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 market for the sale, distribution and pricing of Aluminium Electrolytic Capacitors in Singapore

5 January 2018

Case number: CCS 700/002/13

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

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GLOSSARY

"AECs" refers to Aluminium Electrolytic Capacitors.

"Customers" includes manufacturer customers such as Original Equipment Manufacturers ("OEMs") and Electronic Manufacturing Services ("EMS") providers, distributors that resell capacitors to other end-user customers and the International Procurement Offices ("IPOs") based in Singapore that are in charge of procuring and supplying capacitors to customers or affiliates located in and outside of Singapore.

"Japan Meetings" refers to meetings in Japan attended by representatives of the Japan Parent/Affiliate Companies, also referred to as Market Study or MK Meetings, Presidents Meetings and CUP Meetings.

"Japan Parent/Affiliate Companies" refers to Panasonic Corporation (**"**Panasonic Japan"), Rubycon Corporation ("Rubycon Japan"), ELNA Co. Ltd. ("ELNA Japan"), Nippon Chemi-Con Corporation ("NCC") and Nichicon Corporation ("Nichicon Japan").

"SG Meetings" refer to meetings in Singapore attended by representatives of the Singapore Subsidiary/Affiliate Companies, also referred to as ASEAN SM Meetings, President's Meetings, Electrolytic Capacitor Group Meetings and ATC Meetings.

"Singapore Subsidiary/Affiliate Companies" refers to Panasonic Industrial Devices Singapore and Panasonic Industrial Devices Malaysia Sdn. Bhd. ("Panasonic"), Rubycon Singapore Pte. Ltd. ("Rubycon"), ELNA Electronics (S) Pte. Ltd. ("ELNA"), Singapore Chemi-con (Pte.) Ltd. ("SCC") and Nichicon (Singapore) Pte. Ltd. ("Nichicon").

SUMMARY

1. The Competition Commission of Singapore ("**CCS**") is issuing an Infringement Decision ("**ID**") against the following undertakings for their participation in anti-competitive agreements and/or concerted practices to fix prices and exchange information in relation to the sale of Aluminium Electrolytic Capacitors ("**AECs**") in Singapore, that infringes section 34 of the Competition Act (Cap. 50B) (the "**Act**"):

   (i) Panasonic Industrial Devices Singapore, and Panasonic Industrial Devices Malaysia Sdn. Bhd. (collectively referred to as "**Panasonic**");

   (ii) Rubycon Singapore Pte. Ltd. ("**Rubycon**");

   (iii) Singapore Chemi-con (Pte.) Ltd. ("**SCC**");

   (iv) Nichicon (Singapore) Pte. Ltd. ("**Nichicon**"); and

   (v) ELNA Electronics (S) Pte. Ltd. ("**ELNA**")

   (each a "**Party**" and collectively, the "**Parties**").

2. Statements by employees of the Parties and documentary evidence revealed that the Parties shared and exchanged with each other confidential and commercially sensitive information pertaining to their product pricing and agreements on various price increases. Further to the above, pricing agreements were reached both in regular, organised meetings as well as through ad hoc meetings, bilateral correspondences, and telephone conversations.

3. CCS's investigations revealed a consistent and regular pattern of communication and information exchange between the Parties, who had regular meetings and/or discussions in Singapore from at least 1997 until 25 March 2013.[1] The Parties had engaged in the following agreements and/or concerted practices:

[1] Panasonic and ELNA ceased their participation in the meetings after 25 February 2009.

(i) Agreements and information exchanges on price increases for AECs between 2006 and 2008;

(ii) Agreements to resist price reduction requests from Customers; and

(iii) Exchange of information on Request for Quotations ("**RFQs**") issued by Customers.

4. CCS finds that the Parties participated in agreements and/or concerted practices with the common overall objective to concertedly fix, raise, maintain and/or prevent the reduction in prices of AECs for sale to customers in [✂] Singapore, so as to maintain each Party's market share, profits and sales, during the period from at least 1997 until 2013. Parties had substituted the risks of price competition in favour of practical cooperation and as such, their pricing strategies were not independently made.

5. CCS considers that the Parties' agreements and/or concerted practices were, by their very nature, injurious to the proper functioning of normal competition. Since each Party contributed, or intended to contribute, to the common overall anti-competitive object to collude on pricing decisions, CCS finds that the Parties participated in a single continuous infringement infringing section 34 of the Act ("**the section 34 prohibition**").

6. CCS is imposing on each of the Parties penalties of between S$853,227 and S$6,993,805 amounting to a total combined penalty of S$19,552,464 for infringing section 34 of the Act. In determining the quantum of the financial penalty, CCS has taken into consideration the seriousness of the infringement as well as the relevant mitigating factors and leniency discounts, where applicable.

CHAPTER 1: THE FACTS

1. Following information received from leniency applicant Panasonic Corporation on 4 October 2013, CCS commenced an investigation on 29 May 2014 into anti-competitive agreements and/or concerted practices in respect of the sales, distribution and prices of AECs in Singapore as to whether section 34 of the Act has been infringed.

A. The Parties[2]

2. CCS's investigation revealed that the following undertakings entered into agreements and/or engaged in concerted practices with the object of preventing, restricting or distorting competition in the market for the sale of AECs to Customers in Singapore:

   (i) Panasonic Industrial Devices Singapore, and Panasonic Industrial Devices Malaysia Sdn. Bhd. (collectively referred to as "**Panasonic**");

   (ii) Rubycon Singapore Pte. Ltd. ("**Rubycon**");

   (iii) Singapore Chemi-con (Pte.) Ltd. ("**SCC**");

   (iv) Nichicon (Singapore) Pte. Ltd. ("**Nichicon**"); and

   (v) ELNA Electronics (S) Pte. Ltd. ("**ELNA**")

   (each a "**Party**" and collectively, the "**Parties**").

3. The paragraphs that follow provide further background information and details on the Parties.

(i) Panasonic

4. Panasonic Industrial Devices Singapore ("**Panasonic Singapore**"), is a registered business of Panasonic Asia Pacific Pte. Ltd., which is a wholly-owned subsidiary of Panasonic Corporation (**"Panasonic Japan"**). Panasonic Japan is a multi-national Japanese electronics corporation that was established in 1918, with its registered office in Osaka, Japan. It was previously known as

[2] In this section, details on the Japan Parent/Affiliate Companies are included for background information.

Matsushita Electric Industrial Co. Ltd. (**"Matsushita Japan"**) until the name change took place in 2008.[3] The main business domains prior to 1 April 2017 include appliances, eco-solutions, audio, visual and communications ("**AVC**") networks, and automotive and industrial systems.[4] Arising from a business re-organisation that took effect on 1 April 2017, the main business domains for Panasonic are appliances, eco-solutions, connected solutions and automotive and industrial systems.[5]

5. Panasonic Singapore manufactures and supplies capacitors and other electronic components such as inductors and resistors. While Panasonic Singapore used to manufacture remote controllers,[6] it has ceased production following its divestment of its remote control business on 1 April 2015.[7] Panasonic Singapore's listed address is 3 Bedok South Road, Singapore 469269. Panasonic Japan owns and operates a manufacturing plant in Malaysia, Panasonic Industrial Devices Malaysia Sdn. Bhd.[8] ("**Panasonic Malaysia**") that supplies capacitors to ASEAN countries, including Singapore.[9] For the purposes of this ID, CCS treats Panasonic Malaysia and Panasonic Singapore as a single economic unit.

6. Panasonic Japan has a wholly-owned subsidiary Sanyo Electric Co., Ltd. ("**Sanyo Japan**") which it acquired on 1 April 2011.[10] Panasonic Singapore's turnover for the financial year ending March 2017 was S$[✂].[11]

(ii) Rubycon

7. Rubycon is a wholly-owned subsidiary of Rubycon Holdings Co., Ltd. ("**Rubycon Holdings**"), which is the parent company of Rubycon Corporation (**"Rubycon Japan"**). Rubycon Japan is a Japanese electronics company that was established in 1952, registered in the Nagano Prefecture of Japan. The main business activities of Rubycon Japan are the manufacture and sale of AECs and switching power supply units. Rubycon Japan is part of a group of

[3] http://news.panasonic.com/global/press/data/en080110-6/en080110-6.html.
[4] http://www.panasonic.com/global/corporate/profile/segments.html.
[5] Refer to Written Representations submitted by Panasonic dated 26 May 2017 at [4.1.1].
[6] Information provided by Panasonic dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 1.
[7] Refer to Written Representations submitted by Panasonic dated 26 May 2017 at [4.1.2].
[8] http://www.panasonic.com/my/corporate/profile/g-malaysia.html.
[9] Refer to Answers to Questions 14 and 16 of Notes of Information/Explanation provided by [✂] (Matsushita Japan) dated 28 October 2015.
[10] Refer to Written Representations submitted by Panasonic dated 26 May 2017 at [3.2.2]; and http://news.panasonic.com/global/press/data/en101221-5/en101221-5-1.pdf
[11] Information provided by Panasonic dated 31 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.

companies owned and controlled by Rubycon Holdings which has an established network of domestic (i.e. Japan) and overseas sales offices and manufacturing bases in Europe, North America, ASEAN (including Singapore) and East Asia.[12]

8. Rubycon's registered address is 2 Jurong East Street 21, #05-36 IMM Building, Singapore 609601. The principal activities involved the sale of capacitors, including AECs and switching power supply units. Rubycon's turnover for the financial year ending September 2016 was S$[✂].[13]

(iii) ELNA

9. ELNA is a wholly-owned subsidiary of ELNA Co., Ltd ("**ELNA Japan**").[14] ELNA Japan is a Japanese electronics company established in 1937, registered in Yokohama, Japan. ELNA Japan manufactures and sells various types of capacitors, including AECs.

10. ELNA [✂] manages the sale and distribution of its capacitors to its distributors and end-user customers worldwide excluding Japan, as well as to other subsidiaries of ELNA Japan.[15] ELNA's registered address is 103 Kallang Avenue, #04-01 AIS Industrial Building, Singapore 339504. ELNA mainly deals directly with customers located in Singapore, Asia (excluding Japan) and Oceania. ELNA's turnover for the financial year ending December 2016 was S$[✂].[16]

(iv) SCC

11. SCC is a wholly-owned direct subsidiary of Nippon Chemi-Con Corporation (**"NCC"**).[17] NCC is a Japanese corporation established in 1931, headquartered in Tokyo, Japan. NCC manufactures and sells capacitors, precision mechanical components and various electronics equipment.[18]

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[12] Information provided by Rubycon dated 14 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014.
[13] Information provided by Rubycon dated 29 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.
[14] Information provided by ELNA dated 7 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 2.
[15] Information provided by ELNA dated 28 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 1.
[16] Information provided by ELNA dated 25 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.
[17] Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014.
[18] http://www.chemi-con.co.jp/e/company/index.html.

12. SCC's registered address is 17 Joo Yee Road, Singapore 619201. SCC markets and supplies various types of capacitors such as AECs, ceramic capacitors, film capacitors and Electric Double Layer Capacitors ("**EDLC**") manufactured by NCC and its other subsidiaries. SCC mainly deals with AECs. SCC's customers are mainly located in Singapore but it also supplies capacitors to customers in the Asia-Pacific region. SCC's turnover for the financial year ending March 2017 was S$[✂].[19]

(v) Nichicon

13. Nichicon reports all of its operations to Nichicon Corporation ("**Nichicon Japan**"), which has a [✂]% shareholding stake in Nichicon. The rest of the shares are held by [✂]. Nichicon Japan is a Japanese electronics company established in 1950, headquartered in Kyoto, Japan. Nichicon Japan researches, manufactures and sells, at a global level, various types of capacitors including AECs, plastic film capacitors, EDLCs as well as circuit products. On 17 October 2012, Nichicon Japan agreed to sell its tantalum capacitor business to AVX Corporation[20] and the sale was completed as of 6 February 2013 when Nichicon Japan no longer manufactured tantalum capacitors.[21]

14. Nichicon is located at 20 Jalan Afifi, #06-08, Certis CISCO Centre, Singapore 409179. Nichicon's principal activity relates to the sales of electrolytic capacitors directly to Singapore end customers and distributors. Nichicon also sells capacitors to customers in Indonesia, Vietnam, India, Malaysia, and the Philippines.[22]

15. [✂]. Nichicon's turnover for the financial year ending March 2017 was S$[✂].[23]

B. Background of the Industry

[19] Information provided by SCC dated 29 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.
[20] http://www.nichicon.co.jp/english/ir/pdf/20130215-2_en.pdf.
[21] Refer to Answer to Question 9 of Notes of Information/Explanation provided by [✂] (Nichicon) dated 27 May 2015.
[22] Information provided by Nichicon dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014.
[23] Information provided by Nichicon dated 30 September 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.

16. The Japan Parent/Affiliate Companies are global manufacturers of AECs that have an established network of both domestic and overseas production worldwide.[24] The Japanese manufacturers namely NCC, Nichicon Japan, Rubycon Japan and Panasonic Japan are the top few AEC suppliers in the world.[25] They collectively had 64% of the global market share in 2013.[26]

(i) Capacitor Suppliers in Singapore

17. The Japan Parent/Affiliate Companies set up sales subsidiaries in Singapore, i.e. the Singapore Subsidiary/Affiliate Companies, that market and sell capacitors manufactured by the Japan Parent/Affiliate Companies and/or its subsidiaries to a designated area.[27] The Singapore Subsidiary/Affiliate Companies collectively form the majority of AEC suppliers in Singapore. Each supplies not only AECs to Singapore, but also to customers in South East Asia (referred to as customers in the ASEAN region).[28] The top three suppliers of AECs in Singapore are Rubycon, Nichicon and SCC, which have an aggregate market share of [✂]% in Singapore.[29]

18. In addition to the Singapore Subsidiary/Affiliate Companies, the remaining [✂]% of AEC suppliers in Singapore consist of at least six other AEC suppliers in Singapore. [✂[30]] [✂[31]]

(ii) About Capacitors

[24] Information provided by Rubycon dated 14 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014; http://www.nichicon.co.jp/english/company/com_network.html; and https://www.chemi-con.co.jp/e/jigyou/global.html.

[25] Refer to Answer to Question 8 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.

[26] http://www.prnewswire.com/news-releases/global-and-china-aluminum-electrolytic-capacitor-market-report-2013-2016-300046469.html.

[27] Information provided by Rubycon dated 14 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014;
Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014;
Information provided by ELNA dated 28 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014; and
Information provided by Nichicon dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014.

[28] Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014.

[29] Refer to Answer to Question 16 of Notes of Information/Explanation provided by [✂] (NCC) dated 18 November 2015.

[30] [✂] only supplies polymer aluminium capacitors.

[31] [✂]

19. Capacitors are passive terminal electric components used to store energy electrostatically in an electric field. There are multiple types of capacitors, but all contain at least two electric conductors separated by a dielectric, which is an insulator. Capacitors are widely used as parts of electrical circuits in many common electrical devices. Most capacitors are commodity products, which are substitutable across suppliers although there are also specialised capacitors used by specific manufacturers and/or in specific products.

20. The main component of the capacitor that gives rise to the different types of capacitor is the dielectric – the material between the two plates.[32] Typically, the different types of capacitors are named after the type of dielectric they contain. Capacitors are generally categorised as follows:

    (i) Electrolytic capacitors: these capacitors can be categorised into various types such as polymer,[33] and AECs[34]. Polymer types can be made from either aluminium or tantalum. Electrolytic capacitors are used by customers, such as the OEMs of computer motherboards, and manufacturers of power supply circuits and various devices, such as digital audio/visual and communication devices. The various types of AECs include 5L, 7L, 11L types (according to the diameter of the AECs) and can vary in sizes, e.g. the AECs configured as snap-in and screw terminal types are large type capacitors, and those with lead wires are small. There are also surface mount (Chip type) AECs.[35]

    (ii) Film capacitors: these capacitors are made using an insulating plastic film and consist of general purpose film capacitors as well as film capacitors for specific uses. Generally, these capacitors are non-customized and are used in a wide variety of products, including appliance, lighting, power supply, audio/visual devices, telecommunication devices, game machines and automotive products; and

    (iii) Ceramic capacitors: these capacitors are made with ceramic material. In general, ceramic capacitors can be used in lighting products and power supplies for television.

