the section 63 Notice issued by CCCS dated 22 June 2018.

[779] Pages 7 to 9 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID; Pages 10 to 12 of written representations (Hock Chuan Heng/Hy-fresh) dated 8 February 2018 to SPID.

the absence of an aggravating factor does not equate to there being a mitigating factor. CCCS is of the view that a merely passive or follower role, and the lack of implementation, is not a mitigating factor. Moreover, CCCS notes that Hock Chuan Heng/Hy-fresh cannot be said to have played a passive role. Hock Chuan Heng/Hy-fresh attended the Anti-Competitive Discussions and took the Price Discussions into account when setting its prices. In relation to its market share, CCCS highlights that the relative size of each Party would already be reflected in the relevant turnover used for calculating each Party's penalty.

570. Hock Chuan Heng/Hy-fresh also represented that it was in [✂].[780] CCCS considers that [✂] is not a mitigating factor when determining the appropriate penalty. In any event, Hock Chuan Heng/Hy-fresh has not substantiated that the imposed penalty would result in [✂].

571. Accordingly, CCCS concludes that a financial penalty of S$705,939 is to be imposed on Hy-fresh.[781]

F. Penalty for Kee Song

572. Starting point: Kee Song was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

573. Kee Song's financial year commences on 1 January and ends on 31 December. Kee Song's relevant turnover figure for the financial year 2017 was S$[✂].[782]

574. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Kee Song is therefore S$[✂].

575. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 6.83. Therefore, the penalty after adjustment for duration is S$[✂].

[780] Page 10 of written representations (Hock Chuan Heng/Hy-fresh) dated 19 April 2016 to PID.
[781] Registration of Hock Chuan Heng ceased on 30 November 2016.
[782] Information provided by Kee Song dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Kee Song dated 31 May 2017 pursuant to the Requests for Further Information issued by CCCS dated 11 May 2017; Information provided by Kee Song dated 8 August 2017 pursuant to the section 63 Notice issued by CCCS dated 19 July 2017; Information provided by Kee Song dated 21 June 2018 pursuant to the section 63 Notice issued by CCCS dated 20 June 2018; Information provided by Kee Song dated 18 July 2018 and 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 22 June 2018.

576. Adjustment for aggravating and mitigating factors: CCCS considers that Kee Song was cooperative and forthcoming during the interviews, which allowed CCCS to complete the investigations efficaciously. Having taken into consideration the degree of cooperation rendered by Kee Song, CCCS reduces the penalty by [✂] in mitigation of the infringing conduct. CCCS is of the further view that there are no aggravating factors to be applied.

577. Adjustment for leniency: Kee Song applied for leniency on 26 October 2016 after the conducting of further investigations was announced to the Parties. CCCS considers that Kee Song has provided sufficient information and evidence to fulfil the conditions of leniency.

578. Having taken into consideration all the facts and circumstances of this case including the stage at which the undertaking came forward, the evidence already in CCCS's possession and the quality of the information provided by Kee Song, CCCS reduces the penalty by [✂].

579. Having taken into consideration all the facts and circumstances of this case, and after taking into account the mitigating factor and leniency, the penalty is S$[✂].

580. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Kee Song and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

581. Adjustment to prevent maximum penalty being exceeded: [783] Kee Song's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂].[784] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

582. Kee Song submitted in its representations that [✂] are kampong chickens, [✂] are frozen chickens, [✂] are chicken parts exclusively sold to [✂], and [✂] is a rebranded version of Sakura chicken (a type of specialty chicken) sold

[783] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[784] Information provided by Kee Song dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Kee Song dated 21 June 2018 pursuant to the section 63 Notice issued by CCCS dated 20 June 2018; Information provided by Kee Song dated 18 July 2018 and 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 22 June 2018.

exclusively to [✂] and should be excluded from the relevant turnover.[785] CCCS notes that insufficient evidence has been provided to substantiate Kee Song's claims.

583. Kee Song submitted in its representations that it played a passive role and that its prices ultimately depended on [✂]. Further, Kee Song submitted that it had taken initial steps towards instituting a competition law and regulations compliance programme.[786] CCCS is of the view that a merely passive or follower role, and the lack of implementation, is not a mitigating factor. Moreover, CCCS notes that Kee Song cannot be said to have played a passive role and it took price increase announcements into account when setting its prices. Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) has also indicated that Ong Kian San (*Kee Song*) asked him to return customers. Taking steps to institute a compliance programme is not indicative of a passive role during the infringing conduct, and any compliance programme put in place after investigations had started would not be a mitigating factor.

584. Kee Song also represented that the penalty imposed by CCCS would have an adverse impact on its [✂].[787] CCCS considers that Kee Song's [✂] are not relevant in determining the appropriate penalty. CCCS also notes that Kee Song is [✂].

585. Accordingly, CCCS concludes that a financial penalty of S$2,689,065 is to be imposed on Kee Song.

G. Penalty for Lee Say

586. Starting point: Lee Say was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

587. Lee Say's financial year commences on 1 January and ends on 31 December. Lee Say's relevant turnover figure for the financial year 2017 was S$[✂].[788]

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[785] Paragraphs 59 to 62 of written representations (Kee Song) dated 3 May 2016 to PID; Paragraphs 25 to 27 of written representations (Kee Song) dated 22 February 2018 to SPID.
[786] Paragraphs 36 to 47, 50 to 51 and 53 of written representations (Kee Song) dated 3 May 2016 to PID; Paragraphs 7 to 8 and 10 to 17 of written representations (Kee Song) dated 22 February 2018 to SPID.
[787] Paragraphs 69 to 72 of written representations (Kee Song) dated 3 May 2016 to PID.
[788] Information provided by Lee Say dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Lee Say dated 24 May 2017 and 31 May 2017 pursuant to the Requests for Further Information issued by CCCS dated 11 May 2017; Information provided by Lee Say dated 1 August 2017 pursuant to the section 63 Notice issued by CCCS dated 19 July 2017; Information provided by Lee Say dated 18 September 2017, 19 September 2017 and 22 September 2017 pursuant to the Requests for Further Information issued by CCCS dated 7 September 2017; Information provided by Lee Say

588. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Lee Say is therefore S$[✂].

589. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 3.50. Therefore, the penalty after adjustment for duration is S$[✂].

590. Adjustment for aggravating and mitigating factors: CCCS considers that Lee Say did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

591. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Lee Say and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

592. Adjustment to prevent maximum penalty being exceeded:[789] Lee Say's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂][790]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

593. Accordingly, CCCS concludes that a financial penalty of S$2,453,300 is to be imposed on Lee Say.

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dated 6 October 2017 pursuant to the Requests for Further Information issued by CCCS dated 28 September 2017; Information provided by Lee Say dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[789] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[790] Information provided by Lee Say dated 20 March 2017 and 3 September 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Lee Say dated 24 May 2017 and 31 May 2017 pursuant to the Requests for Further Information issued by CCCS dated 11 May 2017; Information provided by Lee Say dated 1 August 2017 pursuant to the section 63 Notice issued by CCCS dated 19 July 2017; Information provided by Lee Say dated 18 September 2017, 19 September 2017 and 22 September 2017 pursuant to the Requests for Further Information issued by CCCS dated 7 September 2017; Information provided by Lee Say dated 6 October 2017 pursuant to the Requests for Further Information issued by CCCS dated 28 September 2017; Information provided by Lee Say dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

H. Penalty for Hup Heng

594. Starting point: Hup Heng was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

595. Hup Heng's financial year commences on 1 January and ends on 31 December. Hup Heng's relevant turnover figure for the financial year 2017 was S$[✂].[791]

596. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Hup Heng is therefore S$[✂].

597. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 3.50. Therefore, the penalty after adjustment for duration is S$[✂].

598. Adjustment for aggravating and mitigating factors: CCCS considers that Hup Heng did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

599. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Hup Heng and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

600. Adjustment to prevent maximum penalty being exceeded:[792] Hup Heng's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂][793]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

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[791] Information provided by Hup Heng dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Hup Heng dated 24 May 2017 pursuant to the Requests for Further Information issued by CCCS dated 11 May 2017; Information provided by Hup Heng dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[792] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[793] Information provided by Hup Heng dated 20 March 2017 and 3 September 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Hup Heng dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

601. Accordingly, CCCS concludes that a financial penalty of S$1,163,677 is to be imposed on Hup Heng.

I. Penalty for KSB

602. Starting point: KSB was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

603. KSB's financial year commences on 1 January and ends on 31 December. KSB's relevant turnover figure for the financial year 2017 was S$[✂].[794]

604. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for KSB is therefore S$[✂].

605. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 5.08. Therefore, the penalty after adjustment for duration is S$[✂].

606. Adjustment for aggravating and mitigating factors: CCCS considers that KSB did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

607. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to KSB and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

608. Adjustment to prevent maximum penalty being exceeded:[795] KSB's turnover figures for the financial year 2017 for the purpose of calculation of the

[794] Information provided by KSB dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by KSB dated 24 May 2017 pursuant to the Requests for Further Information issued by CCCS dated 11 May 2017; Information provided by KSB dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[795] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

maximum financial penalty is S$[✂][796]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

609. Accordingly, CCCS concludes that a financial penalty of S$3,355,110 is to be imposed on KSB.

J. Penalty for Prestige Fortune

610. Starting point: Prestige Fortune was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

611. Prestige Fortune's financial year commences on 1 January and ends on 31 December. Prestige Fortune's relevant turnover figure for the financial year 2017 was S$[✂].[797]

612. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Prestige Fortune is therefore S$[✂].

613. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 4.50. Therefore, the penalty after adjustment for duration is S$[✂].

614. Adjustment for aggravating and mitigating factors: CCCS considers that Prestige Fortune did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

615. Adjustment for other factors: CCCS considers that the figure of S$[✂] is not sufficient to act as an effective deterrent to Prestige Fortune and to other

[796] Information provided by KSB dated 20 March 2017 and 3 September 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by KSB dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.
[797] Information provided by Prestige Fortune dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Prestige Fortune dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

undertakings. CCCS will, therefore, adjust the penalty at this stage to S$[✂] as stated above at paragraph 545.

616. The Lee Say Group submitted that the financial penalty imposed on Prestige should not be adjusted upwards given its low relevant turnover and unlikely involvement in the infringement.[798] Given that Prestige had participated in the Anti-Competitive Discussions and the need for the financial penalty imposed on Prestige to act as an effective deterrent to Prestige Fortune and to other undertakings, CCCS considers that it is appropriate to adjust the financial penalty upwards from S$[✂] to S$[✂].

617. Adjustment to prevent maximum penalty being exceeded:[799] Prestige Fortune's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂][800]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

618. Accordingly, CCCS concludes that a financial penalty of S$5,000 is to be imposed on Prestige Fortune.

K. Penalty for Lee Say and Hup Heng as an SEE

619. Starting point: Lee Say and Hup Heng, as an SEE, were involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

620. The relevant turnover figures for Lee Say and Hup Heng were set out in the paragraphs above. The total relevant turnover for both Lee Say and Hup Heng for the financial year 2017 was S$[✂].

621. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount is therefore S$[✂].

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[798] Paragraph 9.17 of written representations (Lee Say Group) dated 8 February 2018 to SPID.

[799] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[800] Information provided by Prestige Fortune dated 20 March 2017 and 3 September 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Prestige Fortune dated 9 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

622. Adjustment for duration: In accordance with paragraph 497, CCCS uses a duration multiplier of 0.91. Therefore, the penalty after adjustment for duration is S$[✂].

