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

Notice of Infringement Decision issued by CCS

Infringement of the section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore

11 December 2014

Case number: CCS 700/003/11

Redacted confidential information in this Notice is denoted by square parenthesis [✂].

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CHAPTER 1: THE FACTS

A. The Parties

1. Following information[1] received from DHL Global Forwarding on 28 March 2012, the Competition Commission of Singapore ("CCS") commenced an investigation into anti-competitive agreements and/or concerted practices in respect of fees and surcharges related to the supply of air freight forwarding services for cargo shipped from Japan to Singapore.

2. CCS's investigation indicates that the following undertakings (each a "Party", together, the "Parties") have been involved in the direct or indirect fixing of prices and exchange of information regarding fees and surcharges associated with the air shipment of cargo from Japan to Singapore by freight forwarders that has infringed section 34 of the Competition Act (Cap. 50B) ("the Act"):

(i) Deutsche Post A.G., DHL Global Forwarding Japan K.K. ("DGF Japan"), DHL Global Forwarding Management (Asia Pacific) Pte. Ltd. ("DGF Asia Pacific") and DHL Global Forwarding (Singapore) Pte. Ltd. ("DGF Singapore") (together "DGF")[2];

(ii) Hankyu Hanshin Express Co., Ltd. ("HHE Co.") and its wholly-owned subsidiary Hankyu Hanshin Express (Singapore) Pte. Ltd. ("HHE Singapore") (together "Hankyu Hanshin")[3];

(iii) "K" Line Logistics, Ltd. ("KLJ") and its subsidiary "K" Line Logistics (Singapore) Pte. Ltd. ("KLS") (together "K Line")[4];

(iv) Kintetsu World Express Inc. Japan ("KWEJ") and its wholly-owned subsidiary KWE-Kintetsu World Express (S) Pte. Ltd. ("KWES") (together "KWE")[5];

(v) MOL Logistics (Japan) Co., Ltd. ("MLG-JP") and its subsidiary MOL Logistics (Singapore) Pte. Ltd. ("MLG-SG") (together "MLG")[6];

(vi) Nippon Express Co., Ltd. ("NEJ") and its subsidiary Nippon Express (Singapore) Pte. Ltd. ("NES") (together "Nippon Express")[7];

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[1] See paragraph 52.

[2] DGF is referred to in the documents provided to CCS variously as DGF, Danzas, Maruzen, DHL Global Forwarding, DHL, and DZK.

[3] For HHE Co. (formerly HEX and HAC), HEX is referred to in the documents provided to CCS variously as HEX, HEI, HTI, Hankyu and Hankyu Cargo. HAC is referred to in documents provided to CCS variously as HAC, Hanshin and HER.

[4] K Line is referred to in the documents provided to CCS variously as K Line, Kawasaki, KAS, and KKS, KLL. Kawasaki Kisen Kaisha and KKK is also referred to in certain documents recording meetings K Line participated in.

[5] KWE is referred to in the documents provided to CCS variously as KWE and Kintetsu.

[6] MLG is referred to in the documents provided to CCS variously as MOL, Mitsui, Mitsui O.S.K Lines, MOA, MO, MO Logistics and Mitsui OSK.

(vii) Nishi-Nippon Railroad Co., Ltd. ("NNR Japan") and its subsidiary NNR Global Logistics (S) Pte. Ltd. ("NNR Singapore") (together "NNR")[8];

(viii) Nissin Corporation and its wholly-owned subsidiary Nissin Transport (S) Pte. Ltd. ("Nissin Singapore") (together "Nissin")[9];

(ix) Vantec Corporation ("Vantec Japan") (of which Vantec World Transport Co., Ltd. ("VWT Japan") is now a part) and Vantec World Transport (S) Pte. Ltd. ("Vantec Singapore") (together "Vantec")[10];

(x) Yamato Holdings Co., Ltd. ("Yamato Holdings"); Yamato Global Logistics Japan Co., Ltd. ("YGL Japan") and Yamato Asia Pte. Ltd. ("Yamato Asia") (together "Yamato")[11]; and

(xi) Yusen Logistics Co., Ltd. ("Yusen Japan") and its subsidiary Yusen Logistics (Singapore) Pte. Ltd. ("Yusen Singapore") (together "Yusen")[12].

(i) Deutsche Post A.G., DHL Global Forwarding Japan K.K., DHL Global Forwarding Management (Asia Pacific) Pte. Ltd. and DHL Global Forwarding (Singapore) Pte. Ltd.

3. Deutsche Post A.G. is a German corporation with its principal place of business at Charles-de-Gaulle-Str. 20, 53113 Bonn, Germany. It is the ultimate parent of the companies in the Deutsche Post DHL Group, including DGF Japan, DGF Asia Pacific and DGF Singapore. The ownership structure between DGF Singapore, DGF Asia Pacific and Deutsche Post A.G. is as follows: DGF Singapore is 100% owned by DGF Asia Pacific, DGF Asia Pacific is 100% owned by Danzas Holding A.G., [✂].[13]

4. The DGF brand was originally known as "Danzas". In 1999, the parent company of Danzas, Deutsche Post World Net, purchased Air Express International ("AEI"), following which the name Danzas was amended to Danzas AEI. In 2002, when Deutsche Post acquired DHL International, it integrated DHL and Danzas AEI into the DHL brand. Following the acquisition of Airborne Express

[7] Nippon Express is referred to in the documents provided to CCS variously as Nippon Express, Nittsu and NEC.
[8] NNR is referred to in the documents provided to CCS variously as NNR, Nishitetsu and Nishi Nippon Railroad.
[9] Nissin is referred to in the documents provided to CCS variously as Nissin, Nisshin and NUS. Nissin Corporation is also referred to as Nissin Japan in the Notes of Information/Explanation Provided recorded by CCS.
[10] Vantec is referred to in the documents provided to CCS variously as Vantec, Tokyu, Tokyo Air Cargo, Tokyu World Transport, TCC and TKK.
[11] Yamato is referred to in the documents provided to CCS variously as Yamato, YTC, Yamato Transport, YAPL, YTSPL, YH, YA, YT, YG, YGL and YLC.
[12] Yusen is referred to in the documents provided to CCS variously as Yusen, YAS and NYK (Nippon Yusen).
[13] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 4.

in 2003 and Exel Ltd. in 2005, the Danzas brand was eventually dropped and the whole freight forwarding business unit was renamed as DHL Global Forwarding.[14]

5. DGF Japan is a Japanese company with its principal place of business at 12F Riverside Sumida, 19-9 Tsutsumi-dori 1-Chome, Sumida-ku, Tokyo Japan 131-0034. DGF Japan is wholly-owned by [✂].[15] DGF Japan is in the business of ocean and air freight, customs brokerage, warehousing and distribution. DGF Japan's turnover in Singapore for the financial year ending 31 December 2012 was S$[✂].

6. DGF Asia Pacific is a company limited by shares incorporated in Singapore, having its registered office at 150 Beach Road #04-01 Gateway West Singapore (189720).[16] The Deutsche Post DHL Group has a 100% group equity share in DGF Asia Pacific, and DGF Asia Pacific is listed on Deutsche Post DHL's annual report as one of its "Affiliated Companies included in the Consolidated Financial Statements".[17] DGF Asia Pacific's turnover in Singapore for the financial year ending 31 December 2012 was S$[✂].

7. DGF Singapore is a company limited by shares, incorporated in Singapore, having its registered office at 1 Changi South Street 2 Singapore (486760). It is a wholly-owned subsidiary of DGF Asia Pacific.[18] Ultimately, it is owned by the Deutsche Post DHL Group which has a 100% group equity share in DGF Singapore, and DGF Singapore is listed on Deutsche Post DHL's annual report as one of its "Affiliated Companies included in the Consolidated Financial Statements".[19] DGF Singapore is in the business of ocean and air freight, customs brokerage, warehousing and distribution.[20] DGF Singapore's turnover for the financial year ending 31 December 2012 was S$[✂].

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[14] Information provided by DGF dated 21 June 2012 pursuant to CCS's Request for Information ("RFI") dated 23 May 2013, Annex 1 - DGF's Standard Presentation Kit, page 4.

[15] Information provided by [✂] (DGF) on 22 November 2013 pursuant to CCS's request of 11 November 2013, Annex 1, response to question 2.

[16] Extracted from ACRA record *Business Profile of DHL Global Forwarding Management (Asia Pacific) Pte. Ltd.* (on 12/11/2014).

[17] See Deutsche Post DHL Annual Report 2012 at <http://www.dpdhl.com/content/dam/Investors/Publications/Annual_Reports/DPDHL_Shareholdings_2012-12-31.pdf>.

[18] Extracted from ACRA record *Business Profile of DHL Global Forwarding (Singapore) Pte. Ltd.* (on 12/11/2014).

[19] See Deutsche Post DHL Annual Report 2012 at <http://www.dpdhl.com/content/dam/Investors/Publications/Annual_Reports/DPDHL_Shareholdings_2012-12-31.pdf>.

[20] Information provided by DGF dated 21 June 2013 pursuant to CCS's RFI dated 23 May 2013, Annex 1- DGF's Standard Presentation Kit, page 4.

(ii) Hankyu Hanshin Express Co., Ltd. and Hankyu Hanshin Express (Singapore) Pte. Ltd.

8. Prior to 1 April 2008, Hankyu International Transport (Singapore) Pte. Ltd. ("HIT Singapore") was a 100% owned subsidiary of Hankyu Express International Co. Ltd. ("HEX"), and Hanshin Freight International (Singapore) Pte. Ltd. ("HFI Singapore") was a 100% owned subsidiary of Hanshin Air Cargo Co., Ltd ("HAC"). On 1 April 2008, HEX became a 100% owned subsidiary of Hankyu Hanshin Express Holdings Corporation.[21]

9. On 1 October 2009, HAC was amalgamated with HEX, and HAC, the surviving entity, took the name Hankyu Hanshin Express Co., Ltd. (i.e. HHE Co.).

10. HHE Co. is a wholly-owned subsidiary of Hankyu Hanshin Express Holdings Corporation. HHE Co. is a company limited by shares, incorporated in Japan, having its registered office at 2-5-25 Umeda, Kita-ku, Osaka 530-0001 Japan. HHE Co. provides freight forwarding services, by air and sea, and also logistics and warehousing services to its customers.[22] HHE Co.'s turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

11. On 1 January 2010, as part of the global amalgamation, HIT Singapore amalgamated with HFI Singapore pursuant to section 215D(2) of the Companies Act (Cap. 50). The former was the surviving entity and it changed its name to Hankyu Hanshin Express (Singapore) Pte. Ltd. (i.e. HHE Singapore).[23]

12. HHE Singapore, is a wholly-owned subsidiary of HHE Co. It is a company limited by shares, incorporated in Singapore, having its registered office at 119 Airport Cargo Road #01-10 Changi Cargo Agents Megaplex 1 Singapore (819454). The principal activities of HHE Singapore are the provision of freight forwarding, packing and crating services, as well as other transportation support activities.[24] HHE Singapore's turnover for the financial year ending 31 December 2012 was S$[✂].

(iii) "K" Line Logistics, Ltd. and "K" Line Logistics (Singapore) Pte. Ltd.

13. KLJ is a company incorporated in Japan having its registered office at KLL Nihonbashi Bldg., 8-16, Nihonbashi Honcho 1-Chome, Chuo-ku, Tokyo 103-0023, Japan.[25] The shareholders of KLJ are as follows: Kawasaki Kisen Kaisha, Ltd. (92%), Kawasaki Heavy Industries, Ltd. (4%) and JFE Steel Corporation

[21] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure 1.
[22] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.
[23] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 4(ii).
[24] Extracted from ACRA record *Business Profile of Hankyu Hanshin Express (Singapore) Pte. Ltd* (on 12/11/2014).
[25] Extracted from ACRA record *Business Profile of "K" Line Logistics (Singapore) Pte. Ltd.* (on 12/11/2014).

(4%). KLJ provides international freight forwarding services from point of origin to point of destination. It also provides ancillary services such as packaging of cargo, temporary storage, labelling, arranging of transit insurance, customs documentation and clearance.[26] KLJ's turnover in Singapore for the financial year ending 31 December 2012 was S$[✂].

14. KLS is a company limited by shares, incorporated in Singapore, having its registered office at 3 Changi South Street 2 Xilin Districentre Singapore (486548).[27] The shareholders of KLS are as follows: KLJ (88.7%) and "K" Line (Singapore) Pte. Ltd. (11.3%). KLS provides freight forwarding services, logistics (including warehouse storage) services and acts as a customs broker for Singapore exporters and importers.[28] KLS's turnover for the financial year ending 31 March 2013[29] was S$[✂].

(iv) Kintetsu World Express Inc. Japan and KWE-Kintetsu World Express (S) Pte. Ltd.

15. KWEJ is a listed Japanese company having its registered office at 24th Floor, Shinagawa Intercity Tower A, 2-15-1 Konan, Minato-ku, Tokyo 108-6024, Japan.[30] Its shareholders are as follows: Kintetsu Corporation (40.98%), the Master Trust Bank of Japan (5.15%), Mitsui O.S.K. Lines, Ltd. (5%) and other private investors (48.87%). KWEJ was established in 1970 for the purpose of providing services in international freight forwarding, domestic trucking, customs brokerage, transportation agent, logistics and warehousing.[31] KWEJ's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

16. KWES is a wholly-owned subsidiary of KWEJ. It is a company limited by shares, incorporated in Singapore, having its registered office at 20 Changi South Avenue 2 Singapore (486547).[32] KWES provides international freight forwarding and third party logistic services in Singapore. Its services to customers include air and sea freight forwarding, warehousing, local trucking, cross-border trucking and courier service.[33] KWES's turnover for the financial year ending 31 December 2012 was S$[✂].

[26] Information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A, paragraph 1.
[27] Extracted from ACRA record *Business Profile of "K" Line Logistics (Singapore) Pte. Ltd.* (on 12/11/2014).
[28] Information provided by KLS dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A, paragraph 1.
[29] Due to a change in accounting period, KLS's financial year 2012 ran from 1 January 2012 to 31 March 2013.
[30] Extracted from ACRA record *Business Profile of KWE-Kintetsu World Express (S) Pte Ltd* (on 12/11/2014).
[31] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A, paragraph 1.
[32] Extracted from ACRA record *Business Profile of KWE-Kintetsu World Express (S) Pte Ltd* (on 12/11/2014).
[33] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A, paragraph 1.

(v) MOL Logistics (Japan) Co., Ltd. and MOL Logistics (Singapore) Pte. Ltd.

17. MLG-JP is a company incorporated in Japan having its registered office at Shin-Ochanomizu Building 3, Kanda Surugadai 4-Chome Chiyoda-ku, Tokyo 101-8330, Japan.[34] The shareholders of MLG-JP are as follows: Mitsui O.S.K. Lines, Ltd. (75.06%) and Kintetsu World Express (24.94%).[35] MLG-JP provides international freight transportation and related services in the air and ocean segments. MLG-JP's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

18. MLG-SG is a company limited by shares, incorporated in Singapore, having its registered office at 70 Alps Avenue #01-05 Singapore (498801).[36] The shareholders of MLG-SG are as follows: MLG-JP (51%) and Mitsui O.S.K. Lines, Ltd (49%).[37] MLG-SG provides international freight transportation and related services in the air and ocean segments as well as warehousing and logistics services via a third party warehouse service provider.[38] MLG-SG's turnover for the financial year ending 31 December 2012 was S$[✂].

(vi) Nippon Express Co., Ltd. and Nippon Express (Singapore) Pte. Ltd.

19. NEJ is a listed company incorporated in Japan[39] which provides express transportation services and logistics services. It has its registered office at 1-9-3 Higashi-Shimbashi, Minato-ku, Tokyo 105-8322 Japan.[40] NEJ's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

20. NES is a company limited by shares, incorporated in Singapore, having its registered office at 5C Toh Guan Road East Nippon Exp Global Logistics Ctr Singapore (608828).[41] The shareholders of NES are as follows: Nippon Express (South Asia & Oceania) Pte. Ltd. (77%) and C&P Holdings Pte. Ltd (a major warehousing company in Singapore) (23%).[42] Nippon Express (South Asia & Oceania) Pte. Ltd. is a wholly-owned subsidiary of NEJ.[43] NES provides local and global freight forwarding services through the provision of air, road and

[34] Extracted from ACRA record *Business Profile of MOL Logistics (Singapore) Pte. Ltd.* (on 12/11/2014).
[35] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 2.
[36] Extracted from ACRA record *Business Profile of MOL Logistics (Singapore) Pte. Ltd.* (on 12/11/2014).
[37] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 2.
[38] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 6.
[39] NEJ is listed on the Tokyo Stock Exchange, TYO: 9062.
[40] Extracted from ACRA record *Business Profile of Nippon Express (South Asia & Oceania) Pte. Ltd.* (on 12/11/2014).
[41] Extracted from ACRA record *Business Profile of Nippon Express (Singapore) Pte. Ltd.* (on 12/11/2014).
[42] Information provided by NES dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.1.
[43] Extracted from ACRA record *Business Profile of Nippon Express (South Asia & Oceania) Pte. Ltd.* (on 12/11/2014).

ocean freight transport and ancillary freight-related services.[44] NES's turnover for the financial year ending 31 December 2012 was S$[✂].

(vii) Nishi-Nippon Railroad Co., Ltd. and NNR Global Logistics (S) Pte. Ltd.

21. NNR Japan is a listed company incorporated in Japan[45] which engages in various activities, including logistics and local transportation. NNR Japan's Global Logistics Division carries on the following activities: air freight forwarding services, ocean freight forwarding services, sea and air services, inland transport services and customs brokerage.[46] Its corporate headquarters are located at 1-11-7 Tenjin Chuo-ku Fukuoka 810 Japan.[47] NNR Japan's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

22. NNR Singapore (formerly known as NNR Cargo Services (S) Pte. Ltd.) is a company limited by shares, incorporated in Singapore, having its registered office at 50 Raffles Place, #32-01 Singapore Land Tower, Singapore (048623).[48] NNR Singapore is a subsidiary of NNR Japan under the auspices of its Global Logistics Division, and its principal activity is the provision of international forwarding services.[49] The shareholders of NNR Singapore are as follows: NNR Japan (51%) and Global Freight Corporation Pte Ltd (49%).[50] NNR Singapore's turnover for the financial year ending 31 December 2012 was S$[✂].

(viii) Nissin Corporation and Nissin Transport (S) Pte. Ltd.

23. Nissin Corporation is a listed company incorporated in Japan which provides logistics and transportation services in Japan and internationally.[51] Its registered office is located at 6-84 Onoe-cho Naka-ku Yokohama, Japan.[52] Nissin Corporation's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

24. Nissin Singapore is a wholly-owned subsidiary of Nissin Corporation. It is a company limited by shares, incorporated in Singapore, having its registered office at 50 Tuas Avenue 9, Singapore (639192).[53] Nissin Singapore provides the following services: international freight forwarding services for both air freight and sea freight, customs documentation, inland transportation and distribution, warehousing and inventory management services, project cargo forwarding and site operations, relocation services, as well as crating and

[44] Information provided by NES dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 1.2.
[45] NNR Japan is listed on the Tokyo Stock Exchange, TYO: 9031.
[46] Answer to Question 13 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[47] Extracted from ACRA record *Business Profile of NNR Global Logistics (S) Pte. Ltd.* (on 12/11/2014).
[48] Extracted from ACRA record *Business Profile of NNR Global Logistics (S) Pte. Ltd.* (on 12/11/2014).
[49] Information provided by NNR Japan dated 11 June 2013 pursuant to CCS's RFI dated 30 April 2013, S/N 5.
[50] Extracted from ACRA record *Business Profile of NNR Global Logistics (S) Pte. Ltd.* (on 12/11/2014).
[51] Nissin Corporation is listed on the Tokyo Stock Exchange, TYO: 9066.
[52] Extracted from ACRA record *Business Profile of Nissin Transport (S) Pte Ltd* (on 12/11/2014).
[53] Extracted from ACRA record *Business Profile of Nissin Transport (S) Pte Ltd* (on 12/11/2014).

packing.[54] Nissin Singapore's turnover for the financial year ending 31 December 2012 was S$[✂].

(ix) Vantec Corporation and Vantec World Transport (S) Pte. Ltd.

25. Vantec Japan is a company incorporated in Japan having its registered office at 13-1, 3-Chome, Moriya-cho, Kanagawa-ku Yokohama, Kanagawa, Japan.[55]

26. The air freight forwarding operations of Vantec Japan was initially carried out by Tokyu Air Cargo Co., Ltd. which underwent a name-change exercise in February 2005 to become Vantec World Transport Japan ("VWT Japan"). At that time, they were both owned by Vantec Holdings Corporation ("VHD"). In March 2006, a company named Vantec Group Holdings Corporation was established and became the owner of VHD. In September 2008, as part of a company restructuring exercise, VHD and Vantec Corporation were merged and became known as Vantec Corporation (i.e. Vantec Japan). VWT Japan remained a subsidiary of the new Vantec Japan up until April 2009. In April 2009, Vantec Group Holdings Corporation, Vantec Corporation and VWT Japan were merged to become the current Vantec Japan. Thereafter, in April 2011, Vantec Japan became a wholly-owned subsidiary of Hitachi Transport System Ltd. ("Hitachi Transport").[56]

27. In July 2012, Vantec Japan transferred its air freight forwarding business to Vantec Hitachi Transport Forwarding. [✂][57] Vantec Japan's turnover in Singapore for the financial year ending 31 March 2012 was S$[✂].

28. Vantec Singapore is a company limited by shares, incorporated in Singapore, having its registered office at 11 Changi South Street 2, Singapore (486362).[58] Vantec Singapore arranges for the export of goods from Singapore, namely air freight, primarily to [✂], and the import of goods to Singapore, primarily from [✂].[59]

29. Prior to 1996, Vantec Singapore was a wholly-owned subsidiary of Tokyu World Transport (which became VWT Japan in 2005). In 1996, Vantec Singapore increased its paid up capital by issuing more shares, and had two new shareholders, then known as, Tokyu World Transport (USA), Inc. (now Vantec World Transport (USA), Inc.) (holding 13.6% of the shares) and Tokyu World Transport (H.K.) Limited (now Vantec World Transport (HK) Limited) (holding 7.6% of the shares). Tokyu World Transport, which became VWT Japan,

[54] Information provided by Nissin Singapore dated 16 January 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 8.
[55] Extracted from ACRA record *Business Profile of Vantec World Transport (S) Pte. Ltd.* (on 11/11/2011).
[56] Information provided by Vantec dated 22 January 2014, Annex A-25.
[57] Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, section v, paragraph 2.4.
[58] Extracted from ACRA record *Business Profile of Vantec World Transport (S) Pte. Ltd.* (on 12/11/2014).
[59] Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, section iv, paragraph 1.2.

subsequently held 78.8% of the shares in Vantec Singapore. In 2005, the Tokyu group of companies underwent a rebranding exercise and became known as the Vantec group of companies. During a restructuring exercise in 2009, VWT Japan merged with, and became part of, Vantec Japan. The newly merged Vantec Japan became a successor to VWT Japan and held 78.8% of the shares in Vantec Singapore.[60] On 17 January 2014, Vantec Japan completed the transfer of 100% of its shares in Vantec Singapore to Hitachi Transport. Vantec Singapore is now 100% owned by Hitachi Transport.[61]

30. Vantec Singapore's turnover for the financial year ending 31 March 2012[62] was S$[✂].

(x) Yamato Holdings Co., Ltd., Yamato Global Logistics Japan Co., Ltd. and Yamato Asia Pte. Ltd.

31. Yamato Holdings is a listed Japanese company having as its principal place of business at 16-10 Ginza 2 Cho-Me, Cyu-Oku, Tokyo, Japan. Yamato Holdings is a holding company for a number of different subsidiaries including Yamato Japan and Yamato Asia. Its top four principal shareholders are: The Master Trust Bank of Japan, Ltd. (Trust Account) (6.31%), Japan Trustee Services Bank, Ltd. (Trust Account) (4.80%), Yamato Employees' Shareholdings Association (4.15%), and Mizuo Bank Ltd. (3.68%).[63] Yamato Holdings' turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

32. Yamato Japan is a company incorporated in Japan, having its principal place of business at 1-10-14, Shinkawa, Chuo-ku, Tokyo, Japan.[64] Yamato Japan provides international freight forwarding services in sea and air export and import of cargo in and out of Japan through its worldwide network.[65] Yamato Japan is owned by: Yamato Holdings (70%) and Nippon Yusen Kabushiki Kaisha ("NYK Line") (30%).[66] Yamato Japan's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

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[60] Information provided by Vantec dated 13 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, section iv, paragraphs 2.1 and 2.3.
[61] Information provided by Vantec dated 22 January 2014.
[62] Due to a change in accounting period, Vantec Singapore's financial year 2011 ran from 1 January 2011 to 31 March 2012.
[63] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, Annexure B.
[64] Information provided by Yamato Asia dated 13 February 2012 pursuant to CCS's letter dated 14 December 2011, paragraph 6.1.
[65] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 1.3.
[66] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.1, where it was stated that Yamato Japan is owned by Yamato Holdings (70%) and "Nihon Yusen Kaisha" (30%). In the information provided by Yamato dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, "Nihon Yusen Kaisha" was referred to as "NYK" at response to question 4, and as "Nippon Yusen Kabushiki Kaisha" ("NYK Line") at Annexure A.

33. Yamato Asia is a private limited company registered in Singapore in 1983 having its registered office at 223 Mountbatten Road #01-07/08 223 @ Mountbatten Singapore (398008).[67] Yamato Asia was formerly known as Yamato Transport (S) Pte. Ltd. It was renamed on 9 November 2011 by registering a change of name with the Accounting and Corporate Regulatory Authority ("ACRA").[68] Yamato Asia's core business is in freight forwarding and as a logistics provider.[69] Yamato Asia is a wholly-owned subsidiary of Yamato Holdings.[70] Yamato Asia's turnover for the financial year ending 31 December 2012 was S$[✂].

(xi) Yusen Logistics Co., Ltd. and Yusen Logistics (Singapore) Pte. Ltd.

34. Yusen Japan is a listed company incorporated in Japan[71] having its principal place of business at 2-11-1, Shiba-Koen Minato-Ku, Tokyo, Japan.[72] Yusen Logistics Japan was, until 2010, formerly known as Yusen Air & Sea Services Co. Ltd. It was renamed following the completion of the merger between Yusen Japan with NYK Logistics Japan Ltd. on or about 1 October 2010.[73] Yusen Japan provides air freight forwarding, ocean freight forwarding and various logistics solutions.[74] Yusen Japan's principal shareholder is Nippon Yusen Kabushiki Kaisha ("NYK Lines") (59.53%) with the remaining shares held mainly by financial institutions and financial investors including The Master Trust Bank of Japan, Japan Trustee Services Bank Ltd., Bank of Tokyo-Mitsubishi UFJ Ltd., Tokio Marine and Nichido Fire Insurance Co. Ltd.[75] Yusen Japan's turnover in Singapore for the financial year ending 31 March 2013 was S$[✂].

35. Yusen Singapore is a private limited company having its registered office at 2 Changi South Avenue 2, YAS Logistics Centre, Singapore 486354.[76] Yusen Singapore was formerly known as Yusen Air & Sea Service (Singapore) Pte.

[67] Extracted from ACRA record *Business Profile of Yamato Asia Pte. Ltd.* (on 12/11/2014).
[68] Information provided by Yamato Asia dated 13 February 2012 pursuant to CCS's letter dated 14 December 2011 and information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 3.1 and 2.2 respectively. A new company (a wholly-owned subsidiary of Yamato Asia) was incorporated using the name Yamato Transport (S) Pte. Ltd. The new company carries out local delivery and courier services, see information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 2.
[69] Information provided by Yamato Asia dated 13 February 2012 pursuant to CCS's letter dated 14 December 2011, paragraph 3.5.
[70] Extracted from ACRA record *Business Profile of Yamato Asia Pte. Ltd.* (on 12/11/2014). See also information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.1.
[71] Yusen Japan is listed on the Tokyo Stock Exchange, TYO: 9370.
[72] Extracted from ACRA record *Business Profile of Yusen Logistics (Singapore) Pte. Ltd.* (on 12/11/2014).
[73] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 1.2.
[74] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 4.1.
[75] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.2.
[76] Extracted from ACRA record *Business Profile of Yusen Logistics (Singapore) Pte. Ltd.* (on 12/11/2014).

Ltd. It was renamed following its merger with NYK Logistics (Asia) Pte. Ltd. on or around 1 April 2011.[77] Yusen Singapore provides logistics services including door to door, port to port as well as door to port and port to door services on a prepaid or collect basis.[78] Yusen Singapore is owned by: Yusen Japan (79.3%) and by NYK Lines (20.7%).[79] Yusen Singapore's turnover for the financial year turnover for the financial year ending 31 March 2013 was S$[✂].

B. Background of Related Industry

Freight forwarding services

36. The Parties are providers of air freight forwarding services on the route from Japan to Singapore. Freight forwarders organise and handle the shipment of cargo, according to their customers' individual needs. They manage the domestic and international transportation of cargo through other transportation providers, such as air carriers and ocean liners, and provide related services.

37. Services provided by freight forwarders may include door to door services, port to port services, port to door and/or door to port on a prepaid or collect basis. The actual services provided depend on the requirements of individual customers.[80] Most freight forwarders do not own their own aeroplanes. Instead, freight forwarders usually rely on commercial airlines to provide the air transportation services they require.[81] There are a number of freight forwarders in Singapore providing air freight transportation services. While freight forwarders can vary in size and operational scale, the freight forwarders investigated are all international in nature, with multiple offices and the ability to ship goods globally.[82]

38. Related services provided by freight forwarders include customs clearance services, ground handling services (i.e. provision of transportation from a customer's premises to the airport or port), warehousing services and logistics

[77] Information provided by Yusen Singapore dated 7 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 1.3.
[78] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 4.2.
[79] Extracted from ACRA record *Business Profile of Yusen Logistics (Singapore) Pte. Ltd.* (on 12/11/2014). See also information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.1.
[80] Information provided by KLS dated 22 February 2013 pursuant to the 63 Notice issued by CCS dated 12 December 2012, paragraph 4 and Annex A; information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 1.11 and 4.2; information provided by Nissin Corporation dated 25 March 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 6; and information provided by NES dated 25 February 2013 pursuant to the 63 Notice issued by CCS dated 12 December 2012, paragraphs 1.3 and 4.2.
[81] Information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 1.
[82] Top freight forwarders include DHL Supply Chain and Global Forwarding, KWE-Kintetsu, Nippon Express, Yusen Logistics, see http://www.logisticsmgmt.com/article/top_25_freight_forwarders_thriving_in_the_complexity/.

solutions for goods which require special handling. Customs clearance services tend to be country specific, and may also be import or export specific. Customs clearance services can include listing out the items to be shipped, paying for inspection of the cargo, security clearance and the preparation of customs clearance documentation.

39. To facilitate the movement of their customers' cargo, freight forwarders can appoint agents in other countries to manage the local handling of the goods. These agents may be other freight forwarders or subsidiaries of these freight forwarders.[83] In addition to the amount which these agents earn from the local handling of the cargo, these agents may earn a commission or conduct profit sharing with the principal. It is common for the freight forwarders to enter into such agency agreements.[84]

40. Generally, freight forwarders have two types of practices in relation to the purchase of freight space on airlines: in advance before they have customers who book freight forwarding services with them, or after when customers have already booked freight forwarding services with them. Freight forwarders generally negotiate with the airlines in relation to freight rates[85], and the freight rates differ depending on the pallet sizes.[86] The airlines' freight rates are not passed through to the customers.[87] Instead, freight forwarders price their own freight rates depending on their expected buying costs which are dependent on the outcome of their freight consolidation.[88] There are requirements regarding a minimum volume/weight when freight forwarders book freight space, and the minimum volume/weight depends on the destination of the freight.[89] If freight

[83] Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, section ii, paragraphs 2.4.6 and 2.4.7.

[84] Information provided by Hankyu Hanshin dated 15 November 2013 pursuant to CCS's RFI on 14 November 2013, "Sales and Break-bulk Agency Agreement"; information provided by KWEJ on 10 July 2013 pursuant to CCS's RFI dated 24 June 2013,"International Air Cargo Consolidation Break-bulk Agency Agreement for Export from Japan to Singapore"; information provided by K Line on 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, "Sales and Break-bulk Agency Agreement"; information provided by MLG-SG on 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 1B, "International Aircargo Consolidations Revised Mutual Break-bulk Agency Agreement"; information provided by Nippon Express on 22 October 2013, "International Air Cargo Consolidation Bulk-breaking Agency Agreement"; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, section ii, paragraph 2.4.7; information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure A, "Agency Agreement"; and information provided by Yusen on 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, Appendix JP-36, "International Agency Agreement".

[85] Answer to Question 16 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.

[86] Notes of Meeting – Meeting with Vantec on 5 March 2012, paragraph 30.

[87] Answer to Question 14 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 13 November 2013.

[88] Answer to Question 14 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 13 November 2013.

[89] Answer to Question 14 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 13 November 2013.

forwarders are unable to fill the minimum volume or weight requirements, they may make a loss on that particular shipment.[90]

41. Freight forwarders are typically able to obtain a better rate when they buy freight space in larger volumes.[91] Freight forwarders may co-load to maximise profits, or when they wish to reach the minimum requirements for obtaining better freight rates to a certain destination.[92] For contracts with customers where the freight rates are fixed, a freight forwarder may make a profit or take a loss based on the contracted freight rate, depending on the shipment.[93]

42. Freight forwarding rates may be presented as a package, or as a breakdown of the freight rates and the applicable surcharges and local handling charges.[94] Freight forwarding rates are typically expressed as a price per kilogram.[95] Certain surcharges are charged on a per kilogram basis, while other surcharges are charged on a per house air waybill basis, or on a per master air waybill basis. A house air waybill ("HAWB") sets out the items that are to be shipped and usually indicates the charges to be paid by the customer. A master air waybill ("MAWB") sets out the conditions of carriage between the freight forwarder and the airline/carrier. Surcharges which are applicable upon export of the goods are usually determined by the originating office of the freight forwarder.

Customers

43. Different freight forwarders categorise customers differently. However, generally, customers can be categorised into global customers, regular and *ad hoc*/one-off customers.[96]

44. Global customers are customers who issue requests for quotation ("RFQs") for multiple routes on a global basis, and subsequently enter into contracts with the freight forwarders who win the tenders to provide their services for the routes specified in the RFQs for a certain period.[97] Service agreements that follow from

[90] Answer to Question 14 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 13 November 2013.
[91] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.
[92] Answer to Question 16 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 13 November 2013; and Answer to Question 20 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.
[93] Answer to Question 14 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 13 November 2013.
[94] Notes of Meeting – Meeting with Vantec on 5 March 2012, paragraphs 15 to 29.
[95] Notes of Meeting – Meeting with Vantec on 5 March 2012, paragraph 18.
[96] For example: information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 14; and information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 4.1. where it is stated that Yamato Asia categorises its customers into "contractual customers" and "one-off customers".
[97] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 14; and information provided by NES dated 25 February 2013 pursuant to the 63 Notice issued by CCS dated 12 December 2012, paragraph 5.2.

an RFQ are normally for durations of at least one year.[98] Often, such customers are viewed as "key accounts" for freight forwarders. Such contracts may include an option for renewal or an option for renegotiation.

45. Regular customers are customers who make regular shipments in one or more sectors,[99] such as Asia Pacific to Africa. These customers may have long term contracts with freight forwarders[100] but not on the scale of a global customer where a large multiplicity of routes and countries are involved. *Ad hoc* customers are customers who either ship on an *ad hoc* basis, or do not have long term contracts with freight forwarders. Freight forwarders typically provide quotations valid on a per shipment basis to these customers. In some instances, a freight forwarder may provide the customer with a quotation which is valid until a new quotation is provided. Often, such customers are local customers.[101]

Prepaid and collect shipments

46. Freight forwarding services are typically procured and paid for at the point of origin or at the point of destination. Freight charges that are paid at the point of origin are known as "prepaid shipments" and those that are paid at the destination point are known as "collect shipments". The shipper is the party who sends the goods and the consignee is the party who receives the goods. The shipper and the consignee allocate between themselves payment for different parts of the freight charges, for example, which party is to pay for the freight charges in which country and which party is to pay for the taxes and insurance. Such arrangements are normally set out in the incoterms found in the contracts between the shippers and the consignees.[102] Global customers would be charged as per the amounts set out in their contracts.

Prepaid shipments

47. Quotations are typically provided by the originating office to the customers for prepaid shipments.[103] One of the reasons for this is because for prepaid shipments, the party who is paying is typically located near the originating office. It is unusual for a shipper to contact the destination office for quotations for prepaid shipments. Prepaid shipments are usually booked in the accounts of the originating office.

[98] [✂]; and [✂].
[99] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 14.
[100] Notes of Meeting - Meeting with K Line on 7 March 2012, paragraph 16.
[101] [✂].
[102] Notes of Meeting - Meeting with Vantec on 5 March 2012, paragraph 7.
[103] For example: Answer to Question 15 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

Collect shipments

48. Quotations for collect shipments may be issued by the originating office or the destination office. When these quotations are issued by the originating office, the destination office will collect the amount as set out on the HAWB, which would typically be set out in the invoices to customers.[104]

49. For collect shipments quoted by the destination office, the destination office may obtain a quotation for a customer's shipment from the originating office, especially where there are fees and surcharges incurred at the origin point.[105] The destination office may mark-up the amount to be charged to the customers. The mark-up is normally on freight rates and not the surcharges.[106]

CCS's investigation

50. CCS's investigation concerns the conduct of the Parties regarding the following fees and surcharges: the Japanese Security Surcharge ("JSS"), the Japanese Explosives Examination Fee ("JEEF") (together the "Security Charges") and the Japanese Fuel Surcharge ("JFS"). These fees and surcharges are associated with the air shipment of freight (both on a prepaid and collect basis) from Japan to Singapore.

51. CCS is aware that the fees and surcharges investigated by CCS have also been investigated by the Japan Fair Trade Commission ("JFTC")[107] and the US Department of Justice ("US DOJ")[108].

C. Investigation and Proceedings

52. In 2011, CCS became aware that international freight forwarders may have been involved in anti-competitive activity that had an impact in Singapore; and as a consequence, made inquiries with freight forwarders in this regard. On 21 December 2011, DGF, represented by Allen & Gledhill LLP, applied for a marker for immunity under paragraph 2 of the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel*

[104] Answer to Question 55 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 26 July 2013.
[105] For example: Answer to Question 15 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[106] [✂].
[107] *Cease-and-Desist-Order and Surcharge Payment Order against Freight Forwarders*, JFTC, March 18/2009; and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's letter dated 19 June 2013, Annexure 9 - 2009 Case No.5 (so) Cease-and-Desist-Order.
[108] *Six Japanese freight forwarding companies agree to plead guilty to criminal price-fixing charges*, the US DOJ, Office of Public Affairs, 28 September 2011; *Japanese freight forwarding company agrees to plead guilty to criminal price-fixing charges*, the US DOJ, Office of Public Affairs, 30 September 2011; *Japanese freight forwarder agrees to plead guilty to criminal price-fixing charges*, the US DOJ, Office of Public Affairs, 19 September 2012; and *Two Japanese freight forwarding companies agree to plead guilty to criminal price-fixing charges*, the US DOJ, Office of Public Affairs, 8 March 2013.

Activity 2009 ("*CCS Leniency Guidelines*"), relating to anti-competitive agreements among certain freight forwarders regarding the direct or indirect fixing of prices and/or other trading conditions for fees and surcharges related to the supply of freight forwarding services from Japan to Singapore. DGF was granted a marker for leniency on the same day.

53. CCS received from the Parties responses to its inquiries regarding freight forwarding services between 30 December 2011 and 13 February 2012. CCS also had meetings with Nippon Express on 7 February 2012, Yusen on 10 February 2012, Hankyu Hanshin on 13 February 2012, Nissin on 13 February 2012, MLG on 27 February 2012, Vantec on 5 March 2012 and K Line on 7 March 2012. Subsequent to its meeting with CCS, Yusen provided further information to CCS on 29 February 2012.

54. WongPartnership LLP applied for a marker for lenient treatment on behalf of their clients, NNR Japan, under paragraph 4 of the *CCS Leniency Guidelines* on 5 April 2012, and received a marker in the leniency queue on the same day.

55. On 11 July 2012, CCS commenced an investigation under the Act. CCS found that there were reasonable grounds for suspecting that the Parties had entered into anti-competitive agreements and/or had engaged in concerted practices in respect of the direct or indirect fixing of prices and other trading conditions related to the JSS, the JEEF and the JFS in their respective provision of air freight forwarding services from Japan to Singapore, infringing the prohibition under section 34 of the Act.

56. CCS sent out requests for information under section 63 of the Act on 12 December 2012 to Hankyu Hanshin, K Line, KWE, MLG, Nippon Express, Nissin, Vantec, Yamato and Yusen. Responses from these Parties were received between 16 January 2013 and 25 March 2013. While CCS had evidence that other undertakings were likewise involved in discussions concerning the JSS, the JEEF and the JFS, CCS's investigation focussed on those undertakings which were the key participants involved in the above mentioned discussions and which had a significant presence in Singapore. CCS also considered the role of Japan Aircargo Forwarders Association ("JAFA"). Given that JAFA did not play a significant role in the operation or administration of the agreement (for example, by monitoring compliance with the agreement), CCS did not include JAFA as a party to the investigation.

57. On 15 February 2013, Vantec, represented by Herbert Smith Freehills LLP, applied for a marker in the queue for leniency under paragraph 4 of the *CCS Leniency Guidelines*. A letter confirming Vantec's marker, and requesting further information from Vantec was sent on 2 May 2013. Responses from Vantec were received between 15 May 2013 and 3 July 2013.

58. KWE, represented by Mr. David Ong of David Ong & Partners, applied for a marker for lenient treatment under paragraph 4 of the *CCS Leniency Guidelines* on 5 March 2013. A letter both confirming KWE's marker, and requesting further information and clarification on the previous responses which KWE provided, was sent to KWE on 22 April 2013. KWE's responses to this letter were received between 31 May 2013 and 10 July 2013.

59. Mr. Fan Kin Ning of David Ong & Partners applied for a marker for lenient treatment under paragraph 4 of the *CCS Leniency Guidelines* on behalf of Hankyu Hanshin on 15 May 2013. A letter both confirming their place in the leniency queue and requesting further information was sent to Hankyu Hanshin on 19 June 2013. CCS received Hankyu Hanshin's response on 10 July 2013. As a follow-up from Hankyu Hanshin's response, CCS sent Hankyu Hanshin another letter to request for further information and clarifications on 10 September 2013. Hankyu Hanshin's response was received on 23 October 2013.

60. Letters requesting further information and clarifications following from the information received from the section 63 notices were sent to K Line, MLG, Nippon Express, Nissin, Yamato and Yusen between 19 June 2013 and 9 September 2013. CCS received responses from these Parties between 10 July 2013 and 21 October 2013.

61. In the course of the investigation, CCS identified and sought to interview key individuals involved in the fixing of prices and other trading conditions for fees and surcharges related to the provision of freight forwarding services from Japan to Singapore, as well as key individuals in these entities who could explain the structure and business of the companies. CCS requested interviews with individuals from both the Japanese and Singapore companies of the Parties. CCS carried out 27 interviews with relevant personnel of the Parties as set out in **Annex A**.

62. CCS sent further section 63 notices to each Party between 18 October 2013 and 23 October 2013 requesting documents and information related to each Party's turnover for the past financial years. CCS received responses from each of the Parties between 24 October 2013 and 13 February 2014 to its section 63 notices and requests for follow-up information.

63. On 1 April 2014, CCS sent each of the different companies of the Parties, notice of its proposed infringement decision ("PID"). The documents in CCS's file were made available for the Parties to inspect from 1 April 2014. Written representations on the PID were received from a number of the Parties from 21 May 2014 to 23 May 2014.[109] None of the Parties requested to make oral representations.

[109] Written Representations of DGF in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of DGF") dated 23 May 2014; Written Representations of Hankyu Hanshin in

64. Many of the original documents containing contemporaneous records that CCS relies on for the purpose of this infringement decision ("ID") are in Japanese. During the course of the investigation, the Parties provided CCS with translations of the documents in English. CCS relies on the English translations provided by the Parties for the purpose of this ID and where CCS quotes from those documents, the quotations are from the translations in English.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

65. This section sets out the legal and economic framework in which CCS has considered the information and evidence it has received during the course of its investigation.

A. The Section 34 Prohibition

66. 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; …*".

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response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of Hankyu Hanshin") dated 22 May 2014; Written Representations of K Line in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of K Line") dated 23 May 2014; Written Representations of KWE in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of KWE") dated 21 May 2014; Written Representations of MLG in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of MLG") dated 23 May 2014; Written Representations of NES in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of NES") dated 23 May 2014; Written Representations of NEJ in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of NEJ") dated 23 May 2014; Written Representations of NNR in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of NNR") dated 23 May 2014; Written Representations of Nissin in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of Nissin") dated 23 May 2014; Written Representations of Vantec in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of Vantec") dated 22 May 2014; Written Representations of Yamato Asia in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of Yamato") dated 23 May 2014; Written Representations of Yusen Japan in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of Yusen Japan") dated 23 May 2014; and Written Representations of Yusen Singapore in response to the Proposed Infringement Decision issued on 1 April 2014 ("Written Representations of Yusen Singapore") dated 23 May 2014.

67. The section 34 prohibition applies notwithstanding that an agreement has been entered into outside Singapore or that any party to such agreement is outside Singapore. Section 33(1) of the Act states:

> "*Notwithstanding that*
> *(a) an agreement referred to in section 34 has been entered into outside Singapore;*
> *(b) any party to such agreement is outside Singapore;*
> *...; or*
> *(g) any other matter, practice or action arising out of such agreement, ... is outside Singapore,*
>
> *this Part shall apply to such party, agreement, abuse of dominant position, anticipated merger or merger if —*
>
> *(i) such agreement infringes or has infringed the section 34 prohibition; ...*".

B. Application to Undertakings

68. 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*". Each of the Parties carries on commercial or economic activities related to air freight forwarding services.

69. To identify the entity whose conduct is to be assessed, an assessment may be required as to whether two or more undertakings constitute a single economic entity ("SEE"). Should a SEE exist, it can be used to exclude agreements between the undertakings within the SEE from the purview of section 34. It can also be used to render one undertaking liable for the anti-competitive conduct of another undertaking within the SEE. This section sets out in brief the legal framework for the application of the doctrine of a SEE followed by how liability can be attributed in the context of a SEE and how liability can be attributed in the context of succession.

When Two or More Persons Form Part of the Same Undertaking/Economic Unit

70. The concept of an "undertaking" covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.[110] The *CCS Guidelines on the Section 34 Prohibition* states that two entities – a parent

[110] Case C-41/90 *Hofner and Elser v Macrotron* [1991] ECR I-1979, at [21]. Also see in particular, Cases C-189/02 P etc. *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 *Akzo Nobel v Commission of the European Communities* [2009] 5 CMLR 2633, at [54].

and its subsidiary company or two companies which are under the control of a third company, form a 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.[111]

71. The courts of the European Union ("EU") have recognised that while companies belonging to the same group may have distinct and separate natural or legal entities, 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.[112]

72. Undertakings have been 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*".[113] 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.[114]

73. The law on SEE has been neatly summarised in the Competition Appeal Board ("CAB") decision in an appeal from the *Express Bus Operators Appeal No.3*[115]:

> "*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, will not be agreements between undertakings 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])*".

[111] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.7.
[112] 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].
[113] 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].
[114] Case COMP/39188 – *Bananas*, at [361].
[115] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2, at [67].

74. In the *Akzo Nobel* case referenced by the CAB in *Express Bus Operators Appeal No.3* above, the European Court of Justice ("ECJ")[116] 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).*
>
> *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.*" [Emphasis added]

75. It follows that EU competition case law recognises that different entities belonging to the same group can form an economic unit and therefore an undertaking within the meaning of Articles 101 and Article 102 if the entities concerned do not determine independently their own conduct on the market.

76. This was applied, for example, in *Viho Europe BV v Commission*[117], where the ECJ confirmed that the European Commission ("EC") had been correct to reject a complaint that Parker's distribution agreements concluded with its 100% owned subsidiaries infringed Article 101. Parker controlled the sales, advertising and marketing policy of its subsidiaries which had no real autonomy to determine their course of action and thus formed a "single economic entity" with them.

[116] 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.
[117] Case C-73/95 P, [1996] ECR I-5457.

77. When assessing whether entities form a SEE, EU courts have taken into account whether there has been unitary conduct on the market by the companies concerned. In *Imperial Chemicals Industries Ltd ("ICI") v Commission (Dyestuffs)*[118], the ECJ held that the actions of the ICI subsidiary could be attributed to the ICI parent. The Court found that by providing instructions to increase prices to its subsidiary in Belgium, ICI, registered in the United Kingdom (which was then not part of the EU), used its subsidiary to implement its decision in the common market infringing competition law in the EU. The Court hence rejected ICI's argument that the EC was not empowered to impose fines on it in respect of actions taken outside the EU. The ECJ found that ICI's subsidiary did not enjoy real autonomy in determining its course of action in the market.[119] The ECJ stated "*In these circumstances, the formal separation between these companies, arising from their distinct legal personality, cannot, for the purposes of application of the competition rules, prevail against the* ***unity of their behaviour on the market***". [Emphasis added][120]

78. It is settled EU case law that the anti-competitive conduct of an undertaking can be attributed to another undertaking, where it has not decided independently upon its own conduct on the market but "*carried out, in all material respects, the instructions given to it by that other undertaking, having regard in particular to the economic and legal links between them*".[121]

79. In *J R Geigy v Commission*[122], the parent company located outside of the EU argued that the infringing conduct should be imputed solely to itself and not to its subsidiaries who were located within the EU. The parent company sought to avoid liability by arguing that the EC was not empowered to impose fines on it for anti-competitive actions which it alleged took place outside the EU. In rejecting this argument, the ECJ held that the subsidiaries were bound to follow the parent's instructions as to what price to charge. The ECJ stated that:

80. "*The fact that a subsidiary has a separate legal personality is not sufficient to exclude the possibility of imputing its conduct to the parent company.* ***Such may be the case in particular where the subsidiary, although having a separate legal personality, 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… In view of the unity of the group thus formed, the actions of the subsidiaries may in certain circumstances be attributed to the parent company***". [Emphasis added][123]In *HFB v Commission*[124], the EC

[118] Cases 48, 49, 51-7/69, [1972] ECR 619.
[119] Cases 48, 49, 51-7/69 *Imperial Chemicals Industries Ltd v Commission* [1972] CMLR 557, at [125] to [146].
[120] Cases 48, 49, 51-7/69 *Imperial Chemicals Industries Ltd v Commission* [1972] CMLR 557, at [140].
[121] Case T-314/01*Avebe BA v Commission of the European Communities* [2006] ECR II-3085 [2007] 4 CMLR 1, at [135], Case C-294/98 P *Metsä Serla and Others* v *Commission* [2000] ECR I-10065, at [27] , 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 Rorindustri and others v European Commission* [2005] ECR. I-5425, at [117].
[122] [1972] ECR 787.
[123] Case 52/69 *J R Geigy AG v Commission* [1972] ECR 787, at [44].

regarded the distribution companies Henss Berlin and Henss Rosenheim (now Isoplus Rosenheim) and the production companies Isoplus Hohenberg and Isoplus Sondershausen, as a single undertaking, the Henss/Isoplus group. Each of the companies had separate legal personalities, different Managing Directors, and were not part of a common holding company. However, at cartel meetings the Henss/Isoplus group was represented by a single representative, Mr. Henss; and Mr. Henss, through a trustee, had majority control of the Isoplus group. The CFI, whose finding was upheld on appeal, found that the Henss and Isoplus companies were a SEE on the basis that the group of companies conducted themselves as a SEE, were under the single control of Mr. Henss and pursued a common long-term economic aim.[125]

81. The key question is whether a person or persons constitute a "single economic unit" having regard to the economic, organisational and legal links between them. When assessing whether a parent and its subsidiary or two undertakings form a SEE, an assessment must be made as to whether the subsidiary or undertakings independently decide upon their own conduct on the market.

82. In this regard, EU competition law presumes that where a parent company has a 100% shareholding in a subsidiary, whether held directly or indirectly, that the parent and subsidiary are a single economic unit unless otherwise rebutted, see *Akzo Nobel*[126]. The ECJ in *Akzo Nobel* stated at [65], 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*".

83. A SEE can also exist where the majority shareholding falls short of 100%. For example, in *Commercial Solvents*[127], the parent 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 both companies were a SEE on account of the parent company's power of control over the subsidiary.[128]

84. 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 a SEE. Indicia of decisive influence include the

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[124] [2002] ECR II-1487, [2001] 4 CMLR 1066.
[125] Case T-9/99 etc *HFB Holding v Commission* [2002] ECR II-1487, [2001] 4 CMLR 1066, at [61].
[126] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237. See also Case C-90/09P *General Quimica and Others v Commission* [2011] ECR I-1.
[127] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 0223.
[128] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 0223, at [41].

parent's shareholding in the subsidiary[129], a parent being active on the same or adjacent markets to its subsidiary[130], direct instructions being given by a parent to a subsidiary[131] or the two entities having shared directors[132].

85. 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*"[133]. This reflects the opinion of Advocate General Kokott in *Akzo Nobel* at [87] to [94] which was expressly affirmed by the ECJ.[134] At [91], the Advocate General states:

> "*91. A parent company may exercise decisive influence over its subsidiaries even when it does not make use of any actual rights of co-determination and refrains from giving any specific instructions or guidelines on individual elements of commercial policy. Thus, a single commercial policy within a group may also be inferred indirectly from the totality of the economic and legal links between the parent company and its subsidiaries. Conversely, the absence of such a single commercial policy as between a parent company and its subsidiary can be established only on the basis of an assessment of the totality of all the economic and legal links existing between them*".

86. In *Durkan Holdings Limited and others v the Office of Fair Trading* ("the Durkan case")[135], the UK CAT held that:

> "*It is not necessary to show that any influence was actually exercised as regards the infringement in question: one must look generally at the relationship between the two entities…The factors to which the court may have regard, when considering the issue of decisive influence, are not limited to commercial conduct but cover a wide range as described by the Advocate General and the General Court [in Akzo]*".

87. Competition law also treats undertakings in a principal-agent relationship as a single economic unit. The CAB in the *Express Bus Operators Appeal No. 3*[136]

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[129] 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].

[130] Opinion of Advocate-General Mischo in Case C-286/98 *P Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, at [49].

[131] Case T-48/69 *ICI Limited v Commission* [1972] ECR I-0619, 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].

[132] *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, at [77] to [80].

[133] *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.

[134] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237 at [73].

[135] *Durkan Holdings Ltd v Office of Fair Trading* [2011] CAT 6, at [22].

accepted the parties' arguments based on *Minoan Lines*[137] that they are a single economic unit 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.

88. The existence of an agency relationship, may also support or corroborate a finding that there are economic and legal links between legal entities. In *ISG Pearce Limited v Office of Fair Trading*[138], the UK Competition Appeal Tribunal ("UK CAT") concluded that it was appropriate for the Office of Fair Trading ("OFT") to take account of the existence and consequences of the agency agreement when addressing the decision to Pearce as well as Pearce's intermediate parent company, ISG Pearce.[139]

Attribution of Liability

89. 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.[140]

90. As set out in paragraphs above, a SEE exists where two separate legal entities enjoy no economic independence having regard, *inter alia*, to the economic, organisational and legal links between them. Where a SEE infringes competition law, liability for any infringement can be attributed to the SEE as a whole.[141]

91. In *AKZO*[142], the EC addressed the statement of objections to AKZO Chemie instead of limiting it only to its United Kingdom subsidiary, despite the fact that the complainant had complained of the conduct of the UK subsidiary. In explaining the attribution of liability to the parent company, the EC stated at [90] of its decision that:

> "*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*

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[136] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2, at [68] and [69].
[137] Case T-66/99 *Minoan Lines v Commission* ECR II 5515 [2005] 5 CMLR 7597.
[138] [2011] CAT 10.
[139] [2011] CAT 10, at [26], [27], [33] and [36].
[140] 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 *ETI and Others* [2007] ECR I-10893, at [39].
[141] 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].
[142] EC Decision 85/609/EEC of 14 December 1985.

> *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*".

92. In light of the foregoing, the EC identified AKZO Chemie (including its subsidiary companies), being the economic unit in which the activities of the AKZO group in specialty chemicals are organised, as the appropriate addressee of its decision. This finding of the EC was not contested by AKZO Chemie in the subsequent appeal before the ECJ.

93. In parent-subsidiary relationships, liability can also be imputed to the parent company even where the parent company does not participate directly in the infringement.[143] 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 have held that where a presumption of a SEE arises or where the parent exercises "decisive influence" over the subsidiary, a parent can be liable for the actions of its subsidiaries.

94. The ECJ in *Akzo Nobel*[144] stated, at [77]:

> "***If the parent company is part of that economic unit, which…may consist of several legal persons, the parent company is regarded as jointly and severally liable with the other legal persons making up that unit for infringements of competition law****. Even if the parent company does not participate directly in the infringement, it exercises, in such a case, a decisive influence over the subsidiaries which have participated in it*". [Emphasis added]

95. In view of the above, it is open for CCS to find that two or more undertakings be considered a single economic unit in light of the economic, legal and organisational links between them in relation to their activities which relate to a finding of infringement. Further 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.