[32] Its dielectric constant will alter the level of capacitance that can be achieved within a certain volume.
[33] Polymer capacitors can be further subdivided into conductive polymer aluminium electrolytic capacitors, conductive polymer aluminium solid capacitors, and conductive polymer tantalum solid capacitors.
[34] AECs (no polymer) can be further subcategorized, including surface mount, lead wire terminal, photoflash, snap-in and screw terminal type among others.
[35] Information provided by Rubycon dated 14 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 3.3 and 3.6.

(iii) Categories of Customers

21. The Parties categorise their customers differently. However, they are generally classified into two main groups of customers: Direct Customers and Distributor Customers.[36]

22. Direct Customers include Manufacturer Customers such as OEMs that use these capacitors in their finished products and EMS that use capacitors to test, manufacture, distribute, and provide return/repair services for electronic components and assemblies for OEMs.[37]

23. Distributor Customers include customers that resell capacitors to other end-user customers[38] and the IPOs based in Singapore that are in charge of procuring and selling capacitors to customers or affiliates located in and outside of Singapore.[39]

24. The two groups of customers generally come from a variety of industries such as automotive, computer, industrial equipment, communications, household electrical goods and power supply units.[40]

25. For the purposes of this ID, Direct Customers and Distributor Customers are collectively referred to as **Customers**.

(iv) Process by which Capacitors are Sold

26. The Parties normally negotiate individually and directly with the Customers to determine the final selling price once a quotation is requested.[41] Price negotiations with Customers are generally conducted quarterly, bi-annually or

[36] Refer to Answer to Question 18 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015; and paragraph 6 of the Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014.
[37] Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 5.
[38] Refer to Answer to Question 19 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015.
[39] Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 6.
[40] Refer to Answer to Question 10 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015.
[41] Refer to Answers to Questions 18 and 20 of Notes of Information/Explanation provided by [✂] (Nichicon) dated 27 May 2015; Answer to Question 25 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015; Answer to Question 15 of Notes of Information/Explanation provided by [✂] (NCC) dated 18 November 2015; Answer to Question 13 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015; and Answer to Question 37 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 18 May 2015.

annually.[42] This process may differ for different types of Customers, for example, negotiations with EMS Customers are usually done quarterly, item by item, based on the list of items to be purchased.[43]

C. Investigation and Proceedings

27. On 4 October 2013, CCS received a leniency application from M/s Rodyk & Davidson LLP, now Dentons Rodyk & Davidson LLP, on behalf of Panasonic Japan (including its subsidiaries and Sanyo Japan) relating to the exchange of information, collaboration, collusion and bid-rigging for the sale of electrolytic [✂] capacitors. Panasonic Japan was granted the first marker in the leniency queue on 17 October 2013 and, having perfected its marker, was granted conditional immunity on 19 June 2014.

28. On 29 May 2014, CCS commenced an investigation, pursuant to section 62 of the Act, after being satisfied that there were reasonable grounds to suspect that the section 34 prohibition had been infringed.

29. On 8 August 2014, CCS received a leniency application from M/s Allen & Gledhill LLP on behalf of Rubycon Japan and its related bodies. Rubycon Japan was placed in the leniency queue on 25 August 2014.

30. Exercising formal powers of investigation, CCS issued the Parties with notices under section 63 of the Act on 13 October 2014, which required them to provide information and documentation in relation to the investigation. Two more leniency applications were subsequently filed with CCS. SCC, represented by M/s WongPartnership LLP, applied for leniency on 20 November 2014, while ELNA and ELNA Japan, represented by M/s Lee & Lee, applied for leniency on 21 January 2015. Both SCC and ELNA/ELNA Japan were placed in the leniency queue on 25 November 2014 and 23 January 2015 respectively.

31. CCS conducted interviews with the relevant personnel of the Parties from May 2015 to November 2015, exercising powers of investigation under section 63 of the Act. Further interviews were conducted in July 2016. A summary of the

[42] Refer to Answer to Question 26 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015; Information provided by SCC dated 24 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 10; and Answer to Question 9 of Notes of Information/Explanation provided by [✂] (NCC) dated 18 November 2015.

[43] Refer to Answer to Question 14 of Notes of Information/Explanation provided by [✂] (NCC) dated 18 November 2015.

interviews conducted with the relevant personnel of the Parties is provided in **Annex A**.

32. Most of the original documents containing contemporaneous records that CCS relies on in this ID are in the Japanese language. During the course of the investigation, the Parties provided CCS with translations of those documents into the English language.[44] CCS relies on the English language translations for the purposes of this ID. Where CCS quotes from those documents, the quotations are from the English language translations.

33. CCS issued further notices pursuant to section 63 of the Act to the Parties on 22 November 2016, requesting documents and information relating to each Party's turnover. CCS further requested documents and information relating to each Party's updated turnover via email on 24 August 2017.

34. On 6 April 2017, CCS sent a notice of its proposed infringement decision ("**PID**"). The documents in CCS's investigation files were made available to the Parties. Written representations on the PID were received from all Parties between 26 May 2017 and 2 June 2017. Panasonic and ELNA also made oral representations, heard by CCS on 12 July 2017 and 17 July 2017 respectively.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

35. This section sets out the legal and economic framework in which CCS considers the evidence. This section also sets out, in relation to each undertaking, the extent of their involvement, evidence in relation to their alleged infringements and CCS's assessment of the evidence on which it relies.

A. <u>The Section 34 Prohibition and its Application to Undertakings</u>

36. Section 34 of the Act prohibits any 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. In *Pang's Motor Trading v CCS*,[45] the Competition Appeal Board ("**CAB**") accepted that decisions from the United Kingdom ("**UK**") and European Union ("**EU**") are highly persuasive in interpreting the section 34 prohibition due to the similarities between the relevant sections of their respective competition statutes. Specifically, the CAB stated that:

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

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

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

37. Section 2 of the Act defines "undertaking" to mean, "*any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services*." The concept of an "undertaking" in section 2 of the Act covers any entity capable of carrying on commercial or economic activities, regardless of its legal status or the way in which it is financed. Each of the Parties therefore constitute an "undertaking" for the purposes of the Act as each of the Parties carries on commercial or economic activities relating to, amongst other things, the sale of AECs.

38. Undertakings may also be considered as part of a single economic unit where the entities have 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.[46]

B. Agreements and/or Concerted Practices

39. Paragraph 2.10 of the *CCS Guidelines on the Section 34 Prohibition 2016* ("**Section 34 Guidelines**") states that:

> 2.10 "*Agreement has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written or oral; it includes so-called gentlemen's agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means. All that is required is that parties arrive at a consensus on the actions each party will, or will not, take.*"

40. The section 34 prohibition also applies to concerted practices. The Section 34 Guidelines state that the key difference between a concerted practice and an

[46] See paragraphs 2.7 and 2.8 of the Section 34 Guidelines; See also *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2 at [67].

agreement is that a concerted practice may exist where there is informal co-operation, without any formal agreement or decision. A concerted practice would be found to exist if parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with cooperation between them.[47]

41. In the case of *Suiker Unie and others v Commission*,[48] which was referred to by CCS in the *Express Bus Operators Case*[49] as well as the *Ball Bearings Case*,[50] the parties contacted each other with the aim of removing, in advance, any uncertainties as to the future conduct of their competitors. The European Court of Justice ("**ECJ**") found that it was not necessary to prove there was an actual plan and held that:

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

42. In the case of *Huls AG v. Commission*,[51] the ECJ said that the concept of a concerted practice implies, besides the parties' concertation, a subsequent conduct on the market and a relationship of cause and effect between the parties. The ECJ held that:

> 162 "*However, 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.* ***That is all the more true where the undertakings concert together on a regular basis***

[47] Paragraph 2.18 of the Section 34 Guidelines.
[48] Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1975] ECR 1663, [1976] 1 CMLR 295.
[49] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2 at [51] to [54].
[50] *Re CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5 at [33].
[51] Case C-199/92 P [1999] ECR I-4287.

> ***over a long period**, as was the case here, according to the findings of the Court of First Instance.*"
> ***[Emphasis added]***

43. As CCS stated in the *Pest Control Case*,[52] and which was subsequently cited in the *Express Bus Operators Case*[53] as well as the *Ball Bearings Case*:[54]

> *"...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 part."*

44. It is also established law that it is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice. In the case of *SA Hercules Chemicals v Commission*,[55] which was referred to by CCS in the *Express Bus Operators Case*,[56] the Court of First Instance ("**CFI**") (now the European General Court ("**GC**")) found that Hercules had taken 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 European Commission ("**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*".

45. Similarly, in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*[57] *("**JJB**")*, the Competition Appeal Tribunal ("**CAT**") in the UK stated that:

> 644 "*It is trite law that it is not necessary for the OFT to characterise an infringement as either an agreement or a concerted practice: it is sufficient that the conduct in question amounts to one or the other…*"

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[52] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1 at [42].
[53] [2009] SGCCS 2 at [50].
[54] [2014] SGCCS 5 at [35].
[55] Case T-7/89 [1991] ECR II-1711 at [262] to [265]; See also Case C-238/05 *Asnef-Equifax v Commission* [2006] ECR I-11125 at [32].
[56] See generally [2009] SGCCS 2 at [55] to [58].
[57] [2004] CAT 17 at [644], referring to Cases T-305/94 etc. *NV Limburgse Vinyl Maatschappij v Commission* [1999] ECR II-931 at [696] to [698] and Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 at [131] to [133]; confirmed by the UK Court of Appeal in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2006] EWCA Civ 1318 at [21].

C. Liability of an Undertaking - Participation in an Agreement or a Concerted Practice

46. Paragraph 2.11 of the Section 34 Guidelines states:

> 2.11 "*The fact that a party may have played only a limited part in the setting up of the agreement, or may not be fully committed to its implementation, or participated only under pressure from other parties does not mean that it is not party to the agreement (although these factors may be taken into account in deciding on the level of any financial penalty).*"

47. In *Westfalen Gassen Nederland BV v Commission of the European Communities*[58] ("***Westfalen***"), the Court reiterated that where an undertaking participates in a meeting at which anti-competitive agreements are concluded and did not manifestly opposed those agreements, then that undertaking bears the burden of proof to show that its participation in the meeting was without any anti-competitive intention:

> 76 *"…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 the 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 to theirs"*

48. Again, in *Archer Daniels Midland Co v Commission,*[59] the ECJ stated that:

> 119 *"In accordance with settled case-law, to prove to the requisite standard that an undertaking participated in a cartel, it is sufficient for the Commission to establish that the undertaking concerned participated in meetings during which agreements of an anti-competitive nature were concluded, without manifestly opposing them. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to*

[58] Case T-303/02 [2006] ECR II-4567, [2007] 4 CMLR 334.
[59] Case C-510/06 P *Archer Daniels Midland Co. v Commission* [2009] ECR I-1843.

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 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 and Others v Commission [2004] ECR I-123, paragraph 81).

120 *Consequently, it is indeed the understanding which the other participants in a cartel have of the intention of the undertaking concerned which is of critical importance when assessing whether that undertaking sought to distance itself from the unlawful agreement. Accordingly, the Court of First Instance was fully entitled, in paragraph 247 of the judgment under appeal, to rule that the mere fact that the appellant had left the meeting of 4 October 1994 could not, in itself, be regarded as a public distancing from the cartel at issue and that it was for ADM to provide evidence that the members of the cartel considered that ADM was ending its participation.*"

49. Passive participation can also infringe the section 34 prohibition if the undertaking attends meetings without expressing disapproval or distancing itself from the cartel. In *Westfalen*, a competitor had attended a meeting at which other competitors were present and agreed on a plan to increase prices by 5 to 6% and where it stated that "*it did not commit to implementing a fixed increase in prices either at the meetings of 14 October or of 18 November 1994 or at any other time.*" The Court found that this is "*not equivalent to an express statement of opposition to the increase in prices*"[60] and stated that:

83 *"It is apparent at least that the applicant did not express a clear view on the question of a price increase. Therefore, while it did not state expressly that it would increase its prices in 1995, it also did not say that there would be no price increase that year.*

84 *The applicant therefore did not express a view which would have left the other undertakings in no doubt that it was distancing itself from the idea of such an increase. Its conduct, which it describes as vague, is akin to tacit approval which effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of*

[60] Case T-303/02 [2006] ECR II-4567, [2007] 4 CMLR 334, at [82].

> *participation in the infringement which is therefore capable of rendering the undertaking liable...*"

50. The Court also found that:

> 124 "*Silence by an operator in a meeting during which the parties colluded unlawfully on a precise question of pricing policy is not tantamount to an expression of firm and unambiguous disapproval. On the other hand, according to case-law, 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...*"

51. The fact that an undertaking did not act on the agreement and/or concerted practice or that there is evidence of prices or other behaviour not reflecting those discussed at the meeting, is not sufficient to prove that it was not party to the agreement and/or concerted practice.[61]

52. The fact that an undertaking did not take part in all aspects of the cartel scheme or played only a minor role in the aspects in which it participated is not material to the establishment of an infringement, although this might have an influence on the assessment of the extent of the liability and the severity of the penalty.[62]

(i) <u>Presumption of Continuation of Agreement and/or Concerted Practice</u>

53. There is a presumption that an agreement and/or concerted practice continues to be in operation until the contrary is shown. This has been affirmed by the CAB in its decision on the appeal from the *Express Bus Operators Case*:[63]

> 110. "*... as a matter of evidential burden, as it has been established that the MSP Agreement existed as at 1 June 2005,* ***there is a presumption that such agreement continued to be in***

[61] Case T-3/89, *Atochem SA v Commission* [1991] ECR II-1177 at [100].
[62] Case T-99/04, *AC-Treuhand AG v Commission* [2008] ECR II-1501, at [129] to [132]. Also see the *CCS Guidelines on the Appropriate Amount of Penalty 2016* for the basis on which the CCS will calculate financial penalties for infringements of the section 34 prohibition.
[63] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Konsortium Express and Tours Pte Ltd, Five Stars Tours Pte Ltd, GR Travel Pte Ltd and Gunung Travel Pte Ltd* [2011] SGCAB 1 at [110].

existence, unless there are circumstances indicating to the contrary."
[Emphasis added]

54. A concerted practice may be found to have continued even in the absence of active steps to implement it beyond a certain date. According to the CAT in *JJB* at [928], citing the opinion of the Advocate General in Case 100/80 *SA Musique Diffusion Francaise and Others v Commission of the European Communities* [1983] ECR 1825:

> *"... A concerted practice is capable of continuing in existence, even in the absence of active steps to implement it. Indeed, if the practice is sufficiently effective and widely known, it may require no action to secure its implementation. Cases may arise in which the absence of any evidence of measures taken to implement a concerted practice may suggest that the practice has come to an end. That, however, is a matter of evidence, which must depend upon the circumstances of the case"*

(ii) <u>Elements of Public Distancing</u>

55. The Court in *Westfalen* ruled on what constitutes termination of participation in a cartel. It is necessary for the undertaking to show that it adopted fair and independent competitive conduct in the relevant market:[64]

> 139 "*...the applicant failed to show to the requisite legal standard that it terminated its participating in the cartel before December 1995,* ***by adopting fair and independent competitive conduct in the relevant market. Furthermore, the applicant did not withdraw from the cartel in order to report it to the Commission*** *(Case T-62/02 Union Pigments v Commission [2005] ECR II-0000, paragraph 42).*"
> ***[Emphasis added]***

56. In this connection, the cases have established that to properly publicly distance itself from the cartel and terminate its involvement:

[64] Case T-303/02 *Westfalen Gassen Nederland BV v Commission of the European Communities Case* [2006] ECR II-4567, [2007] 4 CMLR 334.

a. An undertaking must denounce the objectives of the cartel clearly and unequivocally to the other cartel members;[65]
b. The undertaking must not attend any further meetings; [66] and
c. The undertaking must be able to prove that its subsequent conduct on the market was determined independently.[67]

D. Single Continuous Infringement

57. An infringement of the section 34 prohibition may result not only from a single act but also from a series of acts or 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.