623. Adjustment for aggravating and mitigating factors: CCCS considers that Lee Say and Hup Heng did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

624. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Lee Say, Hup Heng and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

625. Adjustment to prevent maximum penalty being exceeded:[801] The total turnover figures for Lee Say and Hup Heng for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

626. Accordingly, CCCS concludes that a financial penalty of S$940,414 is to be imposed on Lee Say and Hup Heng jointly and severally.

L. Penalty for Lee Say, Hup Heng and Prestige Fortune as an SEE

627. Starting point: Lee Say, Hup Heng and Prestige Fortune, as an SEE, were involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

628. The relevant turnover figures for Lee Say, Hup Heng and Prestige Fortune were set out in the paragraphs above. The total relevant turnover for Lee Say, Hup Heng and Prestige Fortune for the financial year 2017 was S$[✂].

[801] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

629. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount is therefore S$[✂].

630. Adjustment for duration: In accordance with paragraph 497, CCCS uses a duration multiplier of 0.50. Therefore, the penalty after adjustment for duration is S$[✂].

631. Adjustment for aggravating and mitigating factors: CCCS considers that Lee Say, Hup Heng and Prestige Fortune did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

632. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Lee Say, Hup Heng, Prestige Fortune and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

633. Adjustment to prevent maximum penalty being exceeded:[802] The total turnover figures for Lee Say, Hup Heng and Prestige Fortune for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

634. Accordingly, CCCS concludes that a financial penalty of S$516,832 is to be imposed on Lee Say, Hup Heng and Prestige Fortune jointly and severally.

M. Penalty for Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB as an SEE

635. Starting point: Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB, as an SEE, were involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

[802] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

636. The relevant turnover figures for Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB were set out in the paragraphs above. The total relevant turnover for Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB for the financial year 2017 was S$[✂].

637. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount is therefore S$[✂].

638. Adjustment for duration: In accordance with paragraph 497, CCCS uses a duration multiplier of 1.75. Therefore, the penalty after adjustment for duration is S$[✂].

639. Adjustment for aggravating and mitigating factors: CCCS considers that Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

640. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Lee Say, Hup Heng, Prestige Fortune, ES Food, KSB and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

641. Adjustment to prevent maximum penalty being exceeded:[803] The total turnover figures for Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

642. The Lee Say Group submitted in its representations that [✂] should be excluded from the relevant market. However, the Lee Say Group has been inconsistent in its explanation for [✂].[804] In any event, CCCS notes that the

[803] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[804] Paragraph 3.32 of written representations (Lee Say Group) dated 3 May 2016 to PID; Paragraph 9.12 of written representations (Lee Say Group) dated 8 February 2018 to SPID – [✂] are marinated chickens. KSB's

evidence does not indicate that these were explicitly excluded from the Anti-Competitive Discussions and insufficient evidence has been provided to substantiate the Lee Say Group's claims.

643. The Lee Say Group also submitted that it had complied with the CCCS's notices diligently, had sought to provide the information and/or documents requested by CCCS in a timely manner, and expended significant administrative efforts to collate the information. The Lee Say Group further submitted that penalties should be reduced for the termination of the infringement as soon as CCCS intervened.[805] CCCS reiterates that it has already considered the extent of cooperation provided in deciding on the appropriate mitigating discount. In this regard, the Lee Say Group did not provide cooperation over and above the extent to which it was legally required. The Lee Say Group has also not provided evidence to substantiate that it had ceased all infringing conduct as soon as CCCS intervened. In any event, CCCS has already considered 13 August 2014 (the date of the First Inspection) to be the end of infringement period for calculating the duration multiplier.

644. The Lee Say Group represented that the nature of the industry is traditional to a large degree and that the Parties would have been unaware of any actions that constitute an infringement of competition law. Although the articles of association of the Association provided that members should not discuss prices, these are in English, which is a language the Parties are not well-versed with. The Lee Say Group also submitted that the fact the articles of association provided that members should not discuss prices is a mitigating factor.[806] CCCS notes that the conduct had the object of preventing, restricting or distorting competition and was injurious to competition by its very nature. There is no real uncertainty that the conduct was anti-competitive. Furthermore, the Association, of which the entities in the Lee Say Group are members, was aware of the need to comply with competition law. This is evidenced by its constitution expressly prohibiting any recommendation or arrangement "*which has the purpose or is likely to have the effect of fixing or controlling the price or any discount*". The Lee Say Group has not substantiated that its entities do not understand the articles of association, particularly given that the entities in the Lee Say Group are represented in the Association's Management Committee. It is also contradictory to submit that the Parties do not understand the Association's articles of association, but yet, on the other hand, that a mitigating discount

response dated 20 March 2017 to section 63 notice dated 10 February 2017 – [✂] requires special cuts but are not marinated chickens.

[805] Paragraphs 14.73 to 14.76 of written representations (Lee Say Group) dated 3 May 2016 to PID.

[806] Paragraph 14.79 of written representations (Lee Say Group) dated 3 May 2016 to PID.

should be granted to the Parties for having prohibited its members from fixing prices in the articles of associaton.

645. The Lee Say Group submitted that the fresh chicken industry was under intense pressure during the bird flu crisis in 2004 and the meetings held by fresh chicken distributors were not necessarily to enter into the allegedly anti-competitive conduct and that there were other reasons prompting a cost increase in 2007 resulting in another crisis of the industry.[807] CCCS notes that while there have been instances of bird flu outbreaks during the duration of the infringement, the infringement is a long-lasting one that continued even in the absence of such outbreaks. In any event, even when there are instances of unfavourable conditions, it does not follow that the Parties should be granted immunity for having engaged in anti-competitive conduct or that the nature of the infringement was in any way less serious.