96. A SEE may arise where a subsidiary is wholly-owned or effectively controlled by the parent company or where other factors exist that evidence the parent exercises decisive influence over the subsidiary or the entities form a single economic unit.

97. Ultimately, whether or not the entities form a single economic unit will depend on the facts and circumstances of each case. This is reflected in paragraph 2.8 of the *CCS Guidelines on the Section 34 Prohibition* which states that some of the

[143] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [58].
[144] Case C-97/08 *Akzo Nobel NV v Commission* [2009] ECR I-08237.

factors that may be considered in assessing whether a subsidiary is independent of or forms part of the same economic unit with the parent include[145]:

- the parent's shareholding in the subsidiary;
- whether the parent has control of the board of directors of the subsidiary; and
- whether the subsidiary complies with the directions of the parent on critical matters such as sales and marketing activities and investment matters.

98. The characterisation of each of the Parties as a SEE is discussed in the Decision of Infringement section below.

Succession

99. Liability for an infringement cannot be avoided simply by reason that the original legal entity 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 into which it may have merged.[146] The ECJ has confirmed that restructurings, sales or other legal or organisational changes will not allow any liability for competition law infringements to be evaded. In *Autorita Garante della Concorrenza e del Mercato*[147], 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*".

[145] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.8 which is cross-referenced in paragraph 2.6 of *CCS Guidelines on the Section 47 Prohibition*.
[146] Commission decision in PVC, OJ L74, 17 March 1989, pages 1 to 20; and Joined Cases C-40/73 and others *Suiker Unie v Commission* [1975] ECR 1663, at [75] to [87].
[147] 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].

100. In the case of certain Parties, the natural or legal person who engaged in the conduct investigated has been through organisational changes, such as mergers and name rebranding. CCS is of the view, however, that this would not absolve the relevant Parties of liability and their economic successors would be liable for any infringement. This is discussed in the Decision of Infringement section below.

C. Agreements and/or Concerted Practices

Agreements

101. 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.[148] 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*".[149]

Concerted Practices

102. 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 substitutes for the risks of competition, practical cooperation between them*".[150]

103. As CCS stated in the *Pest Control Case*[151], and subsequently in the *Express Bus Operators Case*[152] and the *Electrical Works Case*[153]:

> "*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*".

104. This principle was set out in the decision of the ECJ in the case of *Cooperatiëve Vereniging Suiker Unie v Commission*[154], where it was held that that any direct or

[148] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.10.
[149] Case T-7/89 *SA Hercules Chemicals v Commission* [1991] ECR II-1711, at [2].
[150] 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.
[151] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [42].
[152] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [50].
[153] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [40].

indirect contact between competitors, the object or effect whereof 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 themselves have decided to adopt or contemplate adopting on the market is strictly precluded.

105. In *Commission v Anic Partecipazioni*[155], the ECJ re-affirmed what it had held in *Suiker Unie.* The ECJ found that the EC was correct in its decision that Anic had participated in a EU-wide cartel operating in the polypropylene production sector from 1977 to 1983. In *Anic*[156], the ECJ also set out the presumption that applies to conduct that constitutes a concerted practice:

> "*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 …".*

106. In relation to the presumption set out in *Anic*, the ECJ found in *T-Mobile Netherlands v Raad van Bestuur van de Nederlandse Mededingingsautoriteit*[157] that a concertation can occur 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.*
> ...

[154] Joined Cases 40-48/73, 50/73, 54 -56/73, 111/73, 113/73 and 114/73 [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].
[155] Case C-49/92 P [1999] ECR I-4125.
[156] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [118] and [121]. See also Case C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287, at [162].
[157] Case C-8/08 [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*".[158]

Necessity to Conclude whether Conduct is an Agreement and/or Concerted Practice

107. It is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice.[159] It is established jurisprudence in the EU that the conduct of undertakings is capable of being both a concerted practice and an agreement.[160] In *SA Hercules Chemicals v Commission*[161], 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".

108. This position was endorsed and followed by CCS in the *Pest Control Case*[162], *Express Bus Operators Case*[163] and the *Electrical Works Case*[164].

109. Similarly, in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*[165], the 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*

[158] 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].
[159] *The Community v Interbrew NV and Others (re the Belgian beer cartel),* Case IV/37.614/F3 [2004] CMLR 2, at [223].
[160] *The Community v Interbrew NV and Others (re the Belgian beer cartel),* Case IV/37.614/F3 [2004] CMLR 2, at [223].
[161] Case T-7/89 [1991] ECR II-1711, at [264].
[162] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [44] to [47].
[163] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [55] to [58].
[164] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [45] to [47].
[165] [2004] CAT 17.

concerted practice: it is sufficient that the conduct in question amounts to one or the other…".

110. For the purposes of this ID, CCS has assessed whether the conduct of the Parties constitutes an agreement and/or concerted practice that has infringed the section 34 prohibition in the section entitled CCS's analysis of the evidence.

Party to an Agreement and/or Concerted Practice

111. In *Aalborg Portland AS v Commission*[166], 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 (see Case C-199/92 P Hüls v Commission [1999] ECR I-4287, paragraph 155, and Case C-49/92 P Commission v Anic [1999] ECR I-4125, paragraph 96)*".

112. The reason underlying that 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 stated in *Aalborg*[167]:

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

[166] 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 [2004] ECR I-0123, at [81].
[167] 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 A/S and Others v Commission* [2004] ECR I-0123, at [84] to [86].

> ***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 (see, to that effect, Commission v Anic, paragraph 90)*". [Emphasis added]

113. Likewise, in *Sarrio SA v Commission*[168], 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 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. Where public distancing is concerned, in *Adriatica v Commission*[169], the CFI held that:

> "*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*".

114. In this respect, CCS notes that the 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 approval of that unlawful initiative.

115. The mere fact that a party 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.[170] Active steps should be taken by the recipient of the information to distance itself from the conduct.

116. In *Tréfileurope Sales SARL v Commission*[171], Tréfileurope argued that it was offered a quota of 1300 tonnes a month at a meeting on 20 October 1981 but did

[168] C-291/98P [2000] ECR I-9991, at [50].
[169] Case T-61/99 [2003] ECR II-5349, at [135].
[170] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.11.
[171] Case T-141/89 [1995] ECR II-791.

not accept it. In respect of the Benelux market, Tréfileurope admitted 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.

117. The CFI considered that the notes of the meeting on 20 October 1981 indicated that Tréfileurope's representative did not display opposition to the principle of market sharing and made express reference to the latest arrangements and its share. The Court concluded that Tréfileurope had participated in agreements whose object was to fix prices and quotas on the French market and was not exculpated by the fact that it did not respect the prices and quotas.[172] The Court also found that Tréfileurope took an active part in the meetings in respect of the Benelux market. It was always regarded as a habitual participant in the meetings and was perceived by its partners as an undertaking whose opinion should be ascertained in order to establish a common position. In addition, it had chaired some meetings. The Court concluded that Tréfileurope had participated in the agreements on prices concerning the Benelux market and was of the view at [85] 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*".

118. Similarly, a participant who "cheats" by attempting to gain market share at the expense of other members through acting differently from the cartel's agreed line is not absolved. In *Re Polypropylene*[173], 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.

119. In the *Pest Control Case*[174], 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, CCS found:

[172] Case T-141/89 [1995] ECR II-791, at [60].
[173] Case 86/398 OJ 1986 L 230/1, at [85].
[174] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1.

> "*…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*".[175]

120. Further, CCS is of the view that the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice. Liability can be attributed even where a party is a mere recipient of the information, unless the party distances itself from the unlawful initiative.

121. In *Cimenteries v Commission*[176], 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]*". [Emphasis added][177]

122. Likewise in *Tate & Lyle plc v Commission*[178], a case which concerned a series of meetings between British Sugar and its competitors, Tate & Lyle and Napier Brown, the CFI held that the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice. The CFI stated:

> "*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*

[175] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [120] to [128].
[176] Case T-25/95 [2000] ECR II-491.
[177] Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491, at [1852].
[178] 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*).

> *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***". [Emphasis added][179]

123. In *Westfalen Gassen Nederland BV v Commission*[180] 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.[181] To this end the CFI held that 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.[182]

124. In summary, a competitor should not, directly or indirectly, disclose information to another competitor that could influence its future pricing behaviour. The disclosure of future pricing intentions significantly reduces, and may indeed eliminate, uncertainty as to competitors' future conduct on the market allowing 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 is that the market will not be as competitive as it might otherwise have been.[183]

D. Single Overall Infringement

125. 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.

126. In *Re Polypropylene*[184], the EC found that the producers of polypropylene were party to a whole complex of schemes, arrangements and measures decided in the

[179] Case T-202/98, T-204/98 and T-207/98 [2001] *Tate & Lyle plc v Commission* ECR II-2035, at [58].
[180] Case T-303/02 [2007] 4 CMLR 334, at [103].
[181] See the Opinion of Advocate General Mischo in Case C-291/98 P *Sarrio SA v Commission* [2000] ECR I-9991, at [45].
[182] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334, at [124].
[183] *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 pages189 to190.
[184] Case 86/398 OJ 1986 L 230/1.

framework of a system of regular meetings and continuous contact which constituted a single continuing agreement. The EC found that the producers, by subscribing to a common plan to regulate prices and supply in the polypropylene market, participated in an overall framework agreement which was manifested in a series of more detailed sub-agreements worked out from time to time. The EC stated at [83] of its decision:

> "*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***". [Emphasis added]

127. On appeal, the CFI in *Rhône-Poulenc v Commission*[185], whose judgment was confirmed by the ECJ, stated:

> "*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, which progressively manifested itself in both unlawful agreements and unlawful concerted practices*".

128. The concept of a single continuous infringement was elaborated on in the *Choline Chloride* case at both the EC[186] and CFI[187] level. Although the CFI overturned the decision of the EC, one of the EC's key arguments was preserved

[185] Case T-1/89 [1991] ECR II -867, at [125] to [126].
[186] Case COMP / E-2 / 37.533 - *Choline Chloride.*
[187] Joined Cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission of European Communities*, at [159].

– that is, 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.

129. 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 [See judgment in Commission v Anic Partecipazioni, at paragraph 83.]*." [Emphasis added][188]

130. In the appeal from the EC's decision, the CFI made clear 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, these activities must be complementary in nature and contribute towards the realisation of that common objective.[189]

131. The treatment of conduct as a single overall infringement was affirmed by the CFI, in *Hercules v Commission*[190], where the CFI reiterated that it would be

[188] Case COMP / E-2 / 37.533 - *Choline Chloride*, at [146] and [147].
[189] Joined Cases T-10l/05 and T-ll1/05 *BASF AG and UCB SA v Commission of European Communities*, at [179] to [181].
[190] Case T-7/89 [1991] ECR II-01711.

artificial to split up continuous conduct, characterised by a single purpose, by treating it as a number of separate infringements.[191]

132. In this ID, CCS considers whether the conduct of the Parties concerning the JSS and the JEEF formed part of a single overall infringement regarding measures to prevent restrict or distort price competition on surcharges related to security measures. Further, CCS considers whether the meetings of the Parties on several separate occasions in relation to the JSS and the JEEF constituted a single continuous infringement. Likewise, in respect of the JFS, CCS considers whether the lengthy contact between the Parties on separate occasions constituted a single continuous infringement.

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

133. 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, CCS considers "object" and "effect" to be alternative and not cumulative requirements.[192]

134. 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***". [Emphasis added] [193]

135. European jurisprudence has 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*[194], the CFI said:

> "*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*

[191] Case T-7/89 [1991] ECR II-01711, at [263].
[192] 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].
[193] *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [49].
[194] Case T-148/89 [1995] ECR II-1063, at [79].

> *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*".

136. 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*[195], the appellant had regularly participated in meetings where prices were fixed and sales volume targets were set. The ECJ held that the EC did not have to adduce evidence that the concerted practice had manifested itself in 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.[196] In *The Community v Interbrew NV and Others (re the Belgian beer cartel)*[197], the EC held that provided it could be shown that the aim of meetings between the infringing parties was clearly anti-competitive, there was no corresponding need to show that the consequences of the meetings were harmful to competition.

137. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*[198], 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*".

F. Appreciably Prevent, Restrict or Distort Competition

138. CCS notes that in the current case the agreements and/or concerted practices in question involve price-fixing.

139. Price-fixing agreements may involve fixing either the price itself or an element or component of a price. CCS has applied this principle in the *Express Bus Operators Case*[199], where CCS found that the agreement to impose a uniform surcharge (the fuel and insurance charge agreement), which constitutes a

[195] Case C-199/92 [1999] ECR I-4287.
[196] Case C-199/92 *P. Hüls AG v Commission* [1999] ECR I-4287, at [164] to [168].
[197] Case IV/37.614/F3 [2004] CMLR 2, at [254].
[198] [2004] CAT 24, at [357].
[199] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [77] and [78].

component of the total coach ticket price, was a "clear price-fixing agreement" because it amounted to an agreement to introduce a uniform increase in price.[200]

140. This principle was also applied in *Ferry operators – Currency surcharges*[201] and *VOTOB*[202]. *In Ferry operators – Currency surcharges*, five ferry operators had an arrangement to bring about the imposition of a common currency surcharge on freight to be transported on United Kingdom-Continent routes following the devaluation of the pound sterling in September 1992. Identical surcharges were announced, with a common introduction date and common method of calculation. 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.[203]

141. In the case of *VOTOB*, an association of six undertakings offering tank storage facilities in Amsterdam, Dordrecht and Rotterdam decided to increase prices charged to their customers by a uniform, fixed amount. This uniform "environmental charge" was to cover the costs of investment required to reduce vapour emissions from members' storage tanks. The EC took objection to the charge as being incompatible with Article 101 (then Article 85) for the following reasons:

> *"181 When a price or an element of it is fixed, competition on that price element is excluded. By fixing the charge and thus a source of recovery members have less incentive to make investments as cheaply and efficiently as possible. This has a knock-on effect on the market for undertakings providing reconstruction and improvement services. There will be less incentive for members to contract with those undertakings which can achieve the best results for the least expenditure or effort.*
>
> *182 Uniform adoption of the charge ignores differences in each individual member's circumstances……members employ different techniques to reduce emissions, and do not expend investment costs simultaneously. The charge ignores this. In addition, all VOTOB members retain the proceeds of the charge individually.*
>
> *183 The Commission maintains that had there been no horizontal fixing of this particular cost element, individual members could have calculated the cost of necessary investment, decided whether to meet it from their own profit or to pass it on to*

[200] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [294].
[201] Commission Decision (97/84/EC), OJ [1997] L 26/23.
[202] *Report on Competition Policy 1992* (Vol XXII), at [177] to [186].
[203] Commission Decision (97/84/EC), OJ [1997] L 26/23, at [59] and [65].

> *their customers, and, if they decided to pass it on to their customers, determined by how much to increase their prices. This would have been done by the companies independently, having regard to prevailing market conditions and according to their own competitive position*". [204]

142. CCS regards direct or indirect price-fixing to be, by their very nature, restrictive of competition to an appreciable extent.[205] In the *Express Bus Operators Appeals Nos. 1 and 2*[206], 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.

Disclosure and/or Exchange of Price Information

143. The disclosure and/or exchange of price information may serve to reinforce a single overall agreement or concerted practice. For example, the CFI in *Cimenteries*[207] 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 v Office of Fair Trading*[208], the UK CAT held that:

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

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

[204] *Report on Competition Policy 1992* (Vol XXII), at [177] to [186].
[205] *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.2.
[206] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [143].
[207] Joined Case T-25/95 etc *Cimenteries CBR SA v Commission* ECRII-491, at [4027], [4060], [4109] and [4112].
[208] [2004] CAT 17, at [873].

coordination of the parties' conduct on the market.[209] Furthermore, and as the UK CAT confirmed in *JJB Sports plc v Office of Fair Trading*[210], 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 price information can restrict competition by object and can serve to reinforce a single overall agreement and/or concerted practice.

G. Burden and Standard of Proof

147. CCS has 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, that decisions by CCS follow an administrative procedure, and that 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.

148. This was also the standard of proof that was applied by the CAB in deciding the merits of the appeal in the *Express Bus Operators Appeals Nos. 1 and 2*.[211] 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. The question is whether on the evidence the CCS has discharged this burden of proof*".

149. In this regard, CCS notes that in *Westfalen Gassen Nederland BV v Commission*[212], the CFI was of the view that given the clandestine nature of cartels, where little or nothing may be committed in writing, every piece of evidence, even wholly circumstantial evidence, depending on the particular context and the particular circumstances, may be sufficient to meet the required standard. This position was set out earlier in *Aalborg Portland v Commission*[213] where the ECJ stated:

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[209] 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 unamended.

[210] [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].

[211] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [85].

[212] Case T-303/02 [2007] 4 CMLR 334, at [106] to [107].

[213] Cases C-204/00 P etc [2004] ECR I-0123, at [55] to [57]. 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*".

150. In *JJB Sports plc and Allsports Limited v Office of Fair Trading*[214], the UK CAT 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]"*. [Emphasis added]

151. CCS is of the view that infringements of the Act have occurred as set out in the Decision of Infringement section below. The evidence that CCS relies on in support of its decision against the Parties is set out in section I of Chapter 2 below.

H. The Relevant Market

152. Typically, market definition when applied to the context of the section 34 prohibition serves two purposes. First, it usually 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.[215] 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.[216]

153. 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

[214] [2004] CAT 17, at [206].
[215] *CCS Guidelines on Market Definition*, paragraphs 1.6 and 1.7.
[216] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.1.

present investigation concerns agreements and/or concerted practices that involve 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.[217] However, market definition is relevant for the second purpose of assessing the appropriate amount of penalties.

154. In this regard, CCS in the *Pest Control Case*[218] adopted the position taken by the UK CAT in *Argos Limited & Littlewoods Limited v Office of Fair Trading*[219] 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.*
>
> *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*".[220]

155. CCS is of the view that the above position similarly applies in the present case. As stated in paragraph 46 above, freight forwarding services are typically procured and paid for at the point of origin or at the point of destination. For the purposes of this investigation, CCS considers the provision of air freight forwarding services for shipments from Japan to Singapore to be the focal product. As the main purpose of market definition in this case is for the calculation of penalties, CCS is of the view that there is no need to consider any substitute to the focal product or lack thereof, as any such substitute would not contribute to the relevant turnovers of the parties. Therefore, CCS has taken a narrow definition of the market based solely on the focal product of the infringements as the relevant market.

[217] *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.2.
[218] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [67].
[219] [2005] CAT 13.
[220] *Argos Limited & Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [178] and [179].

I. Evidence relating to the Agreement and/or Concerted Practice, CCS's Analysis of the Evidence and CCS's Conclusion on the Infringement

156. This section is divided between conduct relating to the JSS and the JEEF, and conduct relating to the JFS.

157. The structure for the JSS/JEEF section and the JFS section is as follows:
    (i) background;
    (ii) a description of the Parties' conduct outlining the facts and evidence collected in CCS's investigation;
    (iii) the impact of the Parties' conduct on competition within Singapore; and
    (iv) CCS's analysis of the evidence and its conclusions on whether an infringement has occurred in the relevant market.

(I) Japanese Security Surcharge and Japanese Explosives Examination Fee

(i) Background

158. As part of a new cargo security regime, the Japanese Ministry of Land, Infrastructure and Transport ("MLIT") decided to introduce tightened security measures from 1 April 2006. Under this new system, all cargo was subject to a security inspection. Additionally, cargo was required to undergo an explosive inspection, if the cargo was from "unknown shippers".[221] "Known shippers" are shippers who had submitted an air shipment security declaration to a regulated agent. Freight forwarders that met certain security standards were recognised as "regulated agents". Only air cargo identified as being 'secured' would be loaded onto passenger aircraft.

159. The new security measures introduced by MLIT were based on new security rules introduced by the International Civil Aviation Organisation and in particular Annex 17 to the Convention on Internal Civil Aviation ("Chicago Convention").[222] Each of the Parties, over time, obtained the status of a "regulated agent".[223]

[221] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(i); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(d).
[222] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(d).
[223] Information provided by Hankyu Hanshin on 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure 5.

(ii) Conduct of the Parties in Japan

Summary

160. Following the announcement of changes to security requirements by MLIT in 2005, the Parties discussed charging customers the costs of the required security measures at JAFA meetings.

161. The JAFA, during the period of 2001 to 2007 ("the relevant period"), was a representative body of freight forwarders in Japan. It comprised, at its top level, a Board of Directors. Reporting to the Board of Directors were the International Division, the Domestic Division, the General Affairs Division, the Customs Clearance Division and the International Air Express Division.[224] During the relevant period, members of the International Division met in an unofficial body referred to as the Executive Board of International Committee ("EBIC").[225] There also existed a number of other sub-committees of JAFA. The differing types of JAFA meetings, such as the EBIC, Transport Sub-committee, and Export Operations Sub-committee, are described as "JAFA meetings" in this ID.

162. There were 13 members in the EBIC during the period 2001 to 2007 which comprised the Parties and United Aircargo Consolidators, Inc.[226]

163. The JSS and the JEEF, in particular, were discussed at EBIC meetings and at meetings of the Transport Sub-committee and Export Operations Sub-committee. The "major company members" involved in the Transport Sub-committee at least between 2002 and 2006 included Nippon Express, Yusen, NNR, HEX, Yamato, and K Line. There were other smaller company members which changed in the course of the period.[227] Typical attendees of the Export Operations Sub-committee meetings included HEX, HAC, K Line, KWE, Nippon Express, Nissin, Yamato and Yusen.[228]

164. Discussions at JAFA meetings regarding the JSS and the JEEF began in November 2004[229] and discussions on imposing a uniform approach to pricing these began in at least May 2005. These discussions culminated in a consensus

[224] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.1.
[225] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.1.
[226] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit I, ref E988 to E991; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012 ref E988 to E991. See also Table 2 at paragraph 167 and Table 3 at paragraph 198 below.
[227] Answer to Question 2 of [✂] (KWE) Notes of Information/Explanation provided on 27 June 2013.
[228] Answers to Questions 6 and 7 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[229] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 4 November 2004, marked D-ACPERA-000000085 to D-ACPERA-000000089 (English translation provided by DGF on 7 November 2013); and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, Minutes 4 November 2004, HH_00116 & seq Translation.

on 20 February 2006 regarding the amount freight forwarders (including the Parties) should charge for security measures required for shipments ex Japan to overseas countries such as Singapore. For the mandatory screening of all cargo, a JSS of a minimum JPY 300 was agreed; and in respect of screening air cargo by "unknown shippers", a JEEF of a minimum of JPY 1,500 was agreed. Thereafter, attendees at JAFA meetings discussed, *inter alia*, their success in implementing the JSS and the JEEF.

165. Representatives of the freight forwarders who attended these meetings held important managerial responsibilities including the determination of the pricing for their companies' shipment services overseas. Listed in the table below are the main attendees for each of the Parties at meetings where the JSS and the JEEF were discussed.

Table 1: Main Representatives at Meetings (JSS and JEEF)

Parties	Parties representatives at JAFA meetings during the relevant period
DGF	[✂]
Hankyu Hanshin	HEX [✂] HAC [✂]
K Line	[✂]
KWE	[✂]
MLG	[✂]
Nippon Express	[✂]
NNR	[✂]
Nissin	[✂]
Vantec	[✂]
Yamato	[✂]
Yusen	[✂]

166. While minutes of the JAFA meetings were not prepared and published[230], individual attendees recorded notes of what occurred at the meetings. These contemporaneous notes of meetings were circulated internally to other individuals within the attendees' companies. Internal emails and other documents, such as customer letters, sent as follow-up actions to what was decided in the JAFA meetings also evidence the nature of discussions between the freight forwarders and how the information obtained in the JAFA meetings was used by Parties.

Meetings, communications and information exchanged prior to 20 February 2006

167. Listed in the table below are the meetings prior to the meeting on 20 February 2006 that CCS is aware of where the JSS and the JEEF was discussed including the amount to charge customers.

Table 2: Meetings Prior to 20 February 2006 (JSS and JEEF)

Date of meeting	Names of undertakings
4 November 2004, JAFA Board Meeting	DGF, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Kokusai Kuyu ("Kokusai"), Nippon Courier Service ("NCS"), Overseas Courier Service ("OCS"), Pegasus, and United Air Cargo ("UAC")[231]
22 November 2004, JAFA International Committee Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[232]
12 December 2004, JAFA EBIC Meeting	Not listed[233]
28 January 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[234]
25 February 2005, JAFA	Not listed[235]

[230] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, responses to questions 16-d, 16-e, 16-g, 23, 24-d, 24-e, 24-g, 31, 32-d, 32-e, 32-g and 39.

[231] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 4 November 2004, marked D-ACPERA-000000085 to D-ACPERA-000000089 (English translation provided by DGF on 7 November 2013); and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, Minutes 4 November 2004, HH_00116 & seq Translation.

[232] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 8.2 (attendees not listed); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-3.

[233] Documents provided by DGF, Email from [✂] dated 9 November 2009, marked D-ACPERA-000000166 to D-ACPERA-000000167 (English translation provided by DGF on 7 November 2013) (attendees not listed).

[234] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-4.

International Division Meeting	
18 April 2005, JAFA International Committee Directors	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[236]
16 May 2005, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Pegasus, Seino, Seibu, TNT and UAC)[237]
19 July 2005, JAFA Board Meeting	Not listed[238]
19 September 2005, JAFA Executive Board Meeting	Not listed[239]
17 November 2005, JAFA International Committee Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, NCS, OCS, Pegasus and TNT)[240]
25 November 2005, JAFA International Committee Board	DGF, HEX, HAC, KWE, MLG, Nippon Express, NNR, Vantec, Yamato, Yusen and UAC[241]

[235] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 (attendees not listed).

[236] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to the CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00124 & seq Translation; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-5.

[237] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 16 May 2005, marked D-ACPERA-00000072 to D-ACPERA-00000074 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to the CCS RFI dated 19 June 2013, Annexure 12, document marked HH_0641 & seq. Translation (excerpt); information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Extraordinary Meeting of Board of Directors dated 8 June 2005; and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 3 (attendees not listed).

[238] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 36 (attendees not listed).

[239] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(iii) (attendees not listed).

[240] Documents provided by DGF, JAFA's Minutes of the Board Meeting for meeting on 17 November 2005, marked D-ACPERA-000000063 to D-ACPERA-000000066 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to the CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00129 & seq Translation; and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 4 (attendees not listed).

[241] Documents provided by DGF, Email from "[✂] from JAFA" dated 16 November 2005, marked D-ACPERA-0000000185 to D-ACPERA-0000000186 (English translation provided by DGF on 7 November 2013) (attendees not listed); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to the CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00663 & seq Translation (attendees not listed); and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1039.

Meeting/Transport Committee Meeting	
12 December 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[242]
19 December 2005, Email from JAFA to JAFA International Committee Members	[✂] (JAFA), DGF, HEX, HAC, Kintetsu, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others[243]
12 January 2006, Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seino, Seibu, TNT and UAC)[244]

168. Set out below in paragraphs 169 to 181 are meetings and contact between the freight forwarders which are illustrative of the nature of discussions during this period.

Meeting on 16 May 2005

169. At a JAFA meeting (EBIC meeting) on 16 May 2005, freight forwarders discussed how they expected to incur additional costs[245] in relation to the new security measures required by MLIT. The attendees considered in their

[242] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00669 & seq. Translation (excerpt) (attendees not listed); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 3 - JAFA meeting dated 12 December 2005 (no attendees listed but document reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC appear to have participated in discussions at the meetings); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 5; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex B – 12 December 2005 Minutes of the JAFA Executive Board Meeting of International Division (no attendees listed but document reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC appear to have participated in discussions at the meeting); information provided by NNR dated 2 August 2012, Exhibit 69; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-11.

[243] Documents provided by DGF, Email from "[✂] from JAFA" dated 19 December 2005, marked D-ACPERA-000000193 to D-ACPERA-000000194 (English translation provided by DGF on 7 November 2013).

[244] Documents provided by DGF, JAFA's Minutes of the Board Meeting for meeting on 12 January 2005, marked D-ACPERA-000000058 to D-ACPERA-000000061 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to the CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00137 & seq Translation; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex B – Agenda for Meeting of Directors dated 20 March 2006 (lists all attendees but does not list UAC); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 6 (attendees not listed).

[245] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(ii) and Annex C - Agenda for Extraordinary Meeting of Directors dated 8 June 2005.

discussion whether it was possible to collect these increased new costs from their customers under the name of a security surcharge.[246]

170. According to the contemporaneous notes of the meeting prepared by the representative of KWE, [✂] noted that:

> "*International Division is planning to review [the security surcharge] for collection. If this issue was left up to individual companies without established guidelines, the forwarder side would have to bear the cost in the end…we will discuss the matter in terms of the establishment of the bottom line amount, guide for customers and others*". [247]

Meeting on 25 November 2005

171. Security charges, often recorded in meeting notes as "SC", were also discussed at a JAFA meeting on 25 November 2005. This was recorded in an email circulated within DGF by its meeting representative[248] and likewise in an email circulated within HAC by one of HAC's meeting representative.[249] Further details about the meeting were given by one of KWE's meeting representatives on 26 June 2013 in his interview with CCS. [✂] confirmed in the interview, the contents of the following note he made of the 25 November 2005 meeting:

> "*...the SC meeting on November 25, 2005 was held by the working-level personnel of the member companies of the Administrators' Meeting of the International Division to deliberate on the necessity, direction, operation, date of execution and future schedule of the SC, prior to the Administrators' Meeting to be held on December 12 where presentations on the SC were planned…discussion occurred as to whether letters informing shippers of the imposition of SC charges should be prepared by respective companies, or JAFA would prepare them, and that it was possible that Known Shippers of whom no inspection for explosives was required would complain about the SC should it be imposed on all cargoes, and it was confirmed during this SC meeting that we would make sure to collect SC from shippers who were not Known Shippers, of whom explosives inspection was required we confirmed during the SC*

[246] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, Minutes 16 May 2005, HH_00641 minutes; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Extraordinary Meeting of Board of Directors dated 8 June 2005; and documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 16 May 2005, marked D-ACPERA-000000072 to D-ACPERA-000000074 (English translation provided by DGF on 7 November 2013).

[247] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 3 (attendees not listed).

[248] Documents provided by DGF, Email from JAFA dated 30 November 2005, documents marked D-ACPERA 000000189 to D-ACPERA-000000190 (English translation provided by DGF on 7 November 2013).

[249] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, Email from [✂] dated 25 November 2005, HH_00663 & seq. Translation.

meeting that we would start imposing SC on shippers starting on April 1, 2006, as the new security measures would be implemented ful1y on that day". [250]

172. Although K Line was absent from the meeting in November 2005, K Line sent an email to the JAFA Secretariat requesting that it disseminate an update regarding K Line's implementation of security measures and K Line's views on how much to charge customers for the security charges.[251]

Email on 30 November 2005

173. An email dated 30 November 2005 was circulated by the JAFA Secretariat to each member of JAFA. It included an "SC Field Survey" to be answered by each member in the form of a presentation at the next JAFA International Division Board meeting to be held on 12 December 2005. The survey asked for each member's SC policy, the status of each members' study on SC, the details of issues studied (for example, which cargo is subject to SC billing, or what type of customer will be subject to SC), the effective date of implementation of SC by each member, or the date of notification to the customers, and whether each member had any particular request for JAFA.[252]

Meeting on 12 December 2005

174. At a meeting on 12 December 2005, the Parties exchanged information regarding their responses to the new security requirements, including the fees they might charge.[253] The minutes of meeting of Nippon Express sets out the present status of the amount and planned period for implementation by Parties.[254] It was further agreed by attendees that a questionnaire regarding the security measures would be circulated and all members would submit their responses setting out their costs related to the security measures.

175. In an internal email dated 18 December 2005, a representative of HAC at the meeting reported the following had occurred at the 12 December 2005 meeting:

[250] Answer to Question 16 and Tab 3 of document marked [✂]-004 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[251] Document marked [✂]-002 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[252] Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1508. See also Answer to Question 37 of [✂] (MLG) Notes of Information/Explanation Provided on 22 October 2013.
[253] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit G, ref E1061 and Exhibit I, ref E989 to E991; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C76, E989 to E991 and E1061.
[254] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex B – 12 December 2005 Minutes of the JAFA Executive Board Meeting of International Division.

"*In relation to the SC each company reported on their present status, but no company had completely decided what to do*".[255]

176. In the summary report prepared for internal circulation within K Line, the following statement was recorded as being made by the Chairman of JAFA, at the 12 December 2005 meeting:

> "*JAFA will try to start SC as filed rate from 1 April. The secretariat of JAFA will send questionnaires to members. Please describe the cost of depreciation and the cost of subcontractor, and the reasonable price of SC to be charged to customers. And please return the answers to questionnaires by 10 January. After we total questionnaires, we will go to Ministry of Land, Infrastructure and Transport. Next meeting will be held on 20 February 14:00*".[256]

177. This statement is confirmed by the meeting minutes prepared by Yusen's meeting representative for internal circulation within Yusen[257] and likewise by the minutes prepared by KWE's meeting representative[258].

178. In the affidavit of [✂], dated 9 October 2013 ("9 October 2013 Affidavit") [✂] confirms the accuracy of the statement he made to the JFTC dated 5 June 2008 ("5 June 2008 JFTC Statement"). The 5 June 2008 JFTC Statement records that:

> "*At that meeting on December 12, 2005, initially there were reports concerning the statuses [sic] of negotiation with major shippers refusing to pay FSCs on shipper. Followingly, [sic] those companies announced in order the following matters:*
>
> *(1) Collection rate of FSCs (amount of non-collection in cases of some members); and*
>
> *(2) Rates, collection methods, etc. of the Security Charge and the Explosives Inspection Charge projected to be introduced.*
>
> …

[255] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00669 & seq. Translation (excerpt).

[256] Information provided by K Line dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 4(6); and information provided by NNR dated 2 August 2012, Exhibit 121. In the document from NNR, [✂] records: "*Chairman's statement: SC will be made a fee filed with authorities and April 1 is the target date for implementation; The secretariat will send out a questionnaire to each of the companies to be filled out; The companies are requested to enter their respective costs, including depreciation and subcontractors' fees, as well as views on what a reasonable fee should be to be charged to shippers; Answers must be received by January 10; The Ministry of Land, Infrastructure and Transport will be visited upon compilation of the questionnaire answers; The next meeting will be held on February 20 at 2:00 p.m.*"

[257] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-11.

[258] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 5.

At that meeting on December 12, 2005, in addition to Kintetsu Word Express, the other member companies likewise announced their collection rates etc. of FSCs and rates etc. of the Security Charge and the Explosive Inspection Charge to be introduced.

However, as of the day of the meeting, some member companies had not determined specific rates etc. of the Security Charge and the Explosive Inspection Charge as known from the entries under the word "SC" (Security Charge)…

After then, the 13 Companies of the Administrative Board proceeded with the steps for final determination of specific rates of the Security Charge and Explosive Inspection Charge to be imposed, including implementation of the survey of the Security Charge covering the 13 Companies by the secretariat of JAFA around December, 2005 and request by the chairman of the Administrative Board to member companies seeking implementation of deliberation of rates of Security Charge".[259]

179. A questionnaire dated 19 December 2005 was then duly circulated to freight forwarders including the Parties.[260] The deadline for freight forwarders to respond was 5.00 p.m. on Wednesday, 10 January 2006, and responses were to be provided via an email attachment or by fax. Recorded in the statement of [✂] (KWE) dated 11 July 2008 is the following:

> "*the document entitled "SC Field Survey (conducted 12/'05 - 01/'06)" represents the results of a survey reported to me via email by Deputy Secretary General* [✂] *of JAFA Secretariat, who collected the responses from the 13 member companies of the Administrators' Meeting of the International Division who were asked to respond by the Secretariat of JAFA or the Japan Aircargo Forwarders Association, by taking down the responses from working-level personnel of each company over the phone or having the respondents provide answers in the office of the JAFA Secretariat*".[261]

180. DGF also confirmed that attached to the email from the JAFA Secretariat, was a survey where freight forwarders were asked about the recovery rate of the "ISS (Insurance)/SSC (Security)", and about the "New SC --- Expected total costs of

[259] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit I, ref E989 to E991; and Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E989 to E991.
[260] Information provided by NNR dated 2 August 2012, Exhibit 117; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit J, ref E1100 to E1104; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1100 to E1104.
[261] Information provided by NNR dated 2 August 2012, Exhibit 77, pages 1 and 2; and information provided by KWE dated 24 January 2014 pursuant to CCS's RFI dated 12 December 2013, paragraph 4.

your company on April 2006". DGF likewise stated that in this email, the JAFA Secretariat requested for freight forwarders to return the completed survey by 5.00 p.m. on Wednesday, 10 January 2006 to the JAFA office by email attachment or by fax.[262]

181. CCS notes that DGF Japan responded to the survey over the phone because its representative did not think that it was appropriate to contact the JAFA in writing with regard to DGF Japan's response to the questionnaire.[263] The answer given to JAFA was reported to the Japan country manager by email.[264] In this DGF internal email dated 11 January 2006, DGF Japan's recovery rate for "Security" was recorded at more than 95%, basically USD 0.12/Kg. The email also recorded that for the total expected costs for "New Security", DGF "*replied approximately* [✂]".[265]

Meeting on 20 February 2006 ("the 20 February 2006 Meeting")

182. On 20 February, the Parties attended a JAFA meeting (EBIC meeting) where they each presented their position on the costs of complying with the new security measures. Costs related to the JSS included increasing security at their premises through measures such as training, new cameras, security screening of vehicles, and costs related to the JEEF included costs of screening cargo that applied to "unknown shippers" and costs involved in qualifying as a "regulated agent", such as security education and training.[266] Importantly the meeting also discussed the amount each freight forwarder would like to charge customers for the JSS and the JEEF given the costs they had identified.

183. The attendees of this meeting were:
    (i) [✂] of Hankyu Express International Co. Ltd.,
    (ii) [✂] of Hanshin Air Cargo Co., Ltd.,
    (iii) [✂] of Danzas Maruzen K.K.,
    (iv) [✂] of "K" Line Air Service, Ltd.,
    (v) [✂] and [✂] of Kintetsu World Express, Inc.,
    (vi) [✂] of MOL Logistics (Japan) Co., Ltd.,
    (vii) [✂] and [✂] of Nippon Express Co., Ltd.,

[262] Documents provided by DGF, Email from JAFA dated 19 December 2005, documents marked D-ACPERA-0000000193 to D-ACPERA-000000194 (English translation provided by DGF on 7 November 2013).
[263] Documents provided by DGF, Email from JAFA dated 11 January 2006 forwarded by [✂] to [✂], on 19 December 2005, document marked D-ACPERA-0000000195 (English translation provided by DGF on 7 November 2013).
[264] Document provided by DGF, Email from JAFA dated 11 January 2006 forwarded by [✂] to [✂], on 19 December 2005, document marked D-ACPERA-0000000195 (English translation provided by DGF on 7 November 2013).
[265] Documents provided by DGF, Email from JAFA dated 11 January 2006 forwarded by [✂] to [✂], on 19 December 2005, document marked D-ACPERA-0000000195 (English translation provided by DGF on 7 November 2013).
[266] Answer to Question 30 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013; information provided by NNR dated 2 August 2012, Exhibit 10; and Answer to Question 19 of [✂] (Vantec) Notes of Information/Explanation Provided on 13 June 2013.

(viii) [✂] of Nishi-Nippon Railroad Co., Ltd.,
(ix) [✂] of Nissin Corporation,
(x) [✂] of Vantec World Transport Co., Ltd.,
(xi) [✂] of United Aircargo Consolidators, Inc.,
(xii) [✂] of Yamato Logistics Co., Ltd., and
(xiii) [✂] and [✂] of Yusen Air & Sea Service Co., Ltd.[267]

184. According to the information received by CCS, **the Parties agreed at the 20 February 2006 meeting that in response to the need for new security measures, each forwarder would impose a minimum JSS of JPY 300 per HAWB and a minimum JEEF of JPY 1,500 per HAWB on all outgoing cargo from Japan, including the Japan to Singapore route**. It was further agreed that the agreed amounts of the JSS and the JEEF were to be implemented by 1 April 2006.[268]

185. In an internal HAC email dated 23 February 2003, reporting on the JAFA meeting held on 20 February 2006 to the President of HAC, the email records:

> *"3) Supplement regarding the Security Charge*
> *We discussed on the basis of the attached announcements from each company, and by majority decision it came to pass that we will all work in the following direction (Sorry to be repetitive, but this item should be handled with sensitivity)*
> …
> *(3) Content of the Charge*
> *Based on the report from each company, it was decided that there would be a fixed fee for each HAWB applicable to all customers including specified customers, and an additional separate fee for all those that are inspected.*
> *The majority approved the following, which report the top two answers in the above report.*
> *a. Fixed fee: Minimum @300 yen per HAWB*
> *b. Inspected shipments: Minimum @ 1,500 yen per inspection*
> *A minimum was set because of the risk that it would become ineffectual without baseline support.*
> *(However, and this is repetitive, the Secretariat pointed out that it's a problem to discuss this kind of thing because we cannot clear problems with bid-rigging because a minimum has been set.)*". [269]

[267] Information provided by NNR dated 2 August 2012, Exhibit 70.
[268] Information provided by NNR dated 2 August 2012, Exhibit 84.
[269] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00672 & seq. Translation (excerpt).

Also attached to the email was a chart setting out each of the Party's proposed charges for the JSS and the JEEF.[270]

186. Paragraph 2.1 of K Line's internal report describing the meeting titled "JAFA International Division" dated 20 February 2006[271] likewise recorded that:

> "*Each company will keep pace with an implementation date of April 1…The SSC will be collected uniformly (with no distinction between known shippers and non-known shippers), with a minimum fee of 300 yen per HAWB…The inspection fee will be collected with 1,500 yen as the minimum per piece (carton, package) of inspected cargo…The fees are the minimum fees in the industry. Each company is free to set fees as long as they are that amount or higher. Each company can also decide themselves on a maximum amount for the inspection fee*".[272]

187. According to [✂], who attended the meeting on behalf of Nissin Corporation, the discussion at the 20 February 2006 meeting concerned the following:

> "*At the 20 February 2006 International Division Administrators' Meeting, each firm presented, in order, the security charge fees and explosives inspection fees it was envisioning. There was a wide range of fees set by the firms, and the debate did not approach a consensus, so ultimately it was decided by majority vote among the 13 firms that…(2) The security charge would be collected uniformly without distinction between known shippers and shippers who are not known shippers, and would be at least ¥300 per house air waybill, (3) The minimum fee for the inspection fee for explosives inspections would be ¥1,500 per house air waybill, (4) Language in reports to the Ministry of Land, Infrastructure and Transport would be unified, and (5) Collection would begin on 1 April 2006*".[273]

188. In a statement to the JFTC on 21 November 2008, [✂], who was [✂] of KWEJ, was recorded as having said:

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[270] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00672 & seq. Translation (excerpt).

[271] Information provided by NNR dated 2 August 2012, Exhibit 84 - Preamble of Report titled "JAFA International Division" dated 2006-2-20 by [✂] of K Line: "*I attended on behalf of [the president] a meeting of the Administrators of the International Division held at JAFA today (20th, 14:00-14:20), so I am reporting a summary as follows.*" This is confirmed in the information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 3, JAFA meeting dated 20 February 2006.

[272] Information provided by NNR dated 2 August 2012, Exhibit 84, paragraph 2.2 of Report titled "JAFA International Division" dated 2006-2-20 by [✂] of K Line. This is confirmed in the information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 3, JAFA meeting dated 20 February 2006.

[273] Information provided by NNR dated 2 August 2012, Exhibit 47, pages 6 and 7.

"*[A]t the Administrators' Meeting of the International Division held on February 20, 2006, it was decided by majority vote that SC would be a minimum of Yen 300 per HAWB for all shippers, whether known or unknown, and further, when an explosives inspection was carried out, a minimum explosives inspection charge of Yen 1,500 would be billed…the 13 companies, acting as member companies of the Administrators' Meeting of the International Division, resolved that these would be minimums, that is to say, the lowest amount charged, and that no company would set a lower charge*". [274]

189. In an internal MLG email it was reported that at the 20 February 2006 meeting, there was an exchange of opinions on the security surcharge. The email highlighted that the explosives examination fee would be at least JPY 1,500 per examination.[275] While the person who circulated the email, [✂], did not usually attend JAFA meetings, he assisted [✂], who represented MLG at these meetings by disseminating information about what had occurred at JAFA meetings attended by [✂]. The contents of this email was confirmed in CCS's interview of [✂] dated 22 October 2013.[276]

190. Following the meeting on 20 February 2006, a report to [✂] states that:

"*2) Charge amount to be uniformly ¥300/piece (7 companies; 5 companies for ¥500)*
Explosives substances inspection charge to be ¥1500 instance (9 companies; 4 companies ¥1,000)".[277]

191. [✂] 9 October 2013 Affidavit which contains his 5 June 2008 JFTC Statement records the following with regard to the 20 February 2006 meeting:

"*At that meeting of the Administrative Board, the 13 Companies, in order, announced their respective collection rates of FSC, and rates, collection methods, etc. of Security Charge and the Explosives Inspection Charge for applying to expenses accompanying the RA System which would be introduced from April, 2006…*

There was no absent member at the meeting of the Administrative Board, and all of the 13 Companies made their respective announcements, I think…

[274] Information provided by NNR dated 2 August 2012, Exhibit 55, pages 13-14.
[275] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 1 - Email dated 23 February 2006 at 09:01 (English translation provided by MLG-JP on 8 May 2013).
[276] Answer to Question 45 of [✂] (MLG) Notes of Information/Explanation Provided on 22 October 2013.
[277] Answer to Questions 34 to 37 and document marked [✂]-011, page 3 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

Accordingly, at the meeting, the 13 Companies, standing on majority ideas expressed there, agreed as follows:

(1) As to the Security Charge:

(i) Impose separately from the AMS Charge and ISS;

(ii) Impose uniformly irrespective of Specific Shippers or other;

(iii) Set a rate per HAWB; and

(iv) Set ¥300 as the minimum charge.

(2) As to the Explosives Inspection Charge:

(i) Set a rate per HAWB; and

(ii) Set ¥1500 as the minimum charge.

(3) Set April 1, 2006 as the implementation day.

[✂]".[278]

192. In the information provided to CCS, Yamato confirmed the JSS agreement was made on 20 February 2006. Yamato's submission to CCS stated: "*Regarding the JSS, there was an agreement among the freight forwarders who were members of JAFA made on 20 Feb 2006 imposing a security charge of 300 yen per shipment of their customers which was collected by the freight forwarders for their own account*".[279]

193. According to [✂] statement to the JFTC on 21 November 2008, [✂] who attended on behalf of Yamato was recorded as stating:

> "*[I]t was decided to have shippers pay a uniform ¥300 as a minimum fee regardless of whether a known shipper or a shipper who is not a known shipper…for cargo that undergoes explosives inspections, in addition to the ¥300 above, the shipper would also be billed a minimum charge of ¥1,500*".[280]

194. [✂], at the time was the [✂]. He attended EBIC meetings on behalf of Yamato from 1999 onwards. [✂] set out this "new decision by the JAFA industry" in an email which he sent to various individuals in Yamato.[281]

195. In a report entitled "Report of JAFA International Affairs Department Board Officers Meeting" provided by Yusen Japan[282], the following was recorded in respect of the 20 February 2006 meeting:

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[278] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit I, ref E992 to E994; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E992 to E994.

[279] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 11.

[280] Information provided by NNR dated 2 August 2012, Exhibit 75 - JFTC statement taken on 6 June 2008, page 9.

[281] Information provided by NNR dated 2 August 2012, Exhibit 86 - Email dated 21 February 2006.

"*The following items were proposed by* [✂] *and approved by each company…The name Security Surcharge shall be used. The minimum fee shall be Y300/case for total HAWB and Y1.500/case for inspection fees…Confirmation regarding the reaction of shippers shall be performed during the next meeting*".[283]

196. In his interview with CCS on 7 and 8 October 2013, [✂] of Yusen who attended with [✂] confirmed that following the proposal by the JAFA Chairman that JSS would be charged at JPY 300 per HAWB and the JEEF would be charged at JPY 1,500 in the 20 February 2006 meeting, "*the attendees did not actually say yes, but they did approve of the proposal. At JAFA, a guideline was created, a target set up, and thus a conclusion was agreed upon by the attendees*".[284]

Discussions regarding the implementation of the JSS and the JEEF, including reporting of JSS collection rates, between 20 February 2006 and 12 November 2007

197. To ensure the effective implementation of the JSS and the JEEF, the Parties, between 20 February 2006 and 12 November 2007, exchanged information regarding the collection of the JSS and the JEEF at JAFA meetings. At these meetings, the Parties also discussed issues, such as customer responses following the implementation of the JSS and the JEEF and the taxation treatment of the JSS. There were also discussions between some Parties outside of JAFA meetings regarding the implementation of the JSS and the JEEF and collection rates.

198. Listed below in Table 3 are the meetings between the Parties where CCS is aware that discussions of the JSS and the JEEF took place. Selected examples of the nature of discussions at these meetings are set out in the following paragraphs 199 to 212 below.

Table 3: Meetings After 20 February 2006 (JSS and JEEF)

Date of meeting	Names of undertakings
23 February 2006, Co-load Meeting	HAC, K Line, Nissin, Vantec[285]
7 March 2006,	Not listed apart from KWE and Nippon Express[286]

[282] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24.2 and 32.2 and Appendix JP-13.
[283] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24.2 and 32.2 and Appendix JP-13.
[284] Answer to Question 13 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.
[285] Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C77, and E1447-1448.
[286] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(x) which states: "*March 7, 2006. Transportation Committee of the Executive Board (YK) meeting. Commencement of discussions concerning JSS. Questionnaire regarding surcharge system*

Transportation Committee of the Executive Board JAFA Meeting	
20 March 2006, JAFA International Committee Board Meeting/Transport Committee Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (TAC and UAC)[287]
5 April 2006, International Sub-committee Transportation Committee	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[288]
15 May 2006, JAFA International Committee Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[289]
25 May 2006, Transport Committee Meeting	Not listed[290]

distributed to each attendee. Kintetsu proposed a JSS of 300 yen on all shipments, and 1,500 yen on shipments which has actually been inspected for explosives. [✂] *attended for NEJ*" (attendees not listed but document reflects that Nippon Express attended the meeting and KWE appears to have participated in the discussions at the meeting).

[287] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00686 & seq. Translation (excerpt) (attendees not listed); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 7 (attendees not listed); information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 3 - Email dated 20 March 2006 at 15:47 (English translation provided by MLG-JP on 8 May 2013); and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xi) (attendees not listed).

[288] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00633 & seq. Translation; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xiii) (attendees not listed).

[289] Document provided by DGF, JAFA's Board Meeting Minutes for meeting on 15 May 2006, marked D-ACPERA-000000051 to D-ACPERA-000000053 (English translation provided by DGF on 7 November 2013) - the 15 May 2006 board meeting minutes/JAFA committee report references the introduction of "security surcharge" and states: "*Tax authorities are deliberating whether this should be taxable or non-taxable, and some members have not yet begun collecting the surcharge. We request that the Secretariat take the lead in consulting the corporate lawyer and confirm, with the Regional Taxation Bureau.*"; information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00700 & seq. Translation; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 8 (no attendees listed); information provided by NNR dated 2 August 2012, Exhibit 71; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xv) (no attendees listed); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit G, ref E1567; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1215; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-12.

[290] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xvi) (attendees not listed).

7 July 2006, Transport Committee Meeting	Not listed[291]
18 July 2006, JAFA International Committee Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seino, Seibu, TNT, and UAC)[292]
3 August 2006, JAFA International Committee Board Meeting	Not listed[293]
19 September 2006, JAFA International Committee Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[294]
19 September 2006, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seino, Seibu, TNT and UAC)[295]
10 November 2006, JAFA International Committee Board Meeting	DGF, HEX, Hankyu Cargo, HAC, KWE, MLG, Nippon Express, NNR, Yamato, and others (Keihin, Kokusai, NCS, OCS, Pegasus and Seino)[296]
11 January 2007, JAFA	DGF, HEX, Hankyu Cargo, HAC, KWE, MLG,

[291] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS on 12 December 2012, Annex 6, Tab 9 (attendees not listed).

[292] Document provided by DGF, JAFA's Board Meeting Minutes for meeting on 18 July 2006, marked D-ACPERA-000000043 to D-ACPERA-000000045 (English Translation provided by DGF on 7 November 2013) – the Board Meeting Minutes references the introduction of security surcharge and states: "*At the Transport Committee meeting held on July 7, we affirmed the common understanding that "the primary goal is to request SC payment from the shippers*"; and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 9 (attendees not listed).

[293] Document provided by DGF, Email from "JAFA [✂]" dated 14 July 2006, marked D-ACPERA-000000203 to D-ACPERA-000000204 (attendees not listed); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9c, Tab 38 (attendees not listed).

[294] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 4 - JAFA meeting dated 19 September 2006; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 48 (no attendees listed but document reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec Yamato, Yusen and UAC appear to have participated in discussions at the meeting); information provided by NNR dated 2 August 2012, Exhibit 99; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xviii) (no attendees listed); information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C77 and E585; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-14.

[295] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00729 & seq. Translation (excerpt).

[296] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 10 November 2006, marked D-ACPERA-000000034 to D-ACPERA-000000038 (English translation provided by DGF on 7 November 2013).

International Committee Board Meeting	Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seino, Seibu, TNT and UAC)[297]
23 January 2007, Administrators' Meeting.	DGF, HAC, HEX, MLG, K Line, KWE, Nittsu, Nissin, NNR, Vantec, Yamato, Yusen and UAC[298]
19 March 2007, JAFA International Committee Board Meeting	HEX, Hankyu Cargo, HAC, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Seino, Seino, Seibu, Pegasus and UAC)[299]
21 May 2007, JAFA International Committee Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, Pegasus, Seino, Seino, Seibu, TNT and UAC)[300]
17 July 2007, JAFA International Committee Board Meeting/Administrators' Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Pegasus, Seino, Seino, Seibu, TNT and UAC)[301]
18 September 2007, Administrators' Meeting.	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai,

[297] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 11 January 2007, marked D-ACPERA-000000029 to D-ACPERA-000000033 (English translation provided by DGF on 7 November 2013) - the Minutes of Board Meeting references "consumption tax on SC".

[298] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 23 January 2007 (no attendees listed but document reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec Yamato, Yusen and UAC appear to have participated in discussions at the meeting); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52 page 3 (attendees not listed).

[299] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 19 March 2007, marked D-ACPERA-000000023 to D-ACPERA-000000028 – 19 March 2007(English translation provided by DGF on 7 November 2013) – the Minutes of Board Meetng states "*as usual, each board member announced its status of FSC and SC*"; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52 page 4 (attendees not listed); and information provided by NNR dated 2 August 2012, Exhibit 119 (attendees not listed).

[300] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 21 May 2003, marked D-ACPERA-000000017 to D-ACPERA-000000022 (English translation provided by DGF on 7 November 2013) – Minutes of Board Meeting states: "*in regard to the SC, although there are differences for each member company, it appears to be generally difficult to receive from shippers in great numbers*"; and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00754 & seq. Translation (excerpt).

[301] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00166 Translation (excerpt); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 17 July 2007 (no attendees listed but document reflects that DGF, HAC, HEX, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec Yamato, Yusen and UAC appear to have participated in discussions at the meeting); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, pages 5 and 6 (attendees not listed).

	Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[302]
15 October 2007, Meeting of Chairman and Vice-Chairman	KWE, Nippon Express, NNR, OCS, Yamato[303]
12 November 2007, Meeting	Kintetsu, Nippon Express, Yusen[304]

Meeting on 20 March 2006

199. At the JAFA meeting on 20 March 2006, the Parties reaffirmed their agreement of 20 February 2006 and discussed the implementation of the agreement. The Parties discussed the difficulties that they had encountered in explaining the security charges to shippers, and were of the view that it would be difficult to gain the understanding of the shippers with regard to the security charges.[305]

200. Recorded in a KWE document titled "March 20, 2006, Board of Directors Material for International Division", is the following account of the meeting:

> "*In the February 20 Board Meeting of International Division, we decided by consensus of the JAFA member companies that we would charge customers the security charge. We established a new security charge for forwarders to take a twin-track approach rather than combining it with the current "Insurance Surcharge/Security Surcharge (ISS)". The security charge will be charged at Yen 300 or more per HAWB. The inspection cost is set as Yen 1,500 or more per HAWB…In response to these decisions, we held a meeting of Transportation*

[302] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 18 September 2007, marked D-ACPERA-000000001 to D-ACPERA-000000004 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, documents marked HH_00171 & 768 seq. Translation (excerpt); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 18 September 2007 (no attendees listed but document reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec Yamato, Yusen and UAC appear to have participated in discussions at the meeting); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 6 where it is stated in the statement of [✂] dated 30 April 2008 that the attendees presented on the SC collection rates and amounts received; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xix).

[303] Information provided by NNR dated 2 August 2012, Exhibit 72, page 6 - Statement of [✂] of Yusen Air & Sea Service dated 6 October 2008.

[304] Information provided by NNR dated 2 August 2012, Exhibit 72, pages 8 and 9.

[305] Document provided by DGF, JAFA's Minutes of Board Meeting for the meeting on 20 March 2006, document marked D-ACPERA-00054-57 (English translation provided by DGF on 7 November 2013); and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI of 19 June 2013, Annexure 12 document HH_00686 & seq. Translation (excerpt).