58. In *Team Relocations v Commission*,[68] the GC summarised the case law on the conditions that must be met in order to establish a single and continuous infringement:

> 37 *"...three conditions must be met in order to establish participation in a single and continuous infringement, namely the existence of an overall plan pursuing a common objective, the intentional contribution of the undertaking to that plan, and its awareness (proved or presumed) of the offending conduct of the other participants."*

59. The ECJ clarified in *Fresh Del Monte Produce v Commission* that: [69]

> 157 *"An undertaking which has participated in such a single and complex infringement... may also be responsible for the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the*

[65] Case T-61/99 *Adriatica di Navigazione v Commission* [2003] ECR II-5349 at [137] to [138]; T-303/02 *Westfalen Gassen Nederland BV v Commission* [2006] ECR II-4567, [2007] 4 CMLR 334, at [103].
[66] T-303/02 *Westfalen Gassen Nederland BV v Commission* [2006] ECR II-4567, [2007] 4 CMLR 334, at [100] to [102].
[67] Case T-62/02 *Union Pigments v Commission* [2005] ECR II-5057 at [42]; T-303/02 *Westfalen Gassen Nederland BV v Commission* [2006] ECR II-4567, [2007] 4 CMLR 334, at [139].
[68] Joined Cases T-204/08 and T-212/08 [2011] ECR II-3569 at [37]; paragraph cited with approval by the ECJ in the appeal against the GC's judgment: see Case C-444/11 P at [51] to [53].
[69] Joined Cases C-293/13 P and C-294/13 P at [157]; in this case, it was held that the fact that Weichert was unaware of the exchange of information between Dole and Chiquita and did not have to know about it was not such as to negate a finding of a single and continuous infringement even though liability could not be attributed to that company in respect of all of that infringement (see [160]); see also, Case C-441/11 P *Commission v Verhuizingen Coppens* at [42] to [43].

undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk…".

60. The cases have established that for a series of acts or continuous conduct to constitute a single continuous infringement, it must be shown that:

    a. the agreements or concerted practices that made up the single continuous infringement were all in pursuit of the same common objective(s);
    b. each party to the single continuous infringement intended to contribute by its own conduct to the common objectives of the single overall infringement; and
    c. each party was aware of or could reasonably have foreseen actual conduct planned or put into effect by other parties in pursuit of the common objectives.

(i) <u>A Common Objective</u>

61. Where a group of undertakings pursues a common objective or objectives, it is not necessary to divide the agreements or concerted practices by treating them as consisting of a number of separate infringements, where there is sufficient consensus to adhere to a plan limiting the commercial freedom of the parties.[70]

62. CCS applied this principle in the *Price Fixing in Modelling Services Case*[71] (and more recently in the *Ball Bearings Case*[72]) where there was a common objective among the parties to collectively raise modelling rates through various meetings, correspondences and contacts between the parties over a number of years. In this regard, CCS stated that:

    207 "*CCS considers that it would not be reflective to split up such continuous conduct, characterised by a single purpose, and treating it as several separate infringements for different types of anti-competitive agreements, when what was involved was, in reality, a single infringement which manifested itself in a series*

[70] Case T-1/89 *Rhone-Poulenc v Commission* [1991] ECR II-867 at [126].
[71] See *Re Price fixing of rates of modelling services in Singapore by Modelling Agencies* [2011] SGCCS 11 at [207].
[72] See [2014] SGCCS 5 at [53] to [54] and [347] to [348].

> *of anti-competitive activities throughout the period of operation of the cartel. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments.*"

63. In the *Polypropylene* case,[73] the EC found that the producers of polypropylene were party to a whole complex web of schemes, arrangements and measures decided in the framework of regular meetings and continuous contact which constituted a single continuous agreement. The producers, by subscribing to a common plan to regulate prices and supply in the polypropylene market, had participated in an overall framework agreement which manifested in a series of more detailed sub-agreements worked out from time to time. The EC stated that:

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

(ii) <u>Participation in or Contribution by own conduct to a Single Continuous Infringement</u>

64. To demonstrate that each undertaking intended to contribute through its own conduct to the common objectives of the single overall infringement and that it was aware or could reasonably have foreseen the actual conduct planned or put into effect by other undertakings in pursuit of the common objectives, it is not necessary to show that all the parties have given their express or implied consent to each and every aspect of the single overall infringement.[74] The parties may show varying degrees of commitment to the common objectives.

65. The concept of a single continuous infringement was elaborated on in the *Choline Chloride* case by the EC[75] and CFI.[76] The EC's decision on this issue

[73] Case IV/31.149 *Polypropylene* [1986] OJ L230/1, [1988] 4 CMLR 347.
[74] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 at [80].
[75] Case COMP / E-2 / 37.533 – *Choline Chloride.*
[76] Joined Cases T-10l/05 and T-111/05 *BASF AG and UCB SA v Commission of the European Communities* [2007] ECR II-4949 at [158] to [161].

was upheld – that the unequal and differing roles of each undertaking and the presence of internal conflict would not defeat the finding of a common unlawful enterprise. The EC reiterated the principle set out in *Polypropylene* and went on further to state: [77]

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

66. Further guidance on the concept of a single and continuous infringement was provided by the CFI. 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.[78] The CFI also affirmed, in *S. A. Hercules Chemicals N.V. v Commission of the European Communities*,[79] that where it would be artificial to split up continuous conduct, characterised by a

[77] See also Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125.
[78] See Joined Cases T-10l/05 and T-111/05 *BASF AG and UCB SA v Commission of the European Communities* [2007] ECR II-4949 at [179] to [181].
[79] Case T-7/89 [1991] ECR II-1711 at [263].

single purpose, by treating it as a number of separate infringements, a single continuous infringement can be found.

67. In addition, the fact that an undertaking had reservations about whether to participate, or intended to cheat by deviating from the agreed conduct, did not mean that it was not party to an agreement.[80]

(iii) Knowledge or reasonable foreseeability

68. An undertaking may have participated directly in only some of the forms of anti-competitive conduct comprising the single and continuous infringement. But if it had been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objective, or could reasonably have foreseen that conduct and had been prepared to take the risk, then liability is attributable to that undertaking in relation to all the forms of anti-competitive conduct in relation to the infringement as a whole.[81]

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

69. Section 34(1) of the Act prohibits, "*agreements between undertakings … or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore*". In accordance with its plain reading, "object" and "effect" are alternative and not cumulative requirements. This has been affirmed by the CAB in *Pang's Motor Trading v CCS*:[82]

> 30 "*… The Board considers that the phrase "object or effect" in s 34(1) is disjunctive in nature…*"

70. This is explained at paragraph 2.22 of the Section 34 Guidelines which state that "*the words "object or effect" are alternative, and not cumulative, requirements. Once it has been established that an agreement has as its object the appreciable restriction of competition, CCS need not go further to demonstrate anti-competitive effects. On the other hand, if an agreement is not restrictive of competition by object, CCS will examine whether it has appreciable adverse effects on competition.*"

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[80] Richard Whish, *Competition Law*, 7th Ed., Oxford University Press, at 103; Case IV/31.149 *Polypropylene* [1986] OJ L230/1, [1988] 4 CMLR 347 at [85].
[81] See Joined Cases C-293/13 P and C-294/13 P *Fresh Del Monte Produce v Commission* at [157] to [159]; Case COMP/F/38.354 *Industrial Bags*, Doc. C (2005) 4634 final OJ 2007 L282/41 at [441]; Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 at [83] and [203].
[82] [2014] SGCAB 1 at [30].

71. The Section 34 Guidelines further elaborates at paragraph 2.23 that *"the assessment of whether or not an agreement has as its object the restriction of competition is based on a number of factors. The factors include, in particular, the content of the agreement and the objective aims pursued by it. CCS will also consider the context in which the agreement is (to be) applied and the actual conduct and behaviour of the parties on the relevant market(s). In other words, an examination of the facts underlying the agreement and the specific circumstances in which it operates may be required before it can be concluded whether a particular restriction constitutes a restriction of competition by object. The way in which an agreement is actually implemented may reveal a restriction by object even where the formal agreement does not contain an express provision to that effect.*"

72. In the recent ECJ case C-67/13 *Groupement des cartes bancaires v Commission* [83] ("***Cartes Bancaires***"), the concept of an "object" infringement was examined in detail. The case concerned a fee structure established by the nine main members of a payment card system. The ECJ annulled the GC's finding that the fee structure restricted competition by object (i.e. preventing the entry of new banks into the sector) on the basis that it had erred in law on the meaning of "object":

> 52 *Where the analysis of a type of coordination between undertakings does not reveal a sufficient degree of harm to competition, the effects of the coordination should, on the other hand, be considered and, for it to be caught by the prohibition, it is necessary to find that factors are present which show that competition has in fact been prevented, restricted or distorted to an appreciable extent…*
>
> 58 *…[the] concept of restriction by competition by object can be applied only to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects…"*

73. According to the ECJ in *Cartes Bancaires*, the "essential legal criterion" for ascertaining whether coordination between undertakings restricts competition by object is the finding that:

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

> *"such coordination reveals in itself a sufficient degree of harm to competition."* [84]

74. The ECJ stated that "certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects",[85] and to allocate a particular situation into the "object box", there thus needs to be a "sufficient degree of harm". In order to decide, in turn, whether there is a "sufficient degree of harm":

> "*…regard must be had to the content of [the agreement's] provisions, its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.*"[86]

75. The ECJ in *Cartes Bancaires* also held that it is not sufficient that the agreement or the decision "has the potential to" or is "simply capable of" restricting, preventing, or distorting competition; it held that the GC made an error of law by using these (wider) criteria.[87] In order to assess whether the coordination is "harmful to the proper functioning of normal competition":

> "*it is necessary…to take into consideration all relevant aspects - having regard, in particular, to the nature of the services at issue, as well as the real conditions of the functioning and structure of the markets - of the economic or legal context in which that coordination takes place, it being immaterial whether or not such an aspect relates to the relevant market.*"[88]

76. In the case of *Dole Food and Dole Fresh Fruit Europe v Commission*[89] ("***Dole Bananas***"), the ECJ applied *Cartes Bancaires*. It stated, *inter alia*, as follows:

> 117 "*According to the case-law of the Court,* ***in order to determine whether a type of coordination between undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of***

[84] *Cartes Bancaires* at [57].
[85] *Cartes Bancaires* at [58].
[86] *Cartes Bancaires* at [53].
[87] *Cartes Bancaires* at [55] to [56].
[88] *Cartes Bancaires* at [53] and [78].
[89] Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*.

> ***competition 'by object'*** *within the meaning of Article 81(1) EC, regard must be had, inter alia, to its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question (see, to that effect, judgment in [Cartes Bancaires], C-67/13 P, EU:C:2014:2204, paragraph 53 and the case law cited).*
>
> *...*
>
> 122 *In particular, an exchange of information which is* ***capable of removing uncertainty between participants as regards the timing, extent and details of the modifications*** *to be adopted by the undertakings concerned in their conduct on the market* ***must be regarded as pursuing an anticompetitive object*** *(see, to that effect, judgment in T-Mobile Netherlands and Others, C-8/08, EU:C:2009:343, paragraph 41).*"
>
> ***[Emphasis added]***

77. In addition, whilst it is not necessary to prove that the parties have the subjective intention of restricting competition when entering into the agreement or practice, the ECJ found that the Commission is not precluded from finding that the parties' subjective intention is a relevant factor in assessing whether the object of an agreement is anti-competitive.[90] Finally, an agreement or concerted practice may have an anticompetitive object even though there is no direct connection between that practice and consumer prices.[91]

78. The aforementioned principles are consistent with CCS's position in previous cases such as the *Pest Control Case*,[92] which was subsequently applied in its other decisions such as the *Ball Bearings Case*[93] in relation to the section 34 prohibition, that the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into an agreement, but rather on:

> "*...[T]he objective meaning and purpose of the agreement considered in the economic context in which it is to be applied.*

[90] See *Cartes Bancaires* at [54]; Case C-32/11 *Allianz Hungaria* at [37]; see also *Dole Bananas* at [118].
[91] *Dole Bananas* at [123] and [125].
[92] [2008] SGCCS 1 at [49].
[93] [2014] SGCCS 5 at [68].

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."

79. Therefore, once a restriction of competition by object has been established in relation to an agreement and/or concerted practice, CCS need not proceed further to make a specific appreciability analysis and/or demonstrate anti-competitive effects. This is because certain types of coordination between undertakings, where it falls into the "object" category, are regarded by their very nature as being harmful to the proper functioning of normal competition.

(i) Price-Fixing Arrangements

80. CCS regards direct or indirect price-fixing to be restrictive of competition to an appreciable extent.[94] There are many ways in which prices can be fixed. It may involve fixing either the price itself or the components of a price such as a discount, establishing the amount or percentage by which prices are to be increased, or establishing a range outside of which prices are not to move.[95] Price-fixing may also take the form of an agreement to restrict price competition. This may include, for example, an agreement to adhere to published price lists or not to quote a price without consulting potential competitors, or not to charge less than any other price in the market.[96]

81. The ECJ has held that an agreement may have the object of fixing prices while only indirectly affecting the price to be charged. It may cover the discounts or allowances to be granted,[97] transport charges, payments for additional services,[98] credit terms or the terms of guarantees.[99] The agreement may relate

[94] Paragraphs 3.2 and 3.7 of the Section 34 Guidelines.
[95] See generally paragraphs 3.3 and 3.6 of the Section 34 Guidelines.
[96] Paragraph 3.4 of the Section 34 Guidelines.
[97] *Vimpoltu* OJ 1983 L200/44 [1983] 3 CMLR 619 (agreement by Dutch importers to observe maximum discounts and standard delivery and payment terms for imported products); in *FETTCSA* OJ [2000] L268/1 at [132] to [139]: an agreement not to discount off published prices was held to infringe Article 101(1) even though the parties had not expressly agreed on the level of their published prices.
[98] For example, cases which add additional elements to a price: Case COMP/39258 *Airfreight* dcn of 9 November 2010 (fuel surcharges and security surcharge) and Case T-384/06 *IBP v Commission (copper fittings)* [2011] ECR II-1177, [2011] 4 CMLR 1648 (agreement that increase in packaging costs would be passed on to consumers rather than absorbed).
[99] Including interest rates, exchange rates and other credit payment terms as seen in Case COMP/36.571/D-1 *Austrian Banks – (Lombard Club)* OJ 2004 L56/1 (agreement covered all banking products and services including interest rates for loans and savings for commercial customers, fees for certain services, money transfer and export financing – fines were reduced on appeal Cases C-125/07 P); the giving of extended credit may be a form of price reduction if interest is not charged at a commercial rate (cf Joined Cases C-215/96 and C-216/96 *Carlo Bagnasco* [1999] ECR I-135, where standard banking terms requiring banks to lend only

to the charges or allowances quoted themselves, to the ranges within which they fall, or to the formulae by which ancillary terms are to be calculated.

82. The authors of *Bellamy & Child* [100] describe price-fixing in general terms:

> "*There are many ways in which prices can be fixed in addition to setting the price itself. This may include factors which relate directly to the price itself such as determining components of the price, setting a minimum price or establishing a percentage for increase or a range within which the price may be set as well as factors which may add to or subtract elements from the price. It may also relate to indirect measures designed to limit price competition such as an agreement to offer the same discounts.*"

83. The authors then cite *Tate & Lyle plc v Commission*,[101] in which the Commission did not find that the prices for sugar had actually been fixed, but held, in finding an object infringement, that the parties could rely on the other participants to pursue a collaborative strategy of higher pricing in "a climate of mutual certainty". They concluded that:

> "*…Article 101(1) will catch any agreement or concerted practice which directly or indirectly seeks to eliminate, distort or limit price competition.*"

84. In *Dole Bananas*,[102] pre-pricing communications in which competitors discussed price-setting factors relevant to the setting of future quotation prices amounted to object restrictions; the producers had held weekly bilateral phone calls to discuss or disclose their pricing intentions. Communications included volumes and market information, price trends, and likely future quotation prices.

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at variable rates alterable without notice held to fall outside Article 101); see also COMP/39406 *Marine Hoses*, decn of 28 January 2009.

[100] Peter Roth QC, Vivien Rose, *Bellamy & Child: European Community Law of Competition*, 7th Ed., Oxford University Press at 5.039.

[101] Joined cases T-202/98, T-204/98 and T-207/98 [2001] ECR II-2035 at [60].

[102] See generally *Dole Bananas* at [128] to [134].