646. The Lee Say Group also submitted that its turnover figures should exclude the [✂].[808] However, CCCS notes that the Lee Say Group has not substantiated its claim. Furthermore, it is the responsibility of the Lee Say Group to ensure that its turnover figures are accurately recorded and extracted.

647. Accordingly, CCCS concludes that a financial penalty of S$2,964,708 is to be imposed on Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB jointly and severally.

N. Penalty for Ng Ai

648. Starting point: Ng Ai was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

649. Ng Ai's financial year commences on 1 September and ends on 31 August. Ng Ai's relevant turnover figure for the financial year 2017 was S$[✂].[809]

650. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Ng Ai is therefore S$[✂].

[807] Paragraphs 14.80 to 14.81 of written representations (Lee Say Group) dated 3 May 2016 to PID.
[808] Paragraph 9.14 of written representations (Lee Say Group) dated 8 February 2018 to SPID.
[809] Information provided by Ng Ai dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Ng Ai dated 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

651. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 6.83. Therefore, the penalty after adjustment for duration is S$[✂].

652. Adjustment for aggravating and mitigating factors: CCCS considers that Ng Ai did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

653. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Ng Ai and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

654. Adjustment to prevent maximum penalty being exceeded:[810] Ng Ai's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂].[811] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

655. Ng Ai submitted that [✂] are specialty chickens not affected by the Anti-Competitive Discussions.[812] However, CCCS notes that the evidence does not indicate that these were explicitly excluded from the Anti-Competitive Discussions and there is insufficient evidence to substantiate Ng Ai's claims.

656. Ng Ai also submitted that it played a minor role since it would not benefit from the infringing conduct due to [✂] and as a small player that [✂], it would have faced duress if it "rocked the boat".[813] CCCS is of the view that a mere passive or follower role is not a mitigating factor. Moreover, Ng Ai cannot be said to have played a passive role or to have participated only under duress. Ng Ai attended the Anti-Competitive Discussions and Shiny Tan (*Ng Ai*) helped to draft the contents of TSD-011. Despite Ng Ai's allegedly different marketing

[810] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.
[811] Information provided by Ng Ai dated 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Ng Ai dated 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.
[812] Paragraphs 11 to 12 of Agreed Record of Oral Representations (Ng Ai) on 10 May 2016 to PID; Paragraphs 18 and 19 of written representations (Ng Ai) dated 22 February 2018 to SPID.
[813] Paragraphs 38 to 42, 47 to 50 and 52 to 58 of written representations (Ng Ai) dated 19 April 2016 to PID; Paragraphs 22 to 30 of written representations (Ng Ai) dated 22 February 2018 to SPID.

focus from competitors, Ng Ai would still benefit from competitors increasing prices and/or competing for Ng Ai's competitors. This is evidenced by the customer testimonials that Ng Ai submitted in its representations, which indicate that the customers sourced for chickens from different chicken distributors and negotiated prices with Ng Ai if another supplier reduced prices. In relation to its market share, CCCS highlights that the relative size of each Party would already be reflected in the relevant turnover used for calculating each Party's penalty.

657. Ng Ai also represented that there was genuine uncertainty that the Anti-Competitive Discussions constituted an infringement. Further, Ng Ai submitted that its sales policy was a form of compliance programme.[814] CCCS notes that the conduct had the object of preventing, restricting or distorting competition and was injurious to competition by its very nature. There is no real uncertainty that the conduct was anti-competitive. Furthermore, the Association, of which Ng Ai is a member, was aware of the need to comply with competition law. This is evidenced by its constitution expressly prohibiting any recommendation or arrangement "*which has the purpose or is likely to have the effect of fixing or controlling the price or any discount*". In relation to Ng Ai's sales policy, CCCS notes that it does not set out proper policies and procedures to ensure compliance with the Competition Act; in short, it is not a compliance programme.

658. Ng Ai further submitted that it had terminated its infringing conduct as soon as CCCS intervened and had cooperated with CCCS by providing truthful statements and all information in a timely and organised fashion.[815] CCCS reiterates that it has already considered the extent of cooperation provided in deciding on the appropriate mitigating discount. In this regard, Ng Ai did not provide cooperation over and above the extent to which it was legally required. Ng Ai has also not provided evidence to substantiate that it had ceased all infringing conduct as soon as CCCS intervened. In any event, CCCS has already considered 13 August 2014 (the date of First Inspection) to be the end of infringement period for calculating the duration multiplier.

659. Ng Ai also submitted that its turnover figues should exclude [✂].[816] However, CCCS notes that Ng Ai has not substantiated its claim. Furthermore, it is the

[814] Paragraphs 60 to 71 of written representations (Ng Ai) dated 19 April 2016 to PID.
[815] Paragraphs 7 and 72 to 78 of written representations (Ng Ai) dated 19 April 2016 to PID.
[816] Paragraph 20 of written representations (Ng Ai) dated 22 February 2018 to SPID.

responsibility of Ng Ai to ensure that its turnover figures are accurately recorded and extracted.

660. Accordingly, CCCS concludes that a financial penalty of S$1,910,897 is to be imposed on Ng Ai.

O. Penalty for Sinmah

661. Starting point: Sinmah was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

662. Sinmah's financial year commences on 1 January and ends on 31 December. Sinmah's relevant turnover figure for the financial year 2016 was S$[✂].[817]

663. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Sinmah is therefore S$[✂].

664. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 6.83. Therefore, the penalty after adjustment for duration is S$[✂].

665. Adjustment for aggravating and mitigating factors: CCCS considers that Sinmah was cooperative and forthcoming during the interviews, which allowed CCCS to complete the investigations efficaciously. Having taken into consideration the degree of cooperation rendered by Sinmah, CCCS reduces the penalty by [✂] in mitigation of the infringing conduct. CCCS is of the further view that there are no aggravating factors to be applied.

666. Adjustment for leniency: Sinmah applied for leniency on 17 October 2016 after the conducting of further investigations was announced to the Parties. CCCS considers that Sinmah has provided sufficient information and evidence to fulfil the conditions of leniency.