Committee on March 7 to bring this matter to the working level. The second meeting is held on March 20…".[306]

201. The content of this document was confirmed by [✂] of KWE in his interview with CCS on 26 June 2013. He explained that he attended the meetings of the JAFA, the EBIC and the Transportation Sub-committee of the EBIC and prepared notes and memorandums from the meetings he attended.[307]

202. In the statement of [✂] of K Line to the JFTC of 3 September 2008, which was confirmed by [✂] in his interview with CCS on 3 October 2013, [✂] stated that:-

> "*The meetings I attended were the ones held on March 7, 2006 and March 20 of the same year. I do not recall well as to which of these two meeting it was, but we were informed that as one of the topics of the Administrators' Meeting held on February 20, 2006, the following direction had been decided upon: As for SC a minimum of 300 yen to be collected from all shippers, regardless as to whether they are "Known Shippers," or they are "Un-known Shippers," and the explosives inspection charges to be a minimum of 1,500 yen per one HAWB, if explosives inspection is done*".[308]

203. In MLG email report of the 20 February 2006 meeting sent to Managers and Group Managers of MLG's export sales department, it was reported that:

> "*Information on the security charge (SC) was exchanged at the JAFA freight forwarding committee, which was urgently convened today, so I hereby report the following.*
> …
> *I write the conclusion first:*
> *(1) Explosives examination fee will be charged from April 1.*
> *Our fee will be at least* [✂] *yen per HAWB/AWB*
> [✂] *per item.*
> *Example: 1 item:* [✂] *yen (minimum)*
> *4 items:* [✂] *yen*
> ...

[306] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 7; and document marked [✂]-004 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[307] Answers to Questions 15 and 16 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[308] Answer to Question 3 and document marked [✂]-002 - JFTC statement of [✂] dated 3 September 2008, paragraph 4(2)of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.

(2) Security charges (or security surcharges) will be charged from May 1. Our rate will be [✂] *yen per HAWB/AWB (taxable)*".[309]

204. In his interview with CCS on 22 October 2013, [✂] explained his recollection of the 20 March 2006 meeting. CCS's Notes of Information/Explanation Provided record:

> "*The amount of the JSS that [MLG] Japan set was* [✂] *per house air waybill and I assumed that the forwarders had informed their amounts to one another at the JAFA Board meeting held on February 20. At another meeting on 20 March 2006 the members discussed when to start implementing the JSS and decided to do so from 1 May; however, [MLG] Japan started charging the JSS on 15 June 2006 and the date of implementation was not discussed at JAFA subsequently*".[310]

Meeting on 15 May 2006

205. On 15 May 2006, the Parties reported the status of their respective implementation of the JEEF and the JSS, as well as issues such as taxation causing delay and the collection rates of the JEEF.[311]NNR internal report of the meeting noted the following:

> "*The charge for inspection of the explosives varies from company to company from MIN ¥1,500 to ¥3,000. Since there is a cartel issue, this is circumstantially better. With respect to SC, it has been decided to be ¥300 per case… The date of implementation is as of June 1st*".[312]

Meetings on 7 and 18 July 2006

206. In the JAFA meeting (Transportation Sub-Committee) on 7 July 2006, the freight forwarders discussed the confusion faced by shippers with regard to the security charges, which included the JSS and the JEEF, and the approach to be taken. This was described in KWE's notes of the 7 July 2006 meeting as follows:

> "*Now we are going to report a matter discussed in the meeting of the Transportation Committee, "SC associated with security measures."*

[309] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 3 - Email dated 20 March 2006 at 15:47 (English translation provided by MLG-JP on 8 May 2013).
[310] Answer to Question 44 of [✂] (MLG) Notes of Information/Explanation Provided on 22 October 2013.
[311] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 8; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendices JP-12 and JP-26.2 - Report of JAFA International Affairs Department Board Officers Meeting dated 15 May 2006.
[312] Answer to Question 33 and document marked [✂]-010 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013; and information provided by NNR dated 2 August 2012, Exhibit 88.

- *Regarding the issued guidelines, we heard from the JAFA that different interpretations among individual companies have caused confusion in the field.*
- *Because of this, we quickly held a meeting of the committee on July 7.*
- *We explained that it would be preposterous if we gave shippers an excuse to refuse payment as different attitudes were taken by individual forwarders.*
- *We confirmed that "our first priority is to charge customers," which should be shared by members. In dealing with a shipper using more than one forwarder, the forwarders must at first have a discussion among them and negotiate with the relevant shipper with a unified view rather than separately explaining each company's intention.*
- *The following basic policies were confirmed again.*
    - *Set the minimum rate at ¥300 per HAWB.*
    - *State the charge based on the freight cost in the HAWB for collection.*
    - *If customs clearance is handled by another company, the forwarder issuing the HAWB will charge the one handling customs clearance.*
    - *Regarding the consumption taxes issue, for which we have not yet received a response from the National Tax Agency, members will charge customers based on the rule: PP is taxable which CC is not taxable.*
- *As stated earlier, in dealing with a shipper using more than one forwarder, it is important to have the same intention among the forwarders. Now I would like to ask you to completely familiarize your personnel with this idea*".[313]

207. During the JAFA meeting (EBIC meeting) on 18 July 2006, freight forwarders affirmed their common understanding that the primary goal would be to request for security charges payment from the shippers.[314]

Meeting on 19 September 2006

208. Minutes of the JAFA meeting prepared by the different representatives of the Parties record (for internal circulation within their own company record) that on

[313] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS on 12 December 2012, Annex 6, Tab 9.

[314] Document provided by DGF, JAFA's Board Meeting Minutes for meeting on 18 July 2006, marked D-ACPERA-000000043 to D-ACPERA-000000045 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00148 & seq. Translation (excerpt); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 9 (attendees not listed).

19 September 2006, the participants of the meeting announced their JSS collection ratios and set out the collection ratio for each of the Parties.[315]

Meeting on 18 September 2007

209. In the JAFA meeting (EBIC meeting) on 18 September 2007, the Parties continued to report the collection ratio of the JSS and discuss issues regarding its implementation.[316]

Meeting on 12 November 2007

210. At a meeting between Nippon Express, Kintetsu Express, Yusen, and the JAFA Secretariat on 12 November 2007, it was decided that the members of JAFA (including the Parties) should stop discussions at JAFA regarding the JSS, the JEEF and the JFS.[317] It was agreed that no further EBIC meetings would be held in light of investigations into the freight forwarding business by competition authorities[318] in several jurisdictions.

211. Recorded in the JFTC statement of [✂] of Yusen is the following: "*Since the investigations of Antimonopoly Act are spreading even to forwarders in the United States, maybe the companies should stop the discussions at the Administrators' Meeting of the International Division of JAFA as well*".[319] [✂] in his interview with CCS on 18 November 2013 confirmed that he attended the emergency meeting on 12 November 2007. During his interview, he described what happened during the emergency meeting as follows:

[315] Document provided by DGF, Email from "JAFA [✂]" dated 25 September 2006, marked D-ACPERA-000000156 to D-ACPERA-000000157 (English translation provided by DGF on 7 November 2013); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 4 - JAFA meeting dated 19 September 2006; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 48; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C77, and E585 to E591; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit G, ref E590 to E591 and E1544 to E1545; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-14.

[316] Information provided by K Line dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 4 - Summary report dated 18 September 2007 by [✂] of K Line; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xix) which states: "*September 18, 2007. Executive Board (YK) meeting.* [✂] *attended for NEJ and participants exchanged information on the collection of the JSS and discussed the fact that collection rates remained low*".

[317] Information provided by NNR dated 2 August 2012, Exhibit 72, pages 8-10.

[318] The EC confirmed that on 10 October 2007, EC officials carried out unannounced inspections at the premises of various providers of international freight forwarding services (EC Press Release Memo 07/406 dated 11 October 2007). On the same day, it was also reported that the US DOJ antitrust division was "coordinating with the EU and other foreign competition authorities" on the investigation <http://www.reuters.com/article/2007/10/10/eu-cartel-freight-idUSN1026505320071010>.

[319] Information provided by NNR dated 2 August 2012, Exhibit 72, pages 9and 10.

"*Kintetsu proposed that we should stop international committee division meetings and the people present at the emergency meeting did not object to stopping the EBIC meetings. I made some remarks that it was not necessary to discontinue the meetings but I had no objections to discontinuing the meetings. After the emergency meeting, Kintetsu as the Chairman of EBIC, did not call for another EBIC meeting*".[320]

212. No further EBIC meetings were held following the meeting on 12 November 2007.[321] CCS has received no evidence of any discussions between the Parties regarding the JSS and the JEEF after this date.

(iii) Impact on competition of the Security Charges (JSS and JEEF) agreement/and or concerted practice within Singapore

213. Section 33(1) of the Act provides that notwithstanding that an agreement and/or concerted practice has been entered into outside Singapore or that any party to such agreement is outside Singapore, the section 34 prohibition applies. For the section 34 prohibition to apply, competition within Singapore must be restricted, prevented or distorted.

214. CCS is of the view that the Parties' agreement and/or concerted practice to charge a minimum of JPY 300 per house air waybill for the JSS and a minimum of JPY 1,500 per house air waybill for the JEEF for shipments exported from Japan to overseas countries such as Singapore, and to exchange information regarding the application of the JSS and the JEEF, had as its object the restriction, prevention or distortion of competition within Singapore for the provision of air freight forwarding services from Japan to Singapore. In this case, the agreement/and or concerted practice was carried out by each of the Parties' Japan and Singapore companies as detailed below.

215. Customers of prepaid shipments from Japan to Singapore that were located in Singapore would be quoted and charged by the Japan company of the Party concerned a JSS and a JEEF (where applicable) at the amounts agreed and discussed in the JAFA meetings. For collect shipments, customers could be quoted by either the Party's Japan or Singapore company.

216. If collect shipment customers were quoted by the Japan company, the JSS and the JEEF (where applicable) would be quoted and charged by the Japan company at the amount agreed and discussed in the JAFA meetings. If quoted by the Singapore company, the JSS and the JEEF would be quoted and charged at

[320] Answer to Question 52 and document marked [✂]-004 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.
[321] Answer to Question 52 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013; and information provided by NNR dated 2 August 2012, Exhibit 72.

the same amount charged by the Japanese parent or Japanese affiliate company. Payment for collect shipments would be made in Singapore to the Party's Singapore company, which would ensure that the shipment was in order on arrival and would manage local logistics arrangements where necessary. Funds would then be remitted back to the Japanese company or be offset against any amount owed by the Japanese company to the Singapore company. The amount to be remitted back is subject to the profit sharing arrangement, if any, between the Singapore company and the Japanese company. The collect shipment arrangements of each Party are described in more detail in paragraphs 218 to 326 below.

217. Set out below is a description of the conduct engaged in by each Party and its impact within Singapore.

DGF

218. As described in paragraphs 160 to 212 above, DGF Japan was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussions regarding the amount to charge customers and in sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred from at least November 2004 to 12 November 2007 with a consensus being reached on 20 February 2006 that a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF would be charged to customers.

219. DGF has provided documentary evidence of their attendance at the JAFA meetings by providing the minutes of JAFA meetings prepared by the representatives of DGF that attended the meetings and internal emails discussing the proposals in the JAFA meetings.[322] DGF attended JAFA meetings following their mergers with AEI Maruzen K.K. Excel and Japan K.K. Generally, [✂] at DGF Japan, attended the meetings prior to April 2003 on behalf of [✂] of DGF Japan for the JAFA meetings.

220. The minutes of the JAFA meetings provided to CCS record the success of the freight forwarders in charging the JSS and the JEEF as freight forwarders shared their ability to collect these from customers.[323] The minutes also record the discussions of the freight forwarders on their opinion of the JSS and the JEEF.[324]

[322] Documents provided by DGF marked D-ACPERA-000000001 to marked D-ACPERA-000000236 (English translation provided by DGF on 7 November 2013).
[323] Documents provided by DGF marked D-ACPERA-000000001 to marked D-ACPERA-000000236 (English translation provided by DGF on 7 November 2013), reports on such discussions can be found in the Minutes of Board meetings documents.
[324] Documents provided by DGF marked D-ACPERA-000000001 to marked D-ACPERA-000000236 (English translation provided by DGF on 7 November 2013), reports on such discussions can be found in the Minutes of Board meetings documents.

221. Documentary evidence from other Parties likewise evidences the presence of representatives from DGF Japan, and the participation of DGF Japan in discussions concerning the JSS and the JEEF.

222. DGF Japan applied a JEEF of a minimum [✂] to reflect costs associated with MLIT's explosive inspection requirement.[325] The JSS amount was determined based on the results of a survey conducted by the JAFA Secretariat, which found that the lowest amount being charged or contemplated by the various members was JPY 300.[326] For DGF, fees and surcharges were always quoted by the office of origin regardless of type of services. This also applies to collect shipments.[327]

223. For prepaid shipments, DGF Japan would inform the shipper about the surcharges and the shipper would pay for the surcharges.[328] For freight collect shipments, DGF Singapore bills as per the instructions received from the origin office and therefore, for shipments from Japan to Singapore, DGF Singapore bills as per the instructions on freight rates received from DGF Japan.[329] Most of the export shipments of DGF Japan were handled on a charge collect basis, and [✂] of the export shipments were handled by DGF Japan on a prepaid basis.[330] For shipments made on a charge collect basis, the surcharges were automatically billed to the consignees who were not based in Japan.

224. The JSS, and the JEEF for "unknown shippers", were applied to shipments from Japan to other countries, including Singapore. The JSS and the JEEF when applied to individual shipments, were applicable as part of the pricing component of the origin charges for freight being shipped from Japan to Singapore.

225. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 218 to 224 demonstrates that DGF entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

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[325] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 14.
[326] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 14.
[327] Answer to Question 15 of [✂] (DGF) Notes of Information/Explanation Provided on 14 February 2012.
[328] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[329] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[330] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.

Hankyu Hanshin

226. As described in paragraphs 160 to 212 above, HEX and HAC were both actively involved in discussions with the Parties regarding the JSS and the JEEF including discussing the amount to charge customers and in reporting their success in collecting the JSS and the JEEF from customers. Both HEX and HAC were members of the EBIC.[331]

HEX and HIT Singapore

227. HEX participated in discussions at JAFA meetings between the Parties that occurred periodically throughout from at least November 2004 to 12 November 2007, with HEX being part of the final consensus reached on 20 February 2006 that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

228. In the information provided to CCS, HEX informed CCS that [✂], attended the meetings of EBIC and the Board of Directors of JAFA between June 2002 and May 2003, and [✂], attended the meetings of EBIC and the Board of Directors of JAFA from June 2003.[332] The documents provided by Hankyu Hanshin evidence that a HEX representative was present at and participated in the JAFA meetings during which the JSS and the JEEF were discussed.[333] Documentary evidence from other Parties likewise evidences the presence and participation of a representative from HEX in meetings where the JSS and the JEEF were discussed, including reports from the HEX representative of HEX's ability to collect these from customers.

229. HEX applied the JEEF and the JSS as discussed at JAFA on 1 March 2006 and on 1 June 2006 respectively.[334] HEX imposed the amount of [✂] per carton per air waybill for the JEEF, and the amount of [✂] per carton per air waybill for the JSS, uniformly from 1 March 2006 to November 2007 on shipments from Japan including to Singapore.

230. [✂] instructed HEX managers to determine the amount of the JEEF and the JSS to charge customers.[335] A circular in relation to the JEEF, setting out the amount of the JEEF and the reasons for the imposition of the JEEF, was sent to

[331] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's letter dated 19 June 2013, paragraph 2(ii).
[332] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's letter dated 19 June 2013, paragraph 5(ii).
[333] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's letter dated 19 June 2013, Annexure 12.The name of the representative for HEX is set out in the meeting notes.
[334] Information provided by Hankyu Hanshin dated 15 November 2013 pursuant to CCS's RFI dated 14 November 2013.
[335] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 26.

customers in April 2006, and a circular in relation to the JSS, setting out the amount of the JSS and the reason for the imposition of the JSS, was sent to customers in June 2006.[336]

231. The JSS and the JEEF, as determined by HEX, applied to shipments from Japan to Singapore. For prepaid shipments, the JSS and the JEEF, where applicable, were generally quoted by HEX.[337]

232. The JSS and the JEEF, as applied by HEX, were collected from consignees by HIT Singapore where the terms of the shipment were paid collect. The JSS and the JEEF, as determined by HEX, also applied where customers requested a quotation from HIT Singapore and paid collect for their freight in Singapore, as HIT Singapore would request a quotation from HEX and use the amount HEX quoted for their customers. In this manner, the JEEF and the JSS, as determined by HEX, was applied in Singapore. [✂] stated in his Notes of Information/Explanation Provided:

> "*For customers in Singapore requesting for quotations for freight collect shipments from Japan to Singapore, Hankyu Singapore would ask for quotations from Hankyu Japan… Hankyu Singapore would usually not* [✂].[338]

233. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 226 to 232 demonstrates that HEX entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

HAC and HFI Singapore

234. HAC was both a member of the JAFA and a member of EBIC. HAC participated in discussions occurring at JAFA meetings regarding the JSS and the JEEF from at least November 2004 to 12 November 2007, with HAC being part of the final consensus reached on 20 February 2006 that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

[336] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure 5.
[337] Answer to Question 13 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 26 July 2013, where [✂] explained that the Japan office will provide a quote for the documentation or other fees charged for freight from Japan to other countries.
[338] Answer to Question 15 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 25 October 2013.

235. In the information provided to CCS, HAC informed CCS that [✂], attended a number of meetings of the Board of Directors between late 2002 and February 2007, [✂], attended a number of meetings of EBIC and the Board of Directors of JAFA from March 2007, and [✂], attended a number of EBIC meetings on behalf of [✂] and [✂].[339] Documentary evidence from other Parties likewise evidences the presence of a representative from HAC, and the participation of a HAC representative in meetings where the JSS and the JEEF were discussed, including reports where the HAC representative informed other Parties of HAC's ability to collect these from customers.

236. After attending JAFA meetings, the representative from HAC, [✂], or other HAC's employee attending on his behalf, would provide a report of the contents of the meeting to relevant personnel in the company, including [✂] in 2006.[340]

237. As referred to in paragraph 185, a report was sent to [✂] after the JAFA meeting on 20 February 2006, in which [✂] informed [✂] of the agreed minimum amount of JPY 300 per house air waybill for JSS, and the agreed minimum amount of JPY 1,500 per house air waybill for JEEF.[341] In the same report, [✂] also highlighted that there may be competition concerns with respect to the discussions held during the meeting.

238. After the report from [✂] on 24 February 2006, a discussion was held through email on the same day with regard to whether HAC should apply the fees proposed during the JAFA meeting. [✂] said in his reply to the discussion:

> *"…I judge it unavoidable to match the most common JAFA survey result (fixed at 300 yen, inspected items minimum 15,000) because of the possibility that, even if we set a fee at our company's own unique rate separate from most in the market,* [✂]".[342]

239. HAC applied the JEEF and the JSS as discussed at JAFA on 1 April 2006 and 1 July 2006 respectively.[343] The amount for JEEF was [✂] per carton per air waybill, and the amount for JSS was [✂] per carton per air waybill. Information provided by HAC shows that [✂] from HAC instructed HAC's managers to determine the amount of the JEEF and the JSS to charge their respective

[339] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 5(ii).
[340] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12.
[341] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00672 & seq. Translation - Email from [✂] to [✂] with subject "Re: JAFA International Subcommittee Directors Meeting (Held on February 20) – Handle with Sensitivity" dated 23 February 2006, sent at 5.38pm.
[342] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00678 & seq. Translation.
[343] Information provided by Hankyu Hanshin dated 15 November 2013 pursuant to CCS's RFI dated 14 November 2013.

customers in respect of air freight from Japan to Singapore.[344] These amounts were applied uniformly on customers from the date they were first applied to November 2007 on, *inter alia*, shipments from Japan to Singapore.

240. On 22 June 2006, [✂] sent an email to the offices of HAC in various countries informing the employees based in these offices of the security charge.[345] He briefly explained the reason for the application of the security charge, and requested that an explanation be provided to customers regarding the reason for the security charge after its introduction on 1 July 2006.

241. The email was sent to [✂] HFI Singapore at that time. [✂] responded on 24 June 2006 to provide feedback about the length of notice, and also requested for more explanation with regard to the steps taken by the company for the security charge and the quantum of the fees [✂].[346]

242. [✂] responded that:

> "*In any case, the decision was made at the JAFA board meeting where representatives of each company gathered to in the end set a minimum amount at 300yen. (If you explain this to customers it may be taken as bid-rigging, so please just explain the fact that all forwarders will begin to invoice in the same way)*".[347]

243. The JSS and the JEEF, as determined by HAC, were applied to shipments from Japan to Singapore.[348]

244. For shipments paid on a collect basis, the JEEF and the JSS, as determined by HAC, were applied by HFI Singapore. Where HAC quoted to Singapore customers, these fees were collected by HFI Singapore. The JEEF and the JSS, as determined by HAC, were also applied in Singapore. When consignees were quoted by HFI Singapore the JSS and/or the JEEF for their collect shipments from Japan to Singapore, [✂] during the relevant period, informed CCS that:

> "*… for the Singapore office, in respect of Singapore to Japan [sic] for documentation fees or other fees in Japan, the Singapore office will*

[344] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure 12, paragraph 26.
[345] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_000716 & seq. Translation.
[346] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_000716 & seq. Translation.
[347] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_000716 & seq. Translation.
[348] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 26.

obtain a quote from the Japan office and use this to quote a customer in Singapore".[349]

245. CCS considers that the evidence in paragraphs 160 to 212, paragraph 226 and paragraphs 234 to 244 demonstrates that HAC entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

K Line

246. As described in paragraphs 160 to 212 above, KLJ was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically throughout the period from November 2004 to 12 November 2007. K Line was part of the consensus, reached on 20 February 2006, that the amounts to charge customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

247. KLJ admitted in its response dated 22 February 2013 to CCS that its employees were involved in meetings of the JAFA where the JEEF and the JSS were discussed and agreed upon on 12 December 2005 and 20 February 2006.[350] Documentary evidence from other Parties likewise evidences the presence and participation of a representative from KLJ in meetings where the JSS and the JEEF were discussed, including reports from the KLJ representative of K Line's ability to collect these from customers.

248. The K Line response dated 22 February 2013 stated that [✂], was appointed by the [✂], to attend the JAFA meetings on behalf of K Line.[351] Summaries of meetings prepared by [✂] who attended, *inter alia*, the JAFA meetings of 12 December 2005, 20 February 2006, 19 September 2006, 23 January 2007, 17 July 2007 and 18 September 2007, provided by KLJ, evidence discussions of the JSS and the JEEF at those meetings.[352]

[349] Answer to Question 13 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 26 July 2013.
[350] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 16 and 24.
[351] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 19, 20 and 35.
[352] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexes 3 and 4.

249. Further in an interview with CCS, [✂], confirmed a statement he made to the JFTC dated 3 September 2008. In the statement, he confirmed that K Line had participated in JAFA meetings from October 2005 and that it had actively encouraged the setting of unified charges in the industry. The relevant passage of [✂] statement is set out below:

> "*It was around October of 2005, when the topic of SC started to circulate, and when* [✂] *of Yamato Logistics, acting as MC during the meeting of the Subcommittee on Exports, suggested to discuss SC at the next meeting of the Transport Committee. Upon his suggestion, it was decided that I would attend the meeting of the Transport Committee…*
>
> *After the Subcommittee on Exports at which* [✂] *of Yamato Logistics made the suggestion, the first meeting I was to attend regarding the SC was the one held on November 25, 2005…*
>
> *However, I could not manage to attend the meeting held on November 25, 2005 and was going to be absent. Consequently,* [✂] *of the JAFA Secretariat requested that I would inform him of our company's views that would have been expressed at the meeting beforehand and I sent e-mail to* [✂] *of the JAFA Secretariat the following e-mail one day before the meeting as our company's policy on explosives inspection: "We have not yet installed any x-ray inspection equipment and explosives inspection equipment…We are considering setting the charges for this at 2,000 yen minimum and 500 yen per piece. We are considering the same as explosives inspection charges. If charges unified in the industry are set, we will collect the unified charges*".[353]

250. [✂] also participated in the JAFA Transport Committee meetings on 7 and 20 March 2006[354] and 25 May 2006[355].

251. K Line applied a JEEF at a minimum charge of [✂] from 1 April 2006[356] to November 2007 on, *inter alia*, shipments from Japan to Singapore[357] where they were shipped by "unknown shippers". This was confirmed in the interview of

[353] Answer to Question 9 and document marked [✂]-002 JFTC Statement of [✂] dated 3 September 2008, paragraph 4 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[354] Answer to Question 11 and document marked [✂]-002 – JFTC Statement of [✂] dated 3 September 2008, paragraph 4(2) of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[355] Answer to Question 14 where it was further elaborated that at the meeting "*we agreed to begin collecting the JSS on 1 July 2006 but the actual start of collecting the JSS by KLJ was on 1 August 2006*" and document marked [✂]-002 which is the JFTC Statement of [✂] dated 3 September 2008, paragraph 4(4) of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[356] Document marked [✂]-002, paragraph 4(3) which states that K Line started charging the JEEF from 1 April 2006 and Answer to Question 13 where [✂] confirmed paragraph 4(3) of document marked [✂]-002 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[357] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 22.

[✂] with CCS on 3 October 2013. [✂] confirmed in the interview that the following passage in his statement to the JFTC dated 3 September 2008[358] was accurate:

> "*I will talk about the collection of explosives inspection charges of our company.* [✂]".[359]

252. K Line applied a JSS at a minimum charge of [✂] per air waybill uniformly, from 1 July 2006[360] to November 2007 on, *inter alia*, shipments from Japan to Singapore.[361] This is set out in an email from [✂] sent to "8 Domestic All Export" on 25 May 2006 where he stated that a JSS of [✂] would be charged from 1 July 2006.[362] In his interview of 3 October 2013, [✂] confirmed that the 25 May 2006 email was sent to [✂] and that K Line charged the JSS as set out in the email.[363]

253. Both KLJ and foreign branches, including KLS, were informed of the application of the JSS at [✂] per air waybill. CCS's Notes of Information/Explanation Provided of [✂] interview dated 3 October 2013 records:

> "*Q.17 What instructions were given by KLJ to the KLS management and/or staff regarding the JSS and JEEF? For example, how was KLS made aware of the amount of JSS and JEEF to charge or collect for collect shipments from Japan to Singapore?*
> ...
> *A. The JSS was announced to KLS, as per the email dated 19 July 2006 at* [✂]*-004a. For JEEF, I do not remember precisely but I do not think it was announced. With respect to collect shipments from Japan to Singapore, the sales person would be in charge so I do not know how KLS would be made aware of the amount of JEEF to collect or charge*".[364]

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[358] Answer to Question 13 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[359] Document marked [✂]-002 - Statement of [✂] dated 3 September 2008, paragraph 4(3), of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[360] Document marked [✂]-004b - Email from [✂] to 8 Domestic All Export on 25 May 2006 sets out "*As I already informed you that we would charge a part of the cost…related to new security program to customers, we have decided to start from 1 July*", document marked [✂]-004a - Email from [✂] to 2 Overseas Representative and copied to 8 Domestic All Export on 19 July 2006 sets out that "*We have already started to charge to "prepaid" shipment customers who accept SC since 1 July…The effective date for "collect" shipment: 1 August*" of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[361] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 30.
[362] Document marked [✂]-004b of [✂] (K Line) Notes of Information/ Explanation Provided on 3 October 2013.
[363] Answer to Question 15 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[364] Answer to Question 17 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.

254. Further [✂] informed CCS in his interview that while he believed the staff of KLS may not have been aware of discussions on the JEEF and the JSS[365] at JAFA meetings, he confirmed that a circular which stated that the JSS amount of JPY 300 was "practically set by JAFA" had been circulated to KLS.[366]

255. The JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore, whether negotiated by KLS or KLJ. In the email from [✂] on 19 July 2006 to all KLJ staff stationed overseas including K Line Singapore ("2Overseas Representative") that was copied to "8 Domestic ALL Export", he stated "*We have already started to charge to "prepaid" shipment customers who accept SC since 1 July…The effective date for "collect" shipment: 1 August*".[367] [✂] confirmed in his interview dated 3 October 2013 that "*the security surcharge would affect all shipments including shipments to Singapore*".[368]

256. Where collect shipments were negotiated by KLS, KLS would obtain the amount for the JSS and the JEEF to charge from KLJ and quote the amounts obtained to the customer without any mark-up.[369]

257. KLS charged and billed for the JSS and the JEEF as billed by KLJ, i.e. at [✂] for the JSS and a minimum of [✂] for the JEEF. As set out in the CCS's Notes of Information/Explanation Provided of [✂] dated 3 October 2013:

> "*Q.21 Was the decision on the amount of the JSS and JEEF to charge made by KLJ applicable to KLS?*
> …
> *A: Yes, the decision on the amount of the JSS and JEEF to charge made by KLJ applied to KLS on collect shipments from Japan. KLS did not decide on the amount charged but collected exactly the same amount of JSS and JEEF that KLJ quoted*".[370]

258. In CCS's interview with [✂] on 20 September 2013, he stated:

> "*For collect shipments from Japan to Singapore, KLS would discuss with customers about the freight charge and Singapore delivery costs before providing a quotation. KLS would obtain the freight charges and surcharges from KLJ.* [✂]. *KLS received the monthly list of surcharges by carrier from KLJ,* [✂]. *When KLS invoiced customers, the airway*

[365] Answer to Question 17 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[366] Answer to Question 20 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[367] Document marked [✂]-004a of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[368] Answer to Question 20 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.
[369] Answer to Question 20 of [✂] (K Line) Notes of Information/Explanation Provided on 20 October 2013.
[370] Answer to Question 21 of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013.

bill from KLJ would show the freight charge quoted by KLS [✂] *and the surcharges applied by KLJ*".[371]

259. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 246 to 258 demonstrates that K Line entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

KWE

260. As described in paragraphs 160 to 212 above, KWEJ was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically from November 2004 to 12 November 2007. KWE was part of the consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

261. KWEJ admitted in its response to CCS dated 25 February 2013 that its employees were involved in meetings of the JAFA on various dates, from January 2005 to September 2007 including the meeting of 20 March 2006 where KWE believe that the JEEF and the JSS were discussed and agreed upon.[372] The meetings were attended from 28 January 2005 to June 2006, first by [✂] from 2001 to 2006 and then by [✂] from 2001 to 2009.[373] Meetings were then later attended by [✂] for the period up to November 2007. [✂] was first accompanied by [✂] and then by [✂].[374]

262. Summaries of the JAFA meetings, drafted by [✂], who had attended these meetings, set out the nature of discussions on the JSS and the JEEF. These summaries were provided by KWE in its 25 February 2013 response[375] and were confirmed by [✂] during his interview with the CCS on 26 June 2013[376].

[371] Answer to Question 16 of [✂] (K Line) Notes of Information/Explanation Provided on 20 October 2013.
[372] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24 and 32 and Annexes 5 and 6.
[373] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexes 5 and 6; and information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, Annex B1-2, page 10.
[374] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, Annex B1-1 - Memo of Interview with [✂] by [✂] dated 15 October 2009, pages 7 and 8, where he admits to attending the meetings until they stopped. CCS notes that [✂] states that the last meeting was held in September 2007, but there is evidence based on the meeting minutes provided by various parties that there was a meeting in November 2007 that he attended.
[375] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexes 5 and 6.
[376] Answer to Question 18 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.

263. The statements of [✂][377] and [✂][378] to the JFTC dated 11 July 2008 and 21 November 2008 respectively also confirm that they had attended the JAFA meetings, where the JEEF and the JSS were discussed on behalf of KWE. Further documentary evidence provided by other Parties likewise evidences the presence and participation of KWEJ at the JAFA meetings.

264. KWEJ applied a JEEF at a minimum of [✂][379] from 1 April 2006[380] to November 2007 on, *inter alia*, shipments from Japan to Singapore where they were shipped by "unknown shippers" which made up [✂].[381] In his interview with CCS on 26 June 2013, [✂] explained that he had "*...conveyed the decision at JAFA and the minimum JSS and JEEF charges set by JAFA to the forwarding sales department of KWE Japan. The forwarding sales department then took liberty to charge an amount, above the minimum set by JAFA, that they thought they could charge*".[382]

265. The application of the JEEF at a minimum of [✂] was set out in an internal department circular dated 28 March 2006 from the [✂] of KWEJ.[383]

266. KWE applied a JSS of [✂] per air waybill uniformly, from 1 May 2006[384] to November 2007 on shipments from Japan including to Singapore. This was set out in an internal department circular to section managers from the [✂], dated 10 April 2006.[385] During CCS's interview of [✂] dated 24 July 2013, [✂] informed CCS that it was probably through customer circulars, that KWEJ's customers[386] were informed of the application of the JSS. Customers of KWEJ and KWES were also likely to be informed through visits by staff of KWE.[387]

267. The JSS and the JEEF applied to both prepaid and collect shipments from Japan to Singapore. In respect of the amount applied, the Notes of Information/Explanation Provided of [✂] dated 26 June 2013 records that, "*For air cargo, the origin point usually controls the price charged to the shipper. The*

[377] Information provided by NNR dated 2 August 2012, Exhibit 77; and information provided by KWE dated 24 January 2014, paragraph 4.
[378] Information provided by NNR dated 2 August 2012, Exhibit 55; and information provided by KWE dated 24 January 2014, paragraph 4.
[379] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 7.
[380] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, paragraph 8.
[381] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, paragraph 8.
[382] Answer to Question 28 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[383] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 7.
[384] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, paragraph 9.
[385] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 8.
[386] Answer to Question 29 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.
[387] Answer to Question 29 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.

shippers at the origin point usually pay, although there are cases where the shippers may pay collect in the destination office…".[388]

268. This accords with the CCS's Notes of Information/Explanation Provided of [✂] interview on 24 July 2013:

> "*Q.22 How was the amount for JEEF determined? Was the decision on the amount of the JEEF to charge made by KWE Japan applicable to KWE Singapore? For example for goods from Japan to Singapore paid collect by the customer in Singapore and charged by KWE Singapore?*
>
> *A. I do not know how the amount of the JEEF was determined but I think the decision was made by KWE Japan and applicable to KWE Singapore.*
>
> …
>
> *Q.26 How was the amount for JSS determined? Was the decision on the amount of the JSS to charge [sic] made by KWE Japan applicable to KWE Singapore? For example for goods from Japan to Singapore paid collect by the customer in Singapore and charged by KWE Singapore?*
>
> *A. I do not know how the amount of the JSS was determined. I am not sure if the decision on the amount of the JSS was made by KWE Japan and applicable to KWE Singapore but I think it was for all charge collect shipment*".[389]

269. KWES consequently charged and billed for the JSS and the JEEF as billed by KWEJ[390], i.e. at [✂] for the JSS and a minimum of [✂] for the JEEF. CCS notes that KWE has indicated that the JSS and the JEEF were normally billed to shippers in Japan as "freight on board" ("FOB") charges, so customers in Singapore were only asked to pay for collect shipments that had a JSS and/or a JEEF applied to them in instances where payment was for "all freight/charges collect" shipments.[391]

270. For collect shipments from Japan to Singapore, KWES collected all fees and surcharges as agents and on behalf of KWEJ pursuant to the International Air Cargo Consolidation Break-Bulk Agency Agreement for Export from Japan to Singapore between KWEJ and KWES dated 1 January 1993.[392] Where

[388] Answer to Question 28 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[389] Answers to Questions 22 and 26 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.
[390] Answers to Questions 22 and 26 (for JEEF and JSS) of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013; and Answer to Question 58 (regarding JSS) of [✂] (KWE) Notes of Information/Explanation Provided on 23 July 2013.
[391] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, paragraph 9.
[392] Answer to Question 11 and document marked [✂]-003 - paragraph 2D of Schedule A of the agreement which states that "*For a shipment of which airfreight charge and/or other charges are supposed to be paid on a "charges collect" basis, [KWE Singapore] is responsible for collection from the consignee and remittance to [KWE Japan] of all such charges*" of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.

shipments were negotiated or quoted by KWES, KWES would seek quotes from KWEJ, or [✂].[393]

271. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 260 to 270 demonstrates that KWE entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

MLG

272. As described in paragraphs 160 to 212 above, MLG-JP was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically from November 2004 to 12 November 2007. MLG was part of the consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.[394]

273. In the information provided to CCS, MLG-JP admitted that its representatives had attended JAFA meetings. MLG-JP set out that meetings of the JAFA were held once every two months and that its representative at these meetings was mainly [✂].[395] MLG-JP also provided minutes of meetings of the 20 February 2006[396] and 20 March 2006[397] meetings that evidence discussions between freight forwarders regarding the JSS and the JEEF. Documentary evidence from other Parties likewise evidences the presence and participation of a representative from MLG-JP in meetings where the JSS and the JEEF were discussed, including reports from the MLG-JP representative of MLG's ability to collect these from customers.

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[393] Answer to Question 11, which states that "*For imports, it depends because KWE Singapore has to get information from the overseas side; for example for imports from Japan KWE Singapore needs to get the rates from KWE Japan.* [✂] of [✂] (KWE) Notes of Information/Explanation Provided on 23 July 2013.

[394] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 1 - Email dated 23 February 2006 at 09:01 (English translation provided by MLG-JP on 8 May 2013); and Answers to Questions 44 and 45 of [✂] (MLG) Notes of Information/Explanation Provided on 22 October 2013.

[395] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, responses to questions 16-a and 16-c (JEEF) and responses to questions 24-a and 24-c (JSS).

[396] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 1 - Email dated 23 February 2006 at 09:01 (English translation provided by MLG-JP on 8 May 2013).

[397] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 3 - Email dated 20 March 2006 at 15:47 (English translation provided by MLG-JP on 8 May 2013).

274. MLG-JP applied a JSS of [✂] on 16 June 2006 and a JEEF at a minimum of [✂] on 1 April 2006.[398] These amounts applied from the date they were first applied to November 2007 on, *inter alia*, shipments from Japan to Singapore.[399] The amounts for these fees were notified in an internal email from [✂] to MLG-JP's Export Sales Department/Branch Managers and Group Managers on 20 March 2006.[400] Customers were informed of the JEEF in a letter sent in March 2006[401] and of the JSS in a letter sent on 15 May 2006[402]. In an interview with CCS dated 23 October 2013, [✂] informed CCS that [✂].[403]

275. The JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore. The amount charged for the JSS and the JEEF was determined by MLG-JP. In their submissions to CCS, MLG explained that MLG's air cargo forwarding fees are basically determined at the origin point, so all freight rates and charges for ex Japan air cargo are determined in Japan (except for fees that arise at the destination after the cargo has landed at the destination point).[404]

276. For prepaid shipments, the JSS and the JEEF were quoted to customers by MLG-JP and collected at the origin point.[405] For collect shipments which were secured by MLG-JP, MLG-SG's role is that of a receiving agent for MLG-JP, i.e. MLG-SG receives and collects payment from customers as a collecting agent on behalf of MLG-JP[406] (although JEEF is collected in Japan). For collect shipments where the customer is secured by MLG-SG, [✂] the JSS were quoted by MLG-SG at cost based on the quote it received from the origin station MLG-JP.[407]

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[398] Information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, response to question 6 (JEEF) and responses to questions 7 and 8 (JSS).

[399] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 3 - Email dated 20 March 2006 at 15:47 (English translation provided by MLG-JP on 8 May 2013); information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, response to question 6 (JEEF) and response to question 8 (JSS); and Answer to Question 44 of [✂] (MLG) Notes of Information/Explanation Provided on 22 October 2013.

[400] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 17-c and Enclosure 3 - Email dated 20 March 2006 at 15:47 (English translation provided by MLG-JP on 8 May 2013).

[401] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 18.

[402] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 30.

[403] Answer to Question 19 of [✂] (MLG) Notes of Information/Explanation Provided on 23 October 2013.

[404] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, page 4.

[405] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 35.

[406] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 35.

[407] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 34 and 40.

277. This was confirmed in CCS's interview of [✂] on 27 September 2013. The Notes of Information/Explanation Provided record: "[✂] *the JSS and JFS were treated in the same way, passed on to customers at cost as provided by MLG-JP. MLG-SG would contact with overseas offices such as MLG-JP to [get] current tariff information*".[408]

278. Likewise in the interview with [✂] on 23 October 2013, CCS's Notes of Information/Explanation Provided record the following:

> "*Q.16 Was the decision on the amount of the JEEF and JSS to charge made by [MLG] Japan applicable to [MLG] Singapore? For example for goods from Japan to Singapore paid collect by the customer in Singapore and charged by [MLG] Singapore?*
>
> *A. The amount of JSS to charge decided by [MLG] Japan is applicable to all shipments from Japan to overseas including Singapore. The amount of JEEF to charge decided by [MLG] Japan is applicable to all shipments from Japan to overseas including Singapore where it is sent by unknown shippers.*
>
> *Where a shipment is negotiated with a customer in Japan, if the JSS and JEEF applies then it is applicable to shipments from Japan to Singapore paid collect in Singapore (but JEEF is collected and paid in Japan).*
>
> *If a shipment is negotiated in Singapore and paid collect in Singapore the JEEF applies for unknown shippers but it is collected in Japan. If the JSS is on the house air waybill [it is] passed on to Singapore and collected in Singapore by [MLG] Singapore.*
>
> *I am not aware of the extent to which the JSS and JEEF may be negotiated on where a shipment is negotiated in Singapore and paid collect in Singapore. Where the JSS applies it would normally be* [✂]. *I do not know if the JEEF would be quoted to a customer in Singapore in these circumstances. In any case JEEF is collected and paid in Japan*".[409]

279. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 272 to 278 demonstrates that MLG entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

[408] Answer to Question 9 of [✂] (MLG) Notes of Information/Explanation Provided on 27 September 2013.
[409] Answer to Question 16 of [✂] (MLG) Notes of Information/Explanation Provided on 23 October 2013.

Nippon Express

280. As described in paragraphs 160 to 212 above, NEJ was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically from November 2004 to 12 November 2007. Nippon Express was part of the consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.[410]

281. NEJ admitted in their response dated 25 February 2013 to the CCS that, "*It is understood that the Executive Board (YK) met and agreed that freight forwarders should impose an explosives surcharge (JEEF) and an additional JSS*".[411] NEJ has also provided CCS with minutes of JAFA meetings prepared for internal circulation by representatives of NEJ who attended these meetings[412] which demonstrate NEJ's involvement in discussions concerning the JSS and the JEEF.[413] Documentary evidence from other Parties likewise evidences NEJ's attendance and participation at these meetings.

282. According to NEJ, it applied a JEEF at a minimum of [✂] independently on 1 April 2006.[414] NEJ however admits it attended discussions at the JAFA in the transportation sub-committee meetings on 7 March 2006 and 20 March 2006. [415] At those meetings a minimum of JPY 1,500 for JEEF had been proposed and decided on by the transportation committee. NEJ also states that it applied a JSS of [✂] on 1 July 2006[416]. NEJ admits its attendance at the said 20 February 2006 and 7 March 2006 meetings. At those meetings freight forwarders agreed a JSS at the minimum amount of JPY 300. NEJ also admits its attendance at meetings where collection rates were discussed such as at the Executive Board meeting on 15 May 2006 and 19 September 2006.[417]

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[410] Answers to Questions 28 and 30 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[411] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(ix).
[412] Representatives of Nippon Express at JAFA meetings were: [✂]; [✂]; [✂]; and [✂].
[413] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexes B and C.
[414] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xii).
[415] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24.2(x) and 24.2(xi); and Answer to Question 28 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[416] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 24.2(xvii).
[417] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24.2(xv) and 24.2(xviii).

283. In his interview with CCS on 7 November 2013, [✂] admitted that for the Transportation Sub-committee meetings that he attended, "*there were discussions and decisions made regarding the operation of the JSS and JEEF. In particular, we discussed and decided on the definition of the JSS and JEEF, who was supposed to collect the JSS and JEEF and what would be the appropriate amount to charge for the JSS and JEEF*".[418] [✂] also confirmed his attendance at meetings listed in NEJ's submissions to CCS, meetings on 7 March 2006, 20 March 2006, 5 April 2006 and 25 May 2006 where either the JSS, or the JSS and the JEEF, were discussed.[419] He further elaborated that "*the chairman of the transportation committee told me that some form of a board of committee or officers, comprising senior members from the freight forwarders, decided that in relation to a new security-related directive the JSS and JEEF need to be collected*".[420] Additionally, he commented that "*[a]t the 20 March 2006 meeting, the chairman of the transportation sub-committee proposed that 1,500 yen would be charged for the JEEF. I confirm that as set out in item (xi) of* [✂]*-002, the committee then decided to charge 1,500 yen for the JEEF if an explosives inspection occurred. I, representing NEJ, was part of the committee that made this decision*".[421]

284. NEJ has submitted to CCS that each of [✂] in Japan has the authority and responsibility in the negotiation with the client shippers concerning the collection of the charges, and each [✂] has the discretion to determine the actual amount receivable as well as whether or not to charge such charges.[422] However [✂] stated in the record of his interview with CCS on 7 November 2013 that while "*[a]t that point, I had already prepared a plan to charge the JEEF of* [✂]*... I had devised my plan between* [✂]*, taking into consideration the amount proposed by the chairman [of the transportation committee] and after discussing with the* [✂]".[423] This implies that, [✂], representing NEJ, had decided NEJ's surcharge, in view of the amount proposed at the JAFA meeting he attended. Further, in his interview with CCS on 7 November 2013, [✂] stated that the "*[d]ecision made by the Executive Board was conveyed to us at the transportation sub-committee meeting on the amount to charge – it was 300 yen per shipment*".[424]

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[418] Answer to Question 25 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[419] Answer to Question 26 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24.2(x), 24.2(xi), 24.2(xiii) and 24.2(xvi).
[420] Answer to Question 26 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[421] Answer to Question 28 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[422] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 29.
[423] Answer to Question 28 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[424] Answer to Question 30 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.

285. In the interview with CCS on 8 November 2013, [✂] also confirmed that the JSS "*was determined at the JAFA meeting* [✂]. *My boss is the manager*, [✂], [✂]" [425] and "*the JEEF of* [✂] *only applied to the shipment from unknown shipper in Japan and the JSS of* [✂] *were implemented on all shipments from Japan, including from Japan to Singapore*".[426]

286. It is clear from the evidence received that the pricing of the JSS and the JEEF discussed at the JAFA meetings were at the very least considered by NEJ. [✂] Nippon Express charged and billed for the JSS and the JEEF [✂] for prepaid and collect shipments from Japan to Singapore as discussed in the JAFA meetings.[427]

287. CCS understands from the interviews of [✂] on 7 and 8 November 2013 that the JSS and the JEEF were usually determined by NEJ for collect shipments whether quoted to a customer by NEJ or NES and the amounts were informed by NEJ to NES. As recorded in CCS's Notes of Information/Explanation Provided:

> "*...for the JEEF and JSS, the amounts decided on [by NEJ] were addressed to the sales department but were also cc-ed to the Administrative Dept. at overseas offices. The reason for this is that when the invoice has been issued for collect shipments, the consignee overseas would be required to pay for the charges, including the JEEF and JSS invoiced. Providing the information to the overseas offices allows the overseas offices to inform their customers of the charges in advance, though I am not sure how they do it*".[428]

288. This was confirmed in CCS's interview with [✂] on 22 October 2013:

> "*Q.22 For the period 2002 to 2007, please explain the arrangement for collect shipments between NES and NEJ regarding fees and surcharges for shipments from Japan to Singapore. Can you confirm this applies whether the shipments were negotiated by NEJ or NES?*
> …
> *A. ... NES would quote to customers after obtaining the freight rates and surcharges from NEJ. NES* [✂] *The amount of the freight rates and surcharges for collect shipments will be shown on the house airway bill,*

[425] Answer to Question 1 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 8 November 2013.
[426] Answer to Question 2 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 8 November 2013.
[427] Answer to Question 2 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 8 November 2013; and information provided by NEJ dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraphs 10 and 11.
[428] Answer to Question 8 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.

which comes from NEJ. [✂]. *NES would collect payment from consignees on a NES invoice and pay the collect charges to NEJ*".[429]

289. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 280 to 288 demonstrates that Nippon Express entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

NNR

290. As described in paragraphs 160 to 212 above, NNR was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions as evidenced in information provided by NNR and other Parties occurred periodically from November 2004 to 12 November 2007. NNR was part of the consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

291. NNR applied a JEEF at a minimum of [✂] and a JSS of [✂] per air waybill uniformly, until November 2007 on, *inter alia*, shipments from Japan to Singapore.[430] NNR applied the JEEF from 1 April 2006[431] and the JSS from 1 July 2006.[432] A customer letter dated June 2006 regarding the JSS was circulated by NNR to Japanese customers.[433]

292. NNR Japan and foreign branches, including NNR Singapore, were informed of the application of the JSS at [✂] per air waybill. As recorded in CCS's Notes of Information/Explanation Provided on 5 August 2013, [✂] stated:

"Q.58 During 2002 to 2007 did you see document [✂]*-009 or similar customer letters? Were such customer letters provided to NNR Singapore by NNR Japan? Can you explain the customer letter generally? What was the purpose of the letter, including who it originated from?*

[429] Answer to Question 22 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.
[430] Answers to Questions 7 and 8 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013; and information provided by NNR dated 11 June 2013 pursuant to CCS's RFI dated 30 April 2013, S/N 9 to 12 and Annexure D.
[431] Information provided by NNR dated 11 June 2013 pursuant to CCS's RFI dated 30 April 2013, S/N 9.
[432] Information provided by NNR dated 18 June 2013 pursuant to CCS's RFI dated 30 April 2013, S/N 11; and document marked [✂]-013 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[433] Answer to Question 6 and document marked [✂]-013 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.

A. I do not remember seeing [✂]*-009 [customer letter regarding implementation of the JSS]. I think I have seen similar customer letters but I do not remember the details. Such customer letters should have been prepared and sent by NNR Japan to their overseas partners, including NNR Singapore, but I cannot remember exactly. I think the customer circular was prepared by NNR Japan to inform all overseas customers of the imposition of the security surcharge of* [✂] *per airway bill by NNR from 1 July 2006 for all shipments, as stated in* [✂]*-009.*

Q.59 Apart from document [✂]*-009, what instructions were given by NNR Japan to the NNR Singapore management and/or staff regarding the JSS and JEEF? Were NNR Singapore management and/ staff made aware of discussions regarding the JSS and JEEF at JAFA and EBIC?*

A. There may be another notification from NNR Japan similar to [✂]*-009 but regarding the JEEF, since you would need to give prior notice to customers before collecting the JEEF. As to the discussions regarding the JSS and JEEF at JAFA and EBIC, I am not aware*".[434]

293. The JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore. NNR Singapore charged and billed for the JSS and the JEEF as billed by NNR Japan, i.e. at [✂] for the JSS and a minimum of [✂] for the JEEF. CCS's Notes of Information/Explanation Provided of [✂] provided on 5 August 2013 record:

"*Q.17 How were the fees and surcharges quoted to customers for prepaid and collect shipments by NNR Singapore on the Japan to Singapore route generally decided (i.e. by headquarters, regional offices or independently)? Do all offices implement the same amount of fees and surcharges?*

A. Most of the shipments are quoted by NNR Japan for prepaid shipments. Exceptionally [✂]*, a prepaid shipment may be quoted by NNR Singapore. Freight charges and surcharges quoted by NNR Japan are determined by NNR Japan. During the exceptional occasions where prepaid shipments are quoted by NNR Singapore, NNR Singapore would quote the freight charges based on its knowledge of freight charges for the Japan to Singapore route and would quote the specific amount for the security and explosives charges that NNR Japan would specify to NNR Singapore on how much to charge for these surcharges. NNR Singapore would simply quote and charge these surcharges at the amount specified by NNR Japan with no further markup or discount…*

[434] Answers to Questions 58 and 59, and document marked [✂]-009 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

Collect shipments are usually quoted by NNR Singapore and exceptionally are quoted by NNR Japan...In respect of collect shipments, NNR Singapore quotes the surcharges as specified by NNR Japan; I have never come across any discount or mark up that NNR Singapore applies when quoting surcharges for JEEF and JSS that applied on the Japan to Singapore route.

...

Q.24 For freight collect shipments from Japan to Singapore where NNR Singapore collected the fees and surcharges on behalf of NNR Japan, please confirm that NNR Singapore collected ***all*** *fees and surcharges as agents on behalf of NNR Japan. Please confirm that your answer is accurate for the period between 2002 and 2007.*

A. Yes, NNR Singapore collected all fees and surcharges as agents on behalf of NNR Japan. We sent all fees and surcharges back to NNR Japan.

The profit-sharing agreement between NNR Singapore and NNR Japan is that NNR Singapore would receive [✂] *of the profits for shipments that NNR Singapore generated. There is an agency agreement between NNR Japan and NNR Singapore under which the amounts collected need to be paid to NNR Japan within* [✂]".[435]

294. This was further confirmed by [✂] on 5 August 2013 in his interview with CCS. CCS's Notes of Information/Explanation Provided record:

"*For goods from Japan to Singapore charged on a collect basis the amount of the JEEF and JSS is decided by NNR Japan, charged to and collected from the customer in Singapore by NNR Singapore, and the JEEF and JSS collected by NNR Singapore is paid to NNR Japan*".[436]

295. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 290 to 294 demonstrates that NNR entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Nissin

296. As described in paragraphs 160 to 212 above, Nissin was actively involved in discussions with the Parties regarding the JSS and the JEEF, including

[435] Answers to Questions 17 and 24 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[436] Answer to Question 8 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.

discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically throughout the period from November 2004 to 12 November 2007. Nissin was part of the final consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

297. According to a statement provided by [✂][437] to the JFTC on 9 June 2008, Nissin Corporation responded to the JAFA survey regarding the forecast of the cost of new security measures circulated by JAFA on 19 December 2005. The topic "of collecting expenses" regarding the security measures were also discussed by Nissin Corporation at JAFA meetings.[438] Furthermore, evidence provided by other Parties confirm the attendance of [✂], at JAFA meetings including the meeting on 12 January 2006 where attendees were asked to study amounts that should be collected from customers in relation to expenses incurred regarding the new security measures.[439] Nissin duly calculated its expenses for security related expenses and explosives detection fees and presented it at JAFA.[440] Also, [✂] attended for Nissin Corporation the 20 February 2006 meeting where the consensus regarding the amount to charge customers for the JSS and the JEEF was reached.[441]

298. Nissin applied a JEEF at a minimum of [✂] and a JSS at a minimum of [✂][442] per air waybill uniformly, from April 2006 to November 2007 on, *inter alia*, shipments from Japan to Singapore[443]. As set out in the statement of [✂] provided to the JFTC dated 9 June 2008:

> "*[A]fter the decision by the International Division Administrators' Meeting, our firm applied a security charge of* [✂] *per house air waybill to all shippers, and for the inspections fee when we conduct an explosives inspection, we set the basic fee per waybill at* [✂] *for up to five items of cargo with an additional fee of* [✂] *per additional five*

[437] Information provided by NNR dated 2 August 2012, Exhibit 47.
[438] Information provided by NNR dated 2 August 2012, Exhibit 47, pages 1 to 3.
[439] Information provided by NNR dated 2 August 2012, Exhibit 47, pages 4 and 5.
[440] Information provided by NNR dated 2 August 2012, Exhibit 47, page 5.
[441] Information provided by NNR dated 2 August 2012, Exhibit 47, pages 5-7, and pages 9 and 10 where [✂] confirmed attending a JAFA meeting on 19 September 2006 and reporting on Nissin's JSS (as well as JFS) collection rate, and Exhibit 48, pages 3 to 10 where [✂] of Nissin confirmed in a statement provided to the JFTC dated 1 October 2008 that he attended a JAFA meeting on 17 July 2007 and 18 September 2007, where, *inter alia*, JSS collection rates of the attendees were presented.
[442] Information provided by NNR dated 2 August 2012, Exhibit 47, page 9; and information provided by Nissin Corporation dated 25 March 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 10 and basis of the estimation at page 13 where Nissin indicated a charge of JPY [✂] for JEEF and JPY [✂] for JSS.
[443] Information provided by Nissin Corporation dated 25 March 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 10.

items of cargo; we sent out guidelines to shippers around March 2006 and began actually collecting the fee from shippers on 1 April 2006".[444]

299. The JSS and the JEEF are both listed on the fees and surcharges applied by Nissin on the route from Japan to Singapore.[445]

300. Based on data provided by Nissin, the JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore.[446]

301. For collect shipments which were secured by Nissin Corporation, Nissin Singapore collected payment from customers on behalf of Nissin Corporation.[447] For collect shipments where the customer is secured by Nissin Singapore, all applicable [✂], which included the JSS and the JEEF, were quoted by Nissin Singapore at cost, based on the quote it received from the origin station, Nissin Corporation.[448]

302. This was evidenced in CCS's interview of [✂] dated 26 August 2013. CCS's Notes of Information/Explanation provided record:

> "*My understanding for air freight shipments on a collect basis where the quote is given by Nissin Singapore to its customer, Nissin Singapore would quote to the customer what Nissin Japan quotes* [✂] *depending on the market conditions. For* [✂] *that Nissin Japan quotes, we will not impose a mark-up*".[449]

303. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 296 to 302 demonstrates that Nissin entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Vantec

304. As described in paragraphs 160 to 212 above, Vantec was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing

[444] Information provided by NNR dated 2 August 2012, Exhibit 47, page 9.
[445] Information provided by Nissin Corporation dated 25 March 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 9; and information provided by Nissin Corporation dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 17.
[446] Information provided by Nissin Corporation dated 25 March 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 10 and basis of the estimation at page 15, paragraph 6.
[447] Answer to Question 22 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013; and Answer to Question 15 of [✂] (Nissin) dated 26 August 2013.
[448] Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.
[449] Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.

their success in collecting the JSS and the JEEF from customers. These discussions, evidenced in information provided by Vantec and other Parties, occurred periodically throughout the period from November 2004 to 12 November 2007. Vantec was part of the consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

305. Vantec applied a JEEF at a minimum of [✂] to apply from 1 April 2006.[450] Vantec applied a JSS of [✂] per air waybill from 1 July 2006.[451] Vantec continued charging the JEEF and the JSS uniformly until November 2007 on, *inter alia*, shipments from Japan to Singapore.[452]

306. Vantec Japan and foreign branches, including Vantec Singapore, were informed of the application of the JEEF at a minimum of [✂], and the JSS at [✂] per air waybill. The Notes of Information/Explanation Provided of [✂], who was [✂], dated 19 June 2013 record how Vantec informed its customers about the JEEF and the JSS:

> "*Q.84 How did Vantec Japan and Vantec Singapore tell customers that it would be charging the JEEF?*
>
> *A. If a customer needed an explanation of the JEEF the letter at* [✂]*-008 would be shown to the customer for explanation. The sales staff would inform customers.*
> …
>
> *Q.100 How did Vantec Japan and Vantec Singapore tell customers that it would be charging the JSS?*
>
> *A. Vantec Japan issued the letter in document* [✂]*-010 to customers. Vantec Singapore would receive this letter, and the Singapore sales staff would inform customers in Singapore*".[453]

307. The JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore. Vantec Singapore charged and billed for the JSS and the JEEF as billed by Vantec Japan, i.e. at [✂] for the JSS and a minimum of [✂].