85. It must also be noted that it is no defence that a participant in a cartel sometimes does not respect the agreed price increases.[103] Further, an agreement not to offer a discount is, in effect, a price restriction.[104]

(ii) <u>Disclosure and/or Exchange of Price Information</u>

86. The Section 34 Guidelines state that the exchange of information on prices may lead to price co-ordination and therefore diminish competition, which would otherwise be present between the undertakings. This will be the case whether the information exchanged relates directly to the prices charged or to the elements of a pricing policy, for example, discounts, costs, terms of trade and rates and dates of change. Price announcements made in advance to competitors may be anti-competitive where it facilitates collusion.[105]

87. In general, any information exchange which has as its object the prevention, restriction or distortion of competition on the market concerned will be considered as a restriction of competition by object. For example, the exchange of information on an undertaking's individualised data regarding intended future prices will be considered a restriction of competition by object. In addition, private exchanges between competitors of their individualised intentions regarding future prices will normally be considered a restriction of competition by object as they generally have the purpose of fixing prices.[106]

88. As to what constitutes information exchange and when it will be held to be an object infringement, the key requirements are set out in *Dole Bananas*:

> 119 "*In so far as concerns, in particular, the exchange of information between competitors, it should be recalled that the criteria of coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which* ***each economic operator must determine independently the policy which he intends to adopt on the common market*** *(judgment in T-Mobile Netherlands and Others, C 8/08, EU:C:2009:343, paragraph 32 and the case-law cited).*

[103] Case T-308/94 *Cascades v Commission* [1998] ECR II-925 at [230] and Case T-377/06 *Comap SA v Commission* [2011] ECR II-1115 at [99].
[104] *Vimpoltu* OJ 1983 L200/44 [1983] 3 CMLR 619; *FETTCSA* OJ [2000] L268/1 at [132] to [139]: an agreement not to discount published prices was held to infringe Article 101 even though the parties had not expressly agreed on the level of their published prices.
[105] Paragraph 3.22 of the Section 34 Guidelines.
[106] Paragraph 3.22 of the Section 34 Guidelines.

> 120 *While it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, none the less,* ***strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market*** *(judgment in T-Mobile Netherlands and Others, C 8/08, EU:C:2009:343, paragraph 33 and the case law cited).*
>
> 121 *The Court has therefore held that the exchange of information between competitors is liable to be incompatible with the competition rules* ***if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted*** *(judgments in Thyssen Stahl v Commission, C 194/99 P, EU:C:2003:527, paragraph 86, and T-Mobile Netherlands and Others, C 8/08, EU:C:2009:343, paragraph 35 and the case law cited).*
>
> 122 *In particular, an* ***exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anticompetitive object*** *(see, to that effect, judgment in T-Mobile Netherlands and Others, C 8/08, EU:C:2009:343, paragraph 41).*
> ***[Emphasis added]***

89. In the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the EU to Horizontal Co-operation Agreements[107] (the

[107] [2011] OJC 11/1.

"**Horizontal Guidelines**"), the Commission has further articulated the legal principles regarding information exchange:

> 60 ... *the concept of a concerted practice refers to a form of coordination between undertakings by which, without it having reached the stage where an agreement properly so-called has been concluded, practical cooperation between them is knowingly substituted for the risks of competition....*
>
> 61. ... *It does, however, preclude any direct or indirect contact between competitors, the object or effect of which is to create conditions of competition which do not correspond to the normal competitive conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings, and the volume of the said market. This precludes any direct or indirect contact between competitors, the object or effect of which is to influence conduct on the market of an actual or potential competitor, or to disclose to such competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, thereby facilitating a collusive outcome on the market.* ***Hence, information exchange can constitute a concerted practice if it reduces strategic uncertainty in the market thereby facilitating collusion, that is to say, if the data exchanged is strategic****..."* ***[Emphasis added]***

90. The unilateral disclosure and/or exchange of future pricing intentions can also amount to an infringement of the section 34 prohibition. In *JJB*, the 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."[108]

91. The threat to effective competition is especially obvious where an arrangement involves the regular and systematic exchange of specific information as to future pricing intentions between competitors. The exchange of such information reduces uncertainties inherent in the competitive process and facilitates the coordination of the parties' conduct on the market.[109] Furthermore, and as the CAT confirmed in *JJB*, 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.[110]

92. In light of the foregoing, CCS considers that the disclosure and/or exchange of price information will be restrictive of competition to an appreciable extent where it has the object of restricting competition in the market.

F. Burden and Standard of Proof

93. CCS bears the legal burden of proving the infringements in question. Decisions taken by CCS under the Act follow a purely administrative procedure. As such, the standard of proof to be applied in deciding whether an infringement of the section 34 prohibition has been established is the civil standard, commonly known as proof on the balance of probabilities.

94. The civil standard for burden of proof has been applied by the CAB in its decision on the appeal from the *Express Bus Operators Case*: [111]

> 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…*"

G. The Relevant Market

95. Market definition typically serves two purposes in the context of an infringement decision relating to the section 34 prohibition. First, it provides

[108] *JJB* at [873]; see also [658], citing Joined Cases T-25/95 etc. *Cimenteries v Commission* [2000] ECR II-491 at [1849] and [1852] and Joined Cases T-202/98 etc. *Tate and Lyle plc* [2001] ECR II-2035 at [54] to [60].
[109] See OFT Competition law guideline *Trade associations, professions and self-regulating bodies* (OFT 408, Edition 12/04) at [3.10].
[110] *JJB* at [873], citing Joined Cases T-202/98 etc. *Tate and Lyle plc* [2001] ECR II-2035 at [56] to [58] and Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II-867 at [122] and [123].
[111] [2011] SGCAB 1 at [85].

the framework for assessing whether an agreement and/or concerted practice has an appreciable effect on competition. Second, it provides the basis for determining the relevant turnover for the purpose of calculating penalties, should the Parties be directed to pay a financial penalty under section 69(2)(d) of the Act.

96. Agreements and/or concerted practices that involve the direct or indirect fixing of prices, and/or have the object of restricting competition, by their very nature, are regarded as restrictive of competition to an appreciable extent.[112] In the present case, a distinct market definition is not necessary for the purpose of establishing an infringement of the section 34 prohibition because the restrictions at issue relate to price fixing, whether directly or indirectly, as well as exchanges of commercially sensitive information that have as their object the prevention, restriction or distortion of competition.

97. For the purposes of exercising its discretion to impose a financial penalty pursuant to section 69(2)(d) of the Act in this case, CCS has determined that the relevant market is the sale of AECs to Customers in Singapore as the anti-competitive conduct of the Parties had the object of preventing, restricting and distortion of competition in the market for the sale of AECs to Customers in Singapore.

H. The Evidence relating to the Agreement and/or Concerted Practice, CCS's Analysis of the Evidence and CCS's Conclusions on the Infringements

(i) A Single Continuous Infringement by the Parties

Introduction

98. In this ID, CCS finds that the Parties had engaged in a single continuous infringement, in pursuit of a common overall objective to concertedly fix, raise, maintain and/or prevent the reduction in prices of AECs for sale to Customers in [✂] Singapore, so as to maintain each Party's market share, profits and sales. The period of infringement for Rubycon, SCC and Nichicon is from January 2006 until March 2013, while that of ELNA and Panasonic is from January 2006 to February 2009.[113]

99. The evidence revealed that the Parties agreed on various price increases and shared and exchanged with each other confidential and commercially sensitive

[112] See paragraphs 2.23, 2.24 and 3.2 of the Section 34 Guidelines.
[113] Refer to Written Representations submitted by Panasonic dated 26 May 2017 at [3.3].

information pertaining to the pricing of their products and future pricing intentions. Pricing agreements were reached both in regular, organised meetings, as well as through ad hoc meetings, email correspondence, and telephone conversations. In addition to pricing information, the Parties also shared statistics such as production capacities, demand forecasts and volumes of sales.

100. From at least 1997, the Parties had formally organised monthly meetings among themselves in Singapore to serve as a forum for the discussion and exchange of commercially sensitive information in relation to the manufacture and sale of AECs to Customers [✂]. These meetings were known variously as the ASEAN SM Meetings, President's Meetings, Electrolytic Capacitor Group Meetings, or ATC Meetings (collectively referred to as the "**SG Meetings**"). The SG Meetings were attended by director and manager level employees. Apart from the SG Meetings in Singapore, there were also meetings in Singapore called Parts Meetings or Components Meetings which were attended by over fifty Japanese manufacturers of electronic components who exchanged statistics and information on their respective sales, prices and future forecasts.[114]

101. There were also regular meetings in Japan of a similar nature which were attended by representatives from the Japan Parent/Affiliate Companies[115], such as the Market Study (MK) Meetings,[116] Presidents Meetings[117] and CUP (Costs Up) Meetings ("**Japan Meetings**"), which provided a forum for the exchange of information such as the estimates of each company's current sales volumes, pricing information and strategies, forecasts and quantity trends. The CUP Meetings were initially organised to discuss the handling of lead in capacitors, but the Parties eventually used the forum to exchange customer price information and quotations, the prices of AECs during the period 2006 to 2008, and the relevant plans to carry out the price hike program. [✂][118]

102. Several of the Parties explained that the SG Meetings were influenced by the Japan Meetings, especially during the period of price increase agreements

[114] Refer to Answer to Question 11 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 24 November 2015; Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2 and 7.54.
[115] [✂].
[116] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2, 7.9-7.12; Answer to Question 23 of Notes of Information/Explanation provided by [✂] (SCC) dated 18 November 2015.
[117] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2, 7.9-7.12.
[118] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2, 7.38 -7.39.

between 2006 and 2008, and that Japan Parent/Affiliate Companies[119] would occasionally give the Parties instructions on pricing. The Parties also explained that the SG Meetings were focussed on [✂], and that they would report back to the Japan Parent/Affiliate Companies on the discussions that took place during the SG Meetings.

103. In relation to the SG Meetings, the evidence revealed a consistent and regular pattern of communication and information exchange between the Parties, who had monthly meetings in Singapore from at least 1997. Based on the recommendations on prices provided, information exchanged and agreements reached at the SG Meetings, the Parties agreed to and/or displayed their intention to increase AEC prices collectively, stand united against price reduction demands from Customers, and cooperate or agree on pricing and pricing strategies to Customers. Overall, the actions of the Parties were taken to price AECs collusively for the benefit of the Parties.

104. In connection with the discussions during the SG Meetings, the Parties also followed up on their common Customers' RFQs outside of the SG Meetings, by means of bilateral or trilateral communications via meetings, phone calls and emails.

105. The evidence shows that the Parties participated and contributed actively to the SG Meetings and were regular in their attendance at the same. Each Party was fully aware that sensitive commercial information was being exchanged. In fact, each Party contributed to the discussions, by revealing their future pricing intentions, agreeing to take certain courses of action on the market and reporting back on the status of their efforts to increase prices and the outcome of negotiations with Customers at these meetings.

106. The evidence revealed that the SG Meetings and related communications outside of the said meetings had the overall object to fix, raise, maintain and/or prevent the reduction in prices of AECs [✂] and each Party had contributed, or intended to contribute, to this common overall objective.

107. The conduct of the Parties gave them the ability to set their respective prices with greater confidence that they would be profitable, thereby allowing them to maintain their respective market shares. It further allowed the Parties to set the prices higher and/or avoid having to reduce prices which would otherwise have been the case.

[119] [✂].

108. These agreements and exchanges of information are summarised below. CCS finds that each of these agreements and exchanges of information had the object of preventing, restricting and distorting competition in the market for the sale of AECs to Customers in Singapore:

    a. **Agreements and information exchanges on price increases for AECs between 2006 and 2008** – Evidence obtained during the course of investigations revealed that the Parties had arrived at price increase agreements, intended to apply to the sale of AECs to Customers in [✂] Singapore. Those agreements were made during the SG Meetings following agreements reached on price increases in Japan as a result of increases in material costs and fluctuations in exchange rates, amongst other considerations. The Parties also reported on the status of their efforts to increase prices at these meetings. Apart from general agreements on price increases, there is further evidence that the Parties used the SG Meetings to discuss and plan price increases to specific customers, and to facilitate negotiations with the affected customers.

    b. **Agreements to resist price reduction requests from Customers** – The Parties cooperated to collectively resist Customers' price reduction requests, and collectively agreed on several occasions during the SG Meetings not to lower prices of AECs to Customers. This allowed the Parties to maintain their prices to Customers as well as maintain their market share.

    c. **Exchange of information on Customers' RFQs** – The Parties discussed pricing to specific Singapore Customers, including discussions on the percentage price increases of AECs that they intended to quote to these Customers when there was an RFQ and/or their intention or decision not to grant a price reduction to specific Customers.

109. CCS finds that the elements above support a finding of a single continuous infringement of the section 34 prohibition by object.

110. In the paragraphs that follow, CCS sets out the following:

    a. First, the evidence obtained by CCS in support of the common overall objective to fix, raise, maintain and/or prevent the reduction in prices of AECs;

b. Second, the evidence obtained by CCS in support of each of the agreements and the exchanges of information made by the Parties (including evidence from the various meetings) in support of the above objective; and

c. Third, CCS's conclusion on the evidence.

Background on the Japan Meetings

111. Various types of meetings concerning different categories of capacitors, including AECs, were held in Japan from at least 1997 to 2014. The relevant meetings held in Japan during that period were the MK Meetings, CUP Meetings and President Meetings, which were attended by manufacturers of AECs.

112. Similar to the SG Meetings, the Japan Meetings provided participants with a forum to discuss issues surrounding the market for capacitors including AECs, exchange price information and discuss matters relating to customers and pricing.

113. The MK Meetings held from 2005 to 2014 provided [✂][120] competitors with a forum to provide an estimate of each company's current sales volumes, pricing forecasts and production trends. The participants could then use such market information to adjust their production capacity to avoid overcapacity and price competition. The discussions during the MK Meetings were predominantly focused on exchanging information on the status of the orders received by the participants of the MK Meetings, market trends and market forecast. Participants also discussed the status of ongoing price negotiations with customers, demand forecasts, and future pricing strategies. [✂].[121]

114. The participants of the MK Meetings also attended the Presidents Meetings. The Presidents Meetings were held from 2005 to 2008, and the contents of the discussions were similar to that of the MK Meetings although the Presidents Meetings were structured as superior to the MK Meetings, e.g. more senior representatives of each company attended the Presidents Meetings. [✂][122]

115. The CUP Meetings were held from 2006 to 2009, and were initially organised to discuss the handling of lead in capacitors. However, the CUP Meeting

[120] [✂].
[121] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2, 7.4 and Annex 8B.
[122] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2 and 7.4.

participants eventually used the forum to discuss other matters. This included discussions on the situation on raw material costs and exchange rate fluctuations, and measures to be taken to minimise or reduce any losses resulting from the prevailing economic conditions. Agreements in relation to "price recovery" efforts were reached during Cup Meetings, and there were follow up meetings to monitor each company's implementation of the price increases.[123] The participants in the Cup Meetings also discussed the status of their individual price negotiations with their customers, and each company's pricing policy. Specific measures for negotiations with global customers were also discussed, and each company was assigned specific customers with whom it would negotiate for price increases. The company assigned to initiate these price increases to customers would typically be the price leader for the product and had the highest share of the orders for that particular customer. Each company would then report on the status of negotiations for price increases with each customer. [✂].[124]

116. As stated above, the discussions that took place at the Japan Meetings influenced the discussions and conduct of the Parties at the SG Meetings. The Japan Parent/Affiliate Companies are some of the largest manufacturers of AECs in the world, and the meetings in Japan shared the same common objective to fix, raise, maintain and/or prevent the reduction in prices of AECs to their customers. [✂].[125] [✂].[126]

117. In this connection, the discussions at the SG Meetings focussed on customers in [✂] Singapore.

Objective of the SG Meetings

118. The evidence revealed a long history of the SG Meetings. The SG meetings started from at least 1997 and continued up to 2013. The participants of the SG Meetings consisted of the same five Parties for the most part, i.e. Panasonic, Rubycon, Nichicon, ELNA and SCC,[127] with Panasonic and ELNA ceasing their participation in 2009. The SG Meetings served as a forum for the

[123] Refer to Answer to Question 50 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015.
[124] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.2, 7.36 and 7.39.
[125] Information provided by Rubycon dated 2 October 2015 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 3 and 4.
[126] Information provided by Rubycon dated 2 October 2015 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 4.
[127] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraph 7.2 [✂].

discussion and exchange of commercially sensitive information between the Parties in relation to AECs,[128] similar to the meetings in Japan [✂]. The Parties took turns to organise the meetings which were generally held in meeting rooms at various hotels in Singapore.