667. Having taken into consideration all the facts and circumstances of this case including the stage at which the undertaking came forward, the evidence already in CCCS's possession and the quality of the information provided by Sinmah, CCCS reduces the penalty by [✂].

[817] Information provided by Sinmah dated 7 March 2017 and 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017.

668. Having taken into consideration all the facts and circumstances of this case, and after taking into account the mitigating factor and leniency, the penalty is S$[✂].

669. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Sinmah and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

670. Adjustment to prevent maximum penalty being exceeded:[818] Sinmah's turnover figures for the financial year 2016 for the purpose of calculation of the maximum financial penalty is S$[✂].[819] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

671. Sinmah submitted that the following products should be excluded - [✂] were not included in the Anti-Competitive Discussions and are frozen, [✂] is frozen, [✂] are frozen and not sold whole, [✂] is a Sinmah specialty chicken and frozen, and [✂] is marinated and is chicken parts amounting to a whole chicken.[820] However, CCCS notes that the evidence does not indicate that these were explicitly excluded from the Anti-Competitive Discussions and there is insufficient evidence to substantiate Sinmah's claims. CCCS also notes that some of these exclusions contradict Sinmah's submissions during the investigations.

672. Sinmah submitted that a higher discount is warranted given the level of cooperation and the quality of information it provided, the risk of retaliatory measures by other Parties it faced from cooperating with CCCS, and its cessation of the infringing conduct since CCCS's first inspection on 13 August 2014.[821] CCCS highlights that the quality of information and cooperation provided by Sinmah has already been considered in determining the leniency and mitigating discounts. Sinmah has also not provided evidence to substantiate

[818] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.
[819] Information provided by Sinmah dated 7 March 2017 and 20 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Sinmah dated 7 September 2017 pursuant to the section 63 Notice issued by CCCS dated 19 July 2017; Information provided by Sinmah dated 22 June 2018 pursuant to the section 63 Notice issued by CCCS dated 20 June 2018.
[820] Paragraphs 4.1 to 4.6 and 5.11 to 5.13 of written representations (Sinmah) dated 1 March 2018 to SPID.
[821] Paragraphs 2.2 to 2.52 of written representations (Sinmah) dated 3 May 2016 to PID; Paragraphs 9.4 to 9.11 of written representations (Sinmah) dated 1 March 2018 to SPID.

that it had ceased all infringing conduct as soon as CCCS intervened. In any event, CCCS has already considered 13 August 2014 (the date of First Inspection) to be the end of infringement period for calculating the duration multiplier.

673. Sinmah also submitted that there was genuine uncertainty that the Anti-Competitive Discussions constituted an infringement.[822] CCCS notes that the conduct had the object of preventing, restricting or distorting competition and was injurious to competition by its very nature. There is no real uncertainty that the conduct was anti-competitive. Furthermore, the Association, of which Sinmah is a member, was aware of the need to comply with competition law. This is evidenced by its constitution expressly prohibiting any recommendation or arrangement "*which has the purpose or is likely to have the effect of fixing or controlling the price or any discount*".

674. Sinmah further submitted that the penalty imposed on Sinmah is significantly higher than a penalty calculated using CCCS's past methods of calculating a minimum deterrence threshold.[823] CCCS highlights that the use of a minimum deterrence threshold is to ensure a minimum level of deterrence, in the event that the financial penalty based on the methodology described above is insufficient to meet the objective of deterrence. As CCCS considers that the penalty imposed on Sinmah provides sufficient deterrence, it is irrelevant to consider the use of a minimum deterrence threshold.

675. Accordingly, CCCS concludes that a financial penalty of S$2,624,706 is to be imposed on Sinmah.

P. Penalty for Toh Thye San

676. Starting point: Toh Thye San was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

677. Toh Thye San's financial year commences on 1 January and ends on 31 December. Toh Thye San's relevant turnover figure for the financial year 2016 was S$[✂].[824]

[822] Paragraphs 3.1 to 3.4 of written representations (Sinmah) dated 3 May 2016 to PID; Paragraph 9.12 of written representations (Sinmah) dated 1 March 2018 to SPID.
[823] Paragraph 6.5 of written representations (Sinmah) dated 3 May 2016 to PID.
[824] Information provided by Toh Thye San dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Toh Thye San dated 22 June 2018 pursuant to the

678. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Toh Thye San is therefore S$[✂].

679. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 6.83. Therefore, the penalty after adjustment for duration is S$[✂].

680. Adjustment for aggravating and mitigating factors: CCCS considers that Toh Thye San did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂]. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

681. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Toh Thye San and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

682. Adjustment to prevent maximum penalty being exceeded:[825] Toh Thye San's turnover figures for the financial year 2016 for the purpose of calculation of the maximum financial penalty is S$[✂].[826] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

683. Toh Thye San submitted that some of its chickens are sold [✂] and such products should be excluded.[827] However, CCCS notes that the evidence does not indicate that [✂] were explicitly excluded from the Anti-Competitive Discussions and there is insufficient evidence to substantiate Toh Thye San's claims.

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section 63 Notice issued by CCCS dated 20 June 2018; Information provided by Toh Thye San dated 9 July 2018 and 27 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[825] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[826] Information provided by Toh Thye San dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Toh Thye San dated 22 June 2018 pursuant to the section 63 Notice issued by CCCS dated 20 June 2018; Information provided by Toh Thye San dated 9 July 2018 and 27 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[827] Paragraphs 5.2.15 to 5.2.19 of written representations (Toh Thye San) dated 19 April 2016 to PID.

684. Toh Thye San also submitted in its representations that it played a passive role.[828] CCCS is of the view that a mere passive or follower role is not a mitigating factor. Moreover, CCCS notes that Toh Thye San cannot be said to have played a passive role. Ng Lay Long (*Hock Chuan Heng/Hy-fresh*) has indicated that Alex Toh (*Toh Thye San*) called him to request for the return of customers.