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[450] Answer to Question 76 and document marked [✂]-008 of [✂] (Vantec) Notes of Information/Explanation Provided on 19 June 2013.
[451] Information provided by Vantec dated 17 May 2013 pursuant to CCS's RFI dated 2 May 2013, paragraph 2.2.
[452] Answers to Questions 82, 83, 85, 89, 90, 98, 99, 102, and 104 of [✂] (Vantec) Notes of Information/Explanation Provided on 19 June 2013.
[453] Answers to Questions 84 and 100, and documents marked [✂]-008 and [✂]-010 [✂] (Vantec) Notes of Information/Explanation Provided on 19 June 2013.

This is reflected in the Notes of Information/Explanation Provided of [✂] dated 19 June 2013 which records:

> "*Q.83 Did Vantec Singapore ever charge or pass a JEEF onto customers in Singapore? If so how did Vantec Singapore decide what amount of JEEF to charge and what was that amount?*
>
> *A. Vantec Japan did charge the JEEF to customers in Singapore. Vantec Japan would bill the JEEF to Vantec Singapore who then bill the JEEF to the customer. Vantec Singapore does not change the JEEF billed by Vantec Japan.*
> *...*
>
> *Q.87 Did Vantec* Singapore *have discretion in relation to charging the JEEF during the period 2002 to 2007? For example could it decide to charge a different amount of JEEF to what Vantec Japan may have quoted for a consignment from Japan to Singapore?*
>
> *A. It may be possible for a customer to negotiate the JEEF, but it is a Japanese fee. For Vantec Singapore to charge a different JEEF to what Vantec Japan had advised, Vantec Singapore would have to ask Vantec Japan to change the fee. Vantec Singapore cannot change a Vantec Japan fee on its own.*"
> …
>
> *Q.90 Referring to document marked* [✂]*-003 at page 18, it states that "where Vantec Singapore is negotiating with a customer in respect of a consignment being exported from Japan to Singapore, Vantec Singapore does not take a decision on the levy of the Japanese Export Surcharges. Vantec Singapore will only seek a fee quote from Vantec Japan (such a quote will include the Japanese Export Surcharges)…Vantec Singapore will incorporate the said quote as part of its overall quote and pass it on to the customer." Is this correct for the JEEF? Did Vantec Singapore simply implement the JEEF set by Vantec Japan? Were there any negotiations between Vantec Singapore and Vantec Japan in relation to the JEEF?*
>
> *A. Yes, paragraph 16.2 on page 18 of document* [✂]*-003 is correct for the JEEF.*
>
> *I do not know if there were negotiations between Vantec Singapore and Vantec Japan on the JEEF. JEEF is Vantec Japan fee and Vantec Singapore cannot change the JEEF without agreement from Vantec Japan.*
> …

Q.99 Did Vantec Singapore ever charge or pass a JSS onto customers in Singapore? If so how did Vantec Singapore decide what amount of JSS to charge?

A. Yes, Vantec Singapore has passed on JSS to customers in Singapore. Vantec Japan charges the JSS to Vantec Singapore, and Vantec Singapore will charge the same amount to customers in Singapore.
…

Q.102 Did Vantec Singapore have discretion in relation to charging the JSS during the period 2002 to 2007? For example could it decide to charge a different amount of JSS to what Vantec Japan may have quoted for a consignment from Japan to Singapore?

A. Vantec Japan applied a uniform amount to all Vantec subsidiary companies, not only Singapore. After Vantec Singapore receives the debit note from Japan, it cannot change the JSS amount.
…

Q.104 Referring to document marked [✂]*-003 at page 18, it states that "where Vantec Singapore is negotiating with a customer in respect of a consignment being exported from Japan to Singapore, Vantec Singapore does not take a decision on the levy of the Japanese Export Surcharges. Vantec Singapore will only seek a fee quote from Vantec Japan (such a quote will include the Japanese Export Surcharges)…Vantec Singapore will incorporate the said quote as part of its overall quote and pass it on to the customer." Is this correct for JSS? Did Vantec Singapore simply implement the JSS set by Vantec Japan? Were there any negotiations between Vantec Singapore and Vantec Japan in relation to the JSS?*

A. Yes, paragraph 16.2 on page 18 of document [✂]*-003 is correct. Vantec Singapore simply charges the JSS set by Vantec Japan. As far as I know, Vantec Singapore did not have a practice of negotiating JSS with Vantec Japan.*
…

Q.106 Are you aware of any instances when Vantec Singapore's customers refused to pay the JSS? What would Vantec Singapore do in such circumstances?

A. No, I am unaware of such instances. If there was such an instance, Vantec Singapore would check whether Vantec Japan could waive the JSS".[454]

[454] Answers to Questions 83, 87, 90, 99, 102, 104, and 106 of [✂] (Vantec) Notes of Information/Explanation Provided on 19 June 2013.

308. Furthermore, in his 9 October 2013 Affidavit, [✂] stated that:

> "*To the best of my knowledge, surcharges such as the JEEF, JFS and JSS would be imposed on shipments exported out of Japan to all destinations, including Singapore. The decision to impose such surcharges would have been made by Vantec Japan for the shipments from Japan*".[455]

309. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 304 to 309 demonstrates that Vantec entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Yamato

310. As described in paragraphs 160 to 212 above, Yamato Japan was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and in sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically from November 2004 to 12 November 2007. Yamato Japan was part of the consensus, reached on 20 February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

311. In information provided to CCS, Yamato admitted the existence of a JSS agreement between freight forwarders, stating: "*Regarding the JSS there was an agreement among the freight forwarders who were members of JAFA made on 20 Feb 2006 imposing a security charge of 300 yen per shipment of their customers which was collected by the freight forwarders for their own account*".[456] Yamato's representative at this meeting was [✂].[457] Documentary evidence from other Parties also evidences the attendance and participation of Yamato at this and other JAFA meetings.

312. Yamato applied a JSS of [✂] from July 2006 to November 2007 on, *inter alia*, shipments exported from Japan to Singapore.[458] This was described on their air

[455] Affidavit of [✂] (Vantec) dated 9 October 2013, paragraph 26.
[456] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 11.
[457] [✂] has since resigned from Yamato.
[458] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraphs 12 to 13.

waybills as "SC".[459] Yamato noted that there was "*no change in the JSS after the meeting of JAFA of February 20, 2006*".[460] Yamato Japan initially submitted that it did not handle any explosives or dangerous cargo and as such no JEEF was charged to customers.[461] Both [✂] and [✂], in interviews with CCS, likewise stated that they were unaware of an explosives examination fee being applied by Yamato Asia.[462] However, upon further checks, Yamato submitted that there were shipments, albeit only a few, to Singapore incurring a JEEF charge in 2006 and 2007.[463]

313. When asked in an interview on 21 October 2013 with CCS how Yamato's customers were told about the start of the JSS charge, [✂], was recorded as stating that, "*Customers will find out about the JSS through quotations from Yamato Asia, on which Yamato Asia will input the amount of JSS decided and informed by Yamato Japan*".[464] [✂], the JSS was charged uniformly to all customers at a fixed rate[465] of [✂]. [✂].[466]

314. In an interview with CCS on 23 October 2013, [✂] further informed CCS that Yamato [✂]. [✂] was recorded as stating:

> "*I have encountered customers who have claimed that our competitors have lowered/waived surcharges. But I do not know if these claims are genuine. Despite this,* [✂]. *This is the same for surcharges provided by Yamato Japan.* [✂]. *I do not know about Yamato Asia's competitors*".[467]

315. The JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore. The amounts for the JSS and the JEEF to charge customers for all cases whether prepaid or collect were determined by Yamato Japan.[468] Fees for prepaid shipments were determined and paid to Yamato Japan. For collect shipments that were secured by Yamato Japan, the charges set out on the HAWB, were the charges that Yamato Asia collected from customers in

[459] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 13.
[460] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 13.
[461] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 39.
[462] Answer to Question 45 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013; and Answers to Questions 15, 42 and 74 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013.
[463] Information provided by Yamato dated 6 November 2013 pursuant to CCS's RFI dated 21 October 2013, response to question 1.
[464] Answer to Question 53 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[465] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 7.1.
[466] Answer to Question 54 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[467] Answer to Question 13 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013.
[468] Answer to Question 26 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.

Singapore and transmitted back to Yamato Japan.[469] [✂] in his interview on 21 October 2013 also explained that if a shipment is negotiated by Yamato Asia [✂].[470] [✂] likewise in his interview of 23 October 2013 mentioned that [✂].[471]

316. These arrangements were recorded in CCS's interview of [✂] on 21 October 2013. CCS's Notes of Information/Explanation Provided record the following:

> "*For a pre-paid shipment from Japan to Singapore, Yamato Japan determines the fees and surcharges. The same would apply to all pre-paid shipments out of Japan.*
>
> *If it is on collect basis, the fees and surcharges are determined by Yamato Japan and Yamato Asia collects the fees and surcharges on behalf of Yamato Japan and remits that money back to Yamato Japan.*
>
> *In particular, if Yamato Asia is quoting a customer on a collect basis, Yamato Asia will seek a quote from Yamato Japan. Yamato Asia will issue the quote to the customer in Singapore to seek their agreement.*
>
> *Yamato Asia may* [✂]. *But all other charges are as quoted by Yamato Japan.* [✂].
>
> *This has always been the practice. So this would have been the same in 2002-2007*".[472]

317. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 310 to 316 demonstrates that Yamato entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Yusen

318. As described in paragraphs 160 to 212 above, Yusen Japan was actively involved in discussions with the Parties regarding the JSS and the JEEF, including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. These discussions occurred periodically throughout the period from November 2004 to 12 November 2007. Yusen was part of the consensus, reached on 20

[469] Answer to Question 26 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[470] Answer to Question 26 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[471] Answer to Question 14 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013.
[472] Answer to Question 22 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.

February 2006, that the amounts to be charged to customers would be a minimum of JPY 300 per air waybill for the JSS and a minimum of JPY 1,500 per air waybill for the JEEF.

319. Yusen Japan admitted in its response dated 20 February 2013 to CCS that its employees, namely [✂] (designation unknown), [✂], [✂], and [✂] were involved in meetings of the JAFA on 12 December 2005, 20 February 2006, 15 May 2006 and 19 September 2006.[473] Summaries of the meetings by the respective attendees of the aforesaid meetings on 12 December 2005, 20 February 2006, 15 May 2006 and 19 September 2006 were provided to CCS, and these evidenced the JSS and the JEEF being discussed at the meetings.[474]

320. [✂] in his interview with CCS on 7 October 2013 confirmed that there were discussions of the JSS and the JEEF at the EBIC meeting on 20 February 2006, which he attended.[475] [✂] also confirmed that in relation to [✂] proposal regarding the amount to be applied for the JSS and the JEEF, the attendees approved the proposal. [✂] Notes of Information/Explanation Provided records that "*At JAFA, a guideline was created, a target set up, and thus a conclusion was agreed upon by the attendees*".[476] He also confirmed that the JSS and the JEEF were discussed at meetings of the Operations Improvement Committee of JAFA and that included in these discussions were the amounts to charge.[477]

321. Yusen applied a JEEF of a minimum [✂] from 1 April 2006[478] to November 2007 on, *inter alia*, shipments from Japan to Singapore[479] where they were shipped by "unknown shippers"[480], as agreed at JAFA. This was confirmed by [✂] (Yusen) during his interview with CCS on 18 November 2013, where he said that "*[b]ased on the amount provided by JAFA, Yusen determined the amount of JEEF to be charged to its customers*".[481] The application of the JEEF at a minimum of [✂] was set out in and communicated to staff of Yusen Japan

[473] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 24.2 and 32.2.
[474] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendices JP-11, JP-12, JP-13 and JP-14.
[475] Answer to Question 11 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.
[476] Answer to Question 13 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.
[477] Answer to Question 11 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.
[478] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 28.1. Although paragraph 28.2 states that the JEEF was dependent on negotiations with customer and "varied also for each customer", [✂] stated that the JSS was the same for all customers. As recorded in the Answer to Question 56 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013: "*There were customers who refused to pay the JSS, but it was harder for them to get a waiver for the JSS because most of the freight forwarders charged it as a standard fee*".
[479] Answer to Question 16 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.
[480] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 28.4.
[481] Answer to Question 45 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.

through internal circulars[482]. These circulars also instructed staff to explain the JEEF to customers[483] and communicate the charge to Yusen's agents[484].

322. Yusen applied a JSS of [✂] per air waybill uniformly, from 1 July 2006[485] to November 2007 on, *inter alia*, shipments from Japan to Singapore as agreed in JAFA. [✂], in his interview with CCS on 7 October 2013, in response to question 18 stated that:

> "*Yes, the amount set by Yusen Japan was influenced by the discussions at the JAFA meetings…Yusen Japan would try to charge the amounts that were set out in the JAFA guidelines. That said I cannot be completely sure of this because I was hospitalised from February to April 2006*". [486]

323. This amount for the JSS was confirmed by [✂] during his interview with CCS on 18 November 2013, where he stated that Yusen determined the amount of JSS it would charge based on the amount provided by JAFA.[487] The application of the JSS at [✂] was set out in and communicated to staff of Yusen Japan through internal circulars.[488] These circulars instructed staff to explain the JSS to customers and communicate the surcharge to Yusen's agents.[489]

324. The JSS and the JEEF were applied to both prepaid and collect shipments from Japan to Singapore, whether negotiated by Yusen Singapore or Yusen Japan.

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[482] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 25.4, Appendix JP-15.1 – Email dated 11 April 2006 from [✂] to [✂] and all Airline Security Measure Staff of Yusen Japan which states that "*when an explosives inspection is performed, a* [✂] *inspection fee shall be added to each shipment (by unit inspection order). In regards to billing from the sales branch to the customer,* [✂] *shall be billed per HAWB*", paragraph 25.5 and Appendix JP-15.2 - Internal document dated 5 June 2006 sent by the Sales Administration and Coordination to all Department Managers/Branch Managers which states that "*regarding costs associated with machinery of explosive materials, we shall request a charge of* [✂]*…Please explain this to customers…*", and Appendix JP-18 – Email from [✂] to [✂] dated 11 April 2006.

[483] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 25.5 and Appendix JP-15.2.

[484] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-16 - letter dated 16 June 2006 addressed to "Dear Partners" setting out charge of [✂] for the JSS and [✂] for the JEEF with a cover email dated 19 June 2006 from [✂] stating "*Please use message given below when sending emails to inform agents regarding the introduction of the new security charge*".

[485] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 36, Appendix JP-24 - Circulars to Yusen Japan staff and Appendix JP-22- Customer circulars.

[486] Answer to Question 18 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.

[487] Answer to Question 42 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.

[488] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 25.5, 33.7 and 33.8; Appendices JP-15.2, JP-18, JP-21.2 and JP-21.3.

[489] Information provided by Yusen Japan dated 20 February 2013, pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-16.

325. Prepaid shipments were usually quoted and paid for at origin, i.e. Japan, although Yusen Singapore may have quoted such shipments on rare occasions.[490] For all-charge collect shipments, Yusen Singapore would collect payment according to the bill prepared by Yusen Japan. Payment received from a customer would then be remitted back to Yusen Japan pursuant to an agency agreement[491] [✂].[492] Yusen Singapore would obtain the amount of JEEF and/or JSS to collect from the amounts reflected on the air waybill.[493] For other collect shipments, apart from the all-charge collect shipments, only the freight cost was paid by the consignee to Yusen Singapore and the surcharges were collected by Yusen Japan.[494]

326. In cases where the collect shipment was negotiated by Yusen Singapore, Yusen Singapore would obtain the amount for surcharges, including the JSS, to charge from Yusen Japan and quote the amounts so obtained to the customer without any mark-up.[495]

327. CCS considers that the evidence in paragraphs 160 to 212 and paragraphs 318 to 326 demonstrates that Yusen entered into an agreement and/or concerted practice to fix the price of the JSS and the JEEF and exchange information regarding the application of the JSS and the JEEF on air freight shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

(iv) CCS's analysis of the evidence and its conclusions on the JSS and the JEEF

328. It is clear from the evidence above that there existed between the Parties an agreement and/or concerted practice. The Parties were engaged in a long standing arrangement of regular meetings and systemic exchanges in relation to the following:

(i) the pricing of the JSS and the JEEF following the strengthening of security measures by the MLIT for shipments from Japan to overseas countries;

(ii) their success with customers in implementing and charging the prices of the JSS and the JEEF which were agreed at the meeting of 20 February 2006 (i.e. a minimum of JPY 300 per house air waybill for

[490] Answer to Question 23 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[491] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013, [✂] referred to this as a "principal agency agreement"; and information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, Appendix JP-36 - International Agency Agreement between Yusen Japan and Yusen Singapore dated 19 July 2003.
[492] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[493] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[494] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[495] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

the JSS and a minimum of JPY 1,500 per house air waybill for the JEEF); and

(iii) their commitment to this pricing and ancillary matters associated with the JSS and the JEEF such as the tax treatment of the JEEF.

329. The meetings between the Parties in Japan following the consensus reached on 20 February 2006 occurred periodically from February 2006 until November 2007. The overall common objective of these meetings was to ensure:

(i) the freight forwarders' commitment to a fixed level of minimum prices for security measures;

(ii) that the JSS and the JEEF were implemented for freight being shipped from Japan to overseas destinations, including Singapore;

(iii) the dampening of price competition between Parties in relation to the JSS and the JEEF; and

(iv) the reactions of customers were monitored and shared.

330. At meetings, prior to the meeting of 20 February 2006 where the minimum level of price for the JSS and the JEEF was set and agreed, the Parties discussed what security measures they would be required to implement and their likely charges to customers for these. Once the minimum level of pricing for the JSS and the JEEF was agreed at the meeting of 20 February 2006, the Parties actively monitored each other's success in implementing these surcharges with customers.

331. The participation of the Parties in the JAFA meetings to discuss the JSS and the JEEF demonstrates an intention to influence the conduct of competitors by conveying the course of conduct which they themselves have decided to adopt or contemplate adopting. As stated above, the case of *Suiker Unie* has established that any direct or indirect contact between competitors, the object or effect whereof 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 themselves have decided to adopt or contemplate adopting on the market, is strictly precluded.[496]

332. As held in the case of *Tréfilunion SA v Commission*[497], 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 the market.

[496] Joined Cases 40 -8, 50, 54-6, 111, 113 and 114-73 *Cooperatiëve Vereniging Suiker Unie v Commission* [1975] ECR- 1663, at [26] and [173] to [174].
[497] Case T-148/89 [1995] ECR II-1063, at [79].

333. Further, the unequal and differing roles of each participant and the presence of internal conflict would not defeat the finding of a common unlawful enterprise. 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*".[498]

334. The Parties, who were all active freight forwarders, sent numerous shipments (exports) from Japan to overseas countries, including Singapore. The Parties may be presumed, as in the case of *Commission v Anic Partecipazioni*[499], 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 could amount to a concerted practice.[500] Consequently, subject to proof to the contrary, which the economic operators concerned must adduce, the presumption must be that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market.[501]

335. Moreover, the participation by an undertaking in meetings 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 meetings is not such as to relieve it of responsibility for the fact of its participation in the cartel, unless it has publicly distanced itself from what was agreed in them.[502]

336. Yusen, in its representations, submitted that there was no agreement reached at the JAFA on the JSS or the JEEF as attendees at the meeting did not actually say "yes".[503] Yusen also submits that any JSS or JEEF charged by Yusen was independently determined.

337. The discussions between the Parties on the JSS and the JEEF are recorded in the contemporaneous minutes of the JAFA meetings as well as the internal reports on actions to take following the meetings. CCS reiterates that 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 irrespective of the form of the agreement. An agreement may be found where it is implicit from the participants' behaviour. Further, is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted

[498] Case COMP / E-2 / 37.533 - *Choline Chloride*, at [146].
[499] Case C-49/92 [1999] ECR I-4125, at [125].
[500] Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491, at **[**1852].
[501] Case C-199/92 *P. Hüls AG v Commission* [1999] ECR I-4287.
[502] C-291/98P *Sarrio SA v Commission* [2000] ECR I-9991, at [50].
[503] Written Representations of Yusen Japan dated 23 May 2014, paragraphs 2.10 to 2.20.

practice.[504] A concerted practice exists, if undertakings, even if they do not enter into an agreement (either express or implied), that knowingly substitute for the risks of competition, practical cooperation between them.[505]

338. While Yusen may have determined the amount it was going to charge for the JSS and JEEF prior to the meeting on 20 February 2006, it was aware from its attendance at JAFA meetings of what its competitors' pricing for the JSS and the JEEF would be and could take this into account in relation to its own conduct. Further other Parties were aware from discussions at JAFA meetings of how Yusen was pricing its JSS and JEEF and could likewise take this into account.

339. Finally, in the current case, the fact that a Party did not attend every meeting does not exculpate it from a finding of infringement. Each of the Parties which took part in the common unlawful enterprise (through actions which contributed to the realisation of the shared objective) is equally responsible *for the whole period of its adherence to the common scheme*. In the circumstances of this infringement, CCS is of the view that the Parties' conduct can be viewed as a single continuous infringement.

Impact on competition within Singapore

340. Section 33(1) of the Act provides that notwithstanding that an agreement referred to in section 34 has been entered into outside Singapore; any party to such agreement is outside Singapore; or any other matter, practice or action arising out of such agreement is outside Singapore, the Act applies if such an agreement infringes or has infringed the section 34 prohibition.

341. The agreement and/or concerted practice reached between the Parties in Japan prevented, restricted or distorted competition within Singapore. The very target of the Parties' agreement and/or concerted practice was shipments from Japan to destinations overseas including Singapore. The object being to prevent, restrict or distort competition in the market for the provision of air freight forwarding services by the fixing or attempted fixing of prices for the JSS and the JEEF.

342. In the case of all the Parties, each Party's Japan company either quoted or indicated to each other that they would quote customers (for shipments exported from Japan to countries such as Singapore) the agreed prices for the JSS and the JEEF.

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[504] *The Community v Interbrew NV and Others (re the Belgian beer cartel)*, Case IV/37.614/F3 [2004] CMLR 2, at [223].

[505] 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.

343. In this case, the impact on competition within Singapore is clear. For prepaid shipments where the customer was located in Singapore, but secured by the Party's Japan company, the Japan company would quote and charge, a JSS and a JEEF (where applicable) at the amounts agreed and discussed at the JAFA meetings. For collect shipments, where customers were quoted by the Japan company, and payment was collected by the Party's Singapore company, customers would likewise be quoted a JSS and a JEEF (where applicable) at the amount agreed and discussed in the JAFA meetings. For collect shipments secured by the Japan company, the amount for the freight and accompanying surcharges, which could include the JSS and the JEEF, were collected by the Singapore company then usually remitted back to the Party's Japan company, subject to the profit sharing arrangements made between them.

344. For customers quoted by the Party's Singapore company, the JSS and the JEEF where applicable were quoted and charged at the same amounts charged by their Japan companies. From the evidence, it is clear that the Japan parent or Japan affiliate company of each of the Parties informed their Singapore subsidiary or affiliate company of the amount to charge for the JSS and/or the JEEF as applicable and that this was applied by the Singapore company. In the *Dyestuffs*[506] *case*, ICI was found to be liable for price-fixing by the EC for providing instructions to its subsidiary in Belgium to increase its prices. The ECJ found that ICI had used its subsidiary to implement in the common market, its decision, thereby infringing competition law in the EU. Similarly in *J R Geigy v Commission*, the ECJ decided that "*where an undertaking established in a third country, in the exercise of its power to control its subsidiaries established within the community, orders them to carry out a decision to raise prices, the uniform implementation of which together with other undertakings constitutes a practice prohibited under Article 85 (1) of the EEC treaty, the conduct of the subsidiaries must be imputed to the parent company.*[507]

345. The Japan parent and/or affiliate company, for some of the Parties, took proactive steps to inform their Singapore subsidiary/affiliate company about the introduction of the JSS and the JEEF and the timing for when it would apply. Some even provided their respective Singapore subsidiary/affiliate company with circulars that they had sent to customers (the English translations of which were provided by the Singapore subsidiary/affiliate company to customers of the Singapore subsidiary/affiliate company and/or customers in Singapore). Certain Japanese parents and/or affiliate companies provided a briefing or instructions to their respective Singapore subsidiary/affiliate company on the pricing of the JSS and/or the JEEF, or how the JSS and/or the JEEF would apply to customers.

346. In light of the foregoing, it is clear that the Parties entered into an agreement and/or concerted practice through their participation in a series of meetings over

[506] Case 48/69 *ICI v Commission* [1972] ECR 619, at [140].
[507] *J R Geigy AG v Commission* [1972] ECR 787, at [13].

a lengthy duration of time that had as its common objective the fixing of prices for the JSS and the JEEF and exchange of information regarding the application of the JSS and the JEEF on air shipments from Japan to Singapore, to ensure that these Security Surcharges were not a point of competition between the Parties.

347. The agreement and/or concerted practice between the Parties, whereby the JSS and/or the JEEF was quoted and charged to customers at prices that were no lower than the minimum prices agreed and information was exchanged regarding the application of the JSS and/or the JEEF had as its object the prevention, restriction or distortion of competition within Singapore in the market for the provision of air freight forwarding services. The agreement and/or concerted practice was carried out by the conduct of both the Japanese and Singapore companies of each of the Parties as detailed above.

(II) The Japanese Fuel Surcharge

(i) Background

348. In or around May 2001, following increases to the cost of fuel, airlines operating out of Japan, such as Japan Airlines, imposed a fuel surcharge which they charged to freight forwarders for air freight leaving Japan. The carriers changed their respective rates of the fuel surcharge largely depending on the fluctuation of petrol prices worldwide.[508]

349. To notify freight forwarders of changes in the fuel surcharge, freight forwarders received, from time to time (quarterly or bi-yearly), circulars or notices from the different carriers informing them of the amount of fuel surcharge a particular carrier would be imposing.[509] Different carriers, at varying times, charged different rates for their fuel surcharge. The amount of the fuel surcharge was based either on chargeable weight or gross weight. The effective dates of change for each carrier's fuel surcharge differed.[510]

(ii) Conduct of the Parties

Summary

350. In or around March 2001, freight forwarders met in JAFA meetings to discuss their approach to the fuel surcharge to be imposed by the airlines. Included in the

[508] See for example, document marked [✂]-016, page 2 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013. See also information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, responses to questions 11 and 12 and corresponding table "Table for FSC Japan to Singapore for the period January 2002 to December 2008"; and information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 15.

[509] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 15.

[510] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 15.

discussion at certain meetings was whether to charge a fuel surcharge to their customers for air cargo shipments from Japan (i.e. JFS). Following these discussions certain freight forwarders began to charge customers a JFS, but discontinued this, when a drop in the price of fuel saw airlines no longer applying a fuel surcharge from at least January 2002. In September 2002, a JFS was re-instated by freight forwarders following increases in the price of fuel as airlines again began to charge freight forwarders a fuel surcharge on their shipments.

351. The JFS was discussed by the Parties at JAFA meetings and in particular at the EBIC meetings and sub-committee meetings under the EBIC. Meetings of JAFA's EBIC were held on a regular basis about once every two months.[511] At initial meetings in or around 18 September 2002, the Parties along with other freight forwarders discussed imposing a JFS on customers and the amount to be charged.

352. Following discussions between the Parties, a consensus was reached among the Parties that they should pass on to their customers the costs of fuel surcharge imposed on them by airlines. The Parties then began informing one another of their success in imposing this agreed amount for the JFS by reporting their respective collection ratio for the JFS during JAFA meetings. The collection ratio was the total amount of the JFS received from the shippers divided by the airlines fuel surcharge charged to freight forwarders.[512] Given the common understanding was that the JFS was to be passed on at 100% to the customers[513], reporting the collection ratios allowed freight forwarders to monitor their competitors and ensure that the understanding was adhered to.

353. Representatives of the Parties who attended the JAFA meetings were as follows:

Table 4: Main Representatives at JAFA Meetings (JFS)

Parties	Parties representatives at JAFA meetings
DGF	[✂]
Hankyu Hanshin	HEX [✂] HAC [✂]

[511] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 32-a.
[512] Answer to Question 4 of [✂] (K Line) Notes of Information/Explanation Provided on 4 October 2013.
[513] Answers to Questions 17 and 19 of [✂] (Yusen) Notes of Information/Explanation Provided on 19 November 2013.

K Line	[✂]
KWE	[✂]
MLG	[✂]
Nippon Express	[✂]
NNR	[✂]
Nissin	[✂]
Vantec	[✂]
Yamato	[✂]
Yusen	[✂]

Meetings from 12 March 2001 to 11 March 2002

354. As outlined above at paragraph 350, the fuel surcharge imposed by airlines and the JFS to be charged to customers by freight forwarders was discussed by freight forwarders (including the Parties) at various JAFA meetings from sometime on or before 12 March 2001 to 11 March 2002.[514]

355. Initial discussions on the JFS appear to have been prompted by the filings made by airlines for approval with MLIT to charge a fuel surcharge. Freight forwarders expressed concern about the fuel surcharge and JAFA even sought to negotiate with airlines for a delay in its introduction.[515] Freight forwarders also in this period individually applied to the MLIT to seek approval to apply a JFS for their freight forwarding services from Japan, including to Singapore.[516] JAFA expected that in relation to the freight forwarders filing with MLIT "*it would be possible to file the introduction of Surcharge in the same content as was filed by airlines companies*".[517] The scope of the approval sought was for

[514] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C – Agenda for and Minutes of Meeting of Board of Directors on 12 March 2001; and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12 document marked HH_00455 Translation - Email from [✂] dated 27 March 2001 to the directors of HEX, explaining that a fuel surcharge was proposed during an International Sub-committee meeting, during which the proposal was accepted and the agreed date for the introduction of a fuel surcharge was 16 May 2001.
[515] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for and Minutes of Meeting of Board of Directors on 12 March 2001.
[516] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 31.
[517] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C – Agenda for and Minutes of Meeting of Board of Directors on 12 March 2001.

the freight forwarders to charge the customers what the airlines were charging the freight forwarders.[518] MLIT subsequently appears to have approved the charging of a JFS by freight forwarders up to the amount that the airlines were charging.[519]

356. Freight forwarders initially charged customers a JFS at varying amounts, some charged the amount charged to them by the airlines, but at least one freight forwarder charged a lesser amount. The JFS charge discontinued following the removal of the fuel surcharge by airlines from at least January 2002[520] which corresponded with a reduction in the price of fuel.

357. The meetings held during this time period as well as the participants at those meetings that CCS is aware of are set out in the table below:

Table 5: Meetings up till 11 March 2002 (JFS)

Date and meeting type (e.g. Board, EBIC)	Names of undertakings
12 March 2001, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Airborne, Keiyo Butsuryu, Kokusai, Meitetsu, NCS, OCS, Pegasus, TNT and UAC)[521]
27 March 2001, JAFA EBIC Meeting	Not listed[522]
26 April 2001, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Airborne Express and UAC)[523]
14 May 2001, JAFA EBIC/Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Airborne,

[518] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(iv).
[519] For example: information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(vi).
[520] Information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, responses to questions 11 and 12 and corresponding table "Table for FSC Japan to Singapore for the period January 2002 to December 2008"; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C – Agenda for Meeting of Board of Directors on 13 May 2002.
[521] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for and Minutes of 12 March 2001Meeting of Board of Directors.
[522] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00455 Translation - Email from [✂] dated 27 March 2001 to the directors of HEX, explaining that a fuel surcharge was proposed during an International sub-committee meeting, during which the proposal was accepted and the agreed date for the introduction of a fuel surcharge was 16 May 2001 (attendees not listed); and information provided by NNR dated 2 August 2012, Exhibit 20 and 21 (attendees not listed).
[523] Information provided by NNR dated 2 August 2012, Exhibit 22; and Affidavit of [✂] (Vantec), Exhibit F, ref E350.

	OCS, Pegasus, Meitetsu, Keiyo Butsuryu and UAC)[524]
17 May 2001, Meeting amongst 6 JAFA member companies	HEX, KWE, Nippon Express, NNR, Vantec and Yusen[525]
11 March 2002, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yusen and others (Keiyo Butsuryu, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seino, and United Air Lines)[526]

358. Set out below in paragraphs 359 to 366 are meetings and contact between freight forwarders illustrative of the nature of discussions referred to in Table 5 above during this period.

359. The minutes of a JAFA meeting (Board of Directors meeting) dated 12 March 2001 provided by NEJ, record that one of the items discussed was fuel surcharges. The minutes state:

> "*This matter has been our concern since last year…JAFA had proposed last year to set the amount as a Surcharge, and, although consenting to the adoption of such Fuel Surcharge, JAFA made a request to suspend the implementation thereof until May or June, considering the period necessary for guidance and notification to shippers*".[527]

The agenda provided by NEJ states in relation to fuel surcharges "*[i]t was decided to be implemented on May 16th*".[528]

360. Fuel surcharges were further discussed in the JAFA meeting (EBIC meeting) held on 27 March 2001. Recorded in an internal HEX email dated 27 March 2001, sent to the Directors of HEX, under the heading "*How JAFA came to recognize the introduction of a fuel surcharge*" is that a fuel surcharge was proposed [by JAL] during a JAFA meeting (International Sub-committee) on

[524] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Meeting of Board of Directors on 9 July 2001; and information provided by NNR dated 2 August 2012, Exhibit 23.
[525] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00456 Translation; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C83 and E1298 to E1301.
[526] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Meeting of Board of Directors on 13 May 2002.
[527] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C – Agenda for and Minutes of Meeting of Board of Directors on 12 March 2001.
[528] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Meeting of Board of Directors on 12 March 2001.

February 19, during which the proposal was accepted and the agreed date for the introduction of a fuel surcharge was 16 May 2001.[529]

361. Following the JAFA meeting (EBIC meeting) on 27 March 2001, a report of the meeting by an attendee from Yusen recorded, *inter alia*:

> "*3. Procedures for Introducing the F/S's into the Forwarder Freight Charge System*
> *Each forwarder is to file a report adding the following text to the currently filed Application Method for International Forwarder Air Freight Charges and Fees.*
>
> *"Fuel Surcharge:*
> *In the event that an air carrier in use applies a fuel surcharge, a fuel surcharge in the same amount would apply. No surcharge will apply should the air carrier discontinue the fuel surcharge"*.
>
> *The proceedings of yesterday's meeting are as described above, but our ultimate goal would be to make F/S's part of HAWB's. This means that we are to proceed with operations on two fronts: applying pressure to air carriers to avoid the effect of F/S's on one hand, and promoting the passing of F/S's onto shippers on the other"*.[530]

362. Following the JAFA meeting (EBIC meeting) on 14 May 2001 a representative at the meeting from NNR provided a report to his Senior Director and Managing Director, which confirms that a fuel surcharge was expected to be applied by airlines from 16 May 2001. The report listed the undertakings that had attended the JAFA meeting and their views on the amounts of the fuel surcharge that would be imposed by airlines.[531]

363. The minutes of the 14 May 2001 JAFA meeting (Board of Directors meeting) provided by NEJ also record that freight forwarders were concerned about how the imposition by carriers of a fuel surcharge from 16 May 2001 would affect their business as "*it will be extremely difficult to demand 12 JPY per kilo from the shippers*". The minutes state that freight forwarders made a request to Japan Airlines and NCA to postpone the implementation on 16 May 2001. The response received from Japan Airlines was that postponement for one to three months was possible but postponement without a deadline was not possible, and no agreement was reached.[532] Airline companies subsequently charged freight forwarders a fuel surcharge.

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[529] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12 document HH_00455 Translation - Email from [✂] dated 27 March 2001.
[530] Information provided by NNR dated 2 August 2012, Exhibit 20, page 2.
[531] Information provided by NNR dated 2 August 2012, Exhibit 23.
[532] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Meeting of Board of Directors on 9 July 2001.

364. The fuel surcharge by airlines was however removed from at least January 2002. Minutes of the JAFA Board meeting on 11 March 2002 record that "*almost all of the airline companies removed the Fuel Surcharge which they have been charging as of January 1*". The reason cited for the removal by the airlines was that the price of fuel had not reached USD 23 per barrel.[533]

365. While the amount to charge for a JFS was discussed amongst some of the Parties during this period, it is not clear that any consensus was reached. Information from MLG provided to CCS indicates that freight forwarders, in response to the airlines fuel surcharge, imposed a JFS at the same amount as that charged by the airlines.[534] [✂] of HEX however recorded in an internal email to Division Directors that in a meeting on 17 May 2001, freight forwarders sought to adopt a unified approach to charging a fuel surcharge to customers, but that the attendees, Nippon Express, KWE, Yusen, NNR and Vantec were "*unable to take a unified stand*" to charging customers. In particular [✂] noted the non-cooperation of NNR. [✂] stated that "*Nishitetsu has been putting the fuel surcharge clearly [on the house] since last year, and they are taking it 70% of the time (although we don't know if that's actually true)*". He concluded stating "[✂] *while quietly watching for a while if we are competing with Nittsu, Nishitetsu, etc*".[535]

366. CCS also notes that the Parties implemented a JFS at different times in 2001. For example, NEJ began implementing a JFS from 11 June 2001.[536] MLG records that it began implementing a JFS from 16 May 2001.[537]

Meetings between September 2002 and 12 November 2007

367. Around June 2002, the fuel price rose, and as a consequence, airlines reintroduced a fuel surcharge on freight forwarders. One freight forwarder records the JFS as JPY 6 per kilogram which subsequently increased to JPY 12 per kilogram in October 2002.[538]

368. At JAFA meetings between September 2002 and 12 November 2007, the Parties reached a consensus to impose a JFS on shippers at the same rate as the fuel

[533] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(viii) and Annex C - Agenda for Meeting of Board of Directors on 13 May 2002.
[534] Information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, responses to questions 11 and 12 and corresponding table "Table for FSC Japan to Singapore for the period January 2002 to December 2008".
[535] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12 document HH_00456 Translation.
[536] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(vii).
[537] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 36.
[538] [✂].

surcharge imposed on them by airlines and to monitor adherence to that agreement by: (i) discussing not using the JFS as a means of competition amongst freight forwarders; (ii) reporting on JFS collection ratios which is the percentage of JFS charged that freight forwarders are able to collect from their customers[539]; (iii) reporting on uncollected JFS charges from shippers[540]; (iv) discussing changes to the fuel surcharge imposed by airlines[541], and (v) discussing strategy for, and outcome of, negotiations with shippers for payment of the JFS[542].

369. The freight forwarders' notice in relation to the application of the JFS with the MLIT was still valid from the previous application when the JFS was first applied in 2001, therefore freight forwarders did not have to apply for fresh approval from the MLIT.[543] As outlined above, MLIT appears to have approved the charging of a JFS up to the amount charged by the airlines.

370. In his interview with CCS on 6 August 2013, [✂] (NNR), confirmed the accuracy of the contents of his statement of 5 December 2008 to the JFTC. In his JFTC statement he states:

> "*Q: At your company, are you working to be able to collect the full amount from shippers who are bad at paying fuel surcharge?*
> *A: Yes.*
> *Q: Are you aware that participants of JAFA meetings of the administrators of the International Division announced collection rates and uncollected amounts for fuel surcharges billed to shippers at those meetings?*
> *A: Yes.*
> *Q: How do you know that?*
> *A: They are included in reports written by* [✂]*, so I know the numbers both of our company and other companies.*

[539] Answer to Question 18 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[540] Examples of such meetings are the JAFA meeting on 21 September 2004 and 20 September 2005; documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 21 September 2004, marked D-ACPERA-000000090 to D-ACPERA-000000093, and JAFA's Minutes of Board Meeting for meeting on 20 September 2005, marked D-ACPERA-000000069 to D-ACPERA-000000071 (English translation provided by DGF on 7 November 2013).
[541] Examples of such meetings are the JAFA meetings on 17 May 2004 and 4 November 2004; documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 17 May 2004, marked D-ACPERA-000000104 to D-ACPERA-000000108, and JAFA's Minutes of Board Meeting on 4 November 2005, marked D-ACPERA-000000085 to D-ACPERA-000000089 (English translation provided by DGF on 7 November 2013).
[542] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C83 to C87; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C83 to C87.
[543] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013; Annexure 12, document marked HH_00459 Translation.

Q: Are you aware that participants, including from your company, announce the names of shippers who are bad at paying fuel surcharges at meetings of the administrators of the International Division?
A: Yes.
Q: How do you know that?
A: I remember that it was in the report by [✂].
Q: Are you aware that participants, including from your company, selected companies to be in charge of shippers who are bad at paying fuel surcharges at meetings of the administrators of the International Division and decided to conduct payment negotiations with those shippers?
A: Yes.
Q: How do you know that?
A: I remember that it was in the report from [✂].
Q: Are you aware that your company was designated as responsible for shippers who are bad at paying fuel surcharges at a meeting of the administrators of the International Division?
A: Yes. I know.
Q: How do you know that?
A: I remember that it was in the report by [✂]".[544]

371. In [✂] 5 June 2008 JFTC Statement, annexed to his 9 October 2013 Affidavit, it is recorded that:

"*In the right hand side of the paper, the status of collection of Security Charges and FSCs is written under the title of "Status of Collection of Security Charges and FSCs is written under the title of "Status of Collection of Security Charges and Fuel Surcharges".*
Since introduction of the Security Charge, our Company has recorded the status of collection of Security Charges, in addition to the status of collection of SFCs [sic] preparing tables like that now presented to me every month. Based on those tables, I had reported the collection rates of FSCs and Security Charges at meetings of the Administrative Board".[545]

372. Set out below in Table 6 are the main meetings from 18 September 2002 to 12 November 2007 between the Parties that CCS is aware of where the JFS was discussed:

[544] Answer to Question 13 and document marked [✂]-008, pages 2 to 3 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[545] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit I, ref E1000.

Table 6: Meetings from 18 September 2002 to 12 November 2007 (JFS)

Date and meeting type (e.g. Board, EBIC)	Names of undertakings
18 September 2002, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Airbourne, GLD, KAM, Keihin, OCS, PGL, SAF, SUK and UAC)[546]
8 November 2002, JAFA EBIC/Board Meeting	DFF, HEX, HAC, K Line, KWE, MLG, Nippon Express, NNR, Nissin, Vantec, Yamato Transport, Yusen and others (Keihin, Kokusai, NCS, OCS, Pegasus, Seibu and UAC)[547]
15 November 2002, JAFA EBIC/Board Meeting	HEX, K-Line, KWE, Nippon Express, Nissin, NNR, K-Line, Vantec and Yusen[548]
18 November 2002	KWE, Nippon Express, Yusen, JAFA Secretariat ([✂]) and external counsel[549]
15 January 2003, JAFA EBIC/Board Meeting	DGF, Hankyu Cargo Services, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, NYK, Yamato, Vantec and others (Airborne, Keihin, Kokusai,

[546] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, documents marked HH_00459 and HH_00463 Translation (attendees not listed); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - internal email dated 18 September 2002 (attendees not listed); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tabs 1 and 2 (attendees not listed); information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Meeting of Board of Directors on 18 September 2002 (attendees not listed); information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C84 and E459 to E461; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS of 12 December 2012, Appendix JP-25.

[547] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 8 November 2002, marked D-ACPERA-000000139 to D-ACPERA-000000144 (English translation provided by DGF on 7 November 2013)(lists all attendees except Seibu); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00463 Translation; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tabs 4 and 5; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xi) (attendees not listed).

[548] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00471 & seq. Translation (attendees not listed although the record of the meeting suggests K Line, KWE, Nippon Express, Nissin, NNR, Vantec and Yusen attended); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 15 November 2002; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tabs 6 and 8 (attendees not listed); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C84; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C83 to C87 (attendees listed save for HEX and K-Line).

[549] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 7; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xii).

	Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[550]
17 March 2003, JAFA EBIC/Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and others (Airborne, Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino and UAC)[551]
2 April 2003, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Airborne and UAC)[552]
19 May 2003, JAFA EBIC/Board Meeting	DGF, Hankyu Cargo Services, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yusen, Yamato and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[553]

[550] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 15 January 2003, marked D-ACPERA-000000134 to D-ACPERA-000000138 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00476 Translation (listed the same attendees except it does not list NCS, Pegasus, Seibu, Seino and Yusen); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 11 (attendees not listed).

[551] Document provided by DGF, JAFA's Minutes of Board Meeting for meeting on 17 March 2003, marked D-ACPERA-000000128 to D-ACPERA-000000133 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, documents marked HH_00501 and HH_00505 Translation; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tabs 13, 16 and 17 (attendees not listed); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C84; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C84; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS of 12 December 2012, Appendix JP-26.19 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 17 March 2003which does not set out the attendance list but reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen, Airborne and UAC appear to have participated in the discussion at the meeting.

[552] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 15 (attendees not listed); document marked [✂]-009 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C85; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS of 12 December 2012, Annex JP-26.18 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 2 April 2003 which sets out the attendance list which lists all attendees and reflects that the attendees discussed possible responses to the JFS imposed by airlines and "*the following decisions were made: 1. A strategy must be implemented that includes both measures for shippers and measures for airline companies. 2. Each company shall respond individual based upon information exchanged on this day*".

[553] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 19 March 2003, marked D-ACPERA-000000123 to D-ACPERA-000000127 (English translation provided by DGF on 7 November 2013); and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00513 & seq. Translation.

12 June 2003, JAFA EBIC/Board Meeting	Not listed[554]
19 July 2003	Not listed[555]
25 July 2003	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, TNT and UAC)[556]
19 January 2004	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[557]
5 March 2004, JAFA EBIC Meeting	HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[558]
15 March 2004, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Pegasus, Seibu, Seino, TNT and UAC)[559]
6 April 2004, JAFA EBIC Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nissin, NNR, Vantec, Yamato, Yusen and UAC[560]
17 May 2004, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, Nissin,

[554] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 21 (attendees not listed).
[555] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 22 (attendees not listed).
[556] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 25 July 2003, marked D-ACPERA-000000118 to ACPERA-000000122 (English translation provided by DGF on 7 November 2013); and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00521 Translation.
[557] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 19 January 2004, marked D-ACPERA-000000113 to ACPERA-000000116 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00538 & seq. Translation; and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 23 (attendees not listed).
[558] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C85.
[559] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 15 March 2004, marked D-ACPERA-000000109 to D-ACPERA-000000112 (English translation provided by DGF on 7 November 2013); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 24 (attendees not listed).
[560] Information provided by NNR dated 2 August 2012, Exhibit 60; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS of 12 December 2012, Appendix JP-26 (Report of JAFA International Affairs Department Board Meeting for the meeting dated 6 April 2004).

	NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[561]
3 June 2004, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and UAC[562]
1 July 2004, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[563]
20 July 2004, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, , Vantec, Yamato Transport, Yusen, and others (Keihin Airfreight, Kokusai Kuyu, Overseas Courier Service, Pegasus, Seibu, Seino Transportation, TNT and UAC)[564]
28 July 2004, JAFA EBIC Meeting	KWE, HEX, Nippon Express, Yamato, Yusen[565]
21 September 2004, JAFA EBIC	DGF, HEX, HAC, K Line, KWE, MLG,

[561] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 17 May 2004, marked D-ACPERA-000000104 to D-ACPERA-000000108 (English translation provided by DGF on 7 November 2013); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 25 (no attendees listed but the record on the exchange during the meeting shows that the attendees were HEX, Nippon Express, KWE, Yamato, Yusen, NCA, and ANA).

[562] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - internal email dated 3 June 2004 (no attendees listed but the document reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yusen, UAC and YGF appear to have participated in the discussions); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 27 (attendees not listed); information provided by NNR dated 2 August 2012, Exhibit 61; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C85; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS of 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 3 June 2004.

[563] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 1 July 2004 (attendees not listed but document reflects that DGF, HEX, HAC, K Line, KWE, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC appear to have participated in the discussions at the meeting); information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Minutes of the JAFA Executive Board Meeting of International Division on 1 July 2004 (attendees not listed but document reflects that DGF, HEX, HAC, KWE, Nippon Express, Nissin, NNR, Vantec, Yamato and Yusen appear to have participated in discussions); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Annex JP-26.

[564] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 20 July 2004, marked D-ACPERA-000000094 to D-ACPERA-000000098 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00612 & seq. Translation; and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 28 (attendees not listed).

[565] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 28 July 2004.

Meeting	Nissin, Nippon Express, NNR, Vantec, Yusen and UAC[566]
21 September 2004, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Pegasus, Seibu, Seino and UAC)[567]
4 November 2004, JAFA Board Meeting	DGF, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Kokusai, NCS, OCS, Pegasus, TNT and UAC)[568]
22 November 2004, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[569]
12 January 2005, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nippon Express, NNR, Yamato, Yusen and others (Keihin, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino and UAC)[570]

[566] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 29 (note that it is dated 22 September 2004; attendees not listed); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85 and Exhibit F, ref E867; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C85 and E867; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Annex JP-26.

[567] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 21 September 2004, marked D-ACPERA-000000090 to D-ACPERA-000000093 (English translation provided by DGF on 7 November 2013).

[568] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 4 November 2004, marked D-ACPERA-000000085 to D-ACPERA-000000089 (English translation provided by DGF on 7 November 2013); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 30 (attendees not listed).

[569] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 22 November 2004 (attendees not listed but the record of the contents of discussion reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and United Air Cargo appear to have participated in the discussions at the meeting); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85 to C 86 and Exhibit F, ref E903; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C85 and E903; information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 8.2 (attendees not listed); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 22 November 2004.

[570] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 12 January 2005, marked D-ACPERA-000000080 to D-ACPERA-000000084 (English translation provided by DGF on 7 November 2013); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 31 (no attendees listed).

28 January 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[571]
2 February 2005, JAFA Board/EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and United Air Cargo[572]
14 March 2005, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin Aircargo, Overseas Courier Service, Pegasus, Seibu Transport, Seino Transport, TNT, Tokyu and UAC)[573]
18 April 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[574]
16 May 2005, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Pegasus, Seibu, Seino, TNT and UAC)[575]

[571] Documents provided by DGF, Email from [✂] dated 28 December 2004, marked D-ACPERA-000000168 to D-ACPERA-000000169 (English translation provided by DGF on 7 November 2013); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 28 January 2005 (attendees not listed but the record of the contents of discussion reflects that DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC appear to have participated in the discussions at the meeting); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C86 and Exhibit F, ref E949;information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C83 to C 87 and E949; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 28 January 2005.

[572] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00628 Translation (excerpt).

[573] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 14 March 2005, marked D-ACPERA-000000076 to D-ACPERA-000000079 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00629 & seq. Translation (excerpt); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 33 (attendees not listed).

[574] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 18 April 2005 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, NNR, Nippon Express, Vantec, Yamato and UAC); information provided by NNR dated 2 August 2012, Exhibit 68; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C86 and Exhibit F, ref E958; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C86 and ref E958; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting dated 18 April 2005.

[575] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 16 May 2005, marked D-ACPERA-000000072 to D-ACPERA-000000074 (English translation provided by DGF on 7 November 2013) (lists all attendees and Hankyu Cargo); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00641 & seq. Translation (excerpt);

19 July 2005, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, OCS, Pegasus, Seibu, Seino, TNT and UAC)[576]
3 August 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[577]
20 September 2005, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[578]
7 October 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[579]

information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 35 (no attendees listed); and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C - Agenda for Extraordinary Meeting of Board of Directors on 8 June 2005 (lists all attendees and also Hankyu Cargo Service).

[576] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00647 & seq. Translation (excerpt) (lists all attendees and also Meitetsu and Nippon Courier Service); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 19 July 2005 (attendees not listed); and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxiii)(attendees not listed).

[577] Documents provided by DGF, Email from [✂] dated 21 July 2005, marked D-ACPERA-000000172 to D-ACPERA-000000173 (English translation provided by DGF on 7 November 2013) (attendees not listed); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00651 Translation; information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 3 August 2005 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nippon Express, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in the discussions at the meeting); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9c, Tab 38; information provided by NNR dated 2 August 2012, Exhibit 62; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C86 and Exhibit F, ref E554; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C86 and ref E554; information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting dated 3 August 2005.

[578] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 20 September 2005, marked D-ACPERA-000000069 to D-ACPERA-0000000071 (English translation provided by DGF on 7 November 2013) (lists all attendees except Nippon Courier Service, KWE and MLG and also lists DGF, Hankyu Cargo Service, Kinki Nihon, Nippon Tetsudo and Shosen Mitsui); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI of 19 June 2013, Annexure 12, document marked HH_00653 & seq. Translation (excerpt); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 39 (attendees not listed); and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxiv)(attendees not listed).

[579] Documents provided by DGF, Email from [✂] dated 5 October 2005, marked D-ACPERA-000000174 to D-ACPERA-0000000176 (English translation provided by DGF on 7 November 2013) (attendees not listed); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00660 Translation; information provided by KLJ dated 22 February 2012

17 November 2005, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, NCS, OCS, Pegasus and TNT)[580]
12 December 2005, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, NNR, Nippon Express, Nissin, Vantec, Yamato, Yusen and UAC[581]
12 January 2006, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC , K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[582]
20 February 2006, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and UAC[583]

pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 7 October 2005 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HEX, HAC, Nippon Express, MLG, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in the discussions at the meeting); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 40 (attendees not listed); information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C86 and ref E1088-1099; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting for the meeting dated 7 October 2005.

[580] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 17 November 2005, marked D-ACPERA-000000063 to D-ACPERA-0000000066 (English translation provided by DGF on 7 November 2013) (lists all attendees except Air and includes Nippon Courier Service); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 41 (attendees not listed); information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex B - Agenda for Meeting of Board of Directors on 12 January 2006.

[581] Documents provided by DGF, Email from [✂] dated 16 November 2005, marked D-ACPERA-000000180 to D-ACPERA-0000000181 and document marked D-ACPERA-000000182 to ACPERA-0000000184 (English translation provided by DGF on 7 November 2013) (attendees not listed); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00669 & seq. Translation (excerpt); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 5; information provided by NNR dated 2 August 2012, Exhibit 69; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C86; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C86; information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 12 December 2005 (attendees not listed but the record of the contents of discussion reflects some of the attendees); information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex B - Minutes of the JAFA Executive Board Meeting of International Division on 12 December 2005 (attendees not listed but the minutes reflect some of the attendees); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Appendix JP-26.

[582] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 42; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex B - Agenda for Meeting of the Board of Directors on 20 March 2006.

[583] Documents provided by DGF, Email from [✂] dated 13 December 2005, marked D-ACPERA-000000191 to D-ACPERA-000000192 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document

5 May 2006, JAFA Board Meeting	Not listed[584]
15 May 2006, JAFA EBIC Meeting	DGF, HEX, HAC, KWE, NNR, Nippon Express, Nissin, Vantec, Yamato, Yusen and UAC[585]
18 July 2006, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC (Air), K Line, MLG, Nippon Express, Nissin, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC) [586]
19 September 2006, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, NNR, Nippon Express, Nissin, Vantec, Yamato, Yusen and UAC[587]

marked HH_00672 & seq. Translation (excerpt); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 20 February 2006 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nippon Express, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in discussions at the meeting); information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 1 - Email dated 23 February 2006 at 09:01 (English translation provided by MLG-JP on 8 May 2013); document marked [✂]-011 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013; information provided by NNR dated 2 August 2012, Exhibit 70; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C86 to C87, Exhibit F, ref E1116, and Exhibit I, ref E991 to E993; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C83 to C87, ref E1116 and ref E991 to E993); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Appendix JP-13.

[584] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxviii) which sets out the following: "*May 5, 2006. Executive Board (YK) meeting. Discussion of JFS collection rates (focused on certain major client shippers).* [✂]*, who attended for NEJ, reported that* [✂] *(which NEJ had been assigned for negotiation purposes) still was not complying with requests of NEJ/JAFA*" (attendees not listed).