119. The objective of the SG Meetings was best described by [✂] of SCC who said it was to facilitate co-operation between competitors and help maintain each company's profits and market shares. He said that "*customers will generally be happy to go to competitors who offer lower prices. The cooperation of our competitors is to help to protect our company's order. If competitors do not accede to our price maintenance requests and quote cheap prices to our customers, our orders will be taken away from us.*"[129] In relation to the discussions during the SG Meetings on pricing and company profitability, he said that "*we would like to cooperate with our competitors because we do not believe in reducing our prices and reducing our profits*."[130]

120. The SG Meetings reduced the uncertainties inherent in competition and created a climate of mutual certainty between the Parties in relation to future pricing policies. In view of the discussions that took place at the SG Meetings, [✂] of SCC explained that "*if the competitor does not reduce the price, we will also not reduce the price. If the competitor reduces the price, we will have no choice but to reduce our price. This is to allow us to keep our orders and maintain our sales*."[131]

121. Rubycon explained that the SG Meetings were held with the main objective of exchanging information regarding the business conditions of each of the Parties and sharing information on forecasts of demand for capacitors [✂], in particular information on each of the Parties' aggregated company statistics including, *inter alia*, aggregated monthly output and sales volume data; and market trend data [✂]. The conduct which took place at the SG Meetings included, *inter alia*, discussions on price increases or price maintenance, discussions on current and future pricing strategies, exchange of aggregated sales data, and the exchange of business plans.[132]

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[128] The types of capacitors discussed during the SG Meetings related to 5L, 7L, 11L, large and other aluminium capacitors. The codes relate to the size of the capacitors. Refer to Answer to Question 61 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.

[129] Refer to Answer to Question 29 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.

[130] Refer to Answer to Question 26 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.

[131] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.

[132] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, paragraphs 7.44-7.45.

122. On the SG Meetings, [✂] of Rubycon elaborated that "*the purpose was mainly to exchange information on the sales and production of competitors in [✂] Singapore, [✂]. There was also discussion on prices of products sold to Japanese customers [✂]. A lot of the capacitor customers had their factories [✂] and the price discussion concerned prices of the capacitors supplied to these customers with factories [✂]*."[133] In relation to how the information obtained at the SG Meetings were used, he said that Rubycon would use it for pricing purposes, in that Rubycon "*will analyse the information received and decide whether we want to adjust the prices for certain customers, whether upwards or downwards, or perhaps confront our competitors*."[134]

123. In relation to market statistics which were shared during the SG Meetings, [✂] of Rubycon said that the Parties would discuss selling products at a higher price and reject price reduction requests when the market was "busy".[135]

124. [✂] of Panasonic Malaysia, which manufactured AECs for sale to ASEAN countries including Singapore and which supplied AECs to Panasonic Singapore,[136] attended the SG Meetings in Singapore. He was in charge of the pricing of AECs manufactured by Panasonic Malaysia and sold within the ASEAN region, including Singapore. [✂] represented both Panasonic Malaysia and Panasonic Singapore at the SG Meetings in Singapore, [✂] [✂].[137] He explained that the purpose of the meetings was to find out the production volumes and sales volumes of the Parties, including *"market information regarding our customers… the market information related to any changes to each customer, whether they were doing well or whether there were specific requests such as price reduction requests from the customers*."[138]

125. On the discussions that took place during the SG Meetings, [✂] of ELNA said that "*each company will make the announcement regarding the situation in price reductions, increase or maintenance to customers. In general, we mentioned the company conditions and customer conditions and under*

[133] Refer to Answer to Question 62 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015.
[134] Refer to Answer to Questions 65 and 66 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015.
[135] Refer to Answers to Questions 18 and 25 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 24 November 2015.
[136] Refer to Answer to Question 7 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.
[137] Refer to Answer to Question 141 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.
[138] Refer to Answer to Question 128 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.

customer conditions, we might have mentioned price reduction requests from customers or requests by member companies to maintain or increase prices to customers at the meeting. Customers' price requests were shared because this information is very important for sales management."[139]

126. In explaining how he would use the information obtained during the SG Meetings, [✂] of ELNA explained that "*for instance, during the ATC meetings, the competitors will give us information on whether their production capacity is full. If the production rate is full, the customers will have less leeway to make demands on price reductions on ELNA. The information gathering regarding other competitors refusing price reductions will be taken into consideration when I make decisions on whether or not to reduce prices. However, if we require the market share, I will neglect this information and I will reduce my price to take orders away from competitors*."[140]

127. [✂] of ELNA said that there was no repercussion for his action when he did not follow other competitors in not reducing prices. However, he stated that complaints were made at the SG Meetings in such cases. He elaborated that "*as far as I can remember, ELNA has not experienced repercussions when ELNA did not follow the other competitors in not reducing prices. However, I have seen situations where there were complaints between the other members of the meeting when they did not follow the other competitors in refusing to reduce prices*."[141]

128. [✂] of ELNA also said that the information obtained influenced ELNA's pricing decisions: "*when competitors are announcing a price increase and ELNA receive a request for price reduction from customers, we know that competitors will not reduce prices. For the 4 competitors I mentioned earlier at the ATC meetings (i.e. Nippon Chemi-con, Nichicon, Rubycon and Panasonic), these are big companies to ELNA. When they say that they want to increase prices and do not want to decrease prices, I think it is a message from them for ELNA to move prices in the same direction*".[142]

[139] Refer to Answer to Question 44 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015.
[140] Refer to Answer to Question 30 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.
[141] Refer to Answer to Question 30 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.
[142] Refer to Answer to Question 2 of Notes of Information/Explanation provided by [✂] (ELNA) dated 22 May 2015.

129. [✂][143] of SCC [✂],[144] and was able to provide some history to the SG Meetings which he attended during his tenure in SCC at that time. He had returned to SCC [✂].[145] He informed that there were agreements between Parties on price increases for various items to individual customers in the earlier days of the SG Meetings, which he attended from 1999 onwards. There were also discussions and agreements on price floors as well as percentage price increases for various products. He added that discussions on agreements on prices would be held twice a year as that was when price reduction requests from customers would be received.[146]

130. CCS will now set out the details on the various discussions and agreements that occurred during the SG Meetings, particularly from 2006 onwards. This will also include communications on the side of the SG Meetings between several Parties in relation to pricing policies to specific customers, which, in general, formed the subject matter at several SG Meetings. The evidence revealed that the participants of the SG Meetings were party to various arrangements and measures decided in the framework of regular meetings and continuous contact which constituted a single continuing agreement with the common overall objective to fix, raise, maintain and/or prevent the reduction in prices of AECs to customers in [✂] Singapore.

Conclusion on the SG Meetings

131. Based on the evidence obtained, the Parties attended, through their representatives, regular SG Meetings in the period from as early as 1997 till 25 March 2013[147] with the exception of Panasonic and ELNA, both of which stopped attending the SG Meetings from 25 February 2009.[148]

132. At those meetings, the Parties discussed and agreed on the overall strategies to consider and implement in pursuit of the overall common objective to fix, raise, maintain and/or prevent the reduction in prices of AECs to customers in [✂] Singapore, so as to maintain their profits and market shares.

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[143] [✂] is known as "[✂]" or "[✂]" – Refer to Answer to Question 1 of Notes of Information/Explanation provided by [✂] (SCC) dated 18 November 2015. For the purposes of this ID, "[✂]" has been and shall be used throughout.

[144] Refer to Answer to Question 25 of Notes of Information/Explanation provided by [✂] (SCC) dated 18 November 2015.

[145] Refer to Answer to Question 3 of Notes of Information/Explanation provided by [✂] (SCC) dated 18 November 2015.

[146] Refer to Answer to Question 25 of Notes of Information/Explanation provided by [✂] (SCC) dated 18 November 2015.

[147] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, SG Meeting Minutes dated 25 March 2013, Annex 8H.

[148] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, SG Meeting Minutes dated 25 February 2009, Annex 8H.

133. In pursuit of the common overall objective, in relation to the sale of AECs to Singapore Customers, the evidence revealed that representatives of the Parties met regularly, contributing to the common objective of the SG Meetings by discussing the overall strategies and methods by which to implement those overall strategies. It is clear that the participants in those meetings were aware or could reasonably have foreseen that their contributions to those meetings were in pursuit of the common overall objective.

134. The last known SG Meeting was held on 25 March 2013. For the duration of the SG Meetings (and until 25 February 2009 for Panasonic and ELNA), there was no evidence to prove that the Parties had taken steps to denounce the cartel or publicly distance themselves from the arrangements, agreements and/or concerted practices or to publicly distance themselves from the cartel and its objectives.

135. Set out below is the evidence obtained by CCS in relation to the agreements and/or concerted practices between the Parties in pursuit of the common overall objective of the single continuous infringement.

(ii) Conduct of the Parties

(a) Agreements and exchange of information on price increases of AECs between 2006 and 2008

136. Between 2006 and 2008, there was a concerted effort by the Parties to implement a general price increase for AECs which was to be applied globally. This movement was largely due to the increase in raw material prices, which was discussed at the Japan Meetings and which course of action was subsequently agreed upon between the meeting participants. The agreement at the Japan Meetings influenced the discussions at the SG Meetings, i.e. price increases and price recovery efforts during this period were frequently discussed at the SG Meetings. Several Japan Parent/Affiliate Companies also instructed some of the Parties to initiate price increases for AECs during that period.[149] This was despite awareness among the Parties that competition law had been enacted in Singapore, which was illustrated by an announcement by Rubycon during one of the SG Meetings that "*Collusion regulation is getting strict in Singapore, requiring attention*".[150]

[149] Refer to Answers to Questions 13-17 of Notes of Information/Explanation provided by [✂] (Nichicon) dated 15 July 2016.
[150] Refer to Answer to Question 15 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.

137. SCC revealed that it had, sometime in May 2006, together with its competitors engaged in a "*price restoration*" movement. [✂] of SCC explained that the movement involved a price increase to AECs in general and concerned all customers of SCC. SCC had requested for a price increase at the SG Meetings and said that there was a "*framework of cooperation between competitors on the price increase*." SCC further said that it managed to implement the price increase for some customers in Singapore.[151]

138. In this regard, price recovery efforts were also agreed upon during this period at Japan Meetings, for example, during the CUP Meetings. During the SG Meeting held on 30 May 2006, several Parties shared their pricing intentions and discussed price increases for AECs. Specifically, SCC shared that:

"Negotiations are under way for price recovery. Last year's were for foreign-owned customers and this year's target is Japanese customers, asking for price recovery indiscriminately. Chip type. Radial 5% and lag 7%, and the same applies to the [✂]*."*[152]

139. When asked about the reason for NCC's plans for price recovery, [✂] of Panasonic elaborated on his understanding and said:

"it was the direction of the President of NCC's Japanese headquarters to prioritize profit. NCC [Nippon Chemi-con] was also reducing unprofitable products and pushing for price increases."[153]

140. During the SG Meeting held on 19 October 2006, the participants at this meeting, namely SCC, ELNA, Nichicon, Panasonic and Rubycon, discussed price increases for certain customers, and also for eco-friendly and non-eco-friendly[154] AEC products.[155] [✂] of SCC explained that [✂] of Nichicon called to inform SCC that Nichicon had started their move for price increases. [✂] also highlighted that prices have been indicated with a 10% increase for eco-friendly items and a 15% increase for non-eco-friendly items for [✂].[156]

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[151] Refer to Answers to Questions 7, 8 and 10-14 of Notes of Information/Explanation provided by [✂] (SCC) dated 4 June 2015.

[152] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

[153] Refer to Answer to Question 81 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.

[154] Eco-friendly products refer to lead-free products while non eco-friendly products contain lead – Refer to Answer to Question 45 of Notes of Information/Explanation provided by [✂] (SCC) dated 4 June 2015.

[155] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

[156] Refer to Answer to Question 41 of Notes of Information/Explanation provided by [✂] (SCC) dated 4 June 2015; [✂] was a customer of SCC and had its International Procurement Office in Singapore – See

[✂] of ELNA similarly reported a 10% increase for eco-friendly items and a 12% increase for non-eco-friendly items.[157]

141. At the same meeting on 19 October 2006, [✂] of Nichicon explained that there was some delay, but they have started price negotiations according to instructions from Japan. The main reason provided by Nichicon to customers in relation to their price increase was the increasing cost of materials. Nichicon conducted price negotiations on this basis for products with delivery dates from October onwards. [✂] of Panasonic reported that Nichicon indicated it had price increases of 20%.[158]

142. The similar price increases announced by SCC, ELNA and Panasonic could be due to guidelines issued by their Japanese headquarters. The Japanese yen was very expensive in 2006, and there was an increase in raw material prices. Similar guidelines were also being issued in Japan.[159] During this period in Japan, there was an understanding between capacitor manufacturers to increase prices of AECs,[160] and Singapore Subsidiary/Affiliate Companies in [✂] Singapore were issued with instructions according to what was agreed upon between companies in Japan. Price increases were discussed during this period of time in CUP Meetings, and there were agreements on percentages of increase for prices at that point in time.

143. In this regard, Nichicon received instructions from Nichicon Japan from 2006 to 2008 to initiate negotiations on price increases [✂].[161] Another incident where a Japan Parent/Affiliate Company had issued instructions was during an SG Meeting on 27 March 2007, whereby SCC revealed that NCC had announced that it had initially expected price recovery efforts to be completed in March 2007, but NCC had informed SCC of a substantial price increase of foil, and had instructed that there should be another price increase, [✂]. SCC then disclosed that it intended to proceed with a simultaneous price increase in tandem with Japan.[162]

Information provided by SCC dated 24 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex D.

[157] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

[158] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

[159] Refer to Answer to Question 31 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 18 November 2015.

[160] [✂].

[161] Refer to Answers to Questions 13 to 17 of Notes of Information/Explanation provided by [✂] (Nichicon) dated 15 July 2016.

[162] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

144. In the SG Meetings held in 2007, the Parties exchanged statistics related to their businesses and announced their plans to increase prices. In the SG Meeting held on 24 January 2007, SCC announced its plans to increase prices for unprofitable products on a global basis, and Panasonic announced the price increases which have been implemented for [✂][163] and [✂].

145. In the next SG Meeting held on 14 February 2007, SCC announced its intentions for a 2% increase for the next fiscal term. ELNA announced that it was going to increase prices for unprofitable items, and Panasonic announced the successful implementation of a price increase for [✂]. Rubycon indicated during this SG Meeting for all the Parties to continue with "*coordinated efforts for price recovery*". During the subsequent SG Meeting held on 27 March 2007, SCC announced its plans for price increases, Panasonic informed the Parties of its efforts in negotiations for price increases, and Nichicon explained that it would continue with price recovery efforts.[164]

146. During the SG Meeting held on 25 July 2007, Panasonic announced the price increases which have been implemented, and its future plans for price increases, to the other Parties.[165] Panasonic again announced the status of its price increase negotiations during the SG Meeting held on 20 September 2007, and requested for the cooperation of the other Parties so that Panasonic could successfully implement the price increases. SCC made a similar announcement and requested for cooperation during the same meeting.[166]

147. During the SG Meeting held on 21 April 2008, there were discussions relating to future pricing intentions. Specifically, Panasonic, ELNA, SCC, and Rubycon shared information about their future intentions to increase prices. [✂] of Panasonic explained that the context of the discussion during this SG Meeting was to allow all the companies to increase their prices so as to increase profits due to the increase in raw material prices.[167]

[163] [✂] was a direct customer of SCC – See Information provided by SCC dated 24 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex D.
[164] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[165] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[166] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[167] Refer to Answer to Question 149 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.