685. Toh Thye San also represented that CCCS had failed to offer it the same opportunity as other Parties to be cooperative and that it had demonstrated cooperation, and had provided information efficiently and to the best of its ability as and when requested by CCCS.[829] CCCS reiterates that it has already considered the extent of cooperation provided in deciding on the appropriate mitigating discount. In this regard, Toh Thye San did not provide cooperation over and above the extent to which it was legally required. CCCS also highlights that whether and how an undertaking assists the investigation beyond what is required is dependent on the undertaking's own efforts, and it is not for CCCS to deliberately create opportunities for cooperation.

686. Toh Thye San further submitted that CCCS must have cognisance to the existing economic conditions in the market and the risk that the imposition of an unduly high penalty would have on [✂].[830] CCCS considers that [✂] is not a mitigating factor when determining the appropriate penalty. Toh Thye San has also not substantiated that the imposed penalty would result in [✂]. In any event, CCCS has taken into account the market conditions (at paragraphs 520) in setting the starting percentage.

687. Toh Thye San also submitted that CCCS should exclude [✂].[831] However, CCCS is of the view that actual cash flow arising from turnover is not the relevant basis for calculating penalties.

688. Accordingly, CCCS concludes that a financial penalty of S$2,267,465 is to be imposed on Toh Thye San.

[828] Paragraphs 5.4.1 to 5.4.5 of written representations (Toh Thye San) dated 8 February 2018 to PID.
[829] Paragraphs 6.6.1 to 6.6.5 of written representations (Toh Thye San) dated 19 April 2016 to PID.
[830] Paragraphs 6.7.1 to 6.7.3 of written representations (Toh Thye San) dated 19 April 2016 to PID.
[831] Email from Toh Thye San dated 27 July 2018.

Q. Penalty for Tong Huat

689. Starting point: Tong Huat was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

690. Tong Huat's financial year commences on 1 October and ends on 30 September. Tong Huat's relevant turnover figure for the financial year 2017 was S$[✂].[832]

691. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Tong Huat is therefore S$[✂].

692. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 5.58. Therefore, the penalty after adjustment for duration is S$[✂].

693. Adjustment for aggravating and mitigating factors: CCCS considers that Tong Huat did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂].

694. Adjustment for leniency: The Tong Huat Group was the first to apply for leniency on 12 October 2016 after the commencement of further investigations was announced to the Parties. CCCS considers that the Tong Huat Group has provided sufficient information and evidence to fulfil the conditions of leniency.

695. Having taken into consideration all the facts and circumstances of this case including the stage at which the undertaking came forward, the evidence already in CCCS's possession and the high quality of the information provided by the Tong Huat Group, CCCS reduces the penalty by [✂].

696. In addition, as part of its leniency application for this infringement, the Tong Huat Group has also provided evidence relating to separate cartel activity for which conditional leniency was granted. As such, CCCS considers it appropriate to grant Tong Huat a further [✂] reduction under the leniency plus programme.

[832] Information provided by Tong Huat dated 10 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Tong Huat dated 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

697. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors and leniency, the penalty is adjusted to S$[✂].

698. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Tong Huat and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

699. Adjustment to prevent maximum penalty being exceeded:[833] Tong Huat's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂].[834] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

700. Accordingly, CCCS concludes that a financial penalty of S$1,780,549 is to be imposed on Tong Huat.

R. Penalty for Ban Hong

701. Starting point: Ban Hong was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

702. Ban Hong's financial year commences on 1 October and ends on 30 September. Ban Hong's relevant turnover figure for the financial year 2017 was S$[✂].[835]

703. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Ban Hong is therefore S$[✂].

704. Adjustment for duration: In accordance with paragraph 496, CCCS uses a duration multiplier of 5.58. Therefore, the penalty after adjustment for duration is S$[✂].

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[833] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[834] Information provided by Tong Huat dated 10 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Tong Huat dated 23 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

[835] Information provided by Ban Hong dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Ban Hong dated 13 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

705. Adjustment for aggravating and mitigating factors: CCCS considers that Ban Hong did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂].

706. Adjustment for leniency: The Tong Huat Group was the first undertaking to apply for leniency on 12 October 2016 after the conducting of further investigations was announced to the Parties. CCCS considers that the Tong Huat Group has provided sufficient information and evidence to fulfil the conditions of leniency.

707. Having taken into consideration all the facts and circumstances of this case including the stage at which the undertaking came forward, the evidence already in CCCS's possession and the high quality of the information provided by the Tong Huat Group, CCCS reduces the penalty by [✂].

708. In addition, as part of its leniency application for this infringement, the Tong Huat Group has also provided evidence relating to separate cartel activity for which conditional leniency was granted. As such, CCCS considers it appropriate to grant Ban Hong a further [✂] reduction under the leniency plus programme.

709. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors and leniency, the penalty is adjusted to S$[✂].

710. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Ban Hong and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

711. Adjustment to prevent maximum penalty being exceeded: [836] Ban Hong's turnover figures for the financial year 2017 for the purpose of calculation of the maximum financial penalty is S$[✂].[837] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

[836] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

[837] Information provided by Ban Hong dated 6 March 2017 pursuant to the section 63 Notice issued by CCCS dated 10 February 2017; Information provided by Ban Hong dated 13 July 2018 pursuant to the section 63 Notice issued by CCCS dated 25 June 2018.

712. Accordingly, CCCS concludes that a financial penalty of S$1,144,592 is to be imposed on Ban Hong.

S. Penalty for Tong Huat and Ban Hong as an SEE

713. Starting point: Tong Huat and Ban Hong, as an SEE, were involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale and distribution of Fresh Chicken Products in Singapore.