[585] Documents provided by DGF, Email from "JAFA [✂]" dated 10 May 2006, marked D-ACPERA-000000197 to D-ACPERA-000000198 and document marked D-ACPERA-000000051 to D-ACPERA-000000053 (English translation provided by DGF on 7 November 2013); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00700 & seq. Translation; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 45 (attendees not listed); information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxix) (attendees not listed); information provided by NNR dated 2 August 2012, Exhibit 71; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C87 and Exhibit F, ref E1208; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C87 and E1208; Answers to Questions 33 and 34 and document marked [✂]-010 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2014; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, JP-26 (also records K Line and MLG as having attended).

[586] Documents provided by DGF, JAFA's Board Meeting Minutes dated 18 July 2006, marked D-ACPERA-000000043 to D-ACPERA-000000045 (English translation provided by DGF on 7 November 2013); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 46 (attendees not listed).

[587] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00729 & seq. Translation; information provided by NEJ dated 25 February 2013, paragraph 40(xxxi) (attendees not listed); information provided by NNR dated 2 August 2012, Exhibit 63; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C87 Exhibit F, ref E585 and Exhibit G ref E590-591; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C87, ref E585 and E590-591; information provided by KWE dated 25

19 September 2006, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[588]
16 October 2006, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yusen and UAC[589]
10 November 2006, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, KWE, MLG, Nippon Express, NNR, Yamato, and others (Keihin, Kokusai, Nippon Courier Service, Overseas Courier Service, Pegasus and Seino Transport)[590]
11 January 2007, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[591]
23 January 2007, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and UAC[592]

February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 10 and Annex 9(c), Tabs 47 (note that it is dated 14 September 2006) and 48 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nippon Express, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in discussions at the meeting); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 19 September 2006; information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice dated 12 December 2012, Appendix JP-26.

[588] Documents provided by DGF, JAFA's Board Meeting Minutes for meeting on 19 September 2006, marked D-ACPERA-000000039 to D-ACPERA-000000042 (English translation provided by DGF on 7 November 2013).

[589] Documents provided by DGF, Email from "JAFA [✂]" dated 26 September 2006, marked D-ACPERA-000000158 to D-ACPERA-000000160 (English translation provided by DGF on 7 November 2013) (lists all attendees except Nippon Kuyu International and also lists Japan International Airlines); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00733 and 00734 Translation.

[590] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 10 November 2006, marked D-ACPERA-000000034 to D-ACPERA-000000038 (English translation provided by DGF on 7 November 2013).

[591] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 11 January 2007, marked D-ACPERA-000000029 to D-ACPERA-000000033(English translation provided by DGF on 7 November 2013).

[592] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 19 March 2007, marked D-ACPERA-000000023 to D-ACPERA-000000028 (English translation provided by DGF on 7 November 2013); information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 23 January 2007 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nippon Express, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in the discussion at the meeting); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 3 (attendees not listed); information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1365 to E1368;

19 March 2007, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and UAC[593]
21 May 2007, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Pegasus, Seibu, Seino, TNT and UAC)[594]
21 May 2007, JAFA EBIC Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and UAC[595]
6 June 2007, JAFA Board Meeting	Not listed[596]
17 July 2007, JAFA Board Meeting	DGF, HEX, HAC, K Line, KWE MLG, Nissin, Nippon Express, NNR, Vantec, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, OCS, Pegasus, Seibu, Seino, TNT and UAC)[597]
17 July 2007, JAFA EBIC Meeting	DGF, HEX, HAC, K Line, KWE, MLG, Nissin, NNR, Vantec, Yamato, Yusen and UAC[598]

Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C87; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C87.

[593] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 19 March 2007 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nippon Express, Nissin, NNR,K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in the discussion at the meeting).

[594] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 21 May 2007, marked D-ACPERA-000000017 to D-ACPERA-000000022 (English translation provided by DGF on 7 November 2013) (lists all attendees and also lists Hankyu Cargo, Meitetsu and NCS); information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI of 19 June 2013, Annex 12, document marked HH_00754 & seq. Translation (excerpt); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 5; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxxiii) which states: "*May 21, 2007. Board of Directors (RK) meeting. NEJ has no records of its attendance to this meeting*".

[595] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 21 May 2007 (attendees not listed but the record of the contents of discussion reflects some of the attendees).

[596] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 5; and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxxiv) which states: "*June 6, 2007. Board of Directors (RK) meeting. NEJ has no records of its attendance to this meeting*".

[597] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 17 July 2007, marked D-ACPERA-00000005 to D-ACPERA-00000010 (English translation provided by DGF on 7 November 2013).

[598] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 17 July 2007 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in the discussions at the meeting); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, pages 5 and 6 (additionally indicates attendance of Nippon Express); information provided by NNR dated 2 August 2012, Exhibit 64 (NNR and Nippon Express do not have an attendee listed next to their

18 September 2007, JAFA Board Meeting	DGF, HEX, Hankyu Cargo, HAC, K Line, KWE, MLG, Nissin, Nippon Express, NNR, Yamato, Yusen and others (Keihin, Kokusai, Meitetsu, NCS, OCS, Pegasus, Seibu, Seino, TNT and UAC)[599]
18 September 2007, JAFA EBIC Meeting	DGF, HEX, HAC, KLL, KWE, MLG, Nippon Express, NNR, Vantec, Yamato, Yusen and UAC[600]
12 November 2007, Meeting to discontinue JAFA EBIC meetings	KWE, Nippon Express, Yusen, and JAFA[601]

373. The following description of meetings in paragraphs 374 to 409 below summarises certain JAFA meetings listed in Table 6 above. These, as well as Table 6, illustrate the JFS charge being systematically discussed by freight forwarders in the period September 2002 to November 2007. The JFS was understood by industry players to be applied for all air exports from Japan, which includes the Japan to Singapore route.[602]

Meeting on 18 September 2002

374. On 18 September 2002, a JAFA meeting (EBIC meeting) was held where freight forwarders discussed the introduction of a fuel surcharge of JPY 12 per kg by Japanese airlines. A consensus was reached by the Parties and other attendees at the meeting that attendees would charge a JFS at the same amount as the fuel surcharge imposed on them by airlines.

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names); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C87 and Exhibit F, ref E592; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C87 and E592) (no attendee recorded for NNR and Nippon Express).

[599] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 18 September 2007, marked D-ACPERA-00000001to D-ACPERA-00000004 (English translation provided by DGF on 7 November 2013).

[600] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00768 & seq. Translation (excerpt); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 6; information provided by NNR dated 2 August 2012, Exhibit 103; information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 5 - JAFA meeting dated 18 September 2007 (attendees not listed but the record of the contents of discussion reflects some of the attendees being DGF, HAC, HEX, MLG, Nippon Express, Nissin, NNR, K Line, KWE, Vantec, Yamato, Yusen and UAC appear to have participated in discussions at the meeting); and information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxxv), which states: "*September 18, 2007. Executive Board (YK) meeting.* [✂] *attended for NEJ and the participants had generally given up hope that cooperation would yield benefits. This was the final meeting regarding JFS*" (attendees not listed).

[601] Answer to Question 52 and document marked [✂]-004 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.

[602] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 32-f; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, definition of "Japanese Export Surcharges" in Glossary of Key Terms; and information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 24.1.

375. In a KWE report of the 18 September 2002 EBIC meeting, it is recorded that:

> "*To discuss the introduction of the fuel surcharge, members shared their policies with one another in the September 18 Board Meeting of International Division. Coping with the recent introduction, most of the members intended to increase the collection rate from the previous implementation. As of November 1, the fuel surcharge was introduced by 29 air carriers including Japan Airline Corporation with the approval of Civil Aviation Bureau, Ministry of Land, Infrastructure, Transport and Tourism (MLIT). As the fuel price of air carriers is likely to remain in the current range, we anticipate the continued application of the fuel surcharge for the time being*".[603]

376. In an interview with CCS on 28 June 2013, [✂] confirmed a common consensus among freight forwarders that attended EBIC meetings that they would charge a JFS at the same amount as the fuel surcharge imposed on them by airlines, stating:

> "*The JAFA members understood that the other members would try and charge the JFS at the same rate as what the airlines charged to the forwarders, although they may not be successful*".[604]

377. Similarly, in an interview with CCS on 19 November 2013, [✂] of Yusen stated that:

> "*I thought there was a common industry understanding that the JFS had to be passed on at 100% to customers and that a collection ratio of less than 100% was a problem for the industry*".[605]

378. Within HEX the following internal report on the 18 September 2002 JAFA Board meeting and HEX's approach to the fuel surcharge was circulated by email to Division Directors that was subsequently forwarded to [✂]:

> "*There was a report at today's JAFA meeting regarding Fuel Surcharge … Last time a Fuel-Surcharge was implemented we didn't present a united front because Nittsu went soft, but this time every company is taking the stance that we'll take it from our customers…Also, I ask that the sales department take the basic line that "what we have to pay, we will receive" and collect from the customers. That's it*"[606]

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[603] Document marked [✂]-008 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.
[604] Answer to Question 15 of [✂] (KWE) Notes of Information/Explanation Provided on 28 June 2013.
[605] Answer to Question 19 of [✂] (Yusen) Notes of Information/Explanation Provided on 19 November 2013.
[606] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_0459 Translation.

379. An internal report to [✂] and [✂] as well as other managers on the 18 September 2002 JAFA meeting set out what had occurred at the meeting and K Line's approach. The report stated that:

> "*Today I attended JAFA International Affairs Department meeting, where it was reported that Japan Airlines (JAL) had noticed JAFA its decision to impose fuel surcharge of JPY 12.00 per kilogram from 16 October as a non-commissionable surcharge applicable to chargeable weight in addition to air freight. They said that other Japanese airlines would follow.*
> …
> *Many of JAFA members said that they had no choice but to charge the same amount to customers as carriers charge them. They also said that there might be no room for negotiation under space tight situation in these days.*
> …
> [✂]."[607]

380. In CCS's interview of [✂] (NNR) on 6 August 2013, the Notes of Information/Explanation Provided record [✂] responses to questions 12 and 18 respectively as:

> "*2002 was the second instance of a Japanese fuel surcharge being imposed on freight forwarders by airlines. The first time a Japanese fuel surcharge was imposed on freight forwarders on freight out of Japan was in May 2001 when the Ministry of Land and Transportation ("MLT") gave airlines permission to charge a Japanese fuel surcharge. All the airlines started imposing the fuel surcharge at the same time, and were also charging the same amount. At the time, I queried whether this was against anti-trust law, but I was told that in Japan, the fuel surcharge imposed by the airlines was covered by exception to anti-trust law. The first instance of the fuel surcharge stopped at the end of December 2001 or January 2002 because the fuel price went down.*
>
> *The fuel surcharge that started in 2002 was the second time a Japanese fuel surcharge had been imposed on freight forwarders. The oil price again increased in around September 2002, and the airlines informed freight forwarders that the JFS was going to be imposed. Again the airlines got permission from MLT. This was a problem for NNR and also other freight forwarders because forwarders were not able to pass*

[607] Information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - Internal report from [✂] to [✂], [✂] and other managers dated 18 September 2002.

100% of the JFS on to customers, which resulted in discussions of JFS between freight forwarders at JAFA and EBIC".[608]

"*...The common industry understanding was that all freight forwarders would try to recover from their customers 100% of the fuel surcharge imposed on them by the airlines. I knew that NNR's competitors were trying to charge to their customers the same amount of fuel surcharge imposed on them by airlines*".[609]

381. Evidence available to CCS shows that in the 18 September 2002 meeting twelve out of the fourteen freight forwarding companies, including NNR, decided to pass on to their customers.[610]

382. In the affidavit of [✂] provided to CCS on 22 October 2013, [✂], confirmed the accuracy of the statement he made to the JFTC on 31 July 2008, where he stated:

"*The contents of the page now presented to me are ones I put down in the diary when I, on behalf of* [✂]*, attended a meeting of the administrative board of the International Division of the Japan Aircargo Forwarders Association (JAFA) (hereafter referred to as the "Administrative Board") on September 18, 2002.*

I used to report to [✂] *etc. about discussions at a meeting of the Administrative Board whenever I attended such a meeting, after returning to the Company.*

I explain what were discussed at the meeting of the Administrative Board held on September 18, 2002, in the order of the notes in the page.
…

That was the common recognition among the member companies present at the meeting. Concretely speaking, for the member companies having decided to claim and collect the SFC [sic] from shippers at the same rate as one by the air carrier, it was important to avoid the situation that any of member companies used FSC as means for exclusively acquiring new customers or expanding volumes of transactions with existing customers, for example, in the manner of not imposing such FSC fully or partially. So, the member companies attending agreed that they would not "compete with SFC" [sic] and would cooperate in persuading shippers to accept imposition of SFC [sic] at the same rate as one by the air carrier.

[608] Answer to Question 12 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[609] Answer to Question 18 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[610] Answer to Question 12 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.

The phrase "BID shippers" means ones among major shippers which by bidding determine international forwarders they make transactions with and terms and conditions of their transactions. As for such shippers, the member companies attending decided that they would impose SFC [sic] separately from the other freight charge from October 16, 2002. In this relation, the member companies confirmed that they would, as far as possible, ask shippers to accept separate imposition of SFC [sic] and the other freight charge in order to ensure that they could receive FSC at the same rate as one imposed by the air carrier, even from BID shippers.

"01. 5/16 – 12/31 period" refers to the member companies' discussion concerning performance of imposition of SFC [sic] during the period from May 16 to December 31, 2001 in which air carriers imposed SFC [sic] at the previous occasion. Then, too, member companies of the Administrative Board requested shippers to pay SFC [sic] at the same rates as ones imposed by air carriers, but because they could not obtain understanding of shippers, the performance of collection of SFC from shippers was very bad.

…

Under reflection on such results at the previous occasion, members of the Administrative Board confirmed that they would, at this occasion, make cooperative efforts to raise the collection rate of SFC [sic] on shippers towards 100% by persuading shippers to pay SFC [sic] at the same rate as one imposed by Japan Airlines and, as for BID shippers, by requesting them to accept the method of determining the amount of SFC [sic] separately from the other freight charge and pay FSC at the same rate as one by the carrier".[611]

383. The affidavit from [✂] makes it clear that "SFC" is an error and should read "FSC" which refers to the fuel surcharge imposed by the carriers in Japan.[612]

384. In the information provided by Yamato dated 19 August 2013 pursuant to CCS's section 63 notice dated 12 July 2013, Yamato stated that "*With regard to JFS, 14 member companies of JAFA (Japan Air cargo Forwarders Association) jointly entered into an agreement on 18 September 2002 by implementing the JFS imposed by carriers on their customers*".[613]

Meetings following from 18 September 2002

[611] Affidavit of [✂] (Vantec) dated 8 October 2013; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E426 to E429.
[612] Affidavit of [✂] (Vantec) dated 8 October 2013, paragraph 7.
[613] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 11.

385. On 18 November 2002, certain members of JAFA, NEJ, KWE, Yusen together with [✂] of the JAFA Secretariat, met with a Japanese external counsel, [✂], to discuss the circumstances under which collective action by freight forwarders might violate Japanese anti-cartel laws.[614] On 20 November 2002, [✂] of KWE met with the JFTC to discuss the same issue. In CCS's interview with [✂] of KWE on 28 June 2013, [✂] stated that "*Following the consultation with the JFTC on 20 November 2002, members of JAFA were aware that sharing of information about the JFS might be illegal*".[615]

386. On 2 April 2003, the Parties and other freight forwarders listed in Table 6 discussed the JFS at a JAFA meeting. [616] A meeting report prepared for internal distribution within Yusen in relation to the JFS records:

> "*Main opinions from each company*
> …
> *3. Almost all forwarder are requesting payment from customers. …*
> *4. Upon the determination of 18 yen, effort should be made assuming that collection will definitely be possible*".[617]

387. In the [✂] 9 October 2013 Affidavit, [✂] refers to a summary of meeting minutes of the JAFA International Division Board. The summary of meeting minutes recorded the following in respect of the meeting on 2 April 2003:

> "• *All of the member companies were present.*
> • *Each member presented its action plan against the increase of FSC by airlines. The members confirmed that the FSC charged to customers should be raised and that customers should be charged in full*".[618]

388. On 3 June 2004, at a JAFA meeting (EBIC meeting), the Parties and other freight forwarders listed in Table 6 reported on their JFS collection ratios and uncollected JFS, discussed the increase in fuel surcharges and confirmed their agreement of not making JFS a means of competition.[619] In an internal report

[614] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xii); and information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 7.
[615] Answer to Question 4 and document marked [✂]-010 of [✂] (KWE) on 28 June 2013. CCS notes that K Line and MLG dispute that they were aware of the meetings with Japanese external counsel and the JFTC, see Written Representations of K Line para and Written Representations of MLG, paragraph 2.4.3.
[616] Document marked [✂]-009 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[617] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Meeting dated 2 April 2003.
[618] Affidavit of [✂] (Vantec) dated 9 October 2013 ref Exhibit C ref C85; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C, ref C85.
[619] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1413 to

from [✂] of K Line to [✂] and [✂], [✂] sets out the collection ratio of each of the Parties for a JFS of JPY 18 and each of their views regarding the increase of the JFS to JPY 24. [✂] further states:

> "*Summary by* [✂]*…. This is the third increase of fuel surcharge. We will go together with airlines to tough customers for their acceptance. We should tell them not to promise loading their cargo onto scheduled flight if they refuse to pay fuel surcharge. We have to persist in collection of fuel surcharge of JPY 24 as IATA decision*".[620]

[✂] reported in his email that "*[t]he members of the meeting except NNR expressed the difficulty of the increase to JPY 24 Yen per kilogram as this timing is not so good*".

389. On 1 July 2004, at a JAFA meeting (EBIC meeting), attendees discussed cooperative negotiations with clients and airlines, as well as progress with respect to surcharge collection. After the meeting, several attendees agreed to continue their cooperation with airlines in negotiating with shippers. NEJ's minutes from this meeting refer to reports that show each forwarder was to team up with airlines to negotiate with individual shippers.[621] The internal report prepared by [✂] of K Line provided to CCS likewise confirmed that the meeting on 1 July 2004 discussed the JFS surcharge collection and negotiations with customers from whom forwarders had difficulties collecting a JFS.[622] The minutes prepared by [✂] of Yusen for internal circulation further indicate that "*[r]egarding the shippers for whom collection is possible at ¥18, the majority outlook is nearly total collection will be possible at ¥24*".[623]

390. At JAFA meetings on 21 September 2004[624] and 22 November 2004[625], the undertakings listed in Table 6 reported on JFS collection ratios and negotiations

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E1417 and E537 to E541; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26.

[620] Information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - Internal email dated 3 June 2004 from [✂] to [✂] and [✂].

[621] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xix) and Annex C - Minutes of the JAFA Executive Board Meeting of International Division on 1 July 2004.

[622] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 1 July 2004.

[623] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26.

[624] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 21 September 2004, marked D-ACPERA-000000090 to D-ACPERA-000000093 (English translation provided by DGF on 7 November 2013); information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 29 (note that it is dated 22 September 2004); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit G, ref E868 to E870; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E868 to E870; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26.

with major shippers. In relation to the collection ratios reported by attendees in the meeting on 22 November 2004, K Line's internal report of the meeting noted that some attendees reported a drop in the collection ratios following an increase in the JFS by JPY 6 to JPY 30.[626]

391. On 3 August 2005, at a JAFA meeting, the Parties and other freight forwarders listed in Table 6 discussed their JFS collection ratios and uncollected JFS, negotiations with shippers not paying the JFS[627] and the common understanding that freight forwarders would not compete on the JFS.[628]

392. This was confirmed in the note prepared for reporting internally within K Line on the 3 August 2005 meeting. The note states in relation to customers that "*concerning countermeasures against bad players, members selected approximately 10 common customers and appointed main air forwarder for each customer who acts as leader for the discussion with other air freight forwarders…Members' reports suggest that there is no discount battle among air freight forwarders. However once a customer decides FSC rate with main forwarder; that rate will be applied to the other forwarders in many cases*". The JFS was listed on the agenda in the note as increasing from JPY 36 to 42.[629] This followed from a planned increase by JAL[630] to charge JPY 36 noted in the Minutes of Meeting of 14 March 2005 provided by Hankyu Hanshin.[631]

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[625] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 22 November 2004; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C85 to C86; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C ref C85 to C86; information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26.

[626] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 22 November 2004.

[627] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_0651 & seq. Translation; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, attachment A9(c)-38 - Email from [✂] to [✂] et al dated 8 September 2005; document marked [✂]-011 of [✂] (KWE) Notes of Information/Explanation Provided on 28 June 2013 - Email from [✂] to [✂] et al dated 8 September 2005; Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit C, ref C86; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C, ref C86; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26.

[628] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, attachment A9(c)-38 - Email from [✂] to [✂] et al dated 8 September 2005; document marked [✂]-011 of [✂] (KWE) Notes of Information/Explanation Provided on 28 June 2013- Email from [✂] to [✂] et al dated 8 September 2005.

[629] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 3 August 2005.

[630] CCS understands that JAL is a reference to Japan Airlines.

[631] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00629 & seq. Translation (excerpt).

393. On 12 December 2005, the Parties and other freight forwarders listed in Table 6 reported on their JFS collection ratios and uncollected JFS at a JAFA meeting (EBIC). KWE, MLG, Nippon Express, Vantec, Yamato and Yusen were also recorded as being responsible for negotiating with shippers who were reluctant to pay the JFS.[632] In the meeting of 12 December 2005, the amount of the JFS being charged by freight forwarders was recorded in K Line's internal report as JPY 48, following a change from JPY 42 from 1 September 2005.[633]

394. [✂] 5 June 2008 JFTC Statement recorded the following with regard to the meeting on 12 December 2005:

> "*At that meeting on December 12 2005, initially there were reports concerning the statuses of negotiation with major shippers refusing to pay FSCs on shipper. Followingly, those companies announced in order the following matters:*
>
> *(4) Collection rate of FSCs (amount of non-collection in cases of some members); and*
>
> *(5) Rates, collection methods, etc. of the Security Charge and the Explosives Inspection Charge projected to be introduced…*
>
> *At that meeting on December 12, 2005, in addition to Kintetsu World Express, the other member companies likewise announced their collection rates etc. of FSCs and rates etc. of the Security Charge and Explosive Inspection Charge to be introduced*".[634]

395. On 20 February 2006, the Parties and other freight forwarders listed in Table 6 reported on their JFS collection ratios and discussed progress with key shippers who refused to pay the JFS at a JAFA meeting (EBIC).[635] While collection rates

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[632] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00669 & seq. Translation (excerpt); information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 12 December 2005; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 6, Tab 5; information provided by NNR dated 2 August 2012, Exhibit 104; information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting dated 12 December 2005.

[633] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 12 December 2005.

[634] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit I ref E989 to E990 (also information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E989 to E990).

[635] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00672 & seq. Translation (excerpt); information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report summary of [✂] of the Meeting of the Board of International Affairs Department of JAFA dated 20 February 2006; information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 1 - Email dated 23 February 2006 at 09:01 (English

ranged between 82% and almost 100%,[636] [✂] of HEX noted in his internal report for [✂] that "*[w]hile each company has seen significant improvements, it continues to be the case that with major players complete bringing out of the fuel surcharge has not been implemented, and this point is significantly unclear in each company's announcements as well*". According to the notes prepared by [✂] who assisted [✂], the attendee at the meeting on behalf of MLG-JP, the Parties present also listed the companies that were in charge of certain shippers. For example, the report lists HEX as being in charge of [✂].[637]

396. [✂] 5 June 2008 JFTC Statement recorded that:

> "*The paper now presented to me is the registrar of attendants at a meeting of the Administrative Board held on February 20, 2006… As obvious from the other 12 companies' representatives all having signed on the register, all the 13 companies attended the meeting of the Administrative Board on that day…*
>
> *At that meeting of the Administrative Board, the 13 Companies, in order, announced their respective collection rates of FSCs…*
>
> *There was no absent member at the meeting of the Administrative Board, and all of the 13 Companies made their respective announcements, I think…*"[638]

397. On 15 May 2006, at a JAFA meeting (EBIC meeting), the Parties and other freight forwarders listed in Table 6 reported their JFS collection ratios, discussed progress with key shippers who refused to pay the JFS and discussed the likely increase by airlines of JPY 6 to JPY 54 for the fuel surcharge.[639] In his report of this meeting, [✂] stated:

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translation provided by MLG-JP on 8 May 2013); document marked [✂]-011 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013; and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting dated 20 February 2006.

[636] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting dated 20 February 2006; and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document HH_00672 & seq. Translation.

[637] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Enclosure 1 - Email dated 23 February 2006 at 09:01 (English translation provided by MLG-JP on 8 May 2013).

[638] Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit I, ref E991 and E992; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E991 and E992.

[639] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document HH_00700 & seq. Translation; information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40(xxix); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit G, ref E1567; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1567); and information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12

"*As usual, presentation was made regarding 1. collection rate of FSC and 2. SC (Security Charge) for each company*".[640]

398. In his interview with CCS on 5 August 2013, [✂] of NNR was asked about the report from [✂] on the meeting of 15 May 2006. The Notes of Information/Explanation Provided from that interview record:

> "*I think I received this report because it was* [✂] *job to attend EBIC meetings and to report on those meetings to me and also to* [✂], *and others…*
>
> [✂], *who was the chairman of EBIC, asked each forwarder to report on the success of collection of JFS and also JSS. I do not know why the forwarders started reporting on the collection rates during EBIC meetings but I think it may have been because the forwarders had problems collecting the fuel surcharges from customers. I think* [✂] *wanted to make sure the forwarders knew the problems they were facing, and for the forwarders to know each others' situations*". [641]

399. [✂] of KWE prepared notes on the meetings of the JAFA EBIC and transportation committee meetings he attended, which he provided to [✂] to use for the JAFA board meeting on 18 July 2006. [✂] recorded, under the heading Fuel Surcharge, that:

> "*Most of air carriers increased the fuel surcharge by ¥6/K on July 1… In regard to this matter, we are considering to hold a Board Meeting of International Division in September for the presentation by members on their collection rates and developments*". [642]

400. [✂] of KWE prepared notes dated 14 September 2006 from JAFA meetings in which he recorded under the heading of "JAL's FSC price increase":

> "*(1) Use of JFS variations as a sales tool…*
> **Suggestions from Chairman of International Division*
> …

December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Board Officers Meeting dated 15 May 2006.

[640] Answer to Question 33 and document marked [✂]-010 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

[641] Answer to Question 33 and document marked [✂]-010 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

[642] Answer to Question 15 and document marked [✂]-008, Tab 46 [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.

(2) Ask member companies to completely familiarize their personnel that it should not be used as a sales tool".[643]

401. On 19 September 2006, at a JAFA meeting (EBIC meeting), the Parties and other freight forwarders listed in Table 6 announced their respective JFS collection ratios in addition to discussing a proposed change to the fuel surcharge imposed by Japan Airlines.[644] The minutes of the EBIC meeting recorded the participants' JFS and JSS collection ratios and also recorded that "*FSC shouldn't be used as a tool for expanding sales*".[645]

402. Likewise, in the minutes prepared by [✂] of Yusen to Yusen's President, Managing Director, various Executive Directors, Operating Officer, General Managers of East, Central and West Japan Export Sales Division and various sales and consolidation personnel, he also set out that the JFS collection rates were exchanged at the EBIC meeting on 19 September 2006 and recorded that "*[i]n any case, it is important that all member companies refrain from using it as a sales tool*" had been said at the meeting.[646] In addition, minutes of the 19 September 2006 meeting prepared by the JAFA Secretariat reiterate that the "*fuel surcharge should not be tools of sales*", and "*[a]ny competition of fuel surcharge should not happen*".[647]

403. Minutes of the EBIC meeting prepared by [✂] of KWE also recorded [✂] of KWE saying "*you are requested not to use the FSC rate of ¥57 for JAL Asia as a sales tool before our formal stance is set*".[648]

404. A JAFA Board meeting attended by the undertakings listed in Table 6 was also held on 19 September 2006. At the Board meeting, the International Subcommittee Transportation Committee reported that:

> "*we confirmed the status of each member company with respect to the fuel surcharge and exchanged views*".[649]

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[643] Answer to Question 27 and document marked [✂]-004, Tab 10 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.

[644] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00729 & seq. Translation (excerpt); document marked [✂]-013 of [✂] (KWE) Notes of Information/Explanation Provided on 28 June 2013; and information provided by NNR dated 2 August 2012, Exhibit 98.

[645] Documents provided by DGF, Email from "JAFA [✂]" dated 25 September 2006, marked D-ACPERA-000000156 to D-ACPERA-000000157 (English translation provided 1 November 2013); Affidavit of [✂] (Vantec) dated 9 October 2013, Exhibit G, ref E590 and E591; information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E590 and E591.

[646] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendix JP-26 - Report of JAFA International Affairs Department Officers Meeting dated 19 September 2006.

[647] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 report summary of the Meeting of the Board of International Affairs Department of JAFA dated 19 September 2006.

[648] Document marked [✂]-013 of [✂] (KWE) Notes of Information/Explanation Provided on 28 June 2013.

405. On 16 October 2006, at a JAFA meeting (EBIC meeting), the Parties and other freight forwarders listed in Table 6 discussed Japan Airlines' revised fuel surcharge, which would apply from 16 October 2006, at the rate "*of 66 yen per kilo for TC-1,2 and 57 yen per kilo for TC-3*" compared to other airlines which were charging a "*fixed rate of 60 yen per kilo*".[650]

406. At various JAFA meetings on 10 November 2006[651], 23 January 2007[652], 19 March 2007[653] and 21 May 2007[654], the undertakings listed in Table 6 reported on the JFS collection ratios, discussed the possibility of further JFS increases, and discussed the collection of the JFS from shippers.

407. On 17 July 2007, a JAFA meeting (EBIC meeting) occurred at which the Parties and other freight forwarders listed in Table 6 reported on the JFS collection ratios, discussed the increase in the fuel surcharge to be applied by Japan Airlines from 1 August 2007 and discussed collection of the JFS from shippers.[655] K Line's report of the 17 July 2007 meeting, also records that:

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[649] Documents provided by DGF, JAFA's Board Meeting Minutes for meeting on 19 September 2006, marked D-ACPERA-000000039 to D-ACPERA-000000042 (English translation provided by DGF on 7 November 2013); and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00729 & seq. Translation (excerpt).

[650] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00733 & seq Translation.

[651] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 10 November 2006, marked D-ACPERA-000000034 to D-ACPERA-000000038 (English translation provided by DGF on 7 November 2013).

[652] Information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report by [✂] on JAFA international affairs department meeting on 23 January 2007; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 3; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref E1365 to E1368.

[653] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 19 March 2007, marked D-ACPERA-000000023 to D-ACPERA-000000028 (English translation provided by DGF on 7 November 2013); and information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report by [✂] on JAFA international affairs department meeting on 19 March 2007.

[654] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00754 &seq. Translation (excerpt); and information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report by [✂] meeting of the Board of JAFA international affairs department meeting dated 21 May 2007.

[655] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, pages 5 and 6; information provided by NNR dated 2 August 2012, Exhibit 101; Affidavit of [✂] 9 October 2013, Exhibit C, ref C87; and information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex C, ref C87.

"*As the amount of FSC is getting bigger, members should confirm to ask customers pay full amount as a policy of this industry. One of reasons why we could not collect FSC is competition with other members*". [656]

408. On 18 September 2007, at a JAFA meeting (EBIC meeting), the Parties and other freight forwarders listed in Table 6 reported on the JFS collection ratios and uncollected JFS, and discussed collection of the JFS from shippers.[657] HAC's record of the 18 September 2007 meeting, recorded that:

> "*It was confirmed among the companies that, since the uncollected amount of FSC has become enormous, the companies must once again act in a coordinated manner to launch waves of attacks against the customer who are refusing to pay the FSC (but being careful to ensure that our actions do not constitute bid rigging)*". [658]

409. As discussed in paragraphs 210 and 211, on 12 November 2007 representatives of Nippon Express, Yusen, KWE and JAFA held an emergency meeting at which it was decided that there would be no further discussions on the JFS at JAFA meetings.[659]

(iii) Impact on competition within Singapore of the JFS agreement/and or concerted practice

410. Section 33(1) of the Act provides that notwithstanding that an agreement and/or concerted practice has been entered into outside Singapore or that any party to such an agreement and/or concerted practice is outside Singapore, the section 34 prohibition applies. For the section 34 prohibition to apply, competition within Singapore must be restricted, prevented or distorted.

411. The Parties' agreement and/or concerted practice to charge a JFS as determined by airline charges for shipments exported from Japan to overseas countries, such as Singapore, and exchange information regarding the application of the JFS had as its object the prevention, restriction or distortion of competition within Singapore for the provision of air freight forwarding services from Japan to

[656] Information provided by KLJ dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report by [✂] on JAFA international affairs department meeting dated 17 July 2007.
[657] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - report by [✂] on JAFA international affairs department board meeting dated 18 September 2007; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 52, page 6; and information provided by NNR dated 2 August 2012, Exhibit 103.
[658] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00768 & seq. Translation (excerpt).
[659] Answer to Question 52 and document marked [✂]-004 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2017; and information provided by NNR dated 2 August 2012, Exhibit 72.

Singapore. This agreement and/or concerted practice was carried out by each of the Parties' Japan and Singapore companies as detailed below.

412. In relation to the impact on competition within Singapore, the Japan parent or Japan affiliate company of the Parties would quote and charge customers located in Singapore a JFS at the amount agreed and discussed in the JAFA meetings described above. Likewise, each Parties' Singapore subsidiary or Singapore affiliate company quoted, charged and/or collected the JFS at the same amount charged by their Japan parent or Japan affiliate company. The Japan company was usually responsible for prepaid shipments negotiated and concluded with customers, while collect shipments could be negotiated and concluded with customers by either the Japan or Singapore company of the Parties. Customers paying collect in Singapore are generally charged the JFS as quoted by the Japan company either because the Singapore company passed on the JFS quoted to the Singapore company by the Japan company, or the customer paying collect in Singapore was charged based on the quotation these customers received from the Japan company.

413. Set out below is a description of the conduct engaged in by each Party and its impact within Singapore.

DGF

414. As outlined in paragraphs 350 to 409, DGF Japan was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount that the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

415. DGF has provided documentary evidence of their attendance at the JAFA meetings by supplying CCS with the minutes of JAFA meetings prepared by representatives of DGF that attended the meetings and internal emails that discuss proposals related to the JFS that were tabled at JAFA meetings.[660] As outlined previously, DGF attended JAFA meetings following their mergers with AEI Maruzen K.K. and Excel Japan K.K.. [✂] attended the JAFA meetings during the period September 2002 to November 2007, both on behalf of [✂].[661]

[660] Documents provided by DGF, Email from [✂] dated 16 November 2005, marked D-ACPERA-000000187 to D-ACPERA-000000188 (English translation provided by DGF on 7 November 2013).
[661] Information provided by [✂] (DGF) dated 22 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013.

Documentary evidence from other Parties likewise evidences the presence of representatives from DGF Japan, and the participation of DGF Japan at discussions of the JAFA, including the reporting of DGF Japan's collection ratio.

416. DGF Japan applied a JFS of the same amount as the fuel surcharge charged to it by airlines for shipments from Japan to, *inter alia*, Singapore. The JFS was generally based on the level of fuel surcharge imposed by the Japanese airlines, in particular, by the Japanese airlines with the highest sales in terms of cargo exported from Japan.[662]

417. According to the minutes of JAFA meetings (Board meetings) provided by DGF, members of the International Division would generally discuss the JFS during JAFA Board and EBIC meetings. The minutes record that at the JAFA meetings, there were announcements of increases in the amount of the fuel surcharge charged by airlines to freight forwarders[663], discussions of measures to improve recovery rates from customers[664], and discussions about concerns related to the recovery rate for JFS. As set out in the minutes for the Board meeting on 20 September 2005, "*if recovery rates is not increased, this charge will be higher and become even more straining the management [sic]; we should develop and implement some countermeasures as soon as possible*".[665]

418. Following discussions at the JAFA meetings, DGF Japan charged the JFS according to the amount charged by the airlines.[666] The amount for the JFS was determined by DGF Japan.[667] [✂], who attended the JAFA meetings, was instrumental in providing instructions in relation to the changes in the amount of JFS. For example, [✂] sent an email to a DGF email list on 15 May 2006 instructing DGF employees on the list to increase the JFS for two airlines following a discussion at the 15 May 2006 JAFA Board meeting (relating to the increase in JFS for the same airlines).[668] Following circulars from JAL Cargo Sales Co. Ltd. and NCA announcing an increase in fuel surcharge, [✂] also sent an email to [✂] on 11 September 2006, in which he said "*As of October 1, the*

[662] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, paragraph 14.
[663] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 17 March 2007, marked D-ACPERA-000000128 to D-ACPERA-000000133 Minutes of Board Meeting for the 17 March 2003 (English translation provided by DGF on 7 November 2013).
[664] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 20 July 2004, marked D-ACPERA-000000094 to D-ACPERA-000000098 (English translation provided by DGF on 7 November 2013).
[665] Documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 20 September 2005, marked D-ACPERA-000000069 to D-ACPERA-000000071 (English translation provided by DGF on 7 November 2013).
[666] Documents provided by DGF, Email from [✂] dated 24 May 2006, marked D-ACPERA-00000216 to D-ACPERA-00000218 (English translation provided by DGF on 7 November 2013).
[667] Information provided by DGF dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, question 16.
[668] Documents provided by DGF, JAFA's Board Meeting Minutes dated 15 May 2006, marked D-ACPERA-000000051 to D-ACPERA-000000053, and D-ACPERA-00000216 to D-ACPERA-00000218 (English translation provided by DGF on 7 November 2013).

FSC will be JYP60/kg USD0.55/kg". Exel Ltd. (who eventually merged with DGF) would also [✂].[669]

419. [✂].[670] For customers of Danzas Maruzen K.K., the predecessor company of DHL Global Forwarding in Japan, announcements in relation to the fuel surcharge were circulated to inform customers of increases.[671]

420. For prepaid shipments, DGF Japan would inform the shipper about the surcharges and the shipper would pay for the surcharges.[672] Collect shipments could be negotiated by either DGF Japan or DGF Singapore. For freight collect shipments, DGF Singapore billed as per the instructions received from the shipment origin and, therefore, for shipments from Japan to Singapore by DGF Japan, DGF Singapore billed as per the instructions on freight rates received from DGF Japan.[673] Most of the export shipments handled by DGF Japan, however, were on a charge collect basis; [✂] of the export shipments handled by DGF Japan were on a prepaid basis.[674] For shipments made on a charge collect basis, the surcharges were [✂].[675] With customers paying collect on delivery in Singapore when the freight is shipped from Japan to Singapore, the JFS would have been applied in Singapore.

421. DGF has also informed CCS that [✂]. Accordingly, [✂].[676]

422. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 414 to 421 demonstrates that DGF had entered into an agreement and/or concerted practice to fix how the JFS was priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

[669] Documents provided by DGF, Email from [✂] dated 25 May 2006, marked D-ACPERA-000000222 to D-ACPERA-000000227 (English translation provided by DGF on 7 November 2013).
[670] Answer to Question 11 of [✂] (DGF) Notes of Information/Explanation Provided on 14 February 2013.
[671] Documents provided by DGF, circular titled "Change in the applicable amount of export air freight fuel surcharge", marked D-ACPERA-000000207 and, Email from [✂] dated 6 October 2005, marked D-ACPERA-00000212 to D-ACPERA-00000215 (English translation provided by DGF on 7 November 2013).
[672] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[673] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[674] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[675] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[676] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 16.

Hankyu Hanshin

HEX and HIT Singapore

423. As outlined in paragraphs 350 to 409, HEX was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

424. In the information provided to CCS, HEX admitted that its representatives participated in JAFA meetings during which the JFS was discussed.[677] [✂][678] attended the meetings of EBIC and the Board of Directors of JAFA between June 2002 and May 2003, and [✂][679] attended the meetings of EBIC and the Board of Directors of JAFA from May 2003.[680] The discussions at JAFA meetings on JFS included discussions on the collection ratio of the different companies[681], changes in the fuel surcharge charged by the airlines to the freight forwarders[682], and what actions were required or had been taken by the freight forwarders with regard to customers that refused to pay the JFS[683]. Documentary evidence from other Parties likewise evidences the presence of a representative from HEX, and the participation of the HEX representative at JAFA meetings.

425. HEX applied a JFS at the same rate as the fuel surcharge charged by airlines from 1 November 2002[684] from Japan to, *inter alia*, Singapore. This occurred around the same time as a JAFA (EBIC) meeting in September 2002.[685] [✂] instructed the HEX's managers to either bill the customers in full for the JFS, or

[677] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, HH_00672 & seq. Translation (excerpt), HH_00521 & seq. Translation (excerpt) and HH_00462 Translation.
[678] [✂]
[679] [✂]
[680] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, paragraph 5(ii).
[681] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, Annexure 12, document marked HH_00672 and seq. Translation (excerpt).
[682] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, Annexure 12, documents markedHH_00521 & seq. Translation and HH_00641 & suq. Translation (excerpt) respectively.
[683] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, Annexure 12, HH_00471 & seq. Translation (excerpt).
[684] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 July 2013, Annexure 12, HH_00462 Translation.
[685] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, paragraph 2(ii).

at the [✂].[686] The amount of the JFS was notified to customers through a circular sent to the customers.[687]

426. As set out in the "October International Shipment Subcommittee Meeting Minutes", it was internally agreed that HEX would take the "[✂], and it was also highlighted that:

> "*The other companies are all going to take a unified approach to collect all the surcharge from their customers, so the environment is better set up to invoice our customers than last time*".[688]

427. For prepaid shipments, the JFS was normally quoted to customers by HEX in Japan[689] and was also collected by HEX from the shippers in Japan.[690]

428. For collect shipments, these could be secured by either HEX (with HIT Singapore acting as a receiving agent for HEX) or by HIT Singapore. Where the customer for a collect shipment was secured by HEX, HIT Singapore received and collected payment from customers as a collecting agent on behalf of HEX[691] and [✂].[692] Recorded in the Notes of Information/Explanation Provided dated 20 August 2013 for [✂] interview[693] is the following:

> "*Based on the air waybill, Hankyu Singapore is in the position to collect money on behalf of Hankyu Japan*".

429. With regard to freight collect shipments secured by HIT Singapore, the office of origin would provide the quotations to HIT Singapore on [✂] for quotations for collect shipments.[694] HIT Singapore would usually not mark-up [✂] the JFS, so the consignee in Singapore would typically pay the surcharges as determined by

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[686] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, paragraph 2(ii).
[687] For example, a circular was sent to HEX's customers in March 2000 to explain the imposition of the fuel surcharge; information provided by Hankyu Hanshin dated 25 February 2012 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5.
[688] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI letter dated 19 June 2013, Annexure 12, document marked HH_00460 Translation.
[689] Answer to Question 17 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 25 October 2013.
[690] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI of 19 June 2013, paragraph 2(iii).
[691] Information provided by Hankyu Hanshin dated 6 September 2013 pursuant to [✂] (Hankyu Hanshin) interview on 20 August 2013 - Samples of Break Bulk Agreements and Mutual Sales Agreement between HEX and HIT Singapore; and Answers to Questions 8 and 9 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[692] Answer to Question 9 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[693] Answer to Question 66 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[694] Answer to Question 21 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.

HEX. This was confirmed in CCS's interview with [✂]. In CCS's Notes of Information/Explanation Provided with [✂] on 25 October 2013, it is recorded that:

> "*For customers in Singapore requesting for quotations for freight collect shipments from Japan to Singapore, Hankyu Singapore would ask for quotations from Hankyu Japan,* [✂] *and then quote it to customers… Hankyu Singapore would usually not mark up* [✂]".[695]

430. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 423 to 429 demonstrates that HEX had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

HAC and HFI Singapore

431. As outlined in paragraphs 350 to 409, HAC was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same rate as the fuel surcharge charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

432. In the information provided to CCS, HAC informed CCS that [✂], attended a number of JAFA meetings of the Board of Directors between late 2002 and February 2007, [✂] attended a number of JAFA meetings of EBIC and the Board of Directors from March 2007, and [✂] attended a number of EBIC meetings on behalf of [✂] and [✂].[696] [✂] would provide a report to [✂] after attending the JAFA meetings.[697] Documentary evidence from other Parties likewise evidences the presence of a representative from HAC, and the participation of the HAC representative in discussions of JAFA, including reports of collection ratios from the HAC representative[698] and discussions about

[695] Answer to Question 15 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 25 October 2013.
[696] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 5(ii).
[697] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, HH_00672 and seq. Translation, and HH_00651 & seq. Translation.
[698] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, HH_00651 and seq. Translation.

changes in the amount of fuel surcharge charged by the airlines to the freight forwarders[699].

433. HAC applied a JFS at the same rate as the fuel surcharge charged by airlines from the time the airlines started charging a JFS for shipments from Japan to, *inter alia*, Singapore. This occurred around the time of the EBIC meeting in September 2002.[700] Instructions to HAC managers to charge the JFS according to the amount that HAC had been charged by the airlines were given by [✂].[701] [✂] also informed others in HAC that the JFS was discussed during a JAFA Board meeting on 8 November 2002, and that although each company would respond separately, freight forwarders would further discuss during EBIC meetings how to increase the collection ratio.[702] The amount of the JFS was notified to customers in a circular dated 1 October 2002, in which HAC explained that HAC was "*merely obliged to collect the charge on behalf of*" the airlines, and stated that HAC would be collecting the amount charged by the airlines.[703]

434. The JFS, as determined by HAC, was applied to shipments from Japan to Singapore. For prepaid shipments, the JFS was quoted to customers by HAC[704] and was collected from the shippers in Japan.

435. For collect shipments from Japan to Singapore, customers could be secured either by HAC (with HFI Singapore acting as a receiving agent for HAC) or by HFI Singapore. Where a customer was secured by HAC, HFI Singapore received and collected payment from customers as a collecting agent on behalf of HAC.[705] This was confirmed in [✂] interview with CCS on 26 July 2013, where it was recorded in CCS's Notes of Information/Explanation Provided that:

> "*When there is a collect shipment from Japan to Singapore, the Singapore office would invoice the consignee in Singapore. The*

[699] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, HH_00647 and seq. Translation.
[700] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 2(ii).
[701] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 2(ii).
[702] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 11.
[703] Document marked [✂]-015 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 26 July 2013; and information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure 5.
[704] Answer to Question 17 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 25 October 2013.
[705] Information provided by Hankyu Hanshin dated 6 September 2013 pursuant to [✂] interview on 20 August 2013, Samples of Break Bulk Agreements and Mutual Sales Agreement between HAC and HFI Singapore.

Singapore office would receive payment from the consignee [✂]. *The Japan office would then send* [✂]".[706]

436. For collect shipments from Japan to Singapore where the customer is secured by HFI Singapore, all applicable [✂], which included the JFS, were quoted by HFI Singapore at cost, based on the quote it received from the origin station, HAC.[707]

437. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 431 to 436 demonstrates that HAC had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

K Line

438. As outlined in paragraphs 350 to 409, K Line was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

439. In the information provided to CCS by K Line[708] and its employee, [✂][709], K Line admitted that K Line's employees had attended meetings at which the JFS had been discussed. Documentary evidence from other Parties likewise evidences the presence and participation of representatives from K Line at JAFA meetings.

440. K Line applied a JFS at the same rate as the fuel surcharge charged by airlines from 2002 for shipments from Japan to, *inter alia*, Singapore.[710] The amount for the JFS was determined by KLJ and was applicable to both KLJ and KLS.

[706] Answer to Question 19 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 26 July 2013.
[707] Answer to Question 13 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 26 July 2013.
[708] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 32.
[709] Answer to Question 4 of [✂] (K Line) Notes of Information/Explanation Provided on 4 October 2013.
[710] Information provided by K Line Japan dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 36 and 37; Answers to Questions 8 to 11 of [✂] (K Line) Notes of Information/Explanation Provided on 4 October 2013; and Answer to Question 15 of [✂] (K Line) Notes of Information/Explanation Provided on 23 September 2013.

441. For prepaid shipments, the JFS was quoted to customers by KLJ and collected at the origin point. For collect shipments, whether it was secured by KLJ or KLS, KLS received and collected payment from customers and remitted the amounts collected to KLJ, less charges incurred in Singapore.

442. For collect shipments where the customer was secured by KLS, KLS was instructed to collect the JFS from its customers at the amount determined by KLJ.[711] The JFS was quoted by KLS at cost based on the quote it received from the origin station, KLJ. In CCS's interview with [✂] on 23 September 2013, the following is recorded in respect of the JFS:

> "*Q.17 What instructions were given by KLJ to KLS regarding the JFS?*
>
> *A. Each carrier who has traffic from Japan issued a letter to KLJ on the fuel price increase and corresponding fuel surcharge and KLJ would put this into an excel file, and forward this to KLS.*
> …
>
> *Q.19 Was the decision on the amount of the JFS to charge made by KLJ applicable to KLS? For example for goods from Japan to Singapore paid collect by the customer in Singapore and charged by KLS?*
>
> *A. Yes, KLS applied the same amount of the JFS as decided by KLJ. For collect shipments from Japan to Singapore charged by KLS, the amount of the JFS decided by KLJ would apply except the currency would be different…*
>
> *Q.20 How was the amount for JFS determined?*
>
> *A. It was determined by KLJ so I am not sure, but I think it was determined based on the amount charged by the airlines. As I said, the airlines would inform KLJ on the charges and KLJ would consolidate the charges and inform KLS*".[712]

443. In instances where a customer of a collect shipment was secured by KLJ, KLS would collect the amount payable on behalf of KLJ. This was confirmed in CCS's interview with [✂] on 4 October 2013 where CCS's Notes of Information/Explanation Provided record:

[711] Answers to Questions 8 and 10 of [✂] (K Line) Notes of Information/Explanation Provided on 4 October 2013; and Answer to Question 50 of [✂] (K Line) Notes of Information/Explanation Provided on 29 August 2013.
[712] Answers to Questions 17, 19 and 20 of [✂] (K Line) Notes of Information/Explanation Provided on 23 September 2013.

"*Q.10 Was the decision on the amount of the JFS to charge made by KLJ applicable to KLS? For example for goods from Japan to Singapore paid collect by the customer in Singapore.*

A. For collect shipments, KLS would collect the amount payable by the customer for freight and any surcharges on behalf of KLJ. The airway bill from KLJ contained a description of the JFS and this would be collected by KLS. For shipments from Japan to Singapore where KLS has the customer in Singapore, KLJ would inform KLS what to charge for the JFS [as] notifyed by airline".[713]

444. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 438 to 443 demonstrates that K Line had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

KWE

445. As outlined in paragraphs 350 to 409, KWE was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

446. KWE Japan admitted in its response dated 25 February 2013 to CCS that its employees were involved in meetings of the JAFA where the JFS was discussed and agreed upon on various dates, from January 2001 to September 2007.[714] The meetings were attended first by [✂] and [✂] from 18 September 2002 to June 2006[715], followed by [✂] up to November 2007. [✂] was first accompanied by [✂], then by [✂].[716] Summaries of meetings by [✂], who attended, demonstrate that the JFS had been discussed at the meetings.[717] These

[713] Answer to Question 10 of [✂] (K Line) Notes of Information/Explanation Provided on 4 October 2013.
[714] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 40 and 44.
[715] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, Annex B1-2 - Interview memo of [✂] taken by [✂].
[716] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, Annex B-1-1 - Interview memo of [✂] taken by [✂].
[717] Information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c).

summaries were confirmed by [✂] during his interview with the CCS on 27 June 2013.[718]

447. The statements of [✂][719] and [✂][720] dated 11 July 2008 and 21 November 2008 respectively to the JFTC also confirm that they attended JAFA meetings when the JFS was discussed on behalf of KWE.

448. Documentary evidence from other Parties likewise evidences the presence of representatives from KWE, and the participation of KWE representatives at JAFA meetings.

449. KWE applied a JFS at the same rate as the fuel surcharge charged by airlines for shipments from Japan to, *inter alia*, Singapore.[721] The amount for the JFS, determined by KWEJ, was applicable to both KWEJ and KWES. KWES was specifically instructed by KWEJ to collect the JFS at the amount determined by KWEJ. This is recorded in CCS's interview with [✂] on 24 July 2013:

> "*Q.32 What instructions were given by KWE Japan to you as the export manager and to KWE Singapore management and/or staff regarding the JFS...Did JWE Japan instruct KWE Singapore to collect the JFS?*
>
> *A. I was given the instruction to collect the full sum of the JFS. KWE considered that the JFS was not an amount KWE was supposed to pay for and KWE did not collect a commission on the JFS. I do not know whether the need to collect 100% of the JFS was discussed at the JAFA or EBIC; I do not know whether my competitors managed to collect the full JFS, but I assume they would very much like to do so. I sent a request from KWE Japan as its export manager to KWE Singapore for KWE Singapore to persuade its customers to accept the increase in the JFS so that as soon as there was an increase in the JFS, the customer should understand that they should pay the increase*".[722]

450. Customers of KWE were informed of the JFS, *inter alia*, through circulars circulated by KWEJ to its customers and overseas entities, including KWES.[723]

451. The JFS, as determined by KWEJ, applied to shipments from Japan to Singapore. For prepaid shipments, the JFS was quoted to customers by KWEJ

[718] Answers to Question 12 and 13 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.
[719] Information provided by NNR dated 2 August 2012, Exhibit 77; and information provided by KWE dated 24 January 2014 pursuant to CCS's RFI dated 12 December 2013, paragraph 4.
[720] Information provided by NNR dated 2 August 2012, Exhibit 34; and information provided by KWE dated 24 January 2014 pursuant to CCS's RFI dated 12 December 2013, paragraph 4.
[721] Answers to Questions 35 and 37 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013; while a fuel surcharge was applied for routes from Singapore from 2001, the precise date of when KWE applied it on the Japan to Singapore route is unclear.
[722] Answer to Question 32 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.
[723] Answer to Question 36 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.

and collected at the origin point. For collect shipments from Japan to Singapore, KWES collected all fees and surcharges (including the JFS) as agents on behalf of KWEJ pursuant to the International Air Cargo Consolidation Break-Bulk Agency Agreement for Export from Japan to Singapore between KWEJ and KWES dated 1 January 1993.[724]

452. Where shipments were negotiated or quoted by KWES, KWES would request quotes from KWEJ, or [✂]. Recorded in CCS's interview with [✂] on 23 July 2013 is the following:

> "*Q.11 How are the fees and surcharges quoted to customers for prepaid shipments by KWE Singapore generally decided (i.e by headquarters, regional offices or independently)? How are the fees and surcharges quoted to customers for collect shipments by KWE Singapore generally decided (i.e by headquarters, regional offices or independently)? Do all offices implement the same amount of fees and surcharges?*
>
> *A. For imports, it depends because KWE Singapore has to get information from the overseas side; for example for imports from Japan KWE Singapore needs to get the rates from KWE Japan.* [✂]".[725]

453. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 445 to 452 demonstrates that KWE had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

MLG

454. As outlined in paragraphs 350 to 409, MLG was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

455. MLG informed CCS that meetings of the JAFA were held once every two months and admitted the attendance of its main representative at these meetings,

[724] Answer to Question 11 and document marked [✂]-003 of [✂] (KWE) Notes of Information/Explanation Provided on 24 July 2013.
[725] Answer to Question 11 of [✂] (KWE) Notes of Information/Explanation Provided on 23 July 2013.

[✂].[726] Documentary evidence from other Parties likewise evidences the presence and participation of MLG in discussions at JAFA regarding the JFS.

456. MLG applied a JFS at the same rate as the fuel surcharge charged by airlines from May 2001 on shipments from Japan to, *inter alia*, Singapore.[727] CCS notes that MLG-JP, in its response, stated "*[a]n MLG-JP officer who attended the meeting believed from the very beginning that "the JFS does not have a nature of being collected based on competition and it is a matter of course that the full amount of the JFS would be collected from shippers" regardless of the JAFA meeting, and that officer therefore did not make any objection to the policy to collect the full amount of the JFS from shippers*".[728]

457. The amount for the JFS was determined by MLG-JP. In its submission to CCS, MLG informed CCS that as air cargo forwarding fees for MLG were usually determined at the origin point, all freight rates and charges for ex-Japan air cargo were determined in Japan (except for fees that arose at the destination after the cargo has landed at the destination point).[729] The amount of the surcharges applied by airlines was notified to customers in MLG-JP's mail magazine to customers every month.[730] The same JFS was applied to all customers. [✂].[731] As such, the collection rate which [✂] prepared for [✂] to provide to other freight forwarders at JAFA meetings was not 100%.