148. At the same meeting, ELNA shared that they were implementing price recovery measures for items which were still loss-making at that point in time, particularly for 85ºC general-purpose items[168] for which production facilities had not been upgraded.[169] Panasonic announced that they would be implementing further price increases to "defend" themselves, and the first customer which they were targeting for a price increase negotiation of 20% was the [✂]. Panasonic also announced that they have verbally notified other customers of price increases to be implemented in July 2008.[170]

149. SCC further stated that *"For price recovery, exchange rate issue will not be highlighted but the rising cost of materials will be mainly emphasized to negotiate for a two-digit price increase."* Rubycon also informed the others at this meeting that although their factories were at full production, they were having difficulties because of the increasing cost of materials and appreciation of the yen. Rubycon had, at that point in time, started negotiating for the price recovery of unprofitable items [✂] and was curtailing the supply of low-cost 85ºC general-purpose items, even for major customers.[171]

150. In addition, it is also noted that SCC had asked for the cooperation of its competitors in view of higher material costs despite being aware that such cooperation might infringe the law. Specifically, SCC said that *"it is no good to act against laws but members share the same problem of higher material costs and we should cooperate as much as possible for actual merits".*

151. In Japan, an agreement was reached between the Japan Parent/Affiliate Companies during a CUP Meeting held on 21 May 2008 to implement price increases.[172] The implementation of price increases and the profitability of the participating companies were discussed during the meeting. [✂] of NCC stated during his interview in relation to the CUP Meeting held on 21 May 2008:

"Q.52. Was there an agreement to increase prices between competitors?
A: Yes. There was an agreement for all of us to increase prices collectively.

[168] 85˚C capacitors are general AEC products which are 5mm in diameter and 11mm in length radical lead type capacitors. Refer to Answer to Question 49 of Notes of Information/Explanation provided by [✂] (SCC) dated 4 June 2015.
[169] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[170] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[171] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[172] [✂].

Q.53. Please explain paragraph 3 of the exchange on information on specific customers. Would these affect [✂] customers of SCC?
A: Yes, these would [✂] affect SCC's customers."[173]

152. Participants of the meeting agreed on an increase of 5% arising from the increase in raw material cost, and an increase of 7% resulting from fluctuations in exchange rates.[174] For Rubycon, internal meetings were held following instructions received after the agreements reached during the CUP Meeting on 21 May 2008 and the follow-up Cup Meeting on 2 June 2008. Based on these internal meetings, instructions were sent from Rubycon Japan to their subsidiaries worldwide. [✂]. Rubycon conducted the price negotiations accordingly with each customer. Rubycon also issued instructions in the form of a list with the price increases for each product set out next to the product.[175]

153. A subsequent CUP meeting, which functioned as an update on the price increase situations between competitors, was held on 25 June 2008. [✂] of NCC explained that:

"The purpose of discussing the status was to find out if each competitor was really taking action according to what was discussed in relation to price increase to specific customers. If they did not take action, then the competitor would complain at the CUP meeting. Nichicon was always the slowest in taking action because the decision had to be made at the top. So it was useful to exert pressure on [✂] who was the top man of Nichicon so that Nichicon could take action faster."[176]

154. Information exchanged in relation to future intentions to increase prices for AECs occurred between competitors during the SG Meeting on 30 June 2008. Several competitors shared the specific percentage by which they intended to increase prices during this SG Meeting. The minutes of meeting showed that Panasonic shared its intention to increase prices for [✂]:

"From October, commercial distribution will be changed and it will be through a sales company. Taking this opportunity, price will be increased by

[173] Refer to Answer to Questions 52 and 53 of Notes of Information/Explanation provided by [✂] (NCC) dated 19 November 2015.
[174] Refer to Notes of Information/Explanation provided by [✂] (Rubycon) dated 14 May 2015, Exhibit SM-18.
[175] Refer to Answer to Question 35 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 18 November 2015.
[176] Refer to Answer to Question 65 of Notes of Information/Explanation provided by [✂] (NCC) dated 19 November 2015.

5% for [✂] *and 13% for* [✂]. *Will go ahead with a price increase of general-purpose items even for a loss of business."*[177]

155. [✂] of Panasonic, who shared the above statement, clarified that he was referring [✂].[178] In relation to [✂], Rubycon shared that it had "*already implemented price recovery and adjustment of general-purpose items to prepare for a merger in October."* [179]

156. During the same meeting on 30 June 2008, ELNA informed that it had implemented price recovery for unprofitable items.[180] SCC stated that NCC was implementing price recovery initiatives on a worldwide basis, and had started negotiations with all customers [✂] regardless of whether the customer is Japanese or foreign-owned. SCC went on to elaborate on their price recovery initiatives,[181] which was a price increase of 3% for small items, 5% for standard items and 10% for LB.[182] Nichicon added that *"reflecting on the company's previous price recovery manner which received unfavorable criticism from many customers, the company is preparing for negotiations after creating an atmosphere for such move by explaining the market price trends of aluminium for LME, etc. this time."*

157. Nichicon, ELNA, SCC and Rubycon all mentioned price recovery, and everyone discussed price increases during the SG Meeting on 21 July 2008.[183] [✂] of Panasonic explained the context of the meeting, i.e. that insofar as the price increases disclosed by the Parties during this meeting concerned [✂], Singapore customers would also be affected.[184]

158. During the SG Meeting on 18 August 2008, Rubycon indicated its appreciation towards other Parties for their cooperation in relation to the price negotiation with [✂]. There was an understanding between the Parties to increase their

[177] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[178] Refer to Answer to Question 150 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.
[179] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[180] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[181] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[182] "LB" refers to large capacitors for purposes of power supply; Refer to Answer to Question 18 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 14 May 2015.
[183] Refer to Answer to Question 157 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.
[184] Refer to Answer to Question 158 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.

prices when negotiating with [✂], and because the other Parties other than Rubycon had increased their prices earlier when negotiating with [✂], Rubycon was able to achieve the intended price increases for [✂]. Had one company not cooperated, Rubycon would not have been able to negotiate for the price increase.[185] Apart from expressing its appreciation, Rubycon also announced to the other Parties that it was not successful with the price negotiations with the [✂], and would instead improve its productivity through cutting the supply by reducing the production.[186]

159. Beside discussions at the SG Meetings, Rubycon also initiated discussions with Nichicon and SCC in relation to price increases. [✂] of Rubycon approached SCC and Nichicon to implement a price increase strategy which was supposed to result in a weighted average of a 3% increase in prices. [✂] of NCC and [✂] of Nichicon were in discussions with [✂], and an agreement was reached in December 2009 between the three companies to implement a price increase with a weighted average of 3%.[187] The three companies continued their discussions in relation to price increases which continued till at least June 2010.[188]

Conclusion on the agreements and information exchange on price increases to AECs between 2006 and 2008

160. In summary, the evidence obtained by CCS revealed that in the period between 2006 and 2008, the Parties agreed on price increases and exchanged information on the implementation of price increases during the SG Meetings. Each of the Parties has confirmed that they attended the meetings, and none of the Parties had demonstrated that they had publicly distanced themselves from the agreements to increase prices, reached during the SG Meeting, at any point in time during the SG Meetings from 2006 to 2008.

161. Apart from agreeing on price increases, each of the Parties have continuously throughout the course of the SG Meetings held between 2006 and 2008 announced their intentions to increase prices or their efforts at implementing price increases to the other Parties. Each of the Parties had also, at one or more SG Meetings, expressly sought the cooperation of the other Parties present at the SG Meetings in relation to the relevant Party's price increase initiative.

[185] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 18 November 2015.
[186] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[187] Refer to Answer to Question 32 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 19 November 2015.
[188] Refer to Answer to Question 39 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 19 November 2015.

162. The evidence clearly established that the Parties intended to contribute by their own conduct to the common objective of the price increase agreements. They did this by discussing the price increases, agreeing on the price increases, announcing their future pricing plans, announcing the pricing instructions from the Japan Parent/Affiliate Companies and seeking cooperation from each other when negotiating price increases. The Parties were clearly aware or could reasonably have foreseen that their contributions to the agreements to increase prices and information exchanges on price increases were in pursuit of the price increases agreement.

163. Therefore, CCS is of the view that the conduct of the Parties had the object of restricting competition, as the discussions and exchanges of information on price increases reduced or removed the degree of uncertainty as to future pricing intentions of each Party. The sharing and receipt of such information would have influenced each Parties' pricing decisions, as the Parties cannot fail to take that information into account when determining its own future policy on the market. The cooperation between the Parties on price increases is further reinforced through the agreement to reject price reduction requests from Customers, as elaborated on below.

(b) <u>The agreement to resist price reduction requests from customers</u>

164. [✂] of SCC said that the participants at the SG Meeting would share information about each company's sales, production volumes and discuss pricing matters and "price maintenance requests". At these meetings, SCC would request that competitors do not give a cheap quote to customers if SCC intends to raise prices to customers, and the other competitors would also do the same if they want to raise prices.[189]

165. This cooperation between competitors helped to 'protect' SCC's orders. According to [✂] of SCC, "*customers will generally be happy to go to competitors who offer lower prices. The cooperation our competitors is to help to protect our company's order. If competitors do not accede to price maintenance requests and quote cheap prices to our customers, our orders will be taken away from us*".[190]

[189] Refer to Answer to Question 25 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.
[190] Refer to Answer to Question 29 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.

166. [✂] of SCC said that he would share the information obtained at these meetings with his subordinates and rely on it when deciding on pricing matters. He said that at SG Meetings, competitors would discuss price reduction requests from competitors and that it was "*common practice for price reduction requests to be made regularly*".[191] [✂] wanted to understand his competitors' intended response to these requests and said that "*if the competitor does not reduce the price, we will also not reduce the price. If the competitor reduces the price, we will have no choice but to reduce our price. This will allow us to keep our orders and maintain our sales*".[192]

167. [✂] of Panasonic shared that an agreement was reached between participants of SG Meetings around 2006 and 2007. The Parties agreed not to entertain any price reduction requests during that period in view of rising aluminium prices – aluminium foil is an important raw material and significantly affects the cost of producing AECs. The scope of the agreement covered [✂] Singapore.[193]

168. With regard to agreements reached between the Parties in relation to customers' price reduction requests, [✂] of Panasonic said that such agreements occurred repeatedly during the period when he attended the SG Meetings:

> *"Q35. Is it correct to say that the agreement to coordinate between themselves as regards to price reduction requests from customers continued until you left Malaysia in 2009?*
> *A: Before I went back to Japan in 2009, such agreements happened a number of times. You could say that it occurred continuously even till 2009."*[194]

169. During the SG Meeting held on 15 March 2006, three of the Parties shared their intention not to reduce prices. Specifically, Nichicon shared[195] that they "*Have received firm instruction from Japan never to allow price reduction. As the business is getting worse, we can no longer reduce price*". Two of the Parties shared that, "*Price increase may not be possible but there will be no price reduction."…"Tried to persuade members to refrain from competing*

[191] Refer to Answer to Question 58 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.
[192] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.
[193] Refer to Answer to Question 142 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.
[194] Refer to Answer to Question 35 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.
[195] Refer to Answer to Question 77 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015, read with TN-007 Minutes of SM Meeting March 15, 2006.

with each other for a war of attrition with absurd price reduction [✂]*."* When asked about the reason for the Parties to avoid giving price reductions, [✂] of Panasonic shared that "*this was probably due to the increase in prices of raw materials."*[196]

170. During the SG Meeting on 27 June 2006, [✂] of Panasonic explained that there was a price recovery on a global basis, and that a "No Price Reduction Agreement" was reached between competitors during the SG meetings to avoid price reductions:

> *"Q96: NCC mentioned that "price recovery is under way on a global basis". Are all the competitors at this meeting pushing for a price recovery on a global basis?*
> *A: Yes. Competitors are pushing for price recovery because profitability was bad for every manufacturing plant and sales volume was also down. In order to improve profitability, price reductions should be avoided.*
>
> *Q97: Was this agreed during the ATC meetings or at the Japanese headquarters?*
> *A: It was agreed during the ATC meetings."*[197]

171. The Parties attending the SG Meetings announced their respective positions in respect of price reductions, increases or maintenance and made requests for other parties to maintain prices, increase prices or not to accede to requests for price reductions made by their respective customers.[198] They also discussed instances of their rejection of price reduction requests.[199]

172. [✂] of ELNA explained that *"For instance, if there is a price reduction request of 5%, each company will explain their price reduction request received and all companies will be able to understand how each company tackles the price reduction requests. That will be material for us to decide on how to tackle the price reduction requests."*[200]

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[196] Refer to Answer to Question 77 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015
[197] Refer to Answers to Questions 96 to 97 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.
[198] Refer to Answer to Question 44 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015 and Answer to Question 1 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.
[199] Refer to Answer to Question 40 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015, read with exhibit "SK-001" pages 9 and 10, and Answer to Question 1 of Notes of Information/Explanation by [✂] (ELNA) dated 21 May 2015.
[200] Refer to Answer to Question 1 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.

173. There was an occasion when SCC requested for price increases and that no price reductions be granted as raw material prices were increasing.[201] SCC also shared information on its policy and instructions from headquarters not to agree to any price reduction requests from its customers and instead try to increase prices.[202]

Conclusion on the agreement to resist price reduction requests from customers

174. The evidence clearly established that the Parties had agreed to resist price reduction requests from customers on several occasions, and in that regard would regularly announce their efforts in relation to the rejection of price reduction requests during SG Meetings. The agreement and/or understanding reached at these meetings allowed the Parties to maintain their pricing to customers and their market share.

(c) Exchange of information on customers' RFQs

175. In addition to the discussions on the co-ordination of efforts to increase prices and to resist price reduction requests at the SG Meetings, there were instances of pre-pricing communications between the Parties on specific customers. The discussions and communications involving verification of prices quoted to customers, dealing with customer price reduction requests and future pricing such as the intention to increase prices, occurred during the SG Meetings, as well as outside of it by way of email and telephones calls between the Parties.

176. In relation to the verification of prices quoted to customers, [✂] of ELNA had called [✂] of SCC once in May 2006 and received calls from [✂] twice in 2006. These calls related to quotations submitted to common customers between ELNA and SCC. For example, [✂] had called [✂] to verify whether SCC had submitted a low quotation to a customer, [✂],[203] in respect of an

[201] Refer to Answer to Question 2 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015, read with exhibit "SK-001" page 11. Refer also to Answers to Questions 16 and 27 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015, read with exhibit "SK-001" page 15.

[202] Refer to Answer to Question 2 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015, read with exhibit "SK-001" page 11, and Answer to Question 9 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015, read with exhibit "SK-001" page 13. Refer also to Answers to Questions 17, 22, 23 and 27 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015, read with exhibit "SK-001" pages 15, 17 and 19.

[203] [✂] was a customer of SCC and ELNA – See Information provided by SCC dated 24 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex D; Information provided by ELNA dated 28 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 4.

order for capacitors for car audio power supply. [✂] explained that he wanted to verify SCC did indeed submit a low quote, in which case, he would also submit a lower quote.[204]

177. During the SG Meeting in June 2006[205] which [✂] of ELNA attended, he took notes of the meeting and recorded the following instances of pre-pricing communications in relation to various customers who were common to the Parties:

(a) Panasonic revealed that its plant was at full capacity and it had refused a request for price reductions from its customer [✂];[206]
(b) Nichicon, SCC, Rubycon and Panasonic received demands from [✂][207] for price reductions and Rubycon rejected such demands;[208]
(c) Rubycon indicated that it was raising its prices for [✂]; and
(d) SCC disclosed that it was making further increases to its prices and urged the Parties to agree to maintain prices in respect of [✂], as it would be hard to maintain prices for [✂] in the absence of such an agreement.[209]

178. During the SG Meeting held in July 2007, Panasonic proposed to increase its prices for [✂] by 20% (Panasonic had proposed a 30% price increase in the previous year).[210] [✂] was also a customer of ELNA, NCC and Rubycon.[211]

179. During the SG Meeting on 18 August 2008, Rubycon expressed its appreciation to the other Parties, namely Nichicon, NCC, ELNA and Panasonic, for their cooperation in relation to the price negotiation with [✂].