714. The relevant turnover figures for Tong Huat and Ban Hong were set out in the paragraphs above. The total relevant turnover for Tong Huat and Ban Hong was S$[✂].

715. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 517 to 525 above and fixed the starting point at [✂] of relevant turnover. The starting amount is therefore S$[✂].

716. Adjustment for duration: In accordance with paragraph 497, CCCS uses a duration multiplier of 1.25. Therefore, the penalty after adjustment for duration is S$[✂].

717. Adjustment for aggravating and mitigating factors: CCCS considers that Tong Huat and Ban Hong did not provide cooperation over and above the extent to which it was legally required. CCCS therefore reduces the penalty by [✂].

718. Adjustment for leniency: The Tong Huat Group was the first undertaking to apply for leniency on 12 October 2016 after the conducting of further investigations was announced to the Parties. CCCS considers that the Tong Huat Group has provided sufficient information and evidence to fulfil the conditions of leniency.

719. Having taken into consideration all the facts and circumstances of this case including the stage at which the undertaking came forward, the evidence already in CCCS's possession and the high quality of the information provided by the Tong Huat Group, CCCS reduces the penalty by [✂].

720. In addition, as part of its leniency application for this infringement, the Tong Huat Group has also provided evidence relating to separate cartel activity for which conditional leniency was granted. As such, CCCS considers it

appropriate to grant the Tong Huat Group a further [✂] reduction under the leniency plus programme.

721. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors and leniency, the penalty is adjusted to S$[✂].

722. Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Tong Huat, Ban Hong and to other undertakings. CCCS will, therefore, not be making adjustments to the penalty at this stage.

723. Adjustment to prevent maximum penalty being exceeded:[838] The turnover figures for Tong Huat and Ban Hong for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

724. The Tong Huat Group submitted that the penalty imposed by CCCS would lead to [✂].[839] CCCS considers that [✂] are not mitigating factors when determining the appropriate penalty. The Tong Huat Group has also not substantiated that the imposed penalty would result in [✂]. In any event, CCCS has taken into account [✂] (at paragraph 520) in setting the starting percentage.

725. The Tong Huat Group represented that the exceptional circumstances of a bird flu outbreak in 2007 surrounded the infringing conduct.[840] However, CCCS notes that the infringement is a long-lasting one that continued even in the absence of such outbreaks. In any event, even when there are instances of unfavourable conditions, it does not follow that the Parties should be granted immunity for having engaged in anti-competitive conduct or that the nature of the infringement was in any way less serious.

726. The Tong Huat Group submitted that it played a limited role and was not an instigator or leader of the infringing conduct. The Tong Huat Group also

[838] Under section 69(2)(d) read with section 69(4) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.
[839] Paragraphs 5.10 to 5.19 and 5.66.7 to 5.66.14 of written representations (Tong Huat Group) dated 19 April 2016 to PID.
[840] Paragraphs 5.66.15 to 5.66.18 of written representations (Tong Huat Group) dated 19 April 2016 to PID.

represented that it participated in the infringing conduct under duress.[841] In determining financial penalties, CCCS considers that an undertaking's role as a leader in, or an instigator of, the infringement can be an aggravating factor. In calculating the Tong Huat Group's financial penalties, this aggravating factor is not applicable because the Tong Huat Group is not a leader or instigator of the infringing conduct. However, the absence of an aggravating factor does not equate to there being a mitigating factor. CCCS is of the view that a mere passive or follower role is not a mitigating factor. Moreover, CCCS notes that the Tong Huat Group cannot be said to have played a passive role or to have participated only under duress, having attended the Anti-Competitive Discussions and implemented them.

727. The Tong Huat Group represented that it has put in place a compliance regime to prevent a repeat of the infringing conduct, and that it had ceased all infringing conduct following the commencement of CCCS's investigation in August 2014.[842] However, CCCS notes that the described compliance programme was put in place after investigations had started and the Tong Huat Group is therefore not eligible for a further mitigating discount. The Tong Huat Group has also not provided evidence to substantiate that it had ceased all infringing conduct as soon as CCCS intervened. In any event, CCCS has already considered 13 August 2014 (the date of First Inspection) to be the end of infringement period for calculating the duration multiplier.

728. Lastly, the Tong Huat Group requested for a larger discount in its penalties as it considered that the information it provided was particularly instrumental to CCCS's further investigation and it was particularly cooperative despite the risks of retaliation it faced.[843] CCCS highlights that the quality of information and cooperation provided by the Tong Huat Group has already been considered in determining the leniency and mitigating discounts.

729. Accordingly, CCCS concludes that a financial penalty of S$655,274 is to be imposed on Tong Huat and Ban Hong jointly and severally.

[841] Paragraphs 5.68.1 to 5.68.13 of written representations (Tong Huat Group) dated 19 April 2016 to PID.
[842] Paragraphs 5.68.14 to 5.68.21 of written representations (Tong Huat Group) dated 19 April 2016 to PID.
[843] Paragraphs 2 and 3 of written representations (Tong Huat Group) dated 8 Feburary 2018 to SPID.