458. The JFS, as determined by MLG-JP, was applied to shipments from Japan to Singapore. For prepaid shipments, the JFS was quoted to customers by MLG-JP and collected at the origin point.[732]

459. For collect shipments which were secured by MLG-JP, MLG-SG's role was to act as receiving agent for MLG-JP. MLG-SG received and collected payment

[726] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, responses to questions 32-a and 32-c.
[727] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 33-c; MLG-JP notified this to MLIT in May 2001; information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, responses to questions 11 and 12 and corresponding table "Table for FSC Japan to Singapore for the period January 2002 to December 2008", and Answer to Question 72 of [✂] (MLG) Notes of Information/Explanation Provided on 27 September 2013.
[728] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, page 11.
[729] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 36; and information provided by MLG-JP dated 12 September 2013 pursuant to CCS's RFI dated 23 August 2013, Enclosure – "JFS HAWB List 2006-2008" (note the abbreviation for JFS is "MYC" in the HAWB and airway bills).
[730] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 38 and Enclosure 6 - "MOA Cargo Weekly Digest" dated 21 May 2001 (English translation provided by MLG-JP on 8 May 2013).
[731] Answer to Question 19 of [✂] (MLG) Notes of Information/Explanation Provided on 23 October 2013.
[732] Answer to Question 76 of [✂] (MLG) Notes of Information/Explanation Provided on 27 September 2013, and information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 36.

from customers as a collecting agent on behalf of MLG-JP.[733] For collect shipments where the customer was secured by MLG-SG, all applicable [✂], which included the JFS were quoted by MLG-SG at cost, based on the quote it received from the origin station, MLG-JP.[734]

460. This was confirmed in CCS's interview of [✂] dated 27 September 2013: "[✂] *the JSS and JFS were treated in the same way, passed on to customers at cost as provided by MLG-JP. MLG-SG would contact with overseas offices such as MLG-JP to [get] current tariff information*".[735]

"*For freight collect shipments charged by MLG-SG, MLG-SG would ask MLG-JP for the rates and applicable tariffs, including the JFS, and then charge the JFS to the customer in Singapore in accordance with the rate advised by MLG-JP*".[736]

461. Likewise in the interview with CCS on 23 October 2013, [✂] is recorded as stating that:

> "*Airlines decided how much they would charge to freight forwarders in relation to fuel surcharge. [MLG] Japan's decision to charge the JFS to its customers at the same amount as charged to it by airlines was applied to [MLG] Singapore for shipments from Japan to Singapore. [MLG]'s decision to charge the same amount as the airlines for the JFS would apply for goods from Japan to Singapore paid collect by the customer in Singapore and charged by [MLG] Singapore*".[737]

462. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 454 to 461 demonstrates that MLG entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Nippon Express

463. As described in paragraphs 350 to 409 above, NEJ was actively involved in discussions with the other Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios;

[733] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 45.
[734] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 45.
[735] Answer to Question 9 of [✂] (MLG) Notes of Information/Explanation Provided on 27 September 2013.
[736] Answer to Question 73 of [✂] (MLG) Notes of Information/Explanation Provided on 27 September 2013.
[737] Answer to Question 30 of [✂] (MLG) Notes of Information/Explanation Provided on 23 October 2013.

reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

464. NEJ, in the information provided to CCS, admitted that its representatives had attended JAFA meetings and that the JFS was discussed at these meetings.[738] This was confirmed in the interview of [✂] with CCS on 8 November 2013. In the Notes of Information/Explanation Provided, [✂] is recorded as stating "*[t]he JAFA meetings I attended only had sharing of information about the JFS...Each competitor shared information about the collection ratio for JFS at the Transportation Committee and Operations Improvement Committee*".[739] Further in the Notes of Information/Explanation Provided, he explains that to calculate NEJ's collection ratio, "*[t]here was a department, the* [✂], *which was in charge of extracting the data, and they prepared this collection ratio*".[740] Documentary evidence from other Parties also evidences the presence and participation of NEJ in discussions at JAFA regarding the JFS.

465. NEJ applied a JFS at the same rate as the fuel surcharge charged by airlines[741] from 11 June 2001[742] on shipments from Japan to, *inter alia*, Singapore.[743] This was confirmed by [✂] in his interview with CCS on 8 November 2013.[744] As an example, the amount that was applied for the JFS of [✂] by NEJ started out at [✂].[745]

466. For prepaid shipments, the JFS was quoted and collected from customers by NEJ. For collect shipments, NES would collect the fees as shown on the air waybill if the customer was secured by NEJ. If the customer was quoted by NES, NES would quote after obtaining the relevant freight rates and surcharges from NEJ. This is recorded in CCS's interview with [✂] (Nippon Express) on 22 October 2013:

[738] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 40.
[739] Answer to Question 11 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 8 November 2013.
[740] Answer to Question 16 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 8 November 2013.
[741] Information provided by NEJ dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 12.
[742] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2013, paragraph 40(vii).
[743] Information provided by NEJ dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 12.
[744] Answers to Questions 14 and 18 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 8 November 2013.
[745] Information provided by NEJ dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 12.

"*Q.22 For the period 2002 to 2007, please explain the arrangement for collect shipments between NES and NEJ regarding fees and surcharges for shipments from Japan to Singapore. Can you confirm this applies whether the shipments were negotiated by NEJ or NES?*

Do similar arrangements apply currently between NES and NEJ?

A. … Most of the time NES would negotiate for the shipment with the consignee. In exceptional cases, NEJ would be the one to obtain confirmation from the shipper that the consignee is prepared to pay. In such cases, there may be no quotation to the consignee as the shipper is the one who obtains rates from NEJ. NES would still collect of the freight charges and surcharges from the consignee or the consignee's agent.

NES would quote to customers after obtaining the freight rates and surcharges from NEJ. NES [✂] *The amount of the freight rates and surcharges for collect shipments will be shown on the house airway bill, which comes from NEJ.* [✂] *NES would collect payment from consignees on a NES invoice and pay the collect charges to NEJ...*

Q.23 For the period 2002 to 2007, please explain the arrangement between NES and NEJ for prepaid shipments for the collection of fees and surcharges where

(i) the prepaid shipment is secured by NEJ; and

(ii) the prepaid shipment is secured by NES.

Do similar arrangements apply currently between NES and NEJ?

A. Where the prepaid shipment is secured by NEJ, this is agreed upon and payable in Japan. Customers directly communicate with NEJ for the collection of fees and surcharges.

Prepaid shipments from Japan to Singapore are not secured by NES. If the consignee wishes to know, NES can informally provide the amount after checking with NEJ…
…

Q.46 What instructions were given by NEJ to NES management and/or staff regarding the fuel surcharge for shipments from Japan?

A. …We would collect payment for the fuel surcharge from customers using the actual amount stated in the house airway bill, which is issued by NEJ".[746]

467. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 463 to 466 demonstrates that Nippon Express had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

NNR

468. As described in paragraphs 350 to 409 above, NNR was actively involved in the agreement and subsequent discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

469. NNR in its information to CCS admitted that its representatives attended JAFA meetings and discussed the JFS.[747] Documentary evidence from other Parties also evidences the presence and participation of NNR in discussions at JAFA regarding the JFS.

470. NNR charged a JFS to its customers at the same rate as the fuel surcharge was charged to it by airlines from 1 October 2002 on shipments from Japan to, *inter alia*, Singapore.[748] The JFS was applied to both prepaid and collect shipments from Japan to Singapore. NNR Singapore charged and billed for the JFS as billed by NNR Japan, i.e. at same amount charged by airlines. In CCS's interview with [✂] on 5 August 2013, the following is recorded:

"*Q.17 How were the fees and surcharges quoted to customers for prepaid and collect shipments by NNR Singapore on the Japan to*

[746] Answers to Questions 22, 23 and 46 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.
[747] Answers to Questions 12, 17 and 18 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2006; and information provided by NNR dated 2 August 2012, Exhibit 10.
[748] Information provided by NNR dated 11 June 2012 pursuant to CCS's RFI dated 13 April 2013, S/N 13 and 14 and Annex D and E; information provided by NNR dated 18 June 2012 pursuant to CCS's RFI dated 13 April 2013, S/N 13; and document marked [✂]-008, pages 1 and 2 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2006.

Singapore route generally decided (i.e. by headquarters, regional offices or independently)? Do all offices implement the same amount of fees and surcharges?

A: Most of the shipments are quoted by NNR Japan for prepaid shipments. Exceptionally [✂]*, a prepaid shipment may be quoted by NNR Singapore. Freight charges and surcharges quoted by NNR Japan are determined by NNR Japan. During the exceptional occasions where prepaid shipments are quoted by NNR Singapore, NNR Singapore would quote the freight charges based on its knowledge of freight charges for the Japan to Singapore route and would quote the specific amount for the security and explosives charges that NNR Japan would specify to NNR Singapore on how much to charge for these surcharges. NNR Singapore would simply quote and charge these surcharges at the amount specified by NNR Japan with no further markup or discount. As the fuel surcharge varies for most of the customers in Singapore, NNR Singapore quoted this "at cost" to customers*".[749]

471. In CCS's Notes of Information/Explanation Provided with [✂] on 6 August 2013, the following is recorded:

"Q.14 Did NNR impose the JFS on the Japan to Singapore route? Is NNR still imposing the JFS on the Japan to Singapore route?

A: Yes. This was applied at the origin. Whether the freight was pre-paid or collect, NNR Japan would apply the JFS, as long as the shipments are dispatched from Japan. NNR would have quoted the JFS for contracts it negotiated…

NNR Singapore did the compilation of information of fuel surcharges including the JFS that had to be collected from overseas partners for imports and exports.

Q.15 Was the decision on the amount of JFS to charge made by NNR Japan applicable to NNR Singapore? For example for goods from Japan to Singapore paid collect by the customer in Singapore and charged by NNR Singapore?

A: Yes. The JFS charged to customers on the Japan and Singapore route by NNR Japan would be charged similarly by NNR Singapore.

Q.16 How was the amount for JFS determined?

[749] Answer to Question 17 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

A: The amount for the JFS was determined by NNR Japan. I was not involved in determining the amount for it. I think each airline company would inform NNR Japan about the amount that they were going to charge for fuel surcharge, then NNR Japan would pass this on to customers for all shipments going from Japan.

As I said before, the first stage when the JFS was introduced it was 6 yen per HAWB. This amount was determined by the airlines and was uniform across all airlines. Later, I am not sure when, the amount charged by the airlines for the JFS varied. I do not think NNR Japan applied a mark-up or discount to customers on what the airlines charged but I don't know.

Q.17 Was the JFS different for the different types of customers? Were there customers who refused to pay the JFS?

A: No, the JFS was applied to all customers at the same amount and did not vary with the different types of customers".[750]

472. Likewise in the interview with CCS on 5 August 2013, [✂] is recorded as stating:

> "*NNR Singapore will not be involved about [sic] the fees and charges where the shipment is prepaid in Japan as that is conducted by NNR Japan in Japan. Generally there is no involvement of NNR Singapore regarding fee and surcharges for pre-paid shipments from Japan.*
>
> *Collect shipments are normally paid by the importer but big clients can decide whether the payment terms are collect or pre-paid and where the payment will be made.*
>
> *NNR Singapore may have customers that pay collect in Singapore for shipments from Japan to Singapore.* [✂] *NNR Singapore knows that it must charge the fuel surcharge, security surcharge and explosives surcharge where applicable as advised by NNR Japan. If NNR Singapore has a problem charging the surcharges it must tell NNR Japan and await the final decision from NNR Japan*".[751]

473. Further, in the interview with CCS on 6 August 2013, [✂] is recorded as stating that the "*intention of NNR Japan was to impose the same rate of JFS on its customer as what was imposed on NNR by the airlines, regardless of the customer type, but it was not always successful in doing so*".[752]

[750] Answers to Questions 14 to 17 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[751] Answer to Question 15 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2006.
[752] Answer to Question 25 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2006.

474. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 468 to 473 demonstrates that NNR had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Nissin

475. As outlined in paragraphs 350 to 409, Nissin was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

476. In statements provided to the JFTC dated 27 June 2008, [✂] of Nissin Corporation, confirmed to the JFTC that he attended JAFA meetings on 16 May 2001[753], 18 September 2002[754], 3 June 2004[755] and 3 August 2005[756] on behalf of Nissin where the JFS had been discussed and the JFS collection rates presented. In particular, he confirmed that according to his handwritten notes, the members of EBIC decided at the 18 September 2002 meeting "*...that they would try to collect the entire amount of the [JFS] billed by the airline from the shipper as-is, and it was decided that every company would deal with the shippers with the same idea*".[757] In a statement provided to the JFTC on 1 October 2008, [✂] of Nissin also confirmed to the JFTC that he attended a JAFA meeting on 17 July 2007 and 18 September 2007[758], where, *inter alia*, JFS collection rates of the attendees were presented. Likewise, [✂] of Nissin Aircargo Co., Ltd.[759] also informed the JFTC in his statement dated 7 October 2008 that he attended JAFA meeting on 27 March 2001 where JFS was discussed. Documentary evidence from other Parties also evidences the presence and participation of Nissin in discussions at JAFA regarding the JFS.

[753] Information provided by NNR dated 2 August 2012, Exhibit 24.
[754] Information provided by NNR dated 2 August 2012, Exhibit 35.
[755] Information provided by NNR dated 2 August 2012, Exhibit 37.
[756] Information provided by NNR dated 2 August 2012, Exhibit 14.
[757] Information provided by NNR dated 2 August 2012, Exhibit 35.
[758] Information provided by NNR dated 2 August 2012, Exhibit 48.
[759] Information provided by NNR dated 2 August 2012, Exhibit 25; it is set out in paragraph 1 that Nissin Aircargo was a wholly owned subsidiary of Nissin Corporation, responsible for the operations of Nissin Corporation's air cargo.

477. Further to the JAFA meetings, Nissin applied the JFS to all shipments from Japan, including shipments from Japan to Singapore. In a statement provided to the JFTC on 5 September 2008, [✂], confirmed that Nissin "*decided, pursuant to the contents mutually confirmed at the meetings of the International Division Administrators, to implement fuel surcharges to be billed to shippers simultaneously as airline companies would implement the FSC...*" .[760]

478. Nissin applied a JFS at the same rate as the fuel surcharge charged by airlines from October 2002 to November 2007 for shipments from Japan to, *inter alia*, Singapore. The amount of the JFS was determined by Nissin Corporation on a cost recovery basis.[761] Nissin Corporation would compile the list of fuel surcharges according to airlines and disseminate the list to Nissin Singapore.[762]

479. For prepaid shipments, surcharges (such as JFS) were quoted to customers by Nissin Corporation and collected at the origin point.[763]

480. For collect shipments secured by Nissin Corporation, Nissin Singapore collected payment from customers on behalf of Nissin Corporation.[764] For collect shipments where the customer was secured by Nissin Singapore, all applicable [✂], which included the JFS, were quoted by Nissin Singapore at cost, based on the quote it received from the origin station Nissin Corporation.[765]

481. This was confirmed in CCS's interview of [✂] dated 26 August 2013. CCS's Notes of Information/Explanation Provided record:

> "*My understanding for air freight shipments on a collect basis where the quote is given by Nissin Singapore to its customer, Nissin Singapore would quote to the customer what Nissin Japan quotes* [✂] *depending on the market conditions. For* [✂] *that Nissin Japan quotes, we will not impose a mark-up*".[766]

482. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 475 to 481 demonstrates that Nissin entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

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[760] Information provided by NNR dated 2 August 2012, Exhibit 38, page 6.
[761] Answer to Question 55 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.
[762] Answer to Question 54 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.
[763] Answer to Question 16 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013; and Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.
[764] Answer to Question 22 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013; and Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.
[765] Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.
[766] Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.

Vantec

483. As described in paragraphs 350 to 409 above, Vantec was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

484. Vantec in its information to CCS admitted that its representatives attended JAFA meetings and discussed the JFS.[767] Documentary evidence from other Parties also evidences the presence and participation of Vantec in discussions at JAFA regarding the JFS.

485. Vantec charged the JFS to its customers at the same rate as the fuel surcharge was charged to it in the period January 2006 to November 2007 on shipments from Japan to, *inter alia,* Singapore. The JFS was applied to both prepaid and collect shipments from Japan to Singapore. Vantec Singapore charged and billed for the JFS as billed by Vantec Japan, i.e. at same amount charged by airlines. The CCS's Notes of Information/Explanation Provided of [✂] dated 19 June 2013 record the following:

> "*Q.68 Did Vantec Singapore ever charge or pass the JFS onto customers in Singapore? If so how did Vantec Singapore decide what amount of JFS to charge and what was that amount?*
>
> *A. Vantec Singapore did charge customers a JFS for consignments from Japan to Singapore. The amount of the JFS is determined by Vantec Japan. Vantec Singapore cannot change the JFS, it just imposes what is quoted by Vantec Japan.*
>
> *For shipments from Japan to Singapore, Vantec Singapore will issue an invoice to the customer in Singapore which will include both the Vantec Singapore and Vantec Japan charges. The customer will pay Vantec Singapore and Vantec Singapore will pay to Vantec Japan any fees and charges collected on behalf of Vantec Japan.*
> …

[767] Information provided by Vantec dated 15 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, ref C83 to C87.

Q.73 Referring to document marked SS-003 at page 18, it states that "where Vantec Singapore is negotiating with a customer in respect of a consignment being exported from Japan to Singapore, Vantec Singapore does not take a decision on the levy of the Japanese Export Surcharges. Vantec Singapore will only seek a fee quote from Vantec Japan (such a quote will include the Japanese Export Surcharges)…Vantec Singapore will incorporate the said quote as part of its overall quote and pass it on to the customer". Is this correct?

Can you tell us more about this arrangement? Did Vantec Singapore simply implement the surcharges set by Vantec Japan? Were there any negotiations between Vantec Singapore and Vantec Japan in relation to the surcharges?

A. Yes, paragraph 16.2 on page 18 of document SS-003 is correct.

Vantec Singapore does not negotiate with customers about the JFS. [✂]. *Customers would already have been aware of the JFS before goods are shipped. Vantec Singapore may negotiate with Vantec Japan about* [✂] *but not on the JFS*".[768]

486. Similarly, [✂] confirmed in his 9 October 2013 Affidavit that:

> "*To the best of my knowledge, surcharges such as the JEEF, JFS and JSS would be imposed on shipments exported out of Japan to all destinations, including Singapore. The decision to impose such surcharges would have been made by Vantec Japan for the shipments from Japan*".[769]

487. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 483 to 486 demonstrates that Vantec entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Yamato

488. As outlined in paragraphs 350 to 409 above, Yamato was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount that the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of

[768] Answers to Questions 68 and 73 of [✂] (Vantec) Notes of Information/Explanation Provided on 19 June 2013.
[769] Affidavit of [✂] (Vantec) dated 9 October, paragraph 26.

competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

489. This is confirmed in the information provided to CCS. Yamato admitted in its submission that "*[w]ith regard to JFS, 14 member companies of JAFA (Japan Air cargo Forwarders Association) jointly entered into an agreement on 18 September 2002 by implementing the JFS imposed by carriers on their customers*".[770] Documentary evidence from other Parties also evidences the presence and participation of Yamato in discussions at JAFA regarding the JFS.

490. Yamato first imposed the JFS in October 2002.[771] The JFS is described on Yamato air waybills as "MY".[772] The JFS was applied at the same rate as the fuel surcharge charged by airlines for shipments from Japan to, *inter alia*, Singapore.[773]

491. Yamato Japan changed the rate of the JFS from time to time according to the changes made by the carriers.[774] When the JFS amount changed, Yamato Asia was informed by Yamato Japan of this via circulars it had received from carriers.[775] Yamato Asia would then change the JFS amount it charged in accordance with the instructions it received from Yamato Japan.[776] This is confirmed in the interview conducted by CCS of [✂] on 23 October 2013. The Notes of Information/Explanation Provided record the following:

> "*There was information from Yamato Japan on the JFS. The air freight branch manager informed me that the information came from Yamato Japan. He informed me that there was a fuel surcharge charged by the airlines for shipments from Japan to Singapore so all sales personnel would have to impose this to customers in Singapore. I know that fuel surcharge is non-negotiable because it is non-negotiable with airlines in Singapore and Yamato Asia does not negotiate with customers on fuel*

[770] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 11.
[771] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 14.
[772] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 14.
[773] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 14; and Answer to Question 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[774] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 15.
[775] Answer to Question 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[776] Answer to Questions 59 and 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.

surcharge. He told me that the fuel surcharge from Yamato Japan was non-negotiable and needed to be charged to customers cost to cost, i.e. the cost imposed by Yamato Japan on Yamato Asia is passed on without variation to customers".[777]

492. The JFS was applied to both prepaid and collect shipments from Japan to Singapore. The amount for the JFS applied by Yamato Japan and Yamato Asia was determined by Yamato Japan, which was informed by the carrier as to the amount of the fuel surcharge it was charging.[778] Yamato Japan would inform Yamato Asia about the amount to charge for the JFS.[779] There was no mark-up on the JFS imposed by Yamato Japan.[780]

493. [✂], the JFS was charged to all customers at a fixed rate by Yamato Japan and Yamato Asia (the fixed rate varied depending on the amount charged by the airlines to Yamato).[781] The amount of the JFS was notified to customers through quotations and information on invoices.[782]

494. For prepaid shipments, the JFS was quoted to customers by Yamato Japan, and Yamato Asia is not involved in collecting the fuel surcharge.

495. For collect shipments negotiated by Yamato Japan, Yamato Japan would quote customers in Singapore directly. Yamato Asia would not be aware of the quotation provided by Yamato Japan and would only become aware of the charges payable by the customers from the HAWB.[783] Yamato Asia charged customers the exact same amount for JFS as stated on Yamato Japan's HAWB. For collect shipments negotiated by Yamato Asia, Yamato Asia applied the amount of JFS charged to Yamato Asia by Yamato Japan for shipments from Japan to Singapore.[784]

496. This was likewise confirmed in CCS's interview of [✂] on 21 October 2013. CCS's Notes of Information/Explanation Provided record, "*Yamato Asia quoted and charged the JFS as decided by Yamato Japan and informed to Yamato Asia*".[785]

497. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 488 to 496 demonstrates that Yamato had entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding

[777] Answer to Question 55 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013.
[778] Answer to Question 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[779] Answer to Question 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[780] Answer to Question 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[781] Answer to Question 61 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013; and Answer to Question 63 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[782] Answer to Question 62 of [✂r] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[783] Answer to Question 60 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013.
[784] Answer to Question 57 of [✂] (Yamato) Notes of Information/Explanation Provided on 23 October 2013.
[785] Answer to Question 59 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.

the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

Yusen

498. As outlined in paragraphs 350 to 409, Yusen was actively involved in discussions with the Parties regarding the charging of a JFS to shippers at the same amount that the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS. These discussions occurred in JAFA meetings, in particular between September 2002 and 12 November 2007.

499. Yusen Japan admitted in its response dated 20 February 2013 to CCS that its employees, namely [✂], [✂], [✂] and [✂], were involved in meetings of the JAFA where the JFS was discussed and agreed upon between 27 March 2001 and 18 September 2007.[786] Summaries of meetings by the respective attendees of the aforesaid meetings were provided to CCS by Yusen Japan.[787]

500. In his interviews with CCS on 7 October 2013 and 8 October 2013, [✂] confirmed that there were discussions on, *inter alia*, the JFS at the EBIC meeting on 20 February 2006, which he attended, and other JAFA and/or EBIC meetings regarding which he received reports from [✂].[788] He also confirmed that the JFS was discussed at meetings of the JAFA Improvement Committee, including the percentage of the JFS each forwarder was able to collect, and system processes regarding the JFS.[789] Documentary evidence from other Parties also evidences the presence and participation of Yusen in discussions at JAFA regarding the JFS.

501. Yusen applied the JFS at the same rate[790] as the fuel surcharge imposed on it by airlines[791] on shipments from Japan including to Singapore.[792] Yusen Japan

[786] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraphs 40.1, 40.2 and 43.1 and Appendices JP-25 and JP-26.
[787] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Appendices JP-25 and JP-26.
[788] Answer to Question 11 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013; and Answer to Question 12 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013.
[789] Answer to Question 11 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013; and Answer to Question 13 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013.
[790] Answer to Question 24 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013, where he said that the "*JFS was not different for different customers*" although [✂].
[791] Answer to Question 20 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013.

informed its customers about the JFS by passing on circulars from the carriers regarding the amount of JFS.[793]

502. The JFS applied to both prepaid and collect shipments from Japan to Singapore, whether negotiated by Yusen Singapore or Yusen Japan. The decision by Yusen Japan on the amount of JFS to charge was applicable to Yusen Singapore. In his interviews with CCS dated 8 October 2013, [✂] confirmed:

> "*[T]he decision on the amount of JFS to charge made by Yusen Japan was applicable to Yusen Singapore. As long as the customers were happy to pay the JFS, Yusen Singapore used the same amount as decided by Yusen Japan*".[794]

503. Prepaid shipments were usually quoted and paid for at origin, i.e. by Yusen Japan, although Yusen Singapore may have quoted such shipments on rare occasions.[795] For all-charge collect shipments negotiated by Yusen Japan, Yusen Singapore would collect payment according to the bill prepared by Yusen Japan. Payment received from a customer would then be remitted back to Yusen Japan pursuant to an agency agreement[796] [✂].[797]

504. In cases where the collect shipment was negotiated by Yusen Singapore, Yusen Singapore would obtain the amount for [✂], including the JFS, from Yusen Japan and quote the amounts so obtained to its customer without any mark-up.[798] Yusen Japan would list the JFS down in the quotations and send it to Yusen Singapore.[799]

505. CCS considers that the evidence in paragraphs 350 to 409 and paragraphs 498 to 504 demonstrates that Yusen entered into an agreement and/or concerted practice to fix how the JFS would be priced and exchange information regarding the application of the JFS on air shipments from Japan to Singapore that had as its object the prevention, restriction or distortion of competition within Singapore.

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[792] Answer to Question 18 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013; and Answer to Question 60 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[793] Answer to Question 23 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013.
[794] Answer to Question 19 of [✂] (Yusen) Notes of Information/Explanation Provided on 8 October 2013.
[795] Answer to Question 23 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[796] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013; and information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, Appendix JP-36.
[797] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[798] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[799] Answer to Question 59 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

(iv) CCS's analysis of the evidence and its conclusions on the JFS

506. It is clear from the evidence above, that there existed between the Parties an agreement and/or concerted practice in respect of the JFS. The Parties were engaged in a long standing arrangement of regular meetings and systemic exchanges in relation to their agreement and/or concerted practice to impose a JFS on shippers at the same rate as the fuel surcharge was charged to them by airlines. Freight forwarders including the Parties monitored adherence to that agreement by:

    (i) agreeing not to use the JFS as a means of competition amongst freight forwarders;

    (ii) reporting on the JFS collection ratios (i.e. the percentage of JFS charged that freight forwarders are able to collect from their customers)[800];

    (iii) reporting on uncollected JFS charges from shippers[801];

    (iv) discussing changes to the fuel surcharge imposed by airlines[802]; and

    (v) discussing strategy for, and the outcome of, negotiations with shippers for payment of the JFS.[803]

507. The meetings between the Parties in Japan where JFS was discussed occurred periodically from 2001, but in particular from September 2002 until November 2007. The overall common objective of these meetings was to ensure the following:

    (i) the Parties' commitment to passing on the JFS (for cargo shipped from Japan to overseas destinations including Singapore);

[800] Answer to Question 18 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.

[801] Examples of such meetings are the JAFA meetings on 21 September 2004 and 20 September 2005. See documents provided by DGF, JAFA's Minutes of Board Meeting for meeting on 21 September 2004, marked D-ACPERA-000000090 to D-ACPERA-000000093, and, JAFA's Minutes of Board Meeting for meeting on 20 September 2005, D-ACPERA-000000069 to D-ACPERA-000000071 (English translation provided by DGF on 7 November 2013). See also information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document HH_0651 Translation.

[802] Examples of such meetings are the JAFA meetings on 15 May 2006 and 18 July 2006; documents provided by DGF, JAFA's Board Meeting Minutes for meeting on 15 May 2006, marked D-ACPERA-000000051 to D-ACPERA-000000053 and, JAFA's Board Meeting Minutes for meeting on 18 July 2006, D-ACPERA-000000043 to D-ACPERA-000000045.

[803] An example of such a meeting is the JAFA meeting on 3 August 2005; information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 38 - Email from [✂] to [✂] et al dated 8 September 2005; and document marked [✂]-008 Tab 38 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.

(ii) the dampening of price competition between the Parties in relation to JFS; and

(iii) monitor and share the reactions of customers.

508. The participation of the Parties in JAFA meetings to discuss the JFS demonstrates an intention to influence the conduct of competitors by conveying the course of conduct which they themselves have decided to adopt or contemplate adopting. As stated above, the case of *Suiker Unie* has established that any direct or indirect contact between competitors, the object or effect whereof 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 themselves have decided to adopt or contemplate adopting on the market, is strictly precluded.[804]

509. In particular, the Parties sought to monitor each other to ensure that the JFS did not become a component of price competition between them. At the JAFA meetings which they attended, the Parties provided their collection ratios which indicated their success in passing onto customers the costs of the fuel surcharge charged by airlines.

510. The discussions between the Parties, as recorded in the contemporaneous minutes of the JAFA meetings as well as the internal reports on actions to take following the meetings[805], are evidence that the Parties have knowingly substituted "*for the risks of competition, practical cooperation between them*".[806]

511. The Parties, which were all active freight forwarders, sent numerous shipments (exports) from Japan to overseas countries, including Singapore. The Parties may be presumed, as in the case of *Commission v Anic Partecipazioni*[807], 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 could amount to a concerted practice.[808]

512. In *Tréfilunion SA v Commission*[809], it was established 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

[804] Joined Cases 40 -8, 50, 54 -6, 111, 113 and 114-73 *Cooperatiëve Vereniging Suiker Unie v Commission* [1975] ECR- 1663, at [26] and [173] to [174].
[805] For example: information provided by KWE dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 9(c), Tab 38 - Email from [✂] to [✂] et al dated 8 September 2005; document marked [✂]-008, Tab 38 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.
[806] 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)].
[807] Case C-49/92 [1999] ECR I-4125, at [125].
[808] *Cimenteries v Commission* Case T-25/95 [2000] ECR II-491, at **[**1852].
[809] Case T-148/89 [1995] ECR II-1063 at [79].

the market. CCS notes that certain freight forwarders highlighted that they had intended to pass on the costs of what the airlines were charging even prior to the JAFA meetings. It is established case law that the mere receipt by a competitor of a Party's intention could amount to a concerted practice.[810] Consequently, as set out in paragraph 105, subject to proof to the contrary, which the economic operators concerned must adduce, the presumption is that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market.[811]

513. Moreover, the participation by an undertaking in meetings 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 meetings is not such as to relieve it of responsibility for the fact of its participation in the cartel, unless it has publicly distanced itself from what was agreed in them.[812]

514. Yusen and KWE in their representations, submitted that no agreement on the JFS was reached in relation to the amount of JFS as this was determined by the airlines.[813] Yusen further submitted that the exchange of information on the JFS did not have an appreciable effect on competition.

515. As set out above, the Parties' discussions had the object of "*charging of a JFS to shippers at the same amount that the fuel surcharge was charged to them by airlines, and monitoring adherence to this*". This in essence fixes the pricing of the JFS. As part of the agreement and/or concerted practice to fix how the JFS would be priced, the Parties were "*informing one another of their success in imposing this agreed amount for the JFS by reporting their respective collection ratio for the JFS during JAFA meetings*". The disclosure of their respective collection ratio served to reinforce the single overall agreement and/or concerted practice of fixing the JFS. As set out above, it is established case law that where it is shown that an agreement or concerted practice restricts competition by object such as price-fixing, there is no need to show that the conduct may have an anti-competitive effect or to take into account the agreement's actual effect and that price-fixing by its very nature has an appreciable adverse effect on competition.

516. Finally, if a party does not engage in every instance of the conduct, this does not mean that an undertaking is not liable for the infringement.[814] In the current case,

[810] *Cimenteries v Commission* Case T-25/95 [2000] ECR II-491, at **[**1852].
[811] Case C-49/92 *P Commission v Anic Partecipazioni* [1999] ECR I-4125, at [121]. See also *P. Hüls AG v Commission Case* C-199/92 [1999] ECR I-4287, at [162].
[812] C-291/98P *Sarrio SA v Commission* [2000] ECR I-9991, at [50].
[813]Written Representations of KWE dated 21 May 2014, paragraph 2 and Written Representations of Yusen Japan dated 23 May 2014, paragraphs 2.21 to2.32.
[814] Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791.

the fact that a Party did not attend every meeting does not exculpate it from a finding of infringement. Each of the Parties which took part in the common unlawful enterprise (through actions which contributed to the realisation of the shared objective) is equally responsible *for the whole period of its adherence to the common scheme*. CCS is of the view that the Parties conduct, even if not all Parties were present at each meeting, can be viewed as a single continuous infringement.

Impact on competition within Singapore

517. Section 33(1) of the Act provides that notwithstanding that an agreement referred to in section 34 has been entered into outside Singapore; any party to such agreement is outside Singapore; or any other matter, practice or action arising out of such agreement is outside Singapore, the Act applies if such an agreement infringes or has infringed the section 34 prohibition.

518. The agreement and/or concerted practice reached between the Parties in Japan prevented, restricted or distorted competition within Singapore for the provision of air freight forwarding services from Japan to Singapore. The very target of the Parties' agreement and/or concerted practice was shipments from Japan destined for overseas, including Singapore, the object being to prevent, restrict or distort competition in the market for the provision of air freight forwarding services by the fixing of an amount to charge for the JFS.

519. In the case of all the Parties, each Party's Japan company either quoted or indicated to each other that they would quote customers (for shipments exported from Japan to countries such as Singapore) the JFS as charged to them by the airlines.

520. In this case, the impact on competition within Singapore is clear. Where the customer was located in Singapore, but secured by the Party's Japan company, the Japan company would quote the JFS as agreed and discussed at JAFA meetings. For collect shipments secured by the Japan company, payment for the shipment would be collected by the Singapore company and the amount for the freight and accompanying surcharges including the JFS was usually remitted back to the Party's Japan company, subject to the profit sharing arrangements made between them.

521. For customers quoted by the Party's Singapore company, the JFS was charged and collected at the same amounts as charged by their Japan parent or Japan affiliate company. Consequently, customers would likewise be quoted a JFS at the amount as agreed and discussed in JAFA meetings. In *ICI v Commission*, ICI was found to be liable for price-fixing by the EC for providing instructions to its subsidiary in Belgium to increase its prices. The ECJ found that ICI had used its

subsidiary to implement in the common market, its decision, thereby infringing competition law in the EU.[815] Similarly in *J R Geigy v Commission*, it was held that "*where an undertaking established in a third country, in the exercise of its power to control its subsidiaries established within the community, orders them to carry out a decision to raise prices, the uniform implementation of which together with other undertakings constitutes a practice prohibited under Article 85 (1) of the EEC treaty, the conduct of the subsidiaries must be imputed to the parent company*".[816]

522. In light of the foregoing, it is clear that the Parties entered into an agreement and/or concerted practice through their participation in a series of meetings over a lengthy duration of time that had as its object the fixing of how the JFS would be priced and the exchange of information regarding the application of the JFS on air shipments from Japan to Singapore - the common objective being to ensure that the JFS was not a point of competition between the Parties.

523. The agreement and/or concerted practice between the Parties, whereby the JFS was quoted and charged to customers at the price charged to freight forwarders by the air carriers and information was exchanged regarding the application of the JFS, had as its object the prevention, restriction or distortion of competition within Singapore in the market for the provision of air freight forwarding services. The agreement and/or concerted practice was carried out by the conduct of both the Japan and Singapore companies of each of the Parties as detailed above.

CHAPTER 3: DECISION OF INFRINGEMENT

524. CCS is satisfied that there is sufficient evidence in paragraphs 160 to 347 and paragraphs 350 to 526 above to find that the Parties listed at paragraph 2 above, infringed the section 34 prohibition by entering into agreements and/or concerted practices to fix prices and exchange information in respect of the separate infringements set out in paragraphs 347 and 523 above.

525. CCS is also satisfied that the agreements and/or concerted practices referred to in paragraph 524 were carried out by the conduct of both the Japan and Singapore companies acting as a single economic unit for each Party. While each of the Parties consists of different natural and legal persons, these persons together formed a SEE for each Party. Section A below sets out CCS's reasons for its findings that the Japan and Singapore companies were acting as a single economic unit in respect of the infringements set out in paragraph 524. Accordingly, the natural and legal persons of each Party are jointly and severally liable for the payment of the penalty that CCS imposes in Chapter 4 below.

[815] Case 48/69 *ICI v Commission* [1972] ECR 619, at [125] to [146].
[816] *J R Geigy AG v Commission* [1972] ECR 787, at [13].

526. CCS finds that the duration for the conduct for which the Parties are liable is from 1 January 2006 until 12 November 2007. Section B below sets out CCS's reasons for this period.

A. Addressees of CCS's Decision

527. The relevant case law on SEE and attribution of liability as a consequence of a finding of SEE has been discussed at paragraphs 70 to 99.

528. As set out above, it is established case law that an undertaking can consist of several persons, natural and legal.[817] Whether persons constitute a "single economic unit" is dependent on the circumstances of a case.

529. In their representations, certain Parties sought to argue that liability should only be imputed to their Japan company and not also to their related Singapore company. Nippon Express submitted that CCS was wrong to have attributed liability to NES for NEJ's actions as NES was not personally involved in the alleged infringements.[818] NNR submitted that CCS should not attribute liability to NNR Singapore in the absence of legal precedent and a finding that NNR Singapore had knowledge or participated in the infringing activities.[819] Yusen likewise submitted that Yusen Singapore should not be liable as it was not a Party to or was not made aware of discussions relating to the JSS/JEEF or JFS.[820] Nippon Express, NNR and Yusen all submitted that CCS had failed to prove that their respective Japan company and Singapore company were a SEE.

530. CCS has carefully considered the representations of Nippon Express, NNR and Yusen. CCS is of the view that while each of the Parties' respective Japan company participated in the meetings, the agreements/concerted practices agreed at the JAFA meetings were carried out by each Parties' Japan company and Singapore company acting as a single economic unit. CCS has consequently included the Singapore companies as addressees of this ID. For certain Parties, CCS has included as an addressee, the parent company of both the Japan and Singapore company, where the relationship between the Japan company and Singapore company is not one of parent-subsidiary.

531. The burden is on CCS to prove entities are a SEE unless a presumption of SEE arises. In assessing whether the natural and legal persons of each of the Parties form an economic unit such that they should be regarded as a SEE, CCS considered all relevant facts and circumstances for each Party and, in particular, the economic, legal and organisational links between the companies concerned.

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[817] Case C 217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I 11987, at [40].
[818] Written Representations of NEJ dated 23 May 2014, paragraph 2.
[819] Written Representations of NNR dated 23 May 2014, paragraph 5.
[820] Written Representations of Yusen Japan dated 23 May 2014, paragraph 3.

532. Key facts and evidence for each Party and CCS's conclusions on whether they form a SEE are set out below. In summary, CCS is of the view that while each of the Parties consists of different natural and legal persons, these persons together formed a SEE for each Party, given their economic, legal and organisational links. CCS has made no finding that each of the Parties are a SEE by reason of a principal-agent relationship. The existence of an agency or break bulk agreement is but one factor considered by CCS in assessing the economic, legal and organisational links within each Party.

(i) DGF

533. As set out in paragraph 3 above, Deutsche Post A.G. is currently the parent company of DGF Japan and holds 100% group equity share in DGF Singapore. At the relevant time, Exel Ltd. had not been integrated into the DHL brand, and DGF Japan was known as DHL Maruzen.

534. DGF Singapore and DGF Japan report, along with other DGF Asia Pacific country offices, to DGF Asia Pacific which in turn reports to DGF's head office, Deutsche Post A.G.[821]

535. As described in paragraphs 222 to 224 and paragraphs 416 to 421 above, the JSS, the JEEF and the JFS were charges determined by DGF Japan and DGF Asia Pacific that were applied by both DGF Japan and DGF Singapore for shipments from Japan to Singapore. For shipments from Japan to Singapore on a collect basis that were negotiated by DGF Japan, DGF Singapore billed as per the instructions received from the shipment origin, in this case, Japan.[822] Where the collect shipment was negotiated by DGF Singapore, the amount to be charged for surcharges was determined by DGF Asia Pacific and DGF Japan as some form of consensus was required between them.[823]

536. Representations by DGF in respect of SEE: DGF did not make any representations in respect of the issue of SEE.

537. CCS considers that in respect of the infringing conduct, DGF Japan, DGF Singapore, DGF Asia Pacific and Deutsche Post A.G. formed a single economic unit. The existence of 100% ownership by Deutsche Post A.G. of DGF Japan, DGF Singapore and DGF Asia Pacific, creates a rebuttable presumption that Deutsche Post A.G. exercises decisive influence over its subsidiaries: DGF Japan, DGF Singapore, and DGF Asia Pacific. Moreover, CCS considers that other factors demonstrate the economic and legal links between DGF Japan, DGF Singapore, and DGF Asia Pacific that support a finding of a SEE. These

[821] Information provided by DGF dated 3 September 2013 pursuant to CCS's RFI dated 13 August 2013 - DGF Organisation – Global Chart.
[822] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 15.
[823] Information provided by [✂] (DGF) dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013, response to question 16.

factors include the reporting structure between the entities, the existence of common directors, arrangements on revenue and profit sharing and the way in which DGF Japan influenced DGF Singapore's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period.

(ii) Hankyu Hanshin

538. As set out in paragraphs 9 and 11 above, HHE Co. was formed from the amalgamation of HAC and HEX; and HHE Singapore was formed from the amalgamation of HIT Singapore and HFI Singapore.

539. HFI Singapore was a wholly-owned subsidiary of HAC and HIT Singapore was a wholly-owned subsidiary of HEX at the relevant time. After the amalgamations, HHE Singapore became a wholly-owned subsidiary of HHE Co.[824] HFI Singapore paid yearly dividends to HAC when it was a subsidiary of HAC[825], and HIT Singapore [✂] when it was a subsidiary of HEX[826]. HHE Singapore [✂] in HHE Singapore.[827] HAC [✂] Singapore.[828] HIT Singapore [✂][829], and the Managing Director of HIT Singapore also [✂].[830] The Managing Director of HIT Singapore also [✂].[831]

540. There were common directors between the companies during the relevant period. Common directors in HAC and HFI Singapore from January 2002 to December 2008 were as follows[832]:

(i) [✂];
(ii) [✂]; and
(iii) [✂].

541. Common directors in HEX and HIT Singapore from January 2002 to December 2008 were as follows[833]:

[824] Information provided by Hankyu Hanshin dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annexure 1.
[825] Answer to Question 18 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 23 July 2013.
[826] Answer to Question 7 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[827] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 3(vii).
[828] Answer to Question 7 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[829] Answer to Question 10 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[830] Answer to Question 11 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[831] Answer to Question 5 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 20 August 2013.
[832] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 3(vi).
[833] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 3(v).

(i) [✂];
(ii) [✂];
(iii) [✂];
(iv) [✂];
(v) [✂]; and
(vi) [✂].

542. As described in paragraphs 231 to 232, paragraphs 243 to 244, paragraphs 425 to 429 and paragraphs 433 to 436 above, the JSS, the JEEF and the JFS are charges that were determined by HHE Co. (and the former HEX and HAC), and applied by HHE Co. and HHE Singapore (and the former HIT Singapore and HFI Singapore). For shipments from Japan to Singapore on a prepaid basis, HHE Co. collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, where the customer is secured by HHE Co., HHE Singapore collected the JSS, the JEEF and the JFS (as quoted by HHE Co.) from the consignee in Singapore on HHE Co.'s behalf, and [✂].[834] For collect shipments where the customer is secured by HHE Singapore, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were quoted by HHE Singapore at cost based on the quote it received from HHE Co.

543. In this regard, in an interview with [✂] on 25 October 2013, CCS's Notes of Information/Explanation Provided records the following:

> "*Q.15 How are the fees and surcharges quoted to customers for collect shipments by Hankyu Singapore generally decided (i.e. by headquarters, regional offices or independently)? Do all offices implement the same amount of fees and surcharges? Which is the office which quotes for shipments from Japan to Singapore?*
>
> *A. For customers in Singapore requesting for quotations for freight collect shipments from Japan to Singapore, Hankyu Singapore would ask for quotations from Hankyu Japan,* [✂]".[835]

544. Representations by Hankyu Hanshin in respect of SEE: Hankyu Hanshin did not make any representations in respect of the issue of SEE.

545. Based on the above factors, CCS considers that in respect of the infringing conduct, HHE Co. and HHE Singapore formed a single economic unit. The existence of 100% ownership by HHE Co. of HHE Singapore creates a rebuttable presumption that HHE Co. exercises decisive influence over HHE Singapore. Moreover, CCS considers that other factors demonstrate the

[834] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 2(iii).
[835] Answer to Question 15 of [✂] (Hankyu Hanshin) Notes of Information/Explanation Provided on 25 October 2013.

economic and legal links between HHE Singapore and HHE Co. that support a finding of a SEE. These other factors include the reporting structure between the entities, the existence of common directors and the way in which HHE Co. influenced HHE Singapore's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period.

546. In addition, CCS notes the mutual sales and break-bulk agency agreements between the various Hankyu Hanshin companies under which [✂].[836] CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(iii) K Line

547. As set out in paragraph 14 above, KLJ owns 88.7% of KLS. The remainder is owned by "K" Line Singapore Pte. Ltd., which is owned by Kawasaki Kisen Kaisha Ltd. (which also owns 92% of KLJ) and Ng Teow Yhee & Sons Holding Pte. Ltd. [✂].[837]

548. As a majority shareholder in KLS, KLJ has the right to nominate directors of KLS. KLS is expected to issue monthly reports to the corporate planning department of KLJ in relation to KLS's monthly financial results.[838] The Managing Director of KLS reports to the board of directors and to the planning department of KLJ on a periodic (monthly and quarterly) basis.[839]

549. As described in paragraphs 255 to 258 and paragraphs 440 to 443 above, the JSS, the JEEF and the JFS are charges that were determined by KLJ and applied by both KLJ and KLS. For shipments from Japan to Singapore on a prepaid basis, KLJ collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, KLS collected the JSS, the JEEF and the JFS (as informed by KLJ) from the consignee in Singapore on KLJ's behalf[840], and transmitted the payments to KLJ. For collect shipments where the customer was secured by KLS, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were quoted by KLS at cost based on the quote it received from KLJ.

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[836] Information provided by HHE Singapore dated 6 September 2013 pursuant to [✂] (Hankyu Hanshin) interview on 20 August 2013.

[837] Information provided by KLJ dated 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, response to question 2.g.; and information provided by KLS dated 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, response to question 2.g.

[838] Information provided by KLJ dated 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, responses to questions 2.a. and 2.b.; and information provided by KLS dated 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, responses to questions 2.a. and 2.b.

[839] Information provided by KLS dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 3.

[840] Answer to Question 21 (on JEEF and JSS) of [✂] (K Line) Notes of Information/Explanation Provided on 3 October 2013; and Answer to Question 10 (on JFS) of [✂] (K Line) Notes of Information/Explanation Provided on 4 October 2013.

550. This is illustrated in an interview with [✂] on 20 September 2013. CCS's Notes of Information/Explanation Provided record:

> "*Q.8 Please explain the decision making process for implementing and/or changing Japan surcharges at KLS during the period 2004-2007. During that period, what contact would KLS have with KLJ if it was to implement or change a Japan surcharge?*
>
> *A. ...At least after 2004, the Japan surcharge is informed by KLJ via email. From time to time, this surcharge varies because of changes in fuel prices. So every month, KLJ will send over a price list in the form of an excel file. This announcement is made not just to Singapore, but to all "K" Line overseas entities. This is for Japan fuel surcharge. We (KLS) will apply the Japan surcharge informed by KLJ. ...*
> *...*
>
> *Q.12 To what extent did KLJ set financial targets, or issue directives to KLS? Were there any directives regarding the setting and collecting of fees and surcharges?*
>
> *A. ...*[✂].
> *KLJ does not issue directives on fees and surcharges. For surcharges, Japan to Singapore route, KLS just collects the amount of surcharges KLJ provides*".[841]

551. Representations by K Line in respect of SEE: K Line did not make any representations in respect of the issue of SEE.

552. Based on the above factors, CCS considers that in respect of the infringing conduct, KLJ and KLS formed a single economic unit. In CCS's view, the 88.7% ownership of KLS by KLJ, where the remaining shares are owned by "K" Line Singapore Pte. Ltd., creates a rebuttable presumption that KLJ exercises decisive influence over KLS. Moreover, CCS considers that other factors demonstrate the economic and legal links between KLJ and KLS that support a finding of a SEE. These factors include the reporting structure between the entities, KLJ's right to nominate directors of KLS and the way in which KLJ influenced KLS's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period.

553. In addition, CCS notes the mutual sales and break-bulk agency agreement between KLJ and KLS.[842] In the K Line Sales and Break Bulk Agreement,

[841] Answers to Questions 8 and 12 of [✂] (K Line) Notes of Information/Explanation Provided on 20 September 2013.
[842] Information provided by KLJ dated 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, response to question 14(iii) and Annex 5.

[✂].[843] CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(iv) KWE

554. As set out in paragraph 16 above, KWES, is a wholly-owned subsidiary of KWEJ. [✂].[844]

555. In an interview with [✂] on 26 June 2013, CCS's Notes of Information/Explanation Provided record the following regarding the relationship between KWEJ and KWES:

> "*Q.7 ... During the period 2002-2007, to what extent did KWE Japan set financial targets, issue directives or instructions to KWE Singapore? Do the articles of association of KWE Singapore require the consent of KWE Japan for significant decisions?*
>
> *A.* ...[✂]".[845]

556. [✂].[846] [✂].[847]

557. Day-to-day operational matters of KWES are communicated between staff of KWEJ and KWES at their respective operational levels with minimal or no interference from their respective managements.[848] "Day-to-day issues" are matters typically related to exchange of information on:

(i) [✂];
(ii) [✂];
(iii) [✂];
(iv) [✂];
(v) [✂];
(vi) [✂]; and
(vii) [✂].[849]

558. Management issues will be communicated [✂].[850] "Management issues" are issues related to the following:

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[843] K Line's "Sales and Break-bulk Agency Agreement" provided on 13 September 2013 pursuant to CCS's RFI dated 7 August 2013, Annex 5, Clause 1.
[844] Answer to Question 6 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[845] Answer to Question 7 of [✂] (KWE) Notes of Information/Explanation Provided on 26 June 2013.
[846] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, paragraph 2b.
[847] Information provided by KWE dated 10 July 2013 pursuant to CCS's RFI dated 24 June 2013, paragraph 2a; Information provided by KWE dated 10 July 2013 pursuant to CCS's RFI dated 24 June 2013, paragraph 1; [✂].
[848] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013; paragraph 2c.
[849] Information provided by KWE dated 10 July 2013 pursuant to CCS's RFI dated 24 June 2013, paragraph 2.

(i) [✂];
(ii) [✂];
(iii) [✂];
(iv) [✂];
(v) [✂]; and
(vi) [✂].[851]

559. As described in paragraphs 264 to 270 and paragraphs 449 to 452 above, the JSS, the JEEF and the JFS are charges that were determined by KWEJ and applied by both KWEJ and KWES. For shipments from Japan to Singapore on a prepaid basis, KWEJ collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, KWES collected the JSS, the JEEF and the JFS (as billed by KWEJ) from the consignee in Singapore on KWEJ's behalf, and transmitted the payments to KWEJ.[852] For collect shipments where the customer was secured by KWES, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were quoted by KWES at the amount quoted by KWEJ to KWES.

560. Representations by KWE in respect of SEE: KWE did not make any representations in respect of the issue of SEE.

561. CCS considers that in respect of the infringing conduct, KWEJ and KWES formed a single economic unit. The existence of 100% ownership by KWEJ of KWES creates a rebuttable presumption that KWEJ exercises decisive influence over KWES. Moreover, CCS considers that other factors demonstrate the economic and legal links between KWES and KWEJ that support a finding of a SEE. These factors include the reporting structure between the entities, the level of communication between the entities, KWEJ's right to nominate directors of KWES and the way in which KWEJ influenced KWES's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period. In addition, CCS notes the "International Air Cargo Consolidation Break-bulk Agency Agreement for Export from Japan to Singapore" between KWEJ and KWES.[853] Under this agreement, [✂].[854] CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(v) MLG

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[850] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, paragraph 2c.
[851] Information provided by KWE dated 10 July 2013 pursuant to CCS's RFI dated 24 June 2013, paragraph 2.
[852] Information provided by KWE dated 10 July 2013 pursuant to CCS's RFI dated 24 June 2013, paragraphs 6 and 7.
[853] Information provided by KWE dated 10 July 2013 pursuant to CCS's RFI dated 24 June 2013, paragraph 7 and Annex C-4.
[854] Information provided by KWE dated 31 May 2013 pursuant to CCS's RFI dated 22 April 2013, Annex C-4. Clause 1.

562. As set out in paragraph 18 above, MLG-JP owns 51% of MLG-SG. The remaining 49% of shares in MLG-SG is owned by Mitsui O.S.K. Lines, Ltd. which is also the majority (75.06%) shareholder of MLG-JP. [855] [✂].[856]

563. MLG-JP has sole control over the management and overall business operations of MLG-SG.[857] MLG-SG reports monthly profit and loss, business performance and annual fiscal year budget forecasts to MLG-JP for its approval and discussion if necessary. MLG-JP has the right to appoint the Managing Director of MLG-SG. In addition, MLG-JP may nominate the MLG-SG Managing Director onto the board of MLG-JP. MLG-JP also has the right to nominate directors onto the board of MLG-SG.[858]

564. In an interview on 27 September 2013 with [✂], CCS's Notes of Information/Explanation Provided also record the following regarding the relationship between MLG-JP and MLG-SG:

> "*Q.14 Please explain the contact that you would ordinarily have with MLG-JP during the period 2002-4 to 2006-2007 in the positions you held at MLG-SG.*
>
> *A. I would normally be in contact with MLG-JP at the operational and sales level, not so much on the corporate level. The discussions would be about the Japan to Singapore route and Japan to Singapore sales. We would discuss things such as new business accounts, new business development, requests for quotes etc.*
>
> *MLG-P may provide sales leads and then we would work together to see how we can secure the business*".[859]

565. There were also common directors between the companies during the relevant period. Common directors in MLG-SG and MLG-JP from January 2002 to December 2008 were as follows[860]:

(i) [✂];
(ii) [✂];
(iii) [✂]; and
(iv) [✂].

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[855] Information provided by MLG-JP dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 2.
[856] [✂]; information provided by MLG-SG dated 13 September 2013 pursuant to CCS's RFI dated 23 August 2013, paragraph 8.
[857] Information provided by MLG-SG dated 13 September 2013 pursuant to CCS's RFI dated 23 August 2013, paragraphs 2 to 9.
[858] Information provided by MLG-SG dated 13 September 2013 pursuant to CCS's RFI dated 23 August 2013, paragraphs 2 to 4.
[859] Answer to Question 14 of [✂] (MLG) Notes of Information/Explanation Provided on 27 September 2013.
[860] Information provided by MLG-SG dated 13 September 2013 pursuant to CCS's RFI dated 23 August 2013, Annex 1.

566. As described in paragraphs 274 to 278 and paragraphs 456 to 461 above, the JSS, the JEEF and the JFS are charges that were determined by MLG-JP and applied by both MLG-JP and MLG-SG. For shipments from Japan to Singapore on a prepaid basis, MLG-JP collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, where the customer was secured by MLG-JP, MLG-SG collected the applicable origin surcharges such as the JSS and the JFS (as informed by MLG-JP) from the consignee in Singapore on MLG-JP's behalf, and transmitted the payments to MLG-JP.[861] [✂][862] For collect shipments where the customer was secured by MLG-SG, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were quoted by MLG-SG at cost based on the quote it received from the origin station, MLG-JP.

567. In this regard, MLG-SG has stated the following:

> "*As with JEEF and JSS, as explained above, for all air import shipments from Japan to Singapore (whether secured by MOL Logistics Singapore or otherwise), all applicable Japan-origin airline surcharges (such as JFS) are quoted by the origin station, MOL Logistics Japan, and are either quoted at cost by MOL Logistics Singapore to its own customers (for import shipments from Japan it has secured in Singapore), or* [✂], *pre-paid in Japan or collected by MOL Logistics Singapore* [✂] *(for export shipments from Japan secured in Japan)*".[863]

568. Representations by MLG in respect of SEE: MLG did not make any representations in respect of the issue of SEE.

569. Based on the above factors, CCS considers that in respect of the infringing conduct, MLG-JP and MLG-SG formed a single economic unit. First, in view of the ownership structure existing between MLG-JP and MLG-SG, CCS is of the view that MLG-JP had a controlling interest in MLG-SG. Secondly, CCS considers that other factors demonstrate the economic and legal links between MLG-JP and MLG-SG that support a finding of a SEE. These factors include MLG-JP's sole control over the management and overall business operations of MLG-SG, the reporting structure between the entities, MLG-JP's right to nominate directors of MLG-SG and the way in which MLG-JP influenced MLG-SG's commercial and pricing policies for the JSS and the JFS during the relevant period. In addition, CCS notes the mutual break-bulk agency agreement between MLG-JP and MLG-SG.[864] Under the agreement, [✂].[865] CCS is of the view that

[861] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 45.
[862] Written Representations of MLG dated 23 May 2014, paragraph 3.2.2.
[863] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 45.
[864] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 8 and Annex 1B.

the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(vi) Nippon Express

570. As set out in paragraph 20 above, NEJ owns 100% of the shares in Nippon Express (South Asia & Oceania) Pte. Ltd. and in turn, Nippon Express (South Asia & Oceania) Pte. Ltd. owns 77% of the shares in NES.[866] During the relevant period, NEJ owned 77% of the shares in NES.[867] NES [✂] to NEJ and C&P Holdings Pte. Ltd. each year.[868]

571. NEJ also received annual financial statements from NES. NES provided to NEJ monthly reports which contained NES's profit and loss statements, balance sheets, and general information relating to the economic situation, sales trends and customer trends of NES's business. NEJ appointed directors to NES's board during the period of 1 January 2002 to 31 December 2008.[869]

572. As described in paragraphs 285 to 288 and paragraphs 465 to 466 above, the JSS, the JEEF and the JFS are charges that were determined by NEJ and applied by both NEJ and NES. For shipments from Japan to Singapore on a prepaid basis, NEJ collected the JSS, the JEEF and the JFS from the shipper in Japan. For shipments from Japan to Singapore on a collect basis, where the customer was secured by NEJ, NES collected the applicable origin surcharges such as the JSS, the JEEF and the JFS [✂] from the consignee in Singapore on NEJ's behalf, and transmitted the payments to NEJ. For collect shipments where the customer was secured by NES, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were collected by NES [✂] and transmitted to NEJ.[870]

573. In an interview with [✂] (Nippon Express) on 22 October 2013, CCS's Notes of Information/Explanation Provided record the following:

> "*Q13. Please explain the contact that you would ordinarily have with NEJ during the period 2002 to 2007 in the positions you held at NES.*
>
> *A. …For shipments from Japan to Singapore, we would obtain the rates from NEJ for freight charges, origin charges, if pickup required, and*

[865] Information provided by MLG-SG dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 1B, "International Aircargo Consolidations Revised Mutual Break-Bulk Agency Agreement", Article 1.
[866] The remaining 23% of shares in NES is owned by C&P Holdings Pte. Ltd.
[867] Information provided by NES dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.
[868] Information provided by NES dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 2.10.
[869] Information provided by NES dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 2.2 and 2.5.
[870] Answers to Questions 22, 23, 43 (on JSS) and 46 (on JFS) of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.

surcharges. For shipments from Singapore to Japan, we would obtain the rates from NEJ for destination charges if we needed to quote customers for door-to-door shipments.