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[204] Refer to Answer to Question 52 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.
[205] Refer to Answer to Question 39 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015, read with exhibit "SK-001" page 9.
[206] Refer to Answer to Question 39 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015, read with exhibit "SK-001" page 9.
[207] [✂] was a customer of SCC, ELNA, Nichicon, Rubycon, and Panasonic – See Information provided by SCC dated 24 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex D; Information provided by ELNA dated 28 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 4; Information provided by Nichicon dated 27 October 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Appendix 3; Information provided by Rubycon dated 14 November 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Question 6.
[208] Refer to Answer to Questions 40 and 41 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015, read with exhibit "SK-001" page 9.
[209] Refer to Answer to Question 43 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015, read with exhibit "SK-001" page 10.
[210] Refer to Answers to Questions 108 to 111 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015, read with exhibit "TI-003".
[211] Refer to Answers to Questions 113 and 114 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.

There was an understanding between the Parties to increase their prices when negotiating with [✂], and because the other Parties other than Rubycon had increased their prices earlier when negotiating with [✂], Rubycon was able to negotiate for the price increase and achieve the intended price increases for [✂] due to the cooperation of the Parties.[212] In this regard, [✂] of Rubycon said the following: "*All the companies knew what the market price was. It worked smoothly in this case because all the companies cooperated. Had one company not cooperated, Rubycon Singapore would not have been able to negotiate for the price increase. There were no major changes to market share but price increases for [✂] was successfully implemented, therefore Rubycon Singapore expressed its appreciation for the cooperation of from the other companies.*"[213]

180. In a separate incident in November 2009, Rubycon and NCC exchanged prices for capacitors to be supplied to [✂]. [✂] had provided Rubycon with NCC's prices during the price negotiation process to lower the prices quoted by Rubycon. In an email chain between [✂], [✂], [✂] and [✂], then employees of Rubycon, it was revealed that [✂] called NCC to ascertain whether or not [✂] was telling the truth. [✂] then gave instructions not to reduce the prices by such a large percentage.[214] [✂] of Rubycon said that confirming NCC's prices during the price negotiation process removed the uncertainty with regard to the prices quoted by NCC.[215]

181. In an email dated 2 November 2007 from [✂], who was working in Singapore at the relevant point in time, to managers in Japan, he explained that Rubycon had previously "induced" [✂] to pass on unprofitable orders to SCC. [✂] was ordering from Rubycon. After making losses, SCC attempted to implement price increases, which led to [✂] approaching Rubycon to request for quotations. [✂] of SCC provided Rubycon with the list of items for which SCC was declining orders for. The prices quoted by SCC for the relevant products were set out in this email, and most of the prices quoted by Rubycon were higher.[216]

[212] Refer to Answer to Question 57 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 18 November 2015.
[213] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 18 November 2015.
[214] Refer to Answer to Question 47 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 25 November 2015.
[215] Refer to Answer to Question 49 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 25 November 2015.
[216] Refer to Notes of Information/Explanation provided by [✂] (Rubycon) dated 25 November 2015, Exhibit NK-012.

182. Panasonic shared that there were discussions during the SG Meetings in Singapore in relation to price reduction requests from [✂] customers, [✂] from Singapore. The discussions mainly related to the following customers: [✂] and other small Japanese accounts. Once a request was received, the Parties who attended the SG Meetings would ask each other if they received the requests. On occasion, the Parties would discuss how they would respond to the price reduction requests.

183. In relation to how the Parties would use such information, [✂] of ELNA informed that he took into account a competitor's announced intention to increase prices or not to reduce prices when making pricing decisions. He took reference from these announcements, as ELNA knew that their competitors would not reduce prices.[217] He believed that the message from the other Parties was for ELNA and the Parties attending the SG Meetings to move prices in the same direction when they make such announcements.[218]

184. In terms of the impact of such discussions on pricing decisions, [✂], who was in charge of sales in Panasonic Malaysia from 2004 to 2009, said that *"in order to avoid any price reduction requests from our customers, we resorted to attending the ATC meeting* (referring to SG Meeting). *Every year, customers will ask for price reductions. As a manufacturing plant, we prefer not to give price reductions. We tried to use the ATC meeting to collect more information in order to avoid price reductions"*.[219] In addition, he added that "*we [participants in ATC meetings] used the information gathered during the ATC meetings as a reference to guide our [participants in ATC meetings] response to customer in terms of price reduction*".[220]

185. Panasonic's main customer in Singapore was [✂].[221] [✂] purchased AECs directly from Panasonic Malaysia for the manufacture of security cameras. Panasonic shared that the discussions relating to [✂] in the SG meetings were useful because Panasonic could negotiate strongly if competitors expressed that they were going to resist a price reduction request from [✂].

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[217] Refer to Answer to Question 2 of Notes of Information/Explanation provided by [✂] (ELNA) dated 22 May 2015 and Answers to 133 to 142 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.
[218] Refer to Answer to Question 3 of Notes of Information/Explanation provided by [✂] (ELNA) dated 22 May 2015.
[219] Refer to Answer to Question 69 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.
[220] Refer to Answer to Question 129 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.
[221] [✂].

186. According to [✂] of Panasonic, SCC was a competitor to Panasonic in relation to the sale of AECs to [✂]. In this regard, [✂] of SCC had called him about 5 to 6 times during the period of 2004 to 2009 with regard to price reduction requests from customers, some of which were in relation to [✂]. [✂] would usually ask if [✂] had received a price reduction request from a particular customer and how Panasonic intended to respond to the request. If [✂] could not provide information through the call, [✂] would request for the information to be shared during the SG Meetings. Further, [✂] disclosed that he had obtained the information relating to price reduction requests from [✂] during the SG Meetings (2004 – 2009) and that such information would be used to inform Panasonic's response to [✂] in order to maintain its share of sales to that customer.[222]

187. In terms of the mechanics of cooperation between NCC and Panasonic when responding to a price reduction request from [✂], [✂] of Panasonic shared that:[223]

> *"First of all, during the ATC meetings* (SG Meetings)*, we confirm whether the other party had received the same price reduction request, We would share the percentage price reduction requested by [✂]. If Nippon Chemi-con received the same price reduction request, I would ask them whether they would be giving the 5% discount and reply that I would not give the 5% discount. In this case, Nippon Chemi-con would say that they would also not give a 5% discount. Matsushita[224] and Nippon Chemi-con would like to minimize the price reduction and so we would agree to only give a 2-3% price reduction to [✂]. We provide a range in the percentage price reduction because [✂] would become suspicious if we were to give the same percentage of discount."*

<u>*Conclusion on the exchange of information on customers' RFQs*</u>

188. The exchanges of information pertaining to specific customers between the Parties limited the price competition between them and had the object of fixing prices, which can take the form of fixing the price itself or components of a price such as a discount, establishing the amount or percentage by which the prices are to be increased, or establishing a range outside which prices are not move. The Parties had revealed to each other whether or not price reductions were to be given to specific customers, and if so, the range of that price

[222] Refer to Answers to Questions 99 to 103 and 106 to 107 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015.
[223] Refer to Answer to Question 131 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 28 October 2015
[224] Previous name of Panasonic Japan.

reduction. In relation to price increases, the Parties had indicated the percentage price increase to be applied to specific customers.

189. The evidence clearly established that every Party had engaged in the pricing discussions described above with at least one other Party in one or more of the following circumstances: (i) when they received RFQs; (ii) when dealing with price reduction requests; (iii) verification of the another Party's quote; and (iv) when implementing price increases, and the exchange of pricing information and future pricing intention between the Parties had the object of fixing prices.

(iii) CCS's Conclusions on the Evidence

190. In summary, based on the evidence set out above, CCS concludes that all five Parties were engaged in a long-standing arrangement of regular meetings and systematic exchanges of strategic information as to future pricing intentions through the SG Meetings. The last known SG Meeting was held on 25 March 2013. The five party SG Meetings stopped in 2009, and the last minuted meeting of the same was on 25 February 2009.

191. During that meeting on 25 February 2009, it was noted that Panasonic and ELNA will no longer attend the meeting as both no longer had a Japanese representative to attend the meeting, and Panasonic had issued an internal notice prohibiting the participation of its staff at such meetings. The SG Meetings, however, carried on with the remaining three Parties, i.e. Rubycon, SCC, and Nichicon. These meetings were sometimes referred to as dinner meetings. The last minuted meeting between the remaining three Parties, i.e. Rubycon, SCC and Nichicon was on 25 March 2013.

192. At the SG Meetings, the Parties had discussed and agreed on the overall strategies for their Singapore subsidiaries to consider and implement in pursuit of the overall common objective.

193. The evidence also revealed that the Japan Meetings and SG Meetings were complementary in nature as both involved discussions on future pricing policy and strategic direction. Instructions were often given to the Singapore Subsidiary/Affiliate Companies pursuant to agreements and discussions made in Japan, which were then shared at the SG Meetings.[225] Several Singapore Subsidiary/Affiliate Companies would also report the important issues arising from the SG Meetings to their respective Japan Parent/Affiliate Company.

[225] [✂].

194. In light of the foregoing, it is clear that in pursuit of common overall objective to maintain profits and market shares, the Parties engaged in a series of actions, through the SG Meetings and outside of it, to give effect to the objective.

195. Over the years, that series of actions consisted of agreeing on percentage price increases when the prices of raw materials began to increase, and/or exchanging information about the likely percentage price increases to be applied to customers, resisting price reduction request, exchanging information on customers RFQs and verifying customer quotations with each other, in relation to customers in [✂] Singapore. The exchanges and disclosure of price information, amongst other things, reduces the uncertainties inherent in the competitive process and facilitates the coordination of the Parties' conduct on the market. CCS takes the view that such actions clearly have the object of restricting competition and causes serious harm to competition.

196. For example, if a Party attempts, on its own accord, to increase prices of AECs sold to customers, the customers may opt to obtain supply from other AEC suppliers. In a competitive market, an individual AEC supplier may not be able to sustain a price increase without losing market share to its competitor. However, in the circumstances where the Parties agreed to increase the price of AECs collectively, or stand united against price reduction demands by customers, the customers' ability and incentive to switch to another AEC supplier would be significantly reduced.

197. Without the agreements and/or concerted practices between the Parties, individual AEC suppliers would have had to take independent decisions on the extent to which they are able to increase the price of the AECs due to increases in the cost of materials, having regard to prevailing market conditions and according to their own competitive position. The Parties will have to compete for market shares via more competitive prices or non-pricing strategies.

198. The characterisation of a complex cartel as a single continuous infringement is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute infringements.[226] Therefore, even though the actions engaged in by the Parties could individually constitute infringements, this does not preclude CCS from finding that the Parties have engaged in a single continuous infringement.

[226] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125 at [81].

199. CCS also considers that it would be artificial and contrary to the commercial reality of the situation to split up such continuous conduct into a number of separate infringements where it is characterised by a single objective. The participation and contribution of the Parties at these meetings were ultimately aimed at, or amounted to attempts at controlling the price of AECs, with the economic aim of maintaining each Parties' market share and profits through limiting the risks of competition by cooperating on matters related to pricing, instead of making pricing decisions independently. A finding of a single continuous infringement in this regard is based on the common objective of the SG meetings, which concerned common products (AECs), involved common Parties, covered the same geographic scope of application [✂], and demonstrated continuity of practice through the monthly meetings.

200. As stated above, the five party SG Meetings stopped in 2009, and the SG Meetings carried on with three Parties, i.e. Rubycon, SCC and Nichicon, until 25 March 2013. For the period of the infringement, CCS notes that there is no evidence to prove that the Parties took any steps, during the said period, to denounce the cartel and the agreements and concerted practices made by the Parties at the SG Meetings or to publicly distance themselves from the cartel or its objectives. The exception would be Panasonic and ELNA, both of whom stopped attending the SG Meetings from 25 February 2009.

201. CCS makes a finding of a single continuous infringement for the following reasons:

a) the agreements and/or concerted practices that make up the single continuous infringement were all in pursuit of the common overall objective to maintain sales and profits through fixing, raising, maintaining and/or preventing the reduction in prices of AECs to customers in [✂] Singapore;

b) this was effected variously through agreeing on percentage price increases when the prices of raw materials began to increase, and/or exchanging information about the likely percentage price increases to be applied to customers, resisting price reduction request, exchanging information on customers RFQs and verifying customer quotations with each other, in relation to Customers in Singapore. However, at all times, the common overall objective remained the same, with the various actions taken based on the prevailing market circumstances;

c) each Party to the single continuous infringement intended to contribute by its own conduct to the common objectives of the single continuous infringement, and further, each Party was aware of or could reasonably

have foreseen the actual conduct planned or put into effect by other Parties in pursuit of the common objective. This is evident from the participation of the Parties in the meetings as recorded in the contemporaneous records of those meetings that have been provided to CCS and corroborated by the witnesses present at the various meetings;

d) the agreements and/or concerted practices establishing the single continuous infringement are complementary;

e) the Parties to the single continuous infringement remained the same throughout the entire infringement period, with the exception of Panasonic and ELNA, both of which attended their last SG Meeting on 25 February 2009; and

f) for the duration of the SG Meetings, each Party attended regularly and full attendance by all Parties was recorded at almost every meeting.

202. The list of the SG Meetings dates and the representatives of the Parties who attended the meetings is set out at **Annex B**.

CHAPTER 3: DECISION OF INFRINGEMENT

203. Given the manifestly anti-competitive object of the agreement and/or concerted practice to fix, raise, maintain and/or prevent the reduction in prices of AECs, there is no need to show that the arrangement had effects which were restrictive of competition. On account of the evidence set out above, CCS concludes that the evidence unequivocally establishes the elements of an agreement, or at the very least, a concerted practice with the object of restricting, preventing or distorting competition in the market for the sale of AECs to Customers in Singapore in contravention of section 34 of the Act.

204. CCS therefore finds that the Parties, namely ELNA, Nichicon, Panasonic,[227] Rubycon and SCC, have infringed the section 34 prohibition by entering into an agreement or, at the very least, a concerted practice with the object of restricting, preventing or distorting competition in the market for the sale of AECs to Customers in Singapore.

205. CCS further directs the Parties to pay financial penalties pursuant to section 69(2)(d) of the Act.

[227] For the purposes of this ID, CCS treats Panasonic Malaysia and Panasonic Singapore as a single economic unit as [✂] represented both Panasonic Malaysia and Panasonic Singapore at the SG Meetings; [✂] [✂], following his attendance at the SG Meetings (see above at paragraph 124 of ID).

A. End of infringement

206. The section 34 prohibition came into force on 1 January 2006. CCS's analysis of the evidence above shows that the agreement which was in place before 31 July 2005, continued in operation beyond 1 July 2006. In other words, after the expiry of the transitional period provided for under the Competition (Transitional Provisions for Section 34 Prohibition) Regulations.[228] Therefore, pursuant to Regulation 3(2) of the Competition (Transitional Provisions for Section 34 Prohibition) Regulations, CCS may impose a financial penalty on the Parties.

207. The five party SG Meetings stopped in 2009, with the last minuted meeting dated 25 February 2009. During that meeting, it was noted that Panasonic and ELNA will no longer attend the meeting as both no longer had a Japanese representative to attend the meeting, and Panasonic had, for compliance purposes, issued an internal notice prohibiting the participation of its staff at such meetings.[229] The SG Meetings, however, carried on with the remaining three Parties, Nichicon, Rubycon and SCC. These meetings were sometimes referred to as dinner meetings. The last minuted meeting between the remaining three Parties was on 25 March 2013.

208. Taking into account the facts and circumstances of this case, CCS considers the end date of the infringement for each Party to be the last SG meeting that each Party attended, i.e. 25 February 2009 for ELNA and Panasonic, and 25 March 2013 for Nichicon, Rubycon and SCC.

209. The table below sets out the infringing Parties and their respective periods of infringement.

Infringing Parties	**Period of Infringement**
ELNA	1 January 2006 to 25 February 2009
Nichicon	1 January 2006 to 25 March 2013
Panasonic	1 January 2006 to 25 February 2009
Rubycon	1 January 2006 to 25 March 2013
SCC	1 January 2006 to 25 March 2013

[228] Refer to Regulation 2 of the Competition (Transitional Provisions for Section 34 Prohibition) Regulations.
[229] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

B. Financial Penalties - General Points

210. Under section 69(2)(d) of the Act, read with section 69(4) of the same, where CCS has made a decision that an agreement has infringed the section 34 prohibition, CCS may 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.