T. Conclusion on Penalties

730. In conclusion, CCCS, pursuant to section 69(2)(d) of the Act, imposes the following financial penalties on the Parties:

Party	**Financial Penalty (S$)**
Gold Chic/Hua Kun	1,771,111
Hy-fresh	705,939
Kee Song	2,689,065
Ng Ai	1,910,897
Sinmah	2,624,706
Toh Thye San	2,267,465
Lee Say Group	
Lee Say	2,453,300
Hup Heng	1,163,677
Prestige Fortune	5,000
KSB	3,355,110
Lee Say and Hup Heng	940,414
Lee Say, Hup Heng and Prestige Fortune	516,832
Lee Say, Hup Heng, Prestige Fortune, ES Food and KSB	2,964,708
Tong Huat Group	
Tong Huat	1,780,549
Ban Hong	1,144,592
Tong Huat and Ban Hong	655,274
Total	**26,948,639**

Toh Han Li
Chief Executive
Competition and Consumer Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCCS

Company	Key Personnel Interviewed	Dates of interview	Designation
Ban Hong Poultry Pte. Ltd.	Mr Ho Chong Hee	5 May 2015	Sales Manager
Boong Poultry Pte. Ltd.	Mr Tan Chin Long	4 June 2015	Group Chairman
Gold Chic Poultry Supply Pte. Ltd. and Hua Kun Food Industry Pte. Ltd.	Mr Lim Soh Hua	29 April 2015 and 19 October 2016	Semi-retired/ Manager
Hup Heng Poultry Industries Pte. Ltd.	Mr Ma Chin Chew	13 August 2014, 27 November 2014, 15 April 2015 and 5 June 2015	Managing Director
	Mr Eng Kee Hock	13 August 2014	Sales Director
	Mr Li Kong	13 August 2014	Sales Executive
	Mr Yong Miang Boon	13 August 2014	Sales Executive
Hock Chuan Heng Farm/ Hy-Fresh Industries (S) Pte. Ltd.	Mr Ng Lay Long	4 May 2015 and 3 June 2015	Senior Advisor cum Marketing/ Senior Director
Kee Song Food Corporation (S) Pte. Ltd.	Mr Ong Kee Song	24 November 2014	Chairman
	Mr Ong Kian San	24 November 2014, 23 April 2015 and 3 June 2015	Managing Director

	Mr Neo Cheng Hai	13 August 2014 and 24 November 2014	Senior Marketing and Sales Manager
	Mr Sim Ah Soon	13 August 2014	Sales Manager
	Mr Fung Chiew Chen	13 August 2014	Assistant Sales Manager
KSB Distribution Pte. Ltd.	Mr Tan Soon Teck	14 July 2015 and 21 October 2016	Vice President for Sales and Marketing
	Mr Chew Ghim Bok	14 April 2015	Ex-Director
	Mr Chew Gim Soon	29 April 2015	Ex-Deputy General Manager
Lee Say	Mr Tan Koon Seng	13 August 2014, 30 April 2015, 27 October 2016 and 22 November 2016	Executive Director
	Mr Toh Ying Seng	13 August 2014	Deputy Managing Director
	Mr Koh Yeok Boon	13 August 2014, 28 November 2014 and 20 October 2016	Sales Manager
	Ms Nga Seok Choo (Judy)	13 August 2014	Sales Executive
	Mr Ng Khoon Ho	13 August 2014	Sales Executive
	Ms Azmira Binte Mohamed Bejaramin	13 August 2014, 13 April 2015	Sales Executive

		and 25 October 2016[844]	
	[✂]	24 June 2015	Ex-Sales Executive
	Ms Winnie Wong @Tan Winnie	13 April 2015	Ex-Sales Manager
Ng Ai Food Industries Pte. Ltd.	Mr Tan Chee Kien	28 April 2015 and 20 October 2016	Chief Executive Officer
	Ms Tan Sze Nee (Chen Shini)	9 April 2015	Personal Assistant to the Chief Executive Officer
Prestige Fortune (S) Pte. Ltd.	Mr Quek Cheaw Kwang	30 April 2015 and 5 June 2015	Director
Sinmah Poultry Processing (S) Pte. Ltd.	Mr Chiew Kin Huat	25 November 2014, 9 April 2015 and 2 June 2015	Executive Chairman
	Mr Chew Hock You	13 August 2014	Managing Director
	Ms Wu Xiao Ting	13 August 2014, 25 November 2014, 18 March 2015 and 8 June 2015	Deputy Admin Personnel Manager
Toh Thye San Farm	Toh Cheng Hai	23 April 2015 and 19 October 2016	General Manager
	Too Siew Din	13 August 2014, 16 April 2015	Managing Director

[844] There were two interviews on the same day.

Tong Huat Poultry Processing Factory Pte. Ltd.		and 12 October 2016	
	Teo Eng Say	13 August 2014 and 24 April 2015	Manager
The Poultry Merchants' Association, Singapore	Mr Heng Teck Leng	28 November 2014 and 4 June 2015	Chairman of The Poultry Merchants' Association, Singapore
Tung Lok Restaurant (2000) Ltd.	[✂]	[✂]	[✂]
Chicken Up Little Pte. Ltd.	[✂]	[✂]	[✂]
Jumbo Seafood Pte. Ltd.	[✂]	[✂]	[✂]
Crystal Jade Culinary Concepts Holding	[✂]	[✂]	[✂]
Imperial Treasure Restaurant Group Pte. Ltd.	[✂]	[✂]	[✂]

ANNEX B: DIRECTION

UNDERTAKING BY _____

TO CEASE AND DESIST FROM USING THE POULTRY MERCHANTS' ASSOCIATION, SINGAPORE OR ANY INDUSTRY ASSOCIATIONS OR PLATFORMS FOR ANTI-COMPETITIVE ACTIVITIES

_____ (hereinafter referred to as "Company"), company registration no. _____, whose registered address is at _____, hereby provides to the Competition and Consumer Commission of Singapore ("CCCS") the undertaking that the Company shall cease and desist from using The Poultry Merchants' Association, Singapore or any other industry associations or platforms, to discuss, implement or perpetuate any anti-competitive activities that would infringe the Competition Act (Cap. 50B) (hereinafter referred to as "this Undertaking").

2. The Company understands that CCCS will monitor compliance with the terms of this Undertaking and agrees to cooperate fully should CCCS request for the provision of documents and information relating to such monitoring.

3. The Company understands that CCCS may commence investigations if there are reasonable grounds for suspecting that any of the prohibitions in the Competition Act has been infringed.

~~ Signed this [Date] ~~

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For and on behalf of)

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