…

Q.17 ...in the period 2002 to 2007 how were the fees and surcharges quoted to customers by NES for prepaid and collect shipments on the Japan to Singapore route generally decided (i.e by headquarters, regional offices or independently)? ...

A. For prepaid shipments, NES usually does not quote fees and surcharges to customers. This is usually quoted at the origin. For collect shipments, NES quotes the fees and surcharges to customers. We would obtain these rates from a designated department in NEJ...".[871]

574. Representations by Nippon Express in respect of SEE: Nippon Express submitted at paragraph 3 of its representations that CCS failed to discharge its burden of proof to show that NEJ exercised decisive influence on NES. Nippon Express submitted that NES acted independently from NEJ based on the following submissions:

(i) The mere fact that NEJ owns 77% of NES does not show that NEJ exercised decisive influence over NES;[872]

(ii) NEJ cannot be said to exercise decisive influence over NES on the basis of NES providing its financial and economic reports to NEJ, since NES similarly provides annual financial reports to both its shareholders, i.e. NEJ and C&P Holdings Pte. Ltd.;[873]

(iii) NEJ's power to appoint directors to the board of NES only resulted from NEJ being a shareholder of NES. The same applies to C&P Holdings Pte. Ltd., the other shareholder of NES, which also had this power of appointment. This by itself is at most indicative of both NEJ and C&P Holdings Pte. Ltd. being able to exercise influence on NES but is clearly not indicative of NEJ, or C&P Holdings Pte. Ltd., actually exercising decisive influence on NES;[874] and

(iv) NES never received instructions from NEJ on NES's pricing policy vis-à-vis its customers. Rather, NEJ would only provide its own quote

[871] Answers to Questions 13 and 17 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.
[872] Written Representations of NES dated 23 May 2014, paragraph 3.4.2.
[873] Written Representations of NES dated 23 May 2014, paragraph 3.4.3.
[874] Written Representations of NES dated 23 May 2014, paragraph 3.4.4.

to NES for the purposes of transporting shipments from Japan to Singapore.[875]

575. However, CCS notes from the submissions from Nippon Express and accounts from its employees the following:

(i) Nippon Express represents itself as a logistics consultant providing one-stop business solutions that connect people and companies beyond national and regional boundaries.[876] In this regard, Nippon Express is representing the Nippon Express group of company as a single economic unit with operations in various countries to provide logistics solutions. NEJ also referred to their subsidiaries as part of the "Nippon Express family of companies", and stated that there is a "global network of Nippon Express";[877]

(ii) [✂];[878]

(iii) NES provided to NEJ monthly reports which contained NES's profit and loss statements, balance sheets, and general information relating to the economic situation, sales trends and customer trends of NES's business;[879]

(iv) C&P Holdings Pte. Ltd., the minority shareholder of NES, did not set financial targets, issue instructions or give directives to NES during the relevant period; on the other hand, NEJ set up overall financial targets for each region, and the regional headquarters, in this case Nippon Express Hong Kong, would apportion the financial target for each of the Nippon Express offices or subsidiaries in the region and would allocate and notify NES of its financial target, which served as a guide for NES's business operations;[880]

(v) [✂] through the Nippon Express Global Sales Centre ("NEGSC") or Regional Global Sales Centre ("RGSC"). The NEGSC or RGSC would finalise the offer rate [✂].[881] In this regard, the Nippon

[875] Written Representations of NES dated 23 May 2014, paragraph 3.4.5.
[876] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 1.
[877] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 2.
[878] Information provided by NEJ dated 25 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, response to question 3.
[879] Information provided by NES dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 2.2.
[880] Information provided by NES dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraphs 2.6 and 2.7.
[881] Information provided by NES dated 25 February 2013 pursuant to the 63 Notice issued by CCS dated 12 December 2012, paragraph 5.2.

Express group of companies, including NES and NEJ, are presented as a single economic unit to customers. It should also be noted that NES would have to apply the fees and surcharges determined by the NEGSC or RGSC [✂];[882]

(vi) NES had to check with the NEGSC or RGSC before applying certain fees to [✂];[883]

(vii) There was [✂] for prepaid and collect shipments negotiated by NEJ and profit sharing for collect shipments [✂] as NEJ [✂].[884] Further it was NEJ's practice that the revenue from shipments from Japan would be accounted for by NEJ regardless of whether they were prepaid or collect shipments, meaning that if revenues for shipments from Japan were collected by NES they would still be accounted in NEJ.[885]

(viii) Japanese sales managers were posted to NES from NEJ on a term of five to six years;[886]

(ix) The surcharges were set by NEJ and applied by NES [✂];[887] and

(x) At the operations level, NES worked and communicated with NEJ regularly, on a daily basis.[888]

576. CCS considers that, in respect of the infringing conduct, NEJ and NES formed a single economic unit. Firstly, in view of the 77% ownership of NES by NEJ, CCS is of the view that NEJ had a controlling interest in NES. Secondly, CCS considers that other factors demonstrate the economic and legal links between NEJ and NES that support a finding of a SEE. These factors include, the internal reporting structure between the entities, NEJ's right to nominate directors of NES, the arrangements on revenue and profit sharing between NEJ and NES and the way in which NEJ influenced NES's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period. Thirdly, in respect of customers, Nippon Express presented itself to customers on the market as a

[882] Information provided by NES dated 21 October 2013 pursuant to CCS's RFI dated 5 September 2013, paragraph 8.1.
[883] Information provided by NES dated 25 February 2013 pursuant to the 63 Notice issued by CCS dated 12 December 2012, paragraph 12.3.
[884] Answer to Question 9 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[885] Answer to Question 23 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[886] Answer to Question 4 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.
[887] Answer to Question 22 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.
[888] Answer to Question 13 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 22 October 2013.

single economic unit. It advertised that it offered holistic freight forwarding solutions, it negotiated its contracts [✂]. Fourthly, employees were posted between NEJ and NES, and employees at an operational level within NES worked and communicated with NEJ on a daily basis.

577. In addition, CCS notes the "International Air Cargo Consolidation Bulk-breaking Agency Agreement" between NEJ and NES[889] in which [✂].[890] CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(vii) NNR

578. As set out in paragraph 22 above, NNR Japan owns 51% of the shares in NNR Singapore. The remaining 49% of shares in NNR Singapore is owned by Global Freight International Pte. Ltd. ("Global Freight"). NNR Singapore pays dividends to NNR Japan and Global Freight.[891]

579. During the relevant period, there was one common director between NNR Singapore and NNR Japan – [✂]). There were two other directors sent from NNR Japan to NNR Singapore (including [✂]).[892] In relation to significant decisions of NNR Singapore such as [✂].[893] [✂].[894]

580. As described in paragraphs 291 to 294 and paragraphs 470 to 473 above, the JSS, the JEEF and the JFS are charges that were determined by NNR Japan and applied by both NNR Japan and NNR Singapore. For shipments from Japan to Singapore on a prepaid basis, NNR Japan collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, where the customer was secured by NNR Japan, NNR Singapore collected the JSS, the JEEF and the JFS (as informed by NNR Japan) from the consignee in Singapore on NNR Japan's behalf, and transmitted the payments to NNR Japan. For collect shipments where the customer was secured by NNR Singapore, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were quoted by NNR Singapore at cost based on the quote it received from NNR Japan.

581. In the interview with [✂][895] on 5 August 2013, CCS's Notes of Information/Explanation Provided record the following:

> "*Q.15 How are the fees and surcharges quoted to customers for prepaid shipments by NNR Singapore on the Japan to Singapore route generally*

[889] As provided by Nippon Express on 22 October 2013; Answer to Question 21 and document marked [✂]-004 of [✂] (Nippon Express) Notes of Information/Explanation Provided on 7 November 2013.
[890] International Air Cargo Consolidation Bulk-Breaking Agency Agreement provided by NES on 22 October 2013, Clause 2.
[891] Answer to Question 10 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[892] Answer to Question 9 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[893] Answer to Question 12 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[894] Answer to Question 11 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[895] [✂]

decided (i.e. by headquarters, regional offices or independently)? Do all NNR offices charge the same amount for fees and surcharges? Is this the same for collect shipment Japan [sic] to Singapore?

A. NNR Singapore will not be involved about [sic] the fees and charges where the shipment is prepaid in Japan as that is conducted by NNR Japan in Japan. Generally there is no involvement of NNR Singapore regarding fee and surcharges for pre-paid shipments from Japan.

Collect shipments are normally paid by the importer but big clients can decide whether the payment terms are collect or pre-paid and where payment will be made.

NNR Singapore may have customers that pay collect in Singapore for shipments from Japan to Singapore. In that case NNR Singapore will negotiate the sale with the customer, if NNR Singapore is successful in getting the business, it will report the sale to NNR Japan. NNR Japan will provide the airfreight net rate to NNR Singapore. NNR Singapore may negotiate the freight rate with the customer in Singapore based on the information that NNR Japan provides to NNR Singapore. NNR Singapore knows that it must charge the fuel surcharge, security surcharge and explosives surcharge where applicable as advised by NNR Japan. If NNR Singapore has a problem charging the surcharges it must tell NNR Japan and await the final decision from NNR Japan".[896]

582. Further, in the interview with [✂] on 5 August 2013, CCS's Notes of Information/Explanation Provided record the following:

"*Q.24 For freight collect shipments from Japan to Singapore where NNR Singapore collected the fees and surcharges on behalf of NNR Japan, please confirm that NNR Singapore collected* ***all*** *fees and surcharges as agents and on behalf of NNR Japan. Please confirm that your answer is accurate for the period between 2002 and 2007.*

A. Yes, NNR Singapore collected all fees and surcharges as agents on behalf of NNR Japan. We sent all fees and surcharges collected back to NNR Japan.

The profit-sharing agreement between NNR Singapore and NNR Japan is that NNR Singapore would receive [✂] *of the profits for shipments that NNR Singapore generated. There is an agency agreement between NNR Japan and NNR Singapore under which the amounts collected need to be paid to NNR Japan within* [✂]".[897]

[896] Answer to Question 15 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[897] Answer to Question 24 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

583. Representations by NNR in respect of SEE: NNR submitted at paragraphs 4.3.5 to 4.3.35 of their representations[898] that CCS's findings in the PID did not conclusively demonstrate that NNR Japan exercised decisive influence over NNR Singapore due to the following reasons:

(i) NNR Japan's majority shareholding (of 51%) does not confer unilateral control over NNR Singapore;

(ii) NNR Japan did not have control over NNR Singapore's board of directors; NNR Singapore had only one common director with NNR Japan during the relevant period and appointed two further directors, [✂];

(iii) [✂];

(iv) [✂];

(v) [✂];

(vi) NNR Singapore acted independently of NNR Japan in its commercial and pricing policies; and

(vii) The existence of a Break-Bulk and Sales Agency Agreement should not be a factor that supported its finding that NNR Japan and NNR Singapore constituted a SEE.

584. However in addition to the findings set out in paragraphs 578 to 582 above, CCS notes the following:

(i) Although NNR Singapore met with Global Airfreight (the minority shareholders) monthly and sometimes obtained advice from Global Airfreight, there was little involvement from Global Airfreight in NNR Singapore's operations. [✂];[899]

(ii) [✂];[900]

(iii) In contrast to NNR Japan's active role in relation to the determination and collection of the amounts of the JSS, the JEEF and the JFS, Global Airfreight was not involved in determining the amounts that

[898] Written Representations of NNR dated 23 May 2014.
[899] Answer to Question 8 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[900] Answer to Question 12 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

NNR Singapore charged, collected or passed on for the JSS, the JEEF and the JFS;[901]

(iv) If NNR Singapore had problems charging the surcharges to its customers it had to inform "*NNR Japan and await the final decision from NNR Japan*".[902] In particular, with respect to the JFS, customers would be referred back to NNR Japan if NNR Singapore faced any difficulties in the collection of the amount payable;[903] and

(v) The movement of individuals and staff around the NNR group also suggests that NNR Japan and NNR Singapore operated and were regarded internally as part of a single economic unit. For example, based on the account of [✂]:

> "*When I joined NNR in 1982, I was employed by NNR Japan. Since then I have been employed for more than 30 years by NNR Japan. I was transferred to Singapore in 1996 as Managing Director. I was employed from 1996 to 2008 by NNR Singapore. As NNR Singapore is a subsidiary of the NNR Group, the move to Singapore-was just an internal transfer*".[904]

585. CCS considers that in respect of the infringing conduct, NNR Japan and NNR Singapore formed a single economic unit. First, in view of the 51% ownership of NNR Singapore by NNR Japan, CCS is of the view that NNR had majority controlling interest or at least significant influence over NNR Singapore. Secondly, CCS considers that other factors demonstrate the economic and legal links between NNR Japan and NNR Singapore that support a finding of a SEE. These factors include the reporting structure between the entities, the existence of a common director, NNR Japan's ability to nominate directors along with Global Freight and the way in which NNR Japan influenced NNR Singapore's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period. Thirdly, CCS notes that there was little involvement with Global Airfreight in NNR's Singapore operations and [✂]. Fourthly, employees were posted between NNR Japan and NNR Singapore. Finally, in addition, CCS notes the agency agreement between NNR Japan and NNR Singapore.[905] [✂]. CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

[901] Information provided by NNR dated 23 December 2013 pursuant to CCS's RFI dated 12 December 2013.
[902] Answer to Question 15 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[903] Answer to Question 15 of [✂] (NNR) Notes of Information/Explanation Provided on 6 August 2013.
[904] Answer to Question 2 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[905] Answer to Question 24 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.

(viii) Nissin

586. As set out in paragraph 24 above, Nissin Singapore, is a wholly-owned subsidiary of Nissin Corporation. Nissin Singapore pays dividends to Nissin Corporation on the latter's shares in Nissin Singapore.[906]

587. Towards the end of each calendar year, Nissin Corporation would issue general guidelines to Nissin Singapore, seek business reports on logistics prospects and set budgets for the coming year *vis-a-vis* the general market trends in the logistic industry. Nissin Corporation may also propose potential logistics business opportunities and action plans to increase cargo volume and revenue for both sea freight and air freight for Nissin Singapore.[907]

588. There were also common directors between the companies during the relevant period. Common directors in Nissin Singapore and Nissin Corporation from January 2002 to December 2008 were as follows[908]:

(i) [✂];
(ii) [✂];
(iii) [✂];
(iv) [✂];
(v) [✂];
(vi) [✂];
(vii) [✂];
(viii) [✂];
(ix) [✂];
(x) [✂]; and
(xi) [✂].

589. As described in paragraphs 298 to 302 and paragraphs 478 to 481 above, the JSS, the JEEF and the JFS are charges that were determined by Nissin Corporation and applied by both Nissin Corporation and Nissin Singapore. For shipments from Japan to Singapore on a prepaid basis, Nissin Corporation collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, where the customer was secured by Nissin Corporation, Nissin Singapore collected the origin surcharges such as the JSS, the JEEF, and the JFS (as informed by Nissin Corporation) from the consignee in Singapore on Nissin Corporation's behalf, and transmitted the payments to Nissin Corporation. For collect shipments where the customer was secured by Nissin Singapore, the JSS, the JEEF and the JFS, as Japan-origin surcharges,

[906] Although for the relevant period, dividends were only declared for financial year 2002; information provided by Nissin Singapore dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 13.
[907] Information provided by Nissin Singapore dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 9.
[908] Information provided by Nissin Singapore dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, paragraph 12 and Attachment 19.

were quoted by Nissin Singapore at cost based on the quote it received from the origin point Nissin Corporation.

590. In the interview with [✂] on 26 August 2013, CCS's Notes of Information/Explanation Provided record the following:

> "*Q.15 Referring to document* [✂]*-005 ("22 February 2013 Nissin Singapore letter") at paragraph 14, page 6, please confirm that "fees and surcharges are billed on a back-to-back basis in that we (Nissin Singapore) only seek reimbursement or recovery of the exact same quantum of fees and surcharges we have to pay".*
>
> *Does that statement apply on fees and surcharges billed to Nissin Singapore by Nissin Japan for the Japan to Singapore route?*
>
> *A. Yes I confirm that the statement as quoted in* [✂]*-005 para 14, page 6, is correct.*
>
> *My understanding for air freight shipments on a collect basis where the quote is given by Nissin Singapore to its customer, Nissin Singapore would quote to the customer what Nissin Japan quotes* [✂] *depending on the market conditions. For* [✂] *that Nissin Japan quotes, we will not impose a mark-up. The quote provided by Nissin Japan sometimes list lump sums for freight charges and surcharges but nothing more granular than that.*
>
> *For Japanese shippers shipping from Japan to Singapore, freight is normally pre-paid. The amount of surcharges is already stated on the bill and these are directly paid to Nissin Japan. If the freight is shipped on a collect basis and the customer is a Nissin Japan's customer, Nissin Singapore will collect on behalf of Nissin Japan whatever is due and remit the entire amount back to Nissin Japan*".[909]

591. Representations by Nissin in respect of SEE: Nissin did not make any representations in respect of the issue of SEE.

592. CCS considers that in respect of the infringing conduct, Nissin Corporation and Nissin Singapore formed a single economic unit. The existence of 100% ownership by Nissin Corporation of Nissin Singapore creates a rebuttable presumption that Nissin Corporation exercises decisive influence over Nissin Singapore. Moreover, CCS considers that other factors demonstrate the economic and legal links between Nissin Corporation and Nissin Singapore that support a finding of a SEE. These factors include the internal reporting structure between the entities, the level of communication between them including the issuance of guidelines by Nissin Corporation to Nissin Singapore, the existence

[909] Answer to Question 15 of [✂] (Nissin) Notes of Information/Explanation Provided on 26 August 2013.

of common directors and the way in which Nissin Corporation influenced Nissin Singapore's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period. In addition, CCS notes the agency agreement between Nissin Corporation and Nissin Singapore.[910] [✂]. CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(ix) Vantec

593. As set out in paragraph 29 above, Vantec Japan (formerly VWT Japan) owned 78.8% of the shares in Vantec Singapore during the relevant period. The remainder of Vantec's shares were owned by Vantec World Transport (USA), Inc ("Vantec USA") and Vantec World Transport (HK) Limited ("Vantec Hong Kong"), both wholly owned by Vantec Japan.[911] Both Vantec Japan and Vantec Singapore are currently 100% owned by Hitachi Transport.[912] Between 2002 and 2007 Vantec Singapore paid dividends to Vantec Japan.[913]

594. The Managing Director of Vantec Singapore is selected by Vantec Japan. The appointment of other directors of Vantec Singapore are recommended by the Managing Director of Vantec Singapore and approved by Vantec's shareholders.[914] Vantec Singapore's annual budget is submitted to Vantec Japan for review, finalisation and approval.[915] In an interview with [✂] on 12 June 2013, CCS's Notes of Information/Explanation Provided record the following:

> "*Q.9 Please explain the contact that you would ordinarily have with Vantec Japan during your time as Managing Director of Vantec Singapore. For example did Vantec Japan set financial targets, issue directives or instructions to Vantec Singapore?*
>
> *A. I provided monthly sales targets and financial reports to Vantec Japan and also discussed strategy and any difficulties with customers as required*". [916]

595. [✂] also confirmed that if Vantec Japan disagreed with elements of the budget or strategy proposal and wanted changes made Vantec Singapore may need to make those changes.[917]

596. As described in paragraphs 305 to 308 and paragraphs 485 to 486 above, the JSS, the JEEF and the JFS are charges that were determined by Vantec Japan and applied by both Vantec Japan and Vantec Singapore. For shipments from

[910] As provided by Nissin Singapore to CCS on 4 November 2013.
[911] Information provided by Vantec dated 22 January 2014, Annex A-25.
[912] Information provided by Vantec dated 22 January 2014.
[913] Answer to Question 6 of [✂] (Vantec) Notes of Information/Explanation Provided on 12 June 2013.
[914] Answer to Question 7 of [✂] (Vantec) Notes of Information/Explanation Provided on 12 June 2013.
[915] Answer to Question 8 of [✂] (Vantec) Notes of Information/Explanation Provided on 12 June 2013.
[916] Answer to Question 9 of [✂] (Vantec) Notes of Information/Explanation Provided on 12 June 2013.
[917] Answer to Question 8 of [✂] (Vantec) Notes of Information/Explanation Provided on 12 June 2013.

Japan to Singapore on a prepaid basis, Vantec Japan collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, where the customer is secured by Vantec Japan, Vantec Singapore collected the JSS, the JEEF and the JFS (as informed by Vantec Japan) from the consignee in Singapore on Vantec Japan's behalf, and transmitted the payments to Vantec Japan. For collect shipments where the customer was secured by Vantec Singapore, the JSS, the JEEF and the JFS, as Japan-origin surcharges, were quoted and collected by Vantec Singapore at cost based on the quote it received from Vantec Japan.

597. In an interview with [✂][918] on 19 June 2013, CCS's Notes of Information/Explanation Provided record the following:

> *"Q.15 Since July 2006, how were the fees and surcharges charged by Vantec Singapore generally decided (i.e by headquarters or regional or local offices)?*
>
> *A. ...For prepaid imports to Singapore from Japan, Vantec Japan decides the fees and surcharges and charge the customer in Japan. For collect imports to Singapore where the consignee in Singapore pays for the shipment, Vantec Japan will quote the fees and surcharges to Vantec Singapore, who will include Vantec Japan's charges when quoting to the customer in Singapore.*
>
> *For imports to Singapore from Japan, we act as the agent of Vantec Japan. For collect imports, we collect the fees and surcharges billed by Vantec Japan and send Vantec Japan the money. If the customer was secured by Vantec Singapore sales, we would share the profits* [✂] *with Vantec Japan. On rare occasions when Vantec Japan secures a customer in Singapore,* [✂] *profit-sharing. Usually Vantec Japan secures customers in Japan and Vantec Singapore secures customers in Singapore.*
> ...
>
> *In summary, Vantec Singapore will decide the freight and surcharges for exports from Singapore other than local charges overseas and Vantec Japan will decide the freight and surcharges for imports from Japan to Singapore other than local charges in Singapore*". [919]

598. Further, in the interview with [✂] on 13 June 2013, CCS's Notes of Information/Explanation Provided record the following:

> *"Q.9 Was the decision to apply the JEEF centralised and if so, which Vantec office made the decision?*

[918] [✂]
[919] Answer to Question 15 of [✂] (Vantec) Notes of Information/Explanation Provided on 19 June 2013.

A. JEEF was applied for all shipments from Japan, and the price for the JEEF was determined by Vantec Japan only.

...

Q.22 Was the decision to apply the JEF [JSS] centralised and if so, which Vantec office made the decision?

A. The decision to apply the JSS was made by Vantec Japan".[920]

599. Similarly, in the interview with [✂] on 12 June 2013, CCS's Notes of Information/Explanation Provided record the following:

"*Q.62 Was the decision to apply the JFS centralised and if so, which Vantec office made the decision?*

A. The decision was made by Vantec Japan. Vantec Japan did not consult other Vantec offices".[921]

600. Representations by Vantec in respect of SEE: Vantec did not make any representations in respect of the issue of SEE.

601. CCS considers that in respect of the infringing conduct, Vantec Japan and Vantec Singapore formed a single economic unit. First, in view of the 78.8% ownership of Vantec Singapore by Vantec Japan, CCS considers that Vantec Japan had a controlling interest in Vantec Singapore. Secondly, CCS considers that other factors demonstrate the economic and legal links which support a finding of a SEE. These factors include the reporting structure between the entities, Vantec Japan's ability to nominate directors of Vantec Singapore, the revenue and profit sharing arrangements between the two entities and the way in which Vantec Japan influenced Vantec Singapore's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period

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602. In addition, CCS notes the "International Air and Ocean Freight Agency Agreement" between Vantec Japan and Vantec Singapore[922] in which [✂].[923] CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

[920] Answers to Questions 9 and 22 of [✂] (Vantec) Notes of Information/Explanation Provided on 13 June 2013.
[921] Answer to Question 62 of [✂] (Vantec) Notes of Information/Explanation Provided on 12 June 2013.
[922] Information provided by Vantec dated 23 December 2013 pursuant to CCS's RFI dated 10 December 2013, Annex B-41 to B-47.
[923] "International Air and Ocean Freight Agency Agreement" provided by Vantec on 23 December 2013, Clause 1.

(x) Yamato

603. As set out in paragraphs 32 and 33 above, Yamato Holdings owns majority shareholdings in both Yamato Japan and Yamato Asia. Yamato Japan is owned by: Yamato Holdings (70%) and Nippon Yusen Kabushiki Kaisha ("NYK Line") (30%). However during the relevant period Yamato Japan was wholly-owned by Yamato Holdings. Yamato Asia is a wholly-owned subsidiary of Yamato Holdings.[924] [✂].[925]

604. Annual financial reports are made by Yamato Asia to Yamato Holdings.[926] Yamato Asia reports monthly profit and loss, business performance and annual fiscal year budget forecasts to Yamato Japan for its approval and discussion if necessary. In addition, Yamato Holdings being the holding company has the power to nominate directors to Yamato Asia's board.[927] The Managing Director of Yamato Asia is appointed by Yamato Holdings.[928]

605. There were also common directors between the companies during the relevant period. Common directors in Yamato Asia and Yamato Japan from January 2002 to December 2007 were as follows[929]:

(i) [✂];
(ii) [✂];
(iii) [✂];
(iv) [✂]; and
(v) [✂].

606. Common directors in Yamato Holdings, Yamato Asia and Yamato Japan from January 2002 to December 2007 were as follows[930]:

(i) [✂];
(ii) [✂]; and
(iii) [✂].

607. As was described in paragraphs 312 to 316 and paragraphs 490 to 496 above, the JSS, the JEEF and the JFS are charges that were determined by Yamato Japan, and applied by both Yamato Japan and Yamato Asia for shipments. For

[924] Answer to Question 7 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[925] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 6(g).
[926] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 6(a).
[927] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, paragraph 6(b).
[928] Answer to Question 11 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[929] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, Annex C.
[930] Information provided by Yamato Asia dated 19 August 2013 pursuant to CCS's RFI dated 12 July 2013, Annex C.

shipments from Japan to Singapore on a prepaid basis, Yamato Japan collected the JSS, the JEEF and the JFS from the shipper. For shipments from Japan to Singapore on a collect basis, where the customer was secured by Yamato Japan, Yamato Asia collected the surcharges applicable such as the JSS, the JEEF and the JFS (as informed by Yamato Japan) from the consignee in Singapore. Yamato Asia then transmitted the payments collected on Yamato Japan's behalf back to Yamato Japan.[931] Where the collect shipment was negotiated by Yamato Asia, Yamato Asia referred back to Yamato Japan for the applicable fees to charge and there existed [✂].[932] For all cases, prepaid and collect shipments from Japan to Singapore, the surcharges were determined by Yamato Japan.[933]

608. Representations by Yamato in respect of SEE: Yamato did not make any representations in respect of the issue of SEE.

609. CCS considers that in respect of the infringing conduct, Yamato Japan, Yamato Asia and Yamato Holdings formed a single economic unit. The existence of 100% ownership by Yamato Holdings of Yamato Japan and Yamato Asia, creates a rebuttable presumption that Yamato Holdings exercises decisive influence over Yamato Japan and Yamato Asia. Moreover, CCS considers that other factors demonstrate the economic and legal links between Yamato Japan and Yamato Asia that support a finding of a SEE. These factors include, the reporting structure between the entities, the existence of common directors, arrangements on revenue and profit sharing and the way in which Yamato Japan influenced Yamato Asia's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period.

610. In addition, CCS notes the agreement between Yamato Japan and Yamato Asia to mutually appoint one another as [✂] break bulk (de-consolidation) and forwarding agent.[934] Under the terms of the agency agreement, entered into on 1 April 2004,[935] Yamato Asia acts as the local break-bulk handling agent for cargoes coming into Singapore shipped by Yamato Japan's customers. Similarly, cargo belonging to Yamato Asia's customers with Japan as destination will be cleared locally in Japan by Yamato Japan.[936] While CCS notes that clause [✂],

[931] Answer to Question 22 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[932] Answer to Question 26 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[933] Answer to Question 26 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[934] Information provided by Yamato Asia dated 13 February 2012 pursuant to CCS's letter dated 14 December 2011, paragraphs 6.2 and 6.3; and information provided by Yamato dated 23 February 2012 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.4.
[935] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A – Agency agreement between Yamato Transport (S) (now Yamato Asia) and Yamato Global Freight Co. (now Yamato Japan); and Answer to Question 18 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013.
[936] Information provided by Yamato Asia dated 13 February 2012 pursuant to CCS's letter dated 14 December 2011, paragraph 6.3; and information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A – Agency agreement between Yamato Transport (S) (now Yamato Asia) and Yamato Global Freight Co. (now Yamato Japan).

information from Yamato, confirmed in the interview with [✂], is that [✂].[937] [✂].[938] CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

(xi) Yusen

611. As set out in paragraph 35 above, Yusen Japan owns 79.3% of Yusen Singapore with the remainder 20.7%, being owned by Nippon Yusen Kabushiki Kaisha.[939] During the period 2002 to 2007, Yusen Singapore was wholly-owned by Yusen Japan.[940] Yusen Singapore pays dividends to Yusen Japan, the amount of which varied between [✂] to [✂] during the period 2004 to 2008.[941]

612. Yusen Singapore reported to Yusen Japan during the period 2002 to 2007, submitting Yusen Singapore's financial results relating to its revenue and expenses, information relating to its sales (i.e. handling volume and weight), business development plans and market circumstances (including broad economic indicators such as economic growth, unemployment ratio and status of cargo movement) on a monthly basis to Yusen Japan.[942]

613. Recorded in CCS's Notes of Information/Explanation Provided from its interview of [✂], is the following:

> "*In terms of my reporting to Yusen Japan, Yusen Singapore usually submitted monthly profit and loss reports to Yusen Japan in the format provided by Yusen Japan, together with a description of each division with Yusen Singapore performance. For example, we may include issues to note for the key customers, or reasons why a specific division is not meeting its target*".[943]

[937] Information provided by Yamato Asia dated 13 February 2012 pursuant to CCS's letter dated 14 December 2011, paragraph 6.2; and Answer to Question 19 of [✂] (Yamato) Notes of Information/Explanation Provided on 21 October 2013

[938] Information provided by Yamato dated 23 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex A – Agency agreement between Yamato Transport (S) (now Yamato Asia) and Yamato Global Freight Co. (now Yamato Japan).

[939] Extracted from ACRA record *Business Profile of Yusen Logistics (Singapore) Pte. Ltd.* (on 1/10/2013); information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 2.1.

[940] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.4; and Answer to Question 6 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

[941] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.12.

[942] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.5.

[943] Answer to Question 8 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

614. In addition, Yusen Japan's approval was required for the appointment of a director of Yusen Singapore and internal guidelines existed for other kinds of decisions that would require Yusen Japan's approval.[944]

615. There were also common directors between Yusen Japan and Yusen Singapore during the relevant period. Common directors between the period from January 2002 to December 2008 were as follows:

(i) [✂];
(ii) [✂]; and
(iii) [✂].[945]

616. As described in paragraphs 321 to 326 and paragraphs 501 to 504 above, the JSS, the JEEF and the JFS were charges determined by Yusen Japan that both Yusen Japan and Yusen Singapore applied for shipments. For shipments from Japan to Singapore on a prepaid basis, Yusen Japan collected the JSS, the JEEF and the JFS from the shipper in Japan. For shipments from Japan to Singapore on a collect basis, Yusen Singapore collected the JSS, the JEEF and the JFS (as informed by Yusen Japan) from the consignee in Singapore. Where the collect shipment was negotiated by Yusen Japan, Yusen Singapore collected the fees on Yusen Japan's behalf, [✂].

617. Where Yusen Singapore negotiated the collect shipment with a customer, Yusen Singapore was billed by Yusen Japan for the services rendered by them. [✂], Yusen Singapore did not add any mark-up on the JSS, the JEEF and the JFS quoted by Yusen Japan on the Japan to Singapore route.

618. In the interview on 7 October 2013 with [✂], who worked in the Sales Administration and Operations Administration departments of Yusen during the relevant time, CCS's Notes of Information/Explanation Provided record the following:

> "*In relation to the JSS for collect shipments, an airway bill would be sent from Yusen Japan to Yusen Singapore, Yusen Singapore would then collect these charges from the consignee.* [✂] *To collect the charge payable by consignees for collect shipments, Yusen Singapore would know the amount to collect by checking the airway bill or HAWB from Yusen Japan. For collect shipments, where Yusen Singapore quotes a customers, I do not know whether Yusen Singapore would ask Yusen Japan how much to charge.*

[944] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.7; and Answer to Question 13 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[945] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.9; and Answer to Question 7 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

In relation to the JEEF, Yusen Singapore does not know how much is the charge for JEEF. Yusen Singapore would refer to the airway bill/HAWB prepared by Yusen Japan for collect shipments".[946]

619. In the interview with [✂] on 3 October 2013, CCS's Notes of Information/Explanation Provided record the following:

> "*For prepaid shipments, Yusen Singapore did not usually quote customers. If a customer consignee in Singapore contacted Yusen Singapore to ask about a prepaid shipment from Japan to Singapore, we would ask Yusen Japan to get in contact with the shipper who could then decide whether or not to use Yusen. If the prepaid shipment also involved local handling charges in Singapore, Yusen Japan would contact Yusen Singapore to get the rates it would quote to customers.*
>
> *For collect shipments there were two kinds during this period:*
>
> *One where the payment is made in Singapore, but the freight is quoted in Japan. In relation to these shipments Yusen Singapore, on behalf of Yusen Japan, would collect payment from the customer according to the bill prepared by Yusen Japan. Payment received from a customer would then be remitted back to Yusen Japan on a monthly basis. Yusen Singapore would receive a commission fee based on the principal agency agreement Yusen Japan had and still has with Yusen Singapore. In that agreement, it states how much commission Yusen Singapore can receive although sometimes they are kind and give us more for particular shipments. I recall the commission being* [✂]*. It may be around* [✂] *per kilo based on the freight rate. There is no commission received by Yusen Singapore applicable from any of the surcharges.*
>
> *Another kind of collect shipment is where Yusen Singapore quotes the customer. We will bill the customer and pay Yusen Japan whatever they bill us for services rendered by them. For these collect shipments, we will ask Yusen Japan to give us the quote for local handling charges, their freight rates and any surcharges including the fuel surcharge and the security surcharge. We may add a mark up on the* [✂] *they quote us, but we do not add a mark up for* [✂] *quoted by Yusen Japan*". [947]

620. Representations by Yusen in respect of SEE: Yusen submitted that despite Yusen Japan's 100% shareholding of Yusen Singapore during the relevant period, the submission of financial results to Yusen Japan, the existence of an internal guideline for approval from Yusen Japan, common directors during the

[946] Answer to Question 22 of [✂] (Yusen) Notes of Information/Explanation Provided on 7 October 2013.
[947] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

relevant period and Yusen Singapore charging the surcharges at the rates applied by the Japanese parent, they did not form a SEE for the following reasons:

(i) Yusen Japan retained discretion over matters of corporate structure as a shareholder would, such as Yusen Singapore's capital structure, mergers and acquisitions, fund raising requirements and investments in assets over a certain sum and did not go to the business of the company and cannot be an indicator of decisive influence;

(ii) There was only one common director who did not perform operational functions in Yusen Singapore. Yusen Singapore had its own dedicated management and sales team which was responsible for carrying out Yusen Singapore's commercial and pricing policies;

(iii) Communication of rates by Yusen Japan to Yusen Singapore is a matter of industry practice and is not sufficient to evidence any form of decisive influence, and Yusen Singapore had a final say in the charging of the JSS, the JEEF and the JFS and it was a business decision whether it waived the surcharges for certain customers; and

(iv) There was no mandatory reporting structure for Yusen Singapore to Yusen Japan in relation to its air freight business and Yusen Japan did not generally set any policy directives or directions on the price that Yusen Singapore must charge to its customers.[948]

621. While Yusen submitted that Yusen Japan only retained discretion over matters of corporate structure as a shareholder would and did not go to the business of the company (as set out in paragraph 620(i) above), the information submitted by Yusen and the accounts of Yusen's employees suggest otherwise:

(i) As set out in paragraph 2.5 of the information provided by Yusen on 10 October 2013, during the relevant period, the Managing Director of Yusen Singapore would submit Yusen Singapore's financial results relating to its revenue and expenses, information relating to its sales (i.e. handling volume and weight), business development plans and market circumstances (including broad economic indicators such as economic growth, unemployment ratio and status of cargo movement), on a monthly basis to Yusen Japan.[949] While Yusen Japan submitted that such information was provided purely for group consolidation purposes,[950] an account by [✂], the Managing Director

[948] Written Representations of Yusen Japan dated 23 May 2014, paragraphs 3.10 to 3.29; Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 3.12 to 3.29.
[949] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.5.
[950] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 2.5.

of Yusen Singapore stated that, Yusen Singapore reported regularly to Yusen Japan regarding its performance, key customers and specific divisions and targets. Yusen Japan also had an International Division which "looked after all the overseas subsidiaries" and there were group meetings for the purposes of reporting. As [✂] stated in his interview with CCS:

> "*Yusen Singapore usually submitted monthly profit and loss reports to Yusen Japan in the format provided by Yusen Japan, together with a description of each division with Yusen Singapore performance. For example, we may include issues to note for the key customers, or reasons why a specific division is not meeting its target…it was submitted to the International Division in Yusen Japan, which looked after all the overseas subsidiaries". Further 'Every year I would attend a global meeting in Japan, and every half a year the Regional Director would chair a meeting and receive reports from all the Managing Directors of the different country subsidiaries in the region*".[951]

(ii) Further, apart from matters relating to Yusen Singapore's corporate structure, Yusen Japan's approval was also required for [✂].[952]

Accordingly, CCS takes the view that Yusen Japan retained control over the strategic decisions concerning Yusen Singapore, even if day-to-day operations and business decisions had been left to Yusen Singapore.

622. With regard to Yusen's submission that there was only one common director (who did not perform operational functions in Yusen Singapore) and Yusen Singapore instead had its own dedicated management and sales team responsible for carrying out Yusen Singapore's commercial and pricing policies (as set out in paragraph (620(ii) above), CCS notes that the management team of Yusen Singapore reported regularly to the Yusen Japan-appointed common director on various aspects of Yusen Singapore's operations. [✂] during the relevant period, accounted that while he "*was not expected to be involved in the daily operations and policy of Yusen Singapore*" he "*talked to the Managing Director and Chairman of Yusen Singapore around once a month. The discussions would, for example, be about the business situation, organisation management, my meeting schedule for trips to Singapore, and the relationship with particular shippers*".[953]

623. Yusen also submitted that Yusen Singapore had a final say in the charging of the JSS, the JEEF and the JFS and the communication of rates by Yusen Japan to Yusen Singapore was a matter of industry practice and is not sufficient to

[951] Answer to Question 8 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[952] Answer to Question 11 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.
[953] Answer to Question 12 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.

evidence any form of decisive influence (as set out in paragraph 620(iii) above). CCS however, found that the information submitted by Yusen and its employees consistently evinced that Yusen Singapore consistently quoted (for shipments quoted by Yusen Singapore) and/or collected (for all collect shipments, whether quoted by Yusen Japan or Yusen Singapore) the surcharges at the amounts set by Yusen Japan as set out in paragraphs 321 to 326 and paragraphs 501 to 504 of the ID above. CCS also notes the close links and cooperation between Yusen Singapore and Yusen Japan with respect to shipments from Japan. By Yusen Singapore's account, all of Yusen Japan's shipments from Japan to Singapore came through Yusen Singapore[954] although Yusen Japan submitted that to the best of its knowledge, not all of its exports from Japan to Singapore passed through Yusen Singapore[955]. Apart from reporting at the management level, there was interaction between staff from the two companies on a regular, if not daily, basis regarding shipments as well as the fees and surcharges. According to [✂], the air freight division, the logistics division and the ocean freight division in Yusen Singapore would all have dealings with the corresponding division in Japan on operations issues.[956]

624. Further, there is evidence that shows that Yusen Japan influenced Yusen Singapore's operations, including pricing. For example:-

(i) For import shipments particularly in relation to Japan, Yusen Japan will inform Yusen Singapore when there is a change in any surcharge, and Yusen Singapore will bill accordingly;[957]

(ii) For certain collect shipments Yusen Japan head office mandated that Yusen Singapore must not mark-up the freight rate when quoting particular customers[958]; and

(iii) Yusen Singapore required approval from Yusen Japan for big investments and for appointment of board members. Yusen Singapore may also need to report and obtain approval for significant business decisions that affect the "*Yusen network*"[959].

625. Further evidence suggests that Yusen Singapore and Yusen Japan in fact operated as one single economic entity with regard to shipments from Japan. For example:-

[954] Information provided by Yusen Singapore dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 29.8.
[955] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, paragraph 29.8.
[956] Answer to Question 8 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[957] Answer to Question 9 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[958] Answer to Question 24 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[959] Answer to Question 25 of [✂] (Yusen) Notes of Information/Explanation Provided on 18 November 2013.

(i) Based on the account of [✂], Yusen Japan quoted to Yusen Singapore below what it quoted to its customers and Yusen Japan also sometimes paid to Yusen Singapore [✂];[960] further Yusen Japan might give Yusen Singapore additional profits "*if the shipment was particularly difficult to handle, but this does not usually occur*";[961]

(ii) Yusen Japan did not usually negotiate directly with overseas customers for collect shipments. If a Singapore customer called Yusen Japan for a quotation for a collect shipment for the Japan to Singapore route, Yusen Japan would have referred the customer to Yusen Singapore.[962] CCS takes the view that such conduct is not usually characteristic of entities operating as independent commercial entities;

(iii) The movement of individuals and staff around the Yusen group also suggests that Yusen Japan and Yusen Singapore operated as part of a single economic unit. For example, by [✂] account:-

> "*From May 2002, I was transferred to take care of regional development because we were expanding the operations of Yusen in Thailand, Vietnam, Indonesia and Philippines. I was also responsible for co-ordinating other existing Yusen offices in the region, for example, the Malaysian office. From May 2003 to 2004, I was involved in the setting up of the Vietnam office, and from late 2004 to May 2005 I was involved in the setting up with the India Yusen office*." [963]

626. CCS considers that in respect of the infringing conduct, Yusen Japan and Yusen Singapore formed a single economic unit. The existence of 100% ownership by Yusen Japan of Yusen Singapore creates a rebuttable presumption that Yusen Japan exercises decisive influence over Yusen Singapore. Secondly, CCS considers that other factors demonstrate the economic and legal links between Yusen Singapore and Yusen Japan. These factors include the internal reporting structure between the two companies, Yusen's right to nominate directors of Yusen Singapore, the arrangements on revenue and profit sharing between Yusen Japan and Yusen Singapore and the way in which Yusen Japan influenced Yusen Singapore's commercial and pricing policies for the JSS, the JEEF and the JFS during the relevant period. Thirdly in respect of its customers, Yusen Japan and Yusen Singapore acted in a unitary manner actively referring customers to each other according to geographical areas. Fourthly, employees were posted between Yusen Japan and Yusen Singapore, and employees at an

[960] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[961] Answer to Question 25 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[962] Answer to Question 17 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.
[963] Answer to Question 4 of [✂] (Yusen) Notes of Information/Explanation Provided on 3 October 2013.

operational level within Yusen Singapore worked and communicated with Yusen Japan on a daily basis.

627. In addition, CCS notes the International Agency Agreement between Yusen Japan and Yusen Singapore dated 19 July 2003.[964] In the International Agency Agreement, [✂].[965]

CCS is of the view that the agency agreement is yet another factor that demonstrates the economic and legal links between the two companies.

B. Duration of Infringement

628. On the basis of the evidence set out at paragraphs 160 to 347 and paragraphs 350 to 526 above, CCS has considered the relevant duration for each of the infringements. 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.[966]

629. The section 34 prohibition came into force on 1 January 2006. Although CCS considers that the JFS and the JSS/JEEF agreements and/or concerted practices were made before 31 July 2005, CCS's analysis of the evidence above shows that the agreements continued in operation after 1 July 2006 (i.e., after the expiry of the transitional period provided for under the *Competition (Transitional Provisions for Section 34 Prohibition) Regulations*). Therefore, CCS does not consider that the said Regulations apply for the Parties for whom CCS intends to impose a financial penalty. In relation to the end date of the infringements, CCS has evidence that the agreements and/or concerted practices continued until at least 12 November 2007, when the Parties decided to cease their conduct, see paragraphs 210 to 212.

630. Nippon Express and Yusen in their representations submitted that the agreement on the Security Charges was only reached on 20 February 2006.[967]

631. However, as stated in paragraph 164, discussions at JAFA meetings regarding the JSS and the JEEF began in November 2004 and discussions on imposing a uniform approach to pricing began from at least May 2005. While these discussions culminated in an agreement reached at the meeting of 20 February 2006 on the precise quantum of the minimum price to be imposed, the agreement and/or concerted practice in relation to fixing a price for the JSS/JEEF began from at least May 2005.

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[964] Information provided by Yusen Japan dated 10 October 2013 pursuant to CCS's RFI dated 9 September 2013, Appendix JP-36.

[965] Information provided by Yusen Japan dated 20 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, paragraph 4.2.

[966] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraphs 2.1, 2.7 and 2.8.

[967] Written Representations of Yusen Japan dated 23 May 2014, paragraphs 6.30 to 6.36; Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 6.40 to 6.46; Written Representations of NEJ 23 May 2014, paragraph 5.7.

632. In view of when the conduct of the Parties began and ceased, CCS considers that the duration of the JFS and the duration of the JSS/JEEF infringements are from 1 January 2006 until 12 November 2007.

CHAPTER 4: CCS'S ACTION

A. Financial Penalties - General Points

633. Under section 69(2)(d) of the Act, CCS 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.

634. Before exercising the power to impose a financial penalty, CCS must be satisfied, as a threshold condition, that the infringement has been committed intentionally or negligently.[968] This is similar to the position in the EU and the UK. In this respect, CCS notes that in determining whether this threshold condition is met, both the EC and the OFT are not required to decide whether the infringement was committed intentionally or negligently, so long as they are satisfied that the infringement was either intentional *or* negligent.[969]

635. As established in the *Pest Control Case*[970], the *Express Bus Operators Case*[971] and the *Electrical Works Case*[972], the circumstances in which CCS might 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.

636. Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. CCS is likely to find that an infringement of the section 34

[968] Section 69(3) of the Act and *CCS Guidelines on Enforcement*, paragraphs 4.3 to 4.11.
[969] 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].
[970] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[971] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[972] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].

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.[973]

637. CCS finds that the Parties have intentionally engaged in two cartels in the provision of air freight forwarding services for shipments from Japan to Singapore. The Parties met at meetings in Japan where they exchanged information, and discussed and agreed or attempted to agree on the application and prices of the various fees and surcharges: the JSS, the JEEF and the JFS, which are components of the total price charged by the Parties in the provision of air freight forwarding services from Japan to Singapore. Accordingly CCS found that there are two separate agreements for two different sets of fees and surcharges. The first agreement is in relation to the exchange of price information and agreement on the implementation and prices of the Security Charges. The second agreement is in relation to the exchange of price information and agreement on the implementation and price of the JFS.

638. CCS finds that the agreements and/or concerted practices on the application and pricing of the Security Charges (JSS and JEEF) and the JFS have as their object the restriction of competition, and is likely to have been, on the evidence, committed intentionally. CCS finds that Parties must have been aware that the agreements and/or concerted practices in which they participated had the object of preventing, restricting or distorting competition.

639. The Parties had, on several occasions, expressed concerns about the discussions and agreements in relation to the pricing and imposition of the Security Charges and the JFS. Specifically, in press materials for the International Division of JAFA in 2005, 2006 and 2007, there were concerns that the imposition of Security Charges might "*conflict with the Antimonopoly Law [in Japan]*" and thus handling of the matter required "*extra care*".[974] Further, in the minutes of the JAFA meeting on 20 February 2006 discussing the imposition of the Security Charges by the forwarders, K Line's representative recorded that participants had remarked:

> "*As far as antitrust law issues are concerned, there was some opinion that it would be no problem because the price of charges accidentally comes to the same level. But we consider that it was groundless. But we should prepare urgently for filing to [the] Ministry of Land, Infrastructure and Transport...*".[975]

640. This was also highlighted in some of the Parties' own reports on the various JAFA meetings. In an HAC internal email report on the imposition of minimum

[973] *CCS Guidelines on Enforcement*, paragraph 4.10.
[974] Document marked [✂]-004 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.
[975] Information provided by KLJ dated 22 February 2012 pursuant to the section 63 Notice dated 12 December 2012, Annex 3 - JAFA meeting dated 20 February 2006.

Security Charges, regarding the 20 February 2006 JAFA meeting, it was recorded that:

> "*The majority approved the following…:*
>
> a. *Fixed fee: Minimum @300 yen per HAWB*
> b. *Inspected shipments: Minimum @ 1,500 yen per inspection*
>
> *A minimum was set because of the risk that it would become ineffectual without baseline support.*
>
> *…the [JAFA] Secretariat pointed out that it's a problem to discuss this kind of thing because we cannot clear problems with bid-rigging because a minimum has been set*".[976]

641. In the 15 May 2006 report of a JAFA International Section Directors meeting by [✂] of NNR to [✂], [✂] noted the following:

> "*The charge for inspection of the explosives varies from company to company from MIN ¥1,500 to ¥3,000. Since there is a cartel issue, this is circumstantially better. With respect to SC, it has been decided to be ¥300 per case… The date of implementation is June 1st*".[977]

642. As highlighted in paragraphs 240 to 242 above, [✂] of HAC responded to [✂] of HFI Singapore, in relation to an email dated 18 September 2007 sent to the officers of HAC in informing them that:

> "*It was confirmed among the companies that, since the uncollected amount of FSC has become enormous, the companies must once again act in a coordinated manner to launch waves of attacks against the customers who are refusing to pay the FSC (but being careful to ensure that our actions do not constitute an act of bid-rigging).*" [978]

643. With regard to the JFS, [✂] (KWE) confirmed in his interview on 27 June 2013 that:

> "*…JAFA consulted the JFTC on whether it was appropriate for JAFA as an organisation to approach the shippers who refused to*

[976] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12, document marked HH_00672 & seq. Translation (excerpt).
[977] Answers to Questions 33 and 34 and document marked [✂]-010 of [✂] (NNR) Notes of Information/Explanation Provided on 5 August 2013.
[978] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 12 document marked HH_000768 & seq. Translation (excerpt).

pay the JFS. Following the consultation with the JFTC on 20 November 2002 members of JAFA were aware that sharing of information about the JFS might be illegal. Initially JAFA members were quite careful about discussing the JFS but as the fuel surcharge imposed by airlines kept increasing JAFA members felt that they had to sit down together to take certain actions in relation to the JFS".[979]

Parties' Representations

644. Yusen submitted that no financial penalty should be imposed on Yusen Singapore as it did not intentionally or negligently infringe the Act and claimed it had not participated in the meetings and agreements and had no knowledge of the same.[980] Nippon Express submitted in its representations that CCS cannot impose a financial penalty on NES as NES did not commit the infringement, whether negligently or intentionally, since CCS has not established that NES had participated personally in the infringing conduct.[981] NNR likewise submitted in its representations that CCS erred in finding that NNR Singapore should be held liable for the infringement when it did not participate in or have any knowledge regarding the infringing activities. [982]

645. The submission of Nippon Express, NNR and Yusen is that in essence, NES, NNR Singapore and Yusen Singapore did not participate personally in the infringing conduct and therefore should not be held liable. As set out in paragraphs 527 to 532 above, CCS is of the view that while the Japan company participated in the JAFA meetings where the agreements/concerted practices were discussed and made, the agreement/concerted practice was carried out by the conduct of both the Japan company and the Singapore company acting as a single economic unit. CCS's reasons for finding a SEE for NEJ and NES, NNR Japan and NNR Singapore, and Yusen Japan and Yusen Singapore are set out in the section on Addressees of CCS's Decision.

646. In light of the above, CCS is therefore satisfied that each Party intentionally infringed the section 34 prohibition.

647. CCS therefore imposes a penalty on the Parties as set out in the following section.

B. Calculation of Penalties

648. The *CCS Guidelines on the Appropriate Amount of Penalty* provides that the two objectives in imposing any financial penalty are to reflect the seriousness of the infringement, and to deter undertakings from engaging in anti-competitive

[979] Answer to Question 4 of [✂] (KWE) Notes of Information/Explanation Provided on 27 June 2013.
[980] Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 6.1 to 6.9.
[981] Written Representations of NES dated 23 May 2014, paragraphs 5.2.1 and 5.2.2.
[982] Written Representations of NNR dated 23 May 2014, paragraph 5.

practices.[983] In calculating the amount of penalty to be imposed, CCS will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement ("the relevant turnover") in the undertaking's last business year, the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors. CCS adopted this approach in the *Pest Control Case*[984], the *Express Bus Operators Case*[985] and the *Electrical Works Case*[986] and similarly adopts this approach for the present case.

649. CCS notes that the EC and the CMA[987] adopt similar methodologies in the calculation of penalties. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

(i) Seriousness of the Infringements and Relevant Turnover

650. CCS 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 each infringement.

Relevant turnover

651. In this case, the relevant turnover for each infringement would be the turnover from the provision of air freight forwarding services for shipments from Japan to Singapore.

652. Regardless of whether a shipment from Japan to Singapore is prepaid or collect, services have to be performed in both Japan and Singapore. Correspondingly, both the Japan company and the Singapore company are involved in providing air freight forwarding services for the shipment. Consequently, the relevant turnover would be the total turnover of both the Japan company and Singapore company from the provision of air freight forwarding services for shipments from Japan to Singapore. For the purpose of calculating penalties, however, CCS has excluded from this relevant turnover the turnover of the Parties' companies in Japan received from customers outside of Singapore. This is in view that the

[983] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 1.6.
[984] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[985] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[986] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[987] 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.

sale of air freight forwarding services to customers outside of Singapore by the Parties' companies in Japan is likely to have little impact in relation to the prevention, restriction and/or distortion of competition in Singapore. Accordingly CCS has assessed applicable turnover for the calculation of the statutory maximum penalty on the same basis.

653. Where a party is unable or unwilling to provide information to determine its relevant turnover, CCS will impose a penalty that will reflect the seriousness of the infringement and with a view to deterring the undertaking as well as other undertakings from engaging in similar practices.[988]

654. The relevant turnover in the last business year will be considered when CCS assesses the impact and effect of the infringement on the market.[989] The "last business year" is the business year preceding the date on which the decision of the CCS is taken, or if figures are not available for that business year, the one immediately preceding it.[990]

655. Parties Representations

656. In representations from Parties, it was submitted that:

(i) Turnover from Singapore subsidiaries should be excluded, and in the alternative, if entities within each Parties are treated as SEE, turnover from customers or contracts outside of Singapore should be excluded;

(ii) Relevant turnover should not exclude services which are related to but not part of the air freight forwarding services, such as custom clearance services and ground handling services;

(iii) Relevant turnover should not include the JEEF as the agreement on JEEF was in form only and, if it does include the JEEF, only the amount of JPY 1,500 should be applied; and

(iv) CCS erred in applying the same relevant turnover for both infringements.

657. In respect of paragraph 656(i), Nippon Express, NNR and Yusen submitted that turnover from their respective Singapore subsidiary should be excluded as their Singapore subsidiaries should not be held liable for the infringements.[991] In their representations, Nippon Express and Yusen further submitted that even if CCS is minded to find that a SEE exists, turnover from customers outside Singapore

[988] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 1.6.
[989] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.4.
[990] Competition (Financial Penalties) Order 2007, paragraph 3 and *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.5.
[991] Written Representations of NEJ dated 23 May 2014, paragraph 5; Written Representations of NNR dated 23 May 2014, paragraph 5.4; and Written Representations of Yusen Singapore dated 23 May 2014, paragraph 6.

should be excluded.[992] KWE likewise made similar submissions regarding turnover from customers outside Singapore.[993]

658. KWE also submitted that contracts entered into outside of Singapore are not within the purview of the section 34 prohibition. With this in mind, KWE is of the view that such contracts should be excluded from the relevant turnover used to calculate the penalty for infringements of the section 34 prohibition.[994] CCS is of the view that KWE's interpretation of the application of section 34 is incorrect. Sections 33(1)(a) and 33(1)(b) of the Act clearly state that "*[n]otwithstanding that – (a) an agreement referred to in section 34 has been entered into outside Singapore; (b) any party to such agreement is outside Singapore…, [the Act] shall apply to such party, agreement… if (i) such agreement infringes or has infringed the section 34 prohibition…*". Therefore, as long as the agreement has the object or effect the prevention, restriction or distortion of competition within Singapore, it would be prohibited under section 34 of the Act. Consequently, when calculating penalties, relevant turnover of the business in Singapore affected by the infringement could include such contracts.

659. As highlighted in paragraph 652 above, the relevant turnover should be the total turnover of both the Japan company and the Singapore company from the provision of air freight forwarding services for shipments from Japan to Singapore; but CCS has, for the purpose of calculating penalties, excluded the turnover of the Parties' companies in Japan received from customers outside of Singapore.

660. In relation to the scope of products included in relevant turnover, KWE submitted that relevant turnover should exclude the freight and other charges not forming the JSS, the JEEF and the JFS. KWE submitted these should not be construed as the "relevant product" as they were not "affected" by the infringements.[995] KWE also submitted that the JFS is neither a product sold nor a service performed by the freight forwarders.[996] Further, KWE submitted that the JFS is recognised as a distinct and separate component by the filing requirements and practices of MLIT.[997]

661. Nippon Express submitted that relevant turnover should exclude services which are related to, but not part of the air freight forwarding services. In particular, services such as custom clearance services, ground handling services (i.e. provision of transportation from customer's premise to the airport or port),

[992] Written Representations of Yusen Japan dated 23 May 2014, paragraph 6.7; Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 6.10 to 6.18; and Written Representations of NEJ dated 23 May 2014, paragraphs 5.3.7 to 5.3.10.
[993] Written Representations of KWE dated 21 May 2014, paragraphs 14 to 24 and paragraphs 42 to 46.
[994] Written Representations of KWE dated 21 May 2014, paragraphs 7 to 13.
[995] Written Representations of KWE dated 21 May 2014, paragraphs 29 to 36.
[996] Written Representations of KWE dated 21 May 2014, paragraphs 39 to 41.
[997] Written Representations of KWE dated 21 May 2014, paragraphs 33 to 34.

warehousing services and logistics solutions for goods which require special handling, should be excluded.[998]

662. CCS is of the view that where products/services which form the subject matter of the infringement are intrinsically tied to other products/services and are offered as part of a package, and there is no separate product market for the former, the affected product market for the calculation of relevant turnover is the entire package. This was accepted in the CAB's decision in the *Express Bus Operators Appeals Nos. 1 and 2*, where the undertakings concerned made the argument that the relevant turnover for the agreement to fix fuel and insurance charges ("FIC") should be limited to the turnover derived by the undertakings from the sale of the FIC coupons only; whereas CCS had defined the relevant turnover as the turnover from the sale of all coach tickets which was sold with an FIC coupon. The CAB agreed with CCS and held:

> "*...that as there is no separate product market for the FIC coupons and that the sale of each FIC coupon is intrinsically tied with the sale of standalone bus tickets or coach package tours, the affected product market cannot be the sale of the FIC coupons but must be the sale of standalone bus tickets or coach package tours*".[999]

663. In this present case, CCS notes that similarly, there is no separate product market for the JSS, the JEEF and the JFS as the costs for these were necessarily tied to the provision of air freight forwarding services for shipments from Japan to Singapore. Payments made by customers for the JSS, the JEEF and the JFS were not for any services that are separate and distinct from those of air freight forwarding. In these circumstances, the total price paid by a customer for purchasing air freight forwarding services for shipments from Japan to Singapore was unavoidably affected by the agreements and/or concerted practices to fix prices and exchange information in respect of the JSS, the JEEF and the JFS.

664. In this regard, CCS notes that freight forwarders not only provide port to port services, but also door to door services, and various other permutations. The transportation of cargo (i.e. freight) and services related to the transportation of cargo, such as custom clearance services and ground handling services, are all provided as part of the service of air freight forwarding. Accordingly, the relevant turnover from the provision of air freight forwarding services for shipments from Japan to Singapore should include the turnover from freight as well as other related charges.

665. KWE further submitted that the JEEF cartel was in form only, as the JEEF charged by the Parties ranged from JPY 1,500 to JPY 3,000. KWE consequently submitted that JEEF should not be included in the relevant turnover for

[998] Written Representations of NEJ dated 23 May 2014, paragraphs 5.3.4 to 5.3.6.
[999] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [185] and [186].

calculating penalties.[1000] As stated in paragraphs 328 above, the agreement in respect of the JEEF amongst the Parties was for a minimum price floor in the amount of JPY 1,500 which was adhered to by the Parties. Accordingly, CCS sees no reason why the turnover from shipments of the affected product market should not be included.

666. In the alternative, KWE submitted that even if the JEEF surcharges were to be included in the relevant turnover for the purposes of penalty calculation, the relevant amount to be considered should only be JPY 1,500 for each applicable contract.[1001] The *CCS Guidelines on the Appropriate Amount of Penalty* clearly indicates at paragraph 2.4 that the relevant turnover to be applied is the turnover of the business in Singapore and not what the turnover would have been if cartel members had adopted the minimum amount agreed. This is to ensure financial penalties deter undertakings from engaging in anti-competitive practices.

667. Nippon Express in their representations submitted that CCS erred in applying the same relevant turnover for both infringements (i.e. the infringing agreement relating to the JSS/JEEF and the infringing agreement relating to the JFS). Nippon Express submitted that the relevant turnover for purposes of calculating penalties for the infringing agreement relating to JFS should exclude the turnover derived specifically from the JSS and the JEEF, and the relevant turnover for purposes of calculating penalties for the infringing agreement relating to the JSS/JEEF should exclude the turnover derived specifically from the JFS.[1002]

668. As explained in paragraph 524, the Parties have engaged in two separate agreements for the JSS/JEEF and the JFS. However, the JSS/JEEF and the JFS are all inseparable components of the total price paid by a customer to purchase air freight forwarding services for shipments from Japan to Singapore. The relevant turnover used for the purposes of determining penalties for each infringing agreement should therefore not exclude turnover derived from either agreement because it is the total price charged for air freight forwarding services on the Japan to Singapore route that has been affected by each agreement. The starting point is therefore [✂]% for each agreement, with the same turnover used to calculate penalties for both agreements. In this regard, the CAB in its decision in the *Express Bus Operators Appeals Nos. 1 and 2* had similarly applied a cumulative starting point to the relevant turnover of the focal products where the undertaking had been involved in both infringements.[1003] Consequently, for each Party, [✂]% (the cumulative figure of [✂]% for two agreements) will be applied to the relevant turnover.

Seriousness

[1000] Written Representations of KWE dated 21 May 2014, paragraphs 37 and 38.
[1001] Written Representations of KWE dated 21 May 2014, paragraphs 37 and 38.
[1002] Written Representations of NEJ dated 23 May 2014, paragraph 5.4.
[1003] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [187].

669. As set out in paragraph 2.2 of the *CCS Guidelines on the Appropriate Amount of Penalty*, the amount of the financial penalty will depend in particular upon the nature of the infringement and how serious and widespread it is.[1004] In assessing the seriousness of the infringement, CCS 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.[1005]

670. CCS considers the agreements and/or concerted practices regarding the application and pricing of Security Charges (JSS and JEEF) and the JFS, which had as their object the prevention, restriction and distortion of competition, to be by their very nature, serious infringements of the Act. As stated in the *Express Bus Operators Case*[1006], CCS considers that cartel cases involving price-fixing, bid-rigging, market sharing and limiting or controlling production or investment are especially serious infringements and should normally attract a percentage of the relevant turnover that is on the higher end. However, the actual percentage that CCS will assign varies depending on the circumstances of each case.

671. Nature of the product – The relevant market referred to in this decision is the provision of air freight forwarding services for shipments from Japan to Singapore.

672. Structure of the market and market shares of the Parties – There are a number of freight forwarders providing air freight forwarding services operating in Singapore. The market players consist of multinational companies and their subsidiaries in Singapore and other smaller local players. While CCS notes the submissions by certain Parties that the market is a fragmented one[1007], in the present case, the Parties consist of many large multinational companies. CCS notes that of all the air cargo shipped from Japan to Singapore in 2012, JAFA members' total cargo tonnage make up approximately [✂].[1008] The Parties are regular members of JAFA and EBIC.[1009] In addition, CCS also notes that in the JFTC's cease and desist order in 2009, JFTC had stated that the gross freight volume handled by the Parties constituted the majority of the total freight volume handled by the whole industry in Japan. In particular, the aggregated freight volume handled by Nippon Express, KWE and Yusen constituted the

[1004] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.2.
[1005] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.3.
[1006] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [457].
[1007] Written Representations of K Line dated 23 May 2014, paragraphs 5.2.8; Written Representations of MLG dated 23 May 2014, paragraph 3.1.2.
[1008] Information provided by KWE dated 5 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013; information provided by NNR dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013.
[1009] Information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's RFI dated 19 June 2013, Annexure 9.

majority of the total freight volume handled by the fourteen companies (which include the Parties) as stated in the JFTC's cease and desist order.[1010]

673. Hankyu Hanshin, K Line and MLG in their respective representations submitted that CCS failed to take into account that they were minor players in the air freight industry with their respective market shares being either small or significantly less than other Parties.[1011] Hankyu Hanshin, K Line and MLG submitted that CCS should consequently have attributed a lower starting percentage as a consequence.[1012] K Line estimated that its market share is [✂] significantly less than Yusen [✂], Nippon Express [✂] and KWE [✂].[1013]

674. CCS is of the view that in evaluating the seriousness of the infringement, it is the market share figures of all the parties to the agreement that should be taken into consideration and not each individual's market share. Nevertheless, CCS notes that smaller Parties to the agreement would not be inappropriately penalised or over penalised because in calculating the starting point in Step 1 of the calculation, each Party's own relevant turnover is used. The relative market shares of the Parties are therefore accounted for in determining the penalties.

675. K Line and MLG additionally submitted that CCS should take into account in determining penalties that the global freight forwarding industry is one which is fragmented. MLG submitted that the industry has low barriers to entry and exit, and is characterised by highly competitive rate structures and thin profit margins.[1014] As noted in paragraph 669 above, CCS has taken into account in determining starting point the nature of the product, structure and condition of the market. CCS also notes that the structure of the market is but one factor in determining the seriousness of the infringement.

676. Effect on customers, competitors and third parties – It is difficult to quantify the amount of any loss caused by the agreement to consumers of air freight forwarding services. This is due to the unavailability of information on the actual prices paid by the customers under the "counterfactual" scenario.[1015]

[1010] *Cease-and-Desist-Order and Surcharge Payment Order against Freight Forwarders*, JFTC, March 18/2009; and information provided by Hankyu Hanshin dated 10 July 2013 pursuant to CCS's letter dated 19 June 2013, Annexure 9 - 2009 Case No.5 (so) Cease-and-Desist-Order.

[1011] Written Representations of Hankyu Hanshin dated 22 May 2014, paragraph 12; Written Representations of K Line dated 23 May 2014, paragraphs 5.2.5 to 5.2.9; and Written Representations of MLG dated 23 May 2014, paragraph 3.1.4.

[1012] Written Representations of Hankyu Hanshin dated 22 May 2014, paragraph 12; Written Representations of K Line dated 23 May 2014, paragraph 5.2.9.

[1013] Written Representations of K Line dated 23 May 2014, paragraph 5.2.9.

[1014] Written Representations of K Line dated 23 May 2014, paragraphs 5.2.8 and Written Representations of MLG dated 23 May 2014, paragraphs 3.1.2 and 3.1.3.

[1015] The counterfactual scenario is one where the infringing conduct did not occur, i.e., a scenario in which the Parties did not exchange information, discuss and agree or attempt to agree on the application of the JFS, the JSS and the JEEF.

677. That said, CCS notes that the mark-up by the freight forwarders on the JSS and the JEEF could have been as high as 800%.[1016] In an internal email from [✂] to inter alia, [✂] and managers of the sales and export departments, [✂] reported the breakdown of the estimated income and expenditure for the JSS and the JEEF based on the fee of [✂] for the JSS and [✂] for the JEEF; the email sets out that [✂].[1017] During his interview with CCS, [✂] confirmed that the figures set out in [✂]-014 were accurate and based on the assumption that every customer paid the JSS and the JEEF charged.[1018]

678. In regard to the JFS, CCS notes that the agreement on the JFS was to essentially pass on the cost of fuel prices that were charged to freight forwarders by airlines. CCS notes that had freight forwarders not agreed with each other to pass on the cost of the JFS but instead had absorbed or discounted it, they may have suffered substantial losses. In an internal memorandum by [✂] of K Line, he reports that at the JAFA Board of Directors meeting, [✂] of KWE said "*the loss [JFS] of KWE (Kintetsu) in last month was JPY 75000K. KWE cannot survive in this situation*".[1019]

679. By entering into the agreements, the Parties exchanged price information and agreed on the implementation and pricing of the JSS, the JEEF and the JFS. In doing so the Parties substituted the risks of price competition in favour of practical cooperation. The Parties would not make their pricing strategies independently, but would take into account the agreements made amongst the Parties, information gathered from the Parties concerning prices of surcharges imposed by airlines, the success rate of implementation and other information shared amongst the Parties. Competition among the Parties would inevitably be lessened as a result.

680. In a competitive market, an individual freight forwarder may not be able to impose a surcharge without losing market share to its competitors. However, if the Parties decided and agreed to impose a surcharge collectively, the consumer's ability to switch would be compromised. In the absence of the agreements and/or concerted practices, the Parties would have to compete for market shares via more competitive prices or non-pricing strategies.

681. All of the Parties' air freight forwarding services for shipments from Japan to Singapore during the relevant period were potentially affected by the conduct of the Parties as the JSS (and on certain shipments, the JEEF) and the JFS were components of the total price charged for air freight forwarding services. The JSS and the JEEF made up [✂] of the total relevant turnover of the Parties for air shipments from Japan to Singapore in 2012. The JFS made up [✂] of the

[1016] [✂].
[1017] [✂].
[1018] [✂].
[1019] Information provided by K Line dated 22 February 2013 pursuant to the section 63 Notice issued by CCS dated 12 December 2012, Annex 5 - JAFA meeting dated 19 July 2005.

relevant turnover of the Parties for air shipments from Japan to Singapore in 2012. Notwithstanding that the JFS was a larger component of the relevant turnover of the Parties for air shipments from Japan to Singapore, no mark-up was applied by the Parties to the cost of the JFS charged to them by airlines.

682. In the representations received, Parties submitted that the JSS/JEEF and the JFS should not have the same starting percentage. Hankyu Hanshin, KWE and Yusen, submitted that there should be no starting percentage applied for the JSS/JEEF agreement or in the alternative, a lower starting percentage should be applied as [✂] of turnover is insignificant.[1020] MLG submitted that a lower starting percentage should be applied for the JSS/JEEF agreement, as [✂][1021]. KWE, Nippon Express and Yusen also submitted in their representations that a lower starting percentage should be applied for the JFS agreement as it was an agreement to pass on the cost of the JFS.[1022] Yusen submitted that the starting point for the JFS should be even lower than that for the JSS/JEEF given that it was essentially a pass through and that freight forwarders would have suffered substantial losses if they had discounted or absorbed the cost of the JFS.[1023]

683. K Line in its representations submitted that the agreements were less restrictive of competition than fixing the entire product or service as the JSS/JEEF and the JFS were components of the price paid by customers for air freight forwarding services.[1024] To support its representations K Line cited the CAB's decision in the *Express Bus Operators Appeal* and the decision of the OFT in *British Airways/Virgin Atlantic*. K Line also submitted that both the agreement on JSS/JEEF and the agreement on JFS would be unlikely to affect the relevant market significantly.

684. KWE additionally submitted that, in respect of the JFS, the infringement is less serious due to the prevailing circumstances that include the existence of the airlines cartel and [✂].[1025] KWE also submitted that intention was not to cause harm to customers at origin or destination in Singapore and that in any event the Security Charges and JFS would have been imposed on customers even without the conduct given the increased costs to freight forwarders.[1026]

[1020] Written Representations of KWE dated 21 May 2014, paragraphs 47 and 48; Written Representations of Hankyu Hanshin dated 22 May 2014, paragraphs 1 to 6; Written Representations of Yusen Japan dated 23 May 2014, paragraphs 6.21 to 6.28; Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 6.30 to 6.38.

[1021] Written Representations of MLG dated 23 May 2014, paragraph 3.2.2.

[1022] Written Representations of KWE dated 21 May 2014, paragraphs 34 and 55; Written Representations of NEJ dated 23 May 2014, paragraph 5.6.2; Written Representations of Yusen Japan dated 23 May 2014, paragraphs 6.21 to 6.29; Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 6.30 to 6.39.

[1023] Written Representations of Yusen Japan dated 23 May 2014, paragraph 6.29; and Written Representations of Yusen Singapore dated 23 May 2014, paragraph 6.39.

[1024] Written Representations of K Line dated 23 May 2014, paragraphs 5.2.1 to 5.2.4.

[1025] Written Representations of KWE dated 21 May 2014, paragraph 58.

[1026] Written Representations of KWE dated 21 May 2014, paragraphs 54 and 57.

685. As set out in the *CCS Guidelines on the Appropriate Amount of Penalty* at paragraph 2.2, price-fixing is a serious infringement. Price-fixing, by its very nature, is one of the most serious types of infringements which warrant a high starting point. Regardless of whether price-fixing is for a component of the price or for the whole price itself, it is still characterised as price-fixing. In this regard, CCS notes that while the OFT in *British Airways/Virgin Atlantic*[1027] had considered the fact that coordination between the parties involved only a component of the overall ticket price, the OFT also took into account that "*cartel conduct is regarded to be among the most serious infringements*" and imposed a starting percentage of 8.5%. CCS also notes that the CAB in the *Express Bus Operators Appeals Nos. 1 and 2*, regarded the starting percentage for the MSP and FIC as a "relatively low starting percentage".[1028]

686. CCS notes that all shipments from Japan to Singapore handled by the Parties would potentially have been charged a JSS and a JFS; some shipments would also have been charged a JEEF. However, in applying the starting percentage of [✂]%, CCS has taken into account that the JSS and the JEEF, which could have been marked up by 800%, only made up [✂] of the total relevant turnover of the Parties for air shipments from Japan to Singapore in 2012. CCS in fixing the starting percentage of [✂]% for the JFS, has taken into account that although it made up a larger proportion ([✂]) of the relevant turnover of the Parties for air shipments from Japan to Singapore in 2012, it was a cost which was passed on.

687. Hankyu Hanshin in its representations submitted that CCS should not use a uniform starting point for all Parties, and should instead take into account the role each Party played during the formation and application of the agreements.[1029] MLG likewise submitted that it played a minor role in the agreement/concerted practice and as a consequence its starting point should be reduced.[1030] NNR submitted that the CCS should take into account the greater degree of cooperation extended by NNR relative to the other Parties and apply a lower starting percentage to the calculation of NNR's penalty.[1031] NNR highlighted that NNR Japan had come forward with its leniency application prior to the commencement of investigation by the CCS and submitted that CCS should not apply the same starting percentage to it as it applied to the other Parties.

688. As noted in paragraph 669, the starting percentage applied to calculate the base penalty amount reflects, in particular, the seriousness of the nature of the infringement, and not the role of each undertaking during the formation and application of the agreements. CCS is of the view that a distinction must be

[1027] CE/7691-06 *OFT decision: Infringement of Chapter 1 of the CA98 and Article 101 of the TFEU by British Airways Limited and Virgin Atlantic Airways Limited*, 19 April 2012.
[1028] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [179].
[1029] Written Representations of Hankyu Hanshin dated 22 May 2014, paragraphs 11 and 12.
[1030] Written Representations of MLG dated 23 May 2014, paragraph 3.1.4.
[1031] Written Representations of NNR dated 23 May 2014, paragraph 6.1.

drawn between the assessment of the gravity of the infringement, which is used to determine the general starting amount of the penalty, and the assessment of the relative gravity of the participation of each of the undertakings concerned, which is to be examined in the context of any aggravating or mitigating circumstances. Consequently, a uniform starting point is used for all Parties regardless of the role played by each Party during the formation and application of the agreement.

689. MLG and KWE submitted that the JSS/JEEF had to be imposed as a result of governmental regulation requiring compliance with security procedures and protocol, and that this had increased costs for freight forwarders.[1032] While CCS is aware that the security charges were charged to customers following higher costs on freight forwarders due to governmental regulation, it does not follow that the Parties should, as a result, discuss and reach a consensus on the pricing that they should charge customers for the required security measures. CCS does not consider the nature of the agreement to be any less serious simply because it was a response by freight forwarders to increased costs. Moreover, as noted in paragraph 677, the mark-up on the JSS and the JEEF could have been substantial.

690. Having regard to the nature of the product, the structure of the market, the market shares of the Parties, the potential effect of the infringements on customers, competitors and third parties and the fact that price-fixing is one of the more serious infringements of the Act, CCS considers it is appropriate to fix the starting point at [✂]% of relevant turnover for each of the Parties involved in the Security Charges agreement and the starting point at [✂]% of relevant turnover for each of the Parties involved in the JFS agreement. Each Party was involved in both agreements; and since the relevant turnover (discussed above) is the same for both infringements, the starting points of [✂]% for the JSS/JEEF and [✂]% for the JFS will be cumulative, i.e. the starting point will be fixed at [✂]% of relevant turnover for each Party.

(ii) Duration of the Infringements

691. After calculating the base penalty sum, CCS will next consider whether this sum should be adjusted to take into account the duration of the infringements. The duration for which the Parties infringed the section 34 prohibition will depend on when they became party to the agreement(s), and when they ceased to be party to the same.[1033]

692. CCS considers it appropriate for penalties for infringements which last for more than one year to be multiplied by the number of years of the infringement. This therefore means that the base penalty sum will be multiplied for as many years

[1032] Written Representations of KWE dated 21 May 2014, paragraphs 33, 50 to 52 and 59 to 61; and Written Representations of MLG dated 23 May 2014, paragraph 3.1.2.
[1033] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.8.

as the infringement remains in place. This ensures that there is sufficient deterrence against cartels operating undetected for a protracted length of time.

693. 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,[1034] CCS has decided to, in such instances, round down the period to the nearest month. Therefore, where the infringement period is less than a year, CCS 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 provides an incentive to undertakings to terminate their infringements as soon as possible.

694. All the Parties were involved in the infringements for the following durations, i.e., from at least September 2002 to 12 November 2007 for the JFS agreement and from at least May 2005 to 12 November 2007 for the Security Charges agreement. However, as the Act came into force on 1 January 2006, the relevant duration applicable to each Party is the same for both infringements, i.e. from 1 January 2006 to 12 November 2007. As stated in paragraph 693 above, CCS will round down the period to the nearest month. The duration applicable to each Party for each infringement is therefore 22 months.

695. Nippon Express and Yusen in their representations submitted that CCS has erred in applying the same duration multiplier to both infringements because the duration of each infringement was different. Nippon Express and Yusen submitted that the agreement on the Security Charges was only reached on 20 February 2006.[1035]

696. However, as stated in paragraph 164, discussions at JAFA meetings regarding the JSS and the JEEF began in November 2004 and discussions on imposing a uniform approach to pricing these began in at least May 2005. While these discussions culminated in an agreement on the precise quantum of the minimum price to be imposed during the meeting on 20 February 2006, the agreement and/or concerted practice in relation to fixing a price for the JSS/JEEF began from at least May 2005. CCS has therefore not erred in using 1 January 2006 as the starting date in relation to the agreement relating to the Security Charges.

(iii) Aggravating and Mitigating Factors

697. At this next stage, CCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[1036] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

[1034] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.8.
[1035] Written Representations of Yusen Japan dated 23 May 2014, paragraphs 6.30 to 6.36; Written Representations of Yusen Singapore dated 23 May 2014, paragraphs 6.40 to 6.46; Written Representations of NEJ 23 May 2014, paragraph 5.7.
[1036] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.10.

Representations from the Parties

698. As a general point, as stated in paragraph 2.2 of the *CCS Leniency Guidelines*, CCS notes that the pre-requisites for obtaining leniency, whether first in line or not, includes providing CCS with all the information, documents and evidence available to it regarding the cartel activity and maintaining continuous and complete cooperation throughout the investigation and until the conclusion of any action by the CCS arising as a result of the investigation. Hankyu Hanshin, KWE and NNR submitted in their respective representations that they should receive an extra mitigation discount for its cooperation prior to coming in for leniency.[1037] CCS is of the view that in the circumstances of this case, as one of the pre-requisites for obtaining leniency is cooperation with CCS, there is no reason for CCS to grant an extra cooperation discount in addition to a leniency discount. CCS has taken into account the cooperation rendered by leniency applicants, before the application is made, in deciding the leniency discount.

699. In the representations of K Line, KWE and Yusen, the Parties submitted that an additional discount should be applied to their financial penalties as the figures proposed by CCS would amount to double counting, given that each has already been penalised for the same infringing conduct in Japan.[1038] They submitted that CCS had failed to take into consideration the quantum of the fines paid following the JFTC's action. K Line submitted that in *British Airways/Virgin Atlantic*[1039], the OFT exercised its discretion and reduced the penalties by one third as the OFT noted that British Airway's conduct had impacted customers outside the UK and that the Australian Competition and Consumer Commission ("ACCC") had taken into account the penalties paid by Qantas and Cargolux in Europe and USA.[1040]

700. CCS does not consider, in the circumstances of this case, that an additional adjustment is warranted. As discussed above in paragraph 707, the purpose of penalties is to reflect the seriousness of the infringement and deterrence. In this regard, CCS notes that the penalties calculated for the Parties are all already below [✂] of each Party's total turnover. A further reduction would not achieve the deterrence CCS seeks to ensure in imposing a financial penalty.

701. CCS also notes that the principle of *ne bis in idem* cannot in any event apply in the present case as the procedures conducted and the penalties imposed by the JFTC did not pursue the same ends as the Act. The aim of the Act is to preserve

[1037] Written Representations of Hankyu Hanshin dated 22 May 2014, paragraphs 13 and 14; Written Representations of KWE dated 21 May 2014, paragraph 63; and Written Representations of MLG dated 23 May 2014, paragraph 6.2.
[1038] Written Representations of K Line dated 23 May 2014, paragraphs 5.3 to 5.5; Written Representations of KWE dated 21 May 2014, paragraph 61; and Written Representations of Yusen Japan dated 23 May 2014, paragraphs 6.8 to 6.9
[1039] CE/7691-06 *OFT decision: Infringement of Chapter 1 of the CA98 and Article 101 of the TFEU by British Airways Limited and Virgin Atlantic Airways Limited*, 19 April 2012.
[1040] Written Representations of K Line dated 23 May 2014, paragraphs 5.4.

undistorted competition within Singapore, whereas the aim of competition law under Japan's Antimonopoly Act is to protect competition in Japan. The application of the principle of *ne bis in idem* is subject, not only to the infringements and persons sanctioned being the same, but also to the unity of the legal right being protected[1041], i.e. that the laws applied are the same. Finally, CCS notes that differing circumstances apply to the cases cited by the Parties. In the *Qantas*[1042] and *Cargolux*[1043] cases, the ACCC exercised its discretion in the context of a settlement with Qantas regarding the penalty they would jointly propose to the Australian Federal Court. In *British Airways/Virgin Atlantic*, the OFT exercised its discretion in reducing penalties because it was obliged to take into account the impact outside of the UK on the EU, given that the UK is a member of the EU.

702. KWE also submitted that a further reduction should be applied because the infringements investigated by the CCS had terminated before CCS intervened and were terminated "*as soon as the parties were aware in 2007 when the Japanese authorities intervened*".[1044] NNR likewise submitted that it should be granted a further reduction following the immediate steps it took to prevent any recurrence of anti-competitive conduct following the issuance of the cease and desist order by the JFTC.[1045]

703. CCS agrees that the Parties had terminated the agreements before the intervention of CCS. CCS notes however that the termination was in fact largely due to the investigations by several overseas jurisdictions at that time, including the US DOJ. In this regard, CCS does not consider it a mitigating factor which should warrant a further reduction in the penalties imposed by CCS. In any case, the termination of the agreements by the Parties in response to the investigations by overseas jurisdictions would have been accounted for in the duration multiplier.

704. Whether or not there are further aggravating and/or mitigating factors that should be applied to adjust the amount of financial penalty in relation to each of the Parties is considered below.

705. For all the Parties, CCS has found that there are no applicable aggravating factors in this case, and as such, does not make any adjustments to the respective financial penalties for aggravating factors.

706. CCS has found that there are mitigating factors for certain Parties and the reduction for these, where applicable, is described below. In particular, CCS has taken into consideration the cooperation rendered in arranging for personnel

[1041] Joined Cases T-236/01 etc *Tokai Carbon Co. Ltd. and others v Commission*, at [134].
[1042] *Australian Competition and Consumer Commission v Qantas Airways Limited* [2008] FCA 1976.
[1043] *Australian Competition and Consumer Commission v Cargolux Airlines International SA* [2009] FCA 342.
[1044] Written Representations of KWE dated 21 May 2014, paragraph 62.
[1045] Written Representations of NNR dated 23 May 2014, paragraph 6.2.

located outside of Singapore to attend CCS's interviews as well as the extent to which these interviews provided information that assisted CCS in its investigations.

(iv) Other Relevant Factors

707. CCS considers that the penalty may be adjusted as appropriate to achieve policy objectives, particularly the deterrence of the Parties and other undertakings from engaging in anti-competitive practices such as price-fixing. CCS considers that price-fixing is one of the most serious infringements of the Act and as such, penalties imposed should be sufficient to deter undertakings from engaging in price-fixing.

708. CCS considers that if the financial penalty imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of deterrence, CCS will adjust the penalty to meet the objectives of deterrence. In the *Express Bus Operators Appeal No. 3*[1046], the CAB revised upwards the financial penalty against Regent Star to $10,000 to achieve the objective of deterrence.

709. CCS notes that this practice is in line with the position in other competition regimes. For instance, in the UK, the CMA refers to "*The OFT's Guidance as to the Appropriate Amount of Penalty*" which adopts a similar approach.[1047]

(v) Maximum statutory penalty

710. As stated above, under section 69(2)(d) of the Act, CCS 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. KWE submitted in its representations that the maximum penalty be adjusted because KWE's activities in Japan should be excluded from applicable turnover.[1048] As noted in paragraph 652, in applying the statutory maximum, CCS has already excluded turnover of the Parties' companies in Japan received from customers outside of Singapore. CCS takes the position that no further adjustment is warranted.

C. Penalty for DGF

711. Starting point: DGF was involved in both price-fixing agreements for the Security Charges and the JFS with the object of preventing, restricting or

[1046] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2, at [106].
[1047] 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.
[1048] Written Representations of KWE dated 21 May 2014, paragraph 49.

distorting competition in the market for the provision of air freight forwarding services for shipments from Japan to Singapore.

712. DGF's financial year commences on 1 January and ends on 31 December. DGF's relevant turnover[1049] figure for the financial year 2012 was S$[✂].[1050]

713. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for DGF the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for DGF is therefore S$[✂].

714. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for DGF after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

715. Adjustment for aggravating and mitigating factors: CCS considers that DGF cooperated with CCS during the course of the investigations. However, this was a condition of it being granted leniency and so no extra mitigation is given for the same.

716. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

717. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to DGF and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

718. Adjustment to prevent maximum penalty being exceeded:[1051] DGF's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$[✂].

[1049] For turnover figures submitted in Japanese currency, CCS applied an average exchange rate, obtained from the Monetary Authority of Singapore website at https://secure.mas.gov.sg/msb/ExchangeRates.aspx for the respective applicable financial year and period, for the conversion to Singapore dollars.
[1050] Information provided by DGF dated 6 November 2013, 12 November 2013 and 22 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013.
[1051] Under section 69(2)(d) of the Act, CCS 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.

719. Adjustment for leniency: DGF was granted total immunity from financial penalties as part of the CCS's leniency programme. DGF's financial penalty is therefore reduced to nil.

720. Representations by DGF in respect of penalty: DGF did not make any representations in respect of penalty.

721. Accordingly, CCS concludes that no financial penalty is to be imposed on DGF.

D. Penalty for Hankyu Hanshin

722. Starting point: Hankyu Hanshin was involved in both price-fixing infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

723. HHE Co.'s financial year commences on 1 April and ends on 31 March. HHE Singapore's financial year commences on 1 January and ends on 31 December. Hankyu Hanshin's relevant turnover figure for the financial year 2012 was S$[✂].[1052]

724. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for Hankyu Hanshin the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for Hankyu Hanshin is therefore S$[✂].

725. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for Hankyu Hanshin after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

726. Adjustment for aggravating and mitigating factors: CCS considers that Hankyu Hanshin cooperated with CCS during the course of the investigations. However, this was a condition of it being granted leniency and so no extra mitigation is given for the same.

727. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

[1052] Information provided by Hankyu Hanshin dated 6 November 2013 and 12 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013; and information provided by Hankyu Hanshin dated 15 November 2013, 21 November 2013, 26 November 2013, 4 December 2013, 27 December 2013, 16 January 2014, 21 January 2014, 23 January 2014, 13 February 2014 and 25 March 2014 pursuant to CCS's RFI dated 13 November 2013.

728. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Hankyu Hanshin and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

729. Adjustment to prevent maximum penalty being exceeded: Hankyu Hanshin's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$[✂].

730. Adjustment for leniency: Hankyu Hanshin applied for leniency on 15 May 2013 after CCS issued section 63 notices to the Parties. CCS considers that Hankyu Hanshin has provided sufficient information and evidence to fulfil the conditions of leniency.

731. Having taking into consideration all the facts and circumstances of this case, including the stage at which the undertaking came forward, the evidence already in CCS's possession and the quality of the information provided by Hankyu Hanshin, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. Hankyu Hanshin's financial penalty is therefore reduced to S$662,142.

732. Representations by Hankyu Hanshin in respect of penalty: Hankyu Hanshin's representations regarding seriousness and turnover to calibrate the starting point have been addressed in paragraphs 650 to 690 above. Certain representations of Hankyu Hanshin regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

733. Hankyu Hanshin additionally submitted that they cooperated fully with CCS even prior to their leniency application, and by reason of their earlier cooperation, an additional cooperation discount should be given to Hankyu Hanshin.[1053] As noted in paragraph 698 above, cooperation is a pre-requisite for obtaining leniency. Hankyu Hanshin's cooperation has already been taken into account in determining the leniency discount applied, and consequently, CCS does not consider that an additional discount for cooperation is appropriate.

734. Accordingly, CCS concludes that a financial penalty of S$662,142 is to be imposed on Hankyu Hanshin.

E. Penalty for K Line

735. Starting point: K Line was involved in both infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting

[1053] Written Representations of Hankyu Hanshin dated 22 May 2014, paragraphs 13 to 16.

competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

736. KLJ's financial year commences on 1 January and ends on 31 December. KLS's financial year commences on 1 April and ends on 31 March.[1054] K Line's relevant turnover figure for the financial year 2012 was S$[✂].[1055]

737. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for K Line the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for K Line is therefore S$[✂].

738. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for K Line after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

739. Adjustment for aggravating and mitigating factors: CCS considers that K Line cooperated with CCS during the course of the investigations, by providing information beyond what was requested and making efforts to arrange for interviews with persons located outside of Singapore. CCS considers that these interviews significantly assisted CCS's investigation. CCS therefore reduces the penalty by [✂]%.

740. 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$[✂].

741. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to K Line and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

742. Adjustment to prevent maximum penalty being exceeded: K Line's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$828,200.

743. Representations by K Line in respect of penalty: K Line's representations regarding seriousness and turnover to calibrate the starting point have been

[1054] Due to a change in accounting period, KLS's financial year 2012 ran from 1 January 2012 to 31 March 2013.
[1055] Information provided by "K" Line dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013.

addressed in paragraphs 650 to 690 above. Certain representations of K Line regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

744. K Line additionally submitted that they be granted an even higher reduction in penalty in view of their efforts to cooperate with CCS (for example by arranging for interviews for persons located outside of Singapore and complying with CCS's notices diligently and in a timely manner, incurring significant administrative effort and expense).[1056] All the representations made by K Line with regard to cooperation have already been considered by CCS in providing for the cooperation discount. Accordingly, CCS does not consider that a further reduction in the financial penalty is appropriate.

745. K Line also submitted that it should receive a further reduction in penalty for its compliance programme.[1057] CCS notes that K Line's compliance programme was implemented after the investigation by JFTC[1058] and does not consider such a step to be a mitigating factor. Accordingly, CCS does not consider any further reduction appropriate.

746. Accordingly, CCS concludes that a financial penalty of S$828,200 is to be imposed on K Line.

F. Penalty for KWE

747. Starting point: KWE was involved in both price-fixing infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

748. KWEJ's financial year commences on 1 April and ends on 31 March. KWES's financial year commences on 1 January and ends on 31 December. KWE's relevant turnover figure for the financial year 2012 was S$[✂].[1059]

749. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669to 690 above and fixed for KWE the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for KWE is therefore S$[✂].

[1056] Written Representations of K Line dated 23 May 2014, paragraphs 5.7.1 to 5.7.3.
[1057] Written Representations of K Line dated 23 May 2014, paragraphs 5.7.6 to 5.7.16.
[1058] Written Representations of K Line dated 23 May 2014, paragraphs 5.7.4 to 5.7.16.
[1059] Information provided by KWE dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013.

750. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for KWE after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

751. Adjustment for aggravating and mitigating factors: CCS considers that KWE cooperated with CCS during the course of the investigations. However, this was a condition of it being granted leniency and so no extra mitigation is given for the same.

752. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

753. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to KWE and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

754. Adjustment to prevent maximum penalty being exceeded: KWE's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$[✂].

755. Adjustment for leniency: KWE applied for leniency on 5 March 2013 after CCS issued section 63 notices to the Parties. CCS considers that KWE has provided sufficient information and evidence.

756. Having taking into consideration all the facts and circumstances of this case, including the stage at which the undertaking comes forward, the evidence already in CCS's possession and the quality of the information provided by KWE, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. KWE's financial penalty is therefore reduced to S$771,497.

757. Representations by KWE in respect of penalty: KWE's representations regarding seriousness and turnover to calibrate the starting point have been addressed in paragraphs 650 to 690 above. Certain representations of KWE regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

758. KWE also submitted in their representations that they cooperated fully with CCS even prior to their leniency application, and by reason of their earlier cooperation, an additional cooperation discount should be given to KWE.[1060]

[1060] Written Representations of KWE dated 21 May 2014, paragraph 63.

KWE also submitted that it should be granted a higher leniency discount.[1061] As noted in paragraph 698 above, cooperation is a pre-requisite for obtaining leniency. The grant by CCS of a leniency discount is discretionary. All the circumstances of KWE's cooperation have been taken into account in determining the leniency discount applied, and consequently, no additional discount for either cooperation or leniency is appropriate.

759. KWE further submitted that it should be granted a further reduction in penalty on account of the following:

(i) the existence of its compliance programme;[1062]

(ii) the resignation of the employee who represented KWE at the JAFA meetings;[1063] and

(iii) the absence of prior infringements by KWE in Singapore.[1064]

760. First, CCS notes that KWE's compliance programme was implemented after the investigation by JFTC and does not consider such a step to be a mitigating factor. Accordingly, CCS does not consider any further reduction appropriate.

761. Secondly, with regard to (ii), CCS notes that KWE does not indicate in its submission the employee who has resigned or the reasons for his or her resignation. Of KWE's representatives at JAFA meetings, CCS is only aware of the circumstances of the resignation of [✂]. CCS however understands that [✂] resigned voluntarily citing an excessive length of service as the reason and appointed his successor to whom he passed on instructions to carry on his policies in relation to JAFA.[1065] CCS does not view a further reduction in penalty on the ground as appropriate.

762. Thirdly, with regard to (iii), CCS also does not view as appropriate a further reduction in penalty for KWE on the basis that it has no prior infringements in Singapore.

763. Accordingly, CCS concludes that a financial penalty of S$771,497 is to be imposed on KWE.

G. Penalty for MLG

764. Starting point: MLG was involved in both infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting

[1061] Written Representations of KWE dated 21 May 2014, paragraph 69.
[1062] Written Representations of KWE dated 21 May 2014, paragraphs 66 and 67.
[1063] Written Representations of KWE dated 21 May 2014, paragraph 65.
[1064] Written Representations of KWE dated 21 May 2014, paragraph 64.
[1065] Information provided by KWE dated 31 May 2013, document B1-2, page 10.

competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

765. MLG-JP's financial year commences on 1 April and ends on 31 March. MLG-SG's financial year commences on 1 January and ends on 31 December. MLG's relevant turnover figure for the financial year 2012 was S$[✂].[1066]

766. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for MLG the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for MLG is therefore S$[✂].

767. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for MLG after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

768. Adjustment for aggravating and mitigating factors: CCS considers that MLG cooperated with CCS during the course of the investigations, by providing information beyond what was requested and making efforts to arrange for interviews with persons located outside of Singapore. CCS 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$[✂].

769. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to MLG and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

770. Adjustment to prevent maximum penalty being exceeded: MLG's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$77,887.

771. Representations by MLG in respect of penalty: MLG's representations regarding seriousness and turnover to calibrate the starting point have been addressed in paragraphs 650 to 690 above. Certain representations of MLG regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

[1066] Information provided by MLG dated 6 November 2013, 12 November 2013 and 22 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013.

772. MLG also submitted that it should be granted a further reduction in penalty in consideration of the following mitigating factors:

(i) it was not one of the main instigators of the infringing conduct;[1067]

(ii) it was genuinely uncertain that its conduct constituted an infringement;[1068]

(iii) the existence of its compliance programme;[1069] and

(iv) it cooperated considerably in CCS's investigations and proceedings.[1070]

773. In respect of MLG's submission regarding its role in the conduct, CCS in determining financial penalties, considers whether an undertaking played the role as a leader in, or an instigator of, the infringement. If so, this is an aggravating factor in the calculation of financial penalties.[1071] In calculating MLG's financial penalties, CCS agrees that this aggravating factor is not applicable because MLG is not one of the instigators of the infringing conduct. That said, CCS notes that MLG cannot be said to have played only a minor role in the infringing conducts.[1072]

774. Secondly, with regard to MLG's submission of genuine uncertainty, as noted in paragraph 524 above, MLG's conduct in question is one of price-fixing. Price-fixing is one of the most egregious forms of anti-competitive behaviour. CCS is of the view that given the conduct of the Parties, MLG cannot have been unaware that it was engaging in an agreement/concerted practice to fix prices or exchange information about prices or customers. Ignorance that fixing prices is an infringement of the Act is no excuse for non-compliance with the Act. CCS notes that the Act was passed in 2005 and the section 34 prohibition came into force on 1 January 2006. Consequently, CCS does not accept MLG's contention that there is genuine uncertainty on its part whether such conduct constituted an infringement of the Act.

[1067] Written Representations of MLG dated 23 May 2014, paragraph 3.1.4.
[1068] Written Representations of MLG dated 23 May 2014, paragraph 3.3.
[1069] Written Representations of MLG dated 23 May 2014, paragraph 3.4.
[1070] Written Representations of MLG dated 23 May 2014, paragraph 3.5.
[1071] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.11.
[1072] As described in paragraphs 160 to 212 above, MLG-JP was actively involved in discussions with the Parties (between November 2004 to 12 November 2007) regarding the JSS and the JEEF including discussing the amount to charge customers for the JSS and the JEEF and sharing their success in collecting the JSS and the JEEF from customers. Also, as outlined in paragraphs 350 to 409 above, MLG was actively involved in discussions with the Parties (between September 2002 and 12 November 2007) regarding the charging of a JFS to shippers at the same amount the fuel surcharge was charged to them by airlines, and monitoring adherence to this by: discussing not using the JFS as a means of competition amongst freight forwarders; reporting on JFS collection ratios; reporting on uncollected JFS charges from shippers; discussing changes to the fuel surcharge imposed by airlines; and discussing the strategy for, and the outcome of, negotiations with shippers for the payment of the JFS.

775. Thirdly, CCS notes that MLG's compliance programme was implemented after the investigation by JFTC. CCS consequently does not consider such a step to be a mitigating factor. In any case, the termination of the agreements by the Parties is taken into account in the duration multiplier. Accordingly, CCS does not consider any further reduction in penalty appropriate.

776. MLG also submitted that CCS should further reduce its penalty taking into account the cooperation that has been extended by MLG and its personnel, in full support of CCS's investigation and proceedings in this matter.[1073] CCS has considered the cooperation of MLG in providing information beyond what was requested and making efforts to arrange for interviews with persons located outside of Singapore. CCS has accordingly discounted MLG's penalty, CCS however does not consider that a further reduction in the financial penalty is appropriate.

777. Accordingly, CCS concludes that a financial penalty of S$77,887 is to be imposed on MLG.

H. Penalty for Nippon Express

778. Starting point: Nippon Express was involved in both infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

779. NEJ's financial year commences on 1 April and ends on 31 March. NES's financial year commences on 1 January and ends on 31 December. Nippon Express' relevant turnover figure for the financial year 2012 was S$[✂].[1074]

780. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for Nippon Express the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for Nippon Express is therefore S$[✂].

781. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for Nippon Express after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

782. Adjustment for aggravating and mitigating factors: CCS considers that Nippon Express cooperated with CCS during the course of the investigations, by providing information beyond what was requested and making efforts to arrange for interviews with persons located outside of Singapore. CCS therefore reduces

[1073] Written Representations of MLG dated 23 May 2014, paragraph 3.5.1.
[1074] Information provided by Nippon Express dated 6 November 2013 and 2 January 2014 pursuant to the section 63 Notice issued by CCS dated 23 October 2013.

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$[✂].

783. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Nippon Express and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

784. Adjustment to prevent maximum penalty being exceeded: Nippon Express's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$2,072,386.

785. Representations by Nippon Express in respect of penalty: Nippon Express's representations regarding seriousness and turnover to calibrate the starting point have been addressed in paragraphs 650 to 690 above. Certain representations of Nippon Express regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

786. Nippon Express additionally submitted that they cooperated fully with CCS and merited a higher cooperation discount.[1075] Nippon Express additionally submitted that the principle of equal treatment must be followed by CCS when determining the penalty.[1076]

787. In this regard, CCS considered that Nippon Express has cooperated with CCS during the course of the investigations including facilitating interviews by CCS with employees from Nippon Express and considered the degree to which the interviews allowed CCS to conclude its investigations more effectively, and therefore a reduction for cooperation of [✂]% was granted. CCS, having considered Nippon Express's representations, does not consider any further reduction appropriate.

788. Accordingly, CCS concludes that a financial penalty of S$2,072,386 is to be imposed on Nippon Express.

I. Penalty for NNR

789. Starting point: NNR was involved in both price-fixing infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

[1075] Written Representations of NEJ dated 23 May 2014, paragraph 5.8.
[1076] Written Representations of NEJ dated 23 May 2014, paragraph 5.5.

790. NNR submitted that NNR Singapore and NNR Japan do not form a SEE and hence NNR Singapore's relevant turnover should not be included for the purposes of calculating the penalty.[1077] As noted in paragraphs 584 to 585 above, CCS finds that NNR Singapore and NNR Japan form a SEE and are jointly and severally liable for the infringement.

791. NNR Japan's financial year commences on 1 April and ends on 31 March. NNR Singapore's financial year commences on 1 January and ends on 31 December. NNR's relevant turnover figure for the financial year 2012 was S$[✂].[1078]

792. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for NNR the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for NNR is therefore S$[✂].

793. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for NNR after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

794. Adjustment for aggravating and mitigating factors: CCS considers that NNR cooperated with CCS during the course of the investigations. However, this was a condition of its being granted leniency[1079] and so no extra mitigation is given for the same.

795. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

796. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to NNR and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

797. Adjustment to prevent maximum penalty being exceeded: NNR's turnover figures for financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$[✂].

[1077] Written Representations of NNR dated 23 May 2014, paragraph 5.4.1.
[1078] Information provided by NNR dated 6 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013.
[1079] NNR Japan applied for leniency with CCS; NNR Singapore was not included in the leniency application.

798. Adjustment for leniency: NNR Japan applied for leniency on 5 April 2012 before CCS issued section 63 notices to the Parties.[1080] CCS considers that NNR has provided sufficient information and evidence. Having taking into consideration all the facts and circumstances of this case, including the stage at which the undertaking comes forward, the evidence already in CCS's possession and the quality of the information provided by NNR, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. NNR's financial penalty is therefore reduced to S$330,551.

799. Representations by NNR on penalty: NNR's representations regarding seriousness and turnover to calibrate the starting point have been addressed in paragraphs 650 to 690 above. Certain representations of NNR regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

800. NNR also submitted that it should be granted a further reduction in consideration of NNR's efforts to ensure compliance with the section 34 prohibition and to prevent future recurrences of anti-competitive conduct by introducing a compliance programme. CCS notes that NNR's compliance programme was implemented after the investigation by the JFTC and does not consider any further reduction to be appropriate.

801. NNR also submitted that it should be granted a further reduction in the penalty imposed in consideration of NNR's cooperation with the CCS prior to and in the course of the CCS's investigation. As noted in paragraph 698 above, cooperation is a pre-requisite for obtaining leniency. NNR's cooperation has already been taken into account in determining the leniency discount applied and consequently no additional discount for cooperation is appropriate.

802. Accordingly, CCS concludes that a financial penalty of S$330,551 is to be imposed on NNR.

J. Penalty for Nissin

803. Starting point: Nissin was involved in both infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

804. Nissin Corporation's financial year commences on 1 April and ends on 31 March. Nissin Singapore's financial year commences on 1 January and ends on 31 December. Nissin's relevant turnover figure for the financial year 2012 was S$[✂].[1081]

[1080] NNR Singapore was not included in the application for leniency.

[1081] Information provided by Nissin dated 24 October 2013, 6 November 2013, 12 November 2013 and 21 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013; and information

805. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for Nissin the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for Nissin is therefore S$[✂].

806. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for Nissin after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

807. Adjustment for aggravating and mitigating factors: CCS considers that Nissin cooperated to the extent that was required. CCS therefore reduces the penalty by [✂]%.

808. 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$[✂].

809. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Nissin and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

810. Adjustment to prevent maximum penalty being exceeded: Nissin's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$64,283.

811. Representations by Nissin in respect of penalty: Nissin did not make any representations in respect of penalty.

812. Accordingly, CCS concludes that a financial penalty of S$64,283 is to be imposed on Nissin.

K. Penalty for Vantec

813. Starting point: Vantec was involved in both price-fixing infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

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provided by Nissin dated 26 March 2014, 27 March 2014 and 31 March 2014 pursuant to CCS's RFIs dated 12 December 2013 and 13 February 2014.

814. Vantec Japan's financial year commences on 1 April and ends on 31 March. Vantec Singapore's financial year commences on 1 January and ends on 31 December. Vantec's relevant turnover figure for the financial year 2011 was S$[✂].[1082]

815. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for Vantec the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for Vantec is therefore S$[✂].

816. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for Vantec after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

817. Adjustment for aggravating and mitigating factors: CCS considers that Vantec cooperated with CCS during the course of the investigations. However, this was a condition of its being granted leniency and so no extra mitigation is given for the same.

818. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

819. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Vantec and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

820. Adjustment to prevent maximum penalty being exceeded: Vantec's turnover figures for the financial year 2011 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$[✂].

821. Adjustment for leniency: Vantec applied for leniency on 15 February 2013 after CCS issued section 63 notices to the Parties. CCS considers that Vantec has provided sufficient information and evidence.

822. Having taking into consideration all the facts and circumstances of this case, including the stage at which the undertaking comes forward, the evidence

[1082] Information provided by Vantec dated 6 November 2013, 13 November 2013 and 15 November 2013 pursuant to the section 63 Notice issued by CCS dated 18 October 2013. Vantec Japan was unable to provide relevant turnover figures for the full financial year 2012 as they exited the airfreight forwarding business in June 2012. Accordingly, CCS uses the relevant turnover figures for the preceding year, i.e. financial year 2011.

already in CCS's possession and the quality of the information provided by Vantec, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. Vantec's financial penalty is therefore reduced to S$154,249.

823. Representations by Vantec in respect of penalty: Vantec did not make any representations in respect of penalty.

824. Accordingly, CCS concludes that a financial penalty of S$154,249 is to be imposed on Vantec.

L. Penalty for Yamato

825. Starting point: Yamato was involved in both infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

826. Yamato Japan's financial year commences on 1 April and ends on 31 March. Yamato Asia's financial year commences on 1 January and ends on 31 December. Yamato's relevant turnover figure for the financial year 2012 was S$[✂].[1083]

827. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for Yamato the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for Yamato is therefore S$[✂].

828. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for Yamato after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

829. Adjustment for aggravating and mitigating factors: CCS considers that Yamato cooperated to the extent that was required. CCS therefore reduces the penalty by [✂]%.

830. 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$[✂].

831. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Yamato and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

[1083] Information provided by Yamato dated 6 November 2013, 8 November 2013, 12 November 2013 and 24 December 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013.

832. Adjustment to prevent maximum penalty being exceeded: Yamato's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$153,662.

833. Representations by Yamato in respect of penalty: Yamato did not make any representations in respect of penalty.

834. Accordingly, CCS concludes that a financial penalty of S$153,662 is to be imposed on Yamato.

M. Penalty for Yusen

835. Starting point: Yusen was involved in both infringements for the Security Charges and the JFS with the object of preventing, restricting or distorting competition in the market for provision of air freight forwarding services for shipments from Japan to Singapore.

836. Yusen's financial year commences on 1 April and ends on 31 March. Yusen's relevant turnover figure for the financial year 2013 was S$[✂].[1084]

837. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 669 to 690 above and fixed for Yusen the starting point at [✂]% of relevant turnover for the Security Charges agreement and the starting point at [✂]% of relevant turnover for the JFS agreement, for a cumulative starting point at [✂]% of relevant turnover. The starting amount for Yusen is therefore S$[✂].

838. Adjustment for duration: CCS will adopt a duration multiplier of 1.83 for Yusen after rounding down the duration to 22 months. Therefore, the penalty after adjustment for duration is S$[✂].

839. Adjustment for aggravating and mitigating factors: CCS considers that Yusen cooperated with CCS during the course of the investigations, by providing information beyond what was requested and making efforts to arrange for interviews with persons located outside of Singapore. CCS considers that these interviews significantly assisted CCS's investigation. CCS therefore reduces the penalty by [✂]%.

840. 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$[✂].

[1084] Information provided by Yusen dated 6 November 2013, 8 November 2013, 11 November 2013 and 12 November 2013 pursuant to the section 63 Notice issued by CCS dated 23 October 2013.

841. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Yusen and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

842. Adjustment to prevent maximum penalty being exceeded: Yusen's turnover figures for the financial year 2012 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 CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$2,035,995.

843. Representations by Yusen in respect of penalty: Yusen's representations regarding seriousness and turnover on starting point have been addressed in paragraphs 650 to 690 above. Yusen's representations regarding aggravating and mitigating factors have been addressed in paragraphs 697 to 706 above.

844. Accordingly, CCS concludes that a financial penalty of S$2,035,995 is to be imposed on Yusen.

N. Conclusion on Penalties

845. In conclusion, the CCS, pursuant to section 69(2)(d) of the Act, imposes the following financial penalties on the Parties:

Party	**Financial Penalty**
DGF	Nil
Hankyu Hanshin	$662,142
K Line	$828,200
KWE	$771,497
MLG	$77,887
Nippon Express	$2,072,386
NNR	$330,551
Nissin	$64,283
Vantec	$154,249
Yamato	$153,662
Yusen	$2,035,995
Total	**$7,150,852**

Toh Han Li
Chief Executive
Competition Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCS

Company	Key Personnel Interviewed	Dates of interview	Designation during the period 2002 to 2007
DGF			
	[✂]	14 February 2013 and 28 March 2013	[✂]
	[✂]	28 January 2013	[✂]
	[✂]	25 June 2013	[✂]
Hankyu Hanshin			
	[✂]	13, 14 and 15 November 2013	[✂]
	[✂]	30 May 2013 (inspection) and 26 July 2013	[✂]
	[✂]	20 August 2013	[✂]
	[✂]	25 October 2013	[✂]
K Line			
	[✂]	3-4 October 2013	[✂]
	[✂]	20 and 23 September 2013	[✂]
	[✂]	20 August 2013	[✂]
KWE			
	[✂]	27 June 2013	[✂]
	[✂]	23 July 2013	[✂]
	[✂]	24 July 2013	[✂]
MLG			
	[✂]	22 and 23 October 2013	[✂]
	[✂]	27 September 2013	[✂]
Nippon Express			
	[✂]	7 and 8 November 2013	[✂]

	[✂]	22 October 2013	[✂]
Nissin			
	[✂]	26 August 2013	[✂]
	[✂]	26 August 2013	[✂]
	[✂]	26 August 2013	[✂]
NNR			
	[✂]	5 and 6 August 2013	[✂]
	[✂]	5 and 6 August 2013	[✂]
Vantec			
	[✂]	19 June 2013	[✂]
	[✂]	12 and 13 June 2013	[✂]
Yamato			
	[✂]	21 October 2013	[✂]
	[✂]	23 October 2013	[✂]
Yusen			
	[✂]	18 and 19 November 2013	[✂]
	[✂]	7 and 8 October 2013	[✂]
	[✂]	3 October 2013	[✂]