211. Before exercising the discretion to direct an undertaking to pay a financial penalty, CCS must be satisfied that the infringement has been committed intentionally or negligently.[230] 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 UK Competition and Markets Authority ("**CMA**") 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.[231]

212. As established in the *Pest Control Case*,[232] the *Express Bus Operators Case*,[233] the *Electrical Works Case*,[234] and the *Ball Bearings Case*,[235] the circumstances in which CCS might find that an infringement has been committed intentionally include the following:

    a. where an agreement has as its object the restriction of competition;

    b. where 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

    c. where 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.

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[230] See section 69(3) of the Act and [4.3] to [4.11] of the *CCS Guidelines on Enforcement*.
[231] See Case C-137/95 P *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].
[232] See [2008] SGCCS 1 at [355].
[233] See [2009] SGCCS 2 at [445].
[234] See *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works* [2010] SGCCS 4 at [282].
[235] See [2014] SGCCS 5 at [397].

213. 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 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.[236]

214. CCS finds that the Parties engaged in a single continuous infringement in pursuit of a common overall objective to concertedly fix, raise, maintain and/or prevent the reduction in prices of AECs for sale to Customers in [✂] Singapore.

215. CCS finds that the single continuous infringement, which has as its object the restriction of competition, is likely to have been, by its very nature, committed intentionally.

216. CCS further finds that Parties must have been aware that the agreements and/or concerted practices in which they participated will restrict competition but still decided to carry on with them. Statements such as the following, made by the Parties, suggests that the Parties were aware of the implications and the illegality of the conduct:

    a. *"it is no good to act against laws but members share the same problem of higher material cost and we should cooperate as much as possible for actual merits*",[237] as set out in the minutes of the 21 April 2008 SG meeting provided by Rubycon; and

    b. a clarification on the statement provided by [✂] of Panasonic that "*because all companies were experiencing an increase in raw material prices, every member should increase their prices to increase profits*".[238]

217. Further, the Parties were aware that discussing customers' price reduction requests would reduce uncertainties in competitors' pricing decisions and restrict competition. For example, SCC explained that "*if the competitor does not reduce the price, we will also not reduce the price. If the competitor reduces the price, we will have no choice but to reduce our price. This will allow us to keep our orders and maintain our sales*."[239] In this regard, the

[236] See paragraphs 4.7 to 4.10 of the *CCS Guidelines on Enforcement 2016*.
[237] Refer to Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015, "TN-020" Minutes of SM Meeting of April 21, 2008.
[238] Refer to Answer to Question 149 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 29 October 2015.
[239] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.

Parties were acting intentionally when discussing price reduction requests because the knowledge of competitors' pricing intentions allowed the Parties to tailor their own pricing decisions to maintain sales, which in turn reduced the incentive for the Parties to compete on prices.

218. Similarly, the Parties intentionally cooperated to increase their prices when negotiating with [✂], to facilitate Rubycon achieving its intended price increases for [✂]. As Rubycon indicated, "*had one company not cooperated, Rubycon Singapore would not have been able to negotiate for the price increase…therefore Rubycon Singapore expressed its appreciation for the cooperation from the other member companies*."[240]

219. Based on the above evidence, CCS is satisfied that the Parties were aware that their actions would restrict competition but had still chosen to carry them out and therefore intentionally infringed the section 34 prohibition.

220. In this regard, CCS directs the Parties to pay financial penalties as set out in the following section.

C. Calculation of Penalties

221. The *CCS Guidelines on the Appropriate Amount of Penalty 2016* ("**Penalty Guidelines**") provides that the twin objectives of imposing financial penalties are: (1) to reflect the seriousness of the infringement, and (2) to deter the infringing undertakings and other undertakings from engaging in anti-competitive practices.[241] In calculating the amount of penalty to be imposed, CCS will take into consideration the seriousness of the infringement, and the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year ("**the relevant turnover**"). An undertaking's last business year refers to the financial year preceding the year when the infringement ended.[242]

222. CCS also takes into consideration the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors. The EC and the CMA 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, depending on the seriousness of the infringement. A multiplier is applied for the duration of

[240] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 18 November 2015.
[241] See paragraph 1.7 of the Penalty Guidelines.
[242] See paragraph 2.1 of the Penalty Guidelines.

infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

(i) Step 1: <u>Calculation of the base penalty</u>

223. The seriousness of the infringement and the relevant turnover of each Party are taken into account when setting the starting point for calculating the base penalty amount as a percentage rate of each Party's relevant turnover. CCS notes that the Parties import AECs from the Japan Parent/Affiliate Companies and sell them to Singapore Customers. The relevant turnover in this case would therefore be the turnover of each Party for the sale of AECs to Singapore Customers in the financial year preceding the year when the infringement ended.

224. 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 shares of the Parties 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.[243]

225. The seriousness of the infringement may also depend on the nature of the infringement. CCS considers that the single overall infringement with the object of preventing, restricting and distorting competition, which includes, amongst other things, price-fixing agreements and exchanges of strategic information including future pricing intentions, is a serious infringement of the Act.

226. <u>Nature of the product</u> – The relevant product and geographic market is the sale of AECs to Singapore Customers. AECs are generally homogenous in nature and the same type of AEC produced by one Party can be substituted with that produced by another competitor. This fact is supported by information provided by the Parties. For example, Rubycon stated that, "*Generally, the types of AECs produced by Rubycon can also be produced by Nippon Chemi-con and Nichicon…There are 3 main makers of AECs: Nichicon, Nippon Chemi-con and Rubycon and [they] make more or less the same AECs...*"[244] In general, CCS notes that price is an important parameter of competition for products that are homogenous in nature. The Parties, which engaged in a single continuous infringement to fix, raise, maintain and/or prevent the reduction in prices of AECs sold to Singapore Customers, therefore removed a critical and

[243] See paragraph 2.4 of the Penalty Guidelines

[244] Refer to Answer to Question 23 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015.

essential element of competition to the detriment of their Singapore Customers.

227. Structure of the market and market share of the Parties – Generally, the market players selling AECs to Singapore Customers consist of multinational companies with sales subsidiaries in Singapore. The Parties form the majority of AEC suppliers to Singapore Customers [✂].[245]

228. Effect on customers, competitors and third parties – It is difficult to quantify the amount of loss caused to Singapore Customers as a result of the infringement. This is due to the lack of "counterfactual" information, i.e. the price of AECs sold to Singapore Customers during the infringement period had the Parties not engaged in the infringement. That said, there were instances of discussions between Parties relating to price increases of between 3% and 20% and rejection of price reduction requests from Customers.[246] As such, CCS is of the view that in the absence of the infringement, there would have been more competition and potentially lower prices given that price competition is an important element of competition for homogenous products like AECs.

229. Panasonic acknowledged that the act of exchanging information on the pricing of AECs prevented prices from falling more than they otherwise would have fallen absent the infringement: "*These companies attending meetings were competitors. They were supplying the same product to the same market. They competed with each other to get as many orders as possible in normal condition. But at times the competition was so intense that they reduced the price more than required….**In order to avoid the misunderstanding and situations when price were lowered more than necessary, they conducted a meeting of this sort once a month**. By attending the meeting, they knew each other. To avoid the kind of unfavourable situation which I just mentioned, they provide the information about their company's situation to a certain extent."*[247]

230. By engaging in the single continuous infringement in which the Parties had entered into pricing agreements and exchanged confidential and commercially

[245] According to Rubycon, [✂], their main competitors are Panasonic, NCC, ELNA, Nichicon and [✂] – refer to Answer to Question 29 of Notes of Information/Explanation provided by [✂] (Rubycon) dated 13 May 2015; ELNA also reiterated the same information i.e. the main competitors in Singapore for AECs are Panasonic, NCC, Rubycon, and Nichicon – refer to Answer to Question 23 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015.

[246] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.

[247] Refer to Answer to Question 113 of Notes of Information/Explanation provided by [✂] (Panasonic) dated 18 May 2015.

sensitive information relating to the future pricing intentions, the Parties had substituted the risks of price competition in favour of practical cooperation related to pricing, instead of making pricing decisions independently.

231. CCS finds that but for the infringement, each of the Parties, as competitors, would have had a higher level of uncertainty in terms of the pricing strategies of their competitors. This is supported by SCC which stated that, "*knowing the price increases of our competitors is useful for my own price determination. By knowing that, it makes it easier for us to determine our price. In a normal situation, we do not know whether our prices to customers are high or low. By knowing our competitors' prices, price determination is easier."*[248] A higher level of uncertainty would in turn have resulted in a higher level of competitive constraint on the Parties, which would potentially have had to compete for market shares via more competitive prices or non-pricing strategies.

Starting Point Percentage

232. In determining the starting point, CCS has considered the nature of the product, the structure of the market, each Party's market share, the potential effect of the infringements on customers, competitors and third parties and that price fixing is one of the more serious infringements of the Act.

233. In the *Modelling Services case*,[249] CCS established that the higher the combined market share of the infringing Parties, the greater the potential to cause damage to the affected market(s). Further, a high market share figure generally indicates a more stable agreement/concerted practice as third parties find it more difficult to undercut and possibly undermine the incumbents. These factors affect the base amount. In this regard, CCS notes that the Parties make up the majority of the suppliers of AECs to Singapore Customers throughout the infringing period; therefore, the effect on customers will likely be greater given that these customers have limited alternatives to substitute to.

234. The records of the SG meeting on 25 February 2009 revealed that Panasonic and ELNA ceased to attend the SG Meetings because they no longer had a Japanese representative to attend the meeting and Panasonic had released an internal notice prohibiting participation of its staff at such meetings. The meetings that followed therefore consisted of the remaining three Parties, Rubycon, SCC and Nichicon. Although the market share of the Parties involved in said SG Meetings decreased with the cessation of ELNA's and Panasonic's involvements, ELNA and Panasonic are the two smallest players

[248] Refer to Answer to Question 59 of Notes of Information/Explanation provided by [✂] (SCC) dated 3 June 2015.
[249] [2011] SGCCS 11 at [254].

amongst the Parties. As such, the combined market share of the three remaining Parties continue to make up the majority of the AEC suppliers in Singapore.

235. As noted at paragraph 226, the product market is one which is homogenous in nature and price would be a critical and essential parameter of competition. Absent the infringement, the Parties would likely have had to compete vigorously on prices to secure sales. Instead, by cooperating on prices, the Parties have removed this important aspect of competition which would otherwise have likely resulted in lower prices.

236. Having regard to all the circumstances, CCS considers it appropriate to apply a starting point percentage ("**SPP**") of [✂]% of the relevant turnover for each of the Parties involved in the single continuous infringement.

Parties' Representations

237. Nichicon submitted that [✂]% as an SPP was excessive[250] and disproportionate given the generic nature of the conduct which did not involve any agreement in respect of specific price level[251] and that the SG meetings held after February 2009 were of a different nature, i.e. that they were social gatherings amongst a smaller group of participants where there was no common objective or understanding with regard to any pricing or price-related matters, and therefore those meetings should not form part of the single continuous infringement. In that connection, Nichicon submitted that an SPP of no more than [✂]% would be appropriate.

238. SCC submitted that a lower SPP should be applied as the heterogeneous nature of the different types of AECs supplied made it difficult for the Parties to maintain the collusion and as such would have lessened the impact of the infringing conduct.[252] SCC further submitted that the SPP should also be lowered as the Parties have applied for leniency and have cooperated in the investigation.[253]

239. ELNA submitted that the SPP should take into account each Party's individual circumstances. For instance, ELNA argued that they had played a minor role in the infringing conduct and had terminated the conduct before the other Parties. In its representations on why a lower SPP is justified, ELNA also

[250] Refer to Nichicon's Written Representation dated 1 June 2017 at [4.41].
[251] Refer to Nichicon's Written Representation dated 1 June 2017 at [3.11] and [3.70].
[252] Refer to SCC's Written Representation dated 26 May 2017 at [5.3.5 – 5.3.6].
[253] Refer to SCC's Written Representation dated 26 May 2017 at [5.4.3].

argued that they had a smaller market share in the market for AECs as compared to the other Parties and that they did not adhere to the price increases discussed at the meetings.[254]

CCS's Conclusion on the SPP

240. In relation to the seriousness of the infringement, CCS is of the view that the infringing conduct clearly falls on the more serious end of the scale. The egregious nature of the conduct of the Parties included, amongst other things, collective efforts to raise prices and prevent price reductions, as well as exchanges of strategic information including future pricing intentions, thereby protecting the stability of each Party's profitability and market shares to the detriment of their customers, who had limited alternatives to purchase AECs. The harm to competition was for a protracted period of time as this was a long running cartel made of up the major suppliers of AECs in ASEAN, including Singapore. In pursuing their anti-competitive goals, the Parties attended the SG Meetings with unfailing regularity – almost on a monthly basis from as far back as 1997.

241. In relation to SCC's representations that collusion was difficult to maintain, this has no relevance to the consideration of the SPP. It has long been recognised that internal conflicts and rivalries, or even cheating may occur in cartels, and that each participant in a cartel may only play the role which is appropriate to its own specific circumstances. However, each Party shares the responsibility for the infringement as a whole, including acts committed by other participants which share the same unlawful purpose and the same anticompetitive effect.[255] This principle is effected by fact that the same SPP is applied to all Parties, reflecting the overall seriousness of the infringement. Further, in relation to SCC's argument on the heterogeneity of AECs, notwithstanding that there are many different types of AECs, CCS notes that as stated at paragraph 226 above, each type of AEC is manufactured according to similar standards and the same type of AEC produced by one Party can be substituted with that produced by another competitor.

242. Finally, in accordance with settled case law and consistent with CCS's decisional practice to date, CCS is of the view that the SPP should not reflect individual circumstances, as seriousness relates to the nature of the infringement as a whole[256] – and not as an assessment of the relative gravity

[254] Refer to ELNA's Written Representation dated 2 June 2017 at [13 – 28]
[255] Paragraph 65 of ID; Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125.
[256] *Quinn Barlo Ltd v European Commission* [2012] 4 C.M.L.R. 13 at [185]; Case T-348/08 *Aragonesas Industries y Energia, SAU v European Commission* at [264], [272]; *Novacke Chemicke Zavody AS v European Commission* [2013] 4 C.M.L.R. 23 at [58].

of the participation of each of the Party. The relative gravity of each Parties' conduct is more appropriately taken into account at Step 3, when assessing the applicable aggravating and mitigating circumstances. Further, the relative size of each Party and its market share is reflected in the individual relevant turnover to which the SPP is applied.

243. Having considered the representations, CCS rejects the Parties' arguments for a lower SPP.

Relevant Turnover

244. The relevant turnover in the last business year will be considered when CCS calculates the base penalty.[257] An undertaking's last business year refers to the financial year preceding the year when the infringement ended.[258] Consistent with how CCS defined the relevant market, the relevant turnover refers to the turnover of each Party attributable to the sale of AECs to Customers in Singapore. This generally refers to the relevant portion of the turnover of each Singapore Subsidiary/Affiliate Company.

245. CCS notes that the Parties' Customers may include OEMs, EMS, IPOs and distributors or other third party intermediaries ("**Re-Exporter**") that may subsequently sell AECs to Singapore Customers and/or sell or re-export AECs to non-Singapore customers ("**Re-Export Sales**"). As established in the *Ball Bearings Case,*[259] Re-Export Sales are included in the calculation of relevant turnover if the distribution was not done on behalf of any of the Parties as its agent or there is no evidence to suggest that the Party had any control over whom the Re-Export Sales went to. A necessary consideration should therefore be the nature of the relationship between a Party and Re-Exporter, including the extent to which the Re-Exporter bore the business cost and inventory risk of the AECs bought from the Party which were meant to be re-exported and consequently whether the relationship resembled that of a supplier and customer or a principal and agent. The former relationship will suggest that the Re-Exporter bore the full brunt of damage caused by any anti-competitive behaviour by the Party and it should follow that Re-Export Sales should be included as part of the relevant turnover. CCS's arguments were subsequently upheld on appeal before the CAB.[260]

[257] See paragraph 2.1 of the Penalty Guidelines.
[258] See paragraph 2.1 of the Penalty Guidelines.
[259] See [2014] SGCCS 5 at [450] and [454].
[260] See *Re Nachi-Fujikoshi Corporation and Nachi Singapore Private Limited* [2016] SGCAB 1 at [34] to [38].

246. Having regard to all the circumstances of the case, CCS considers it appropriate to define the relevant turnover as the turnover of the Parties in relation to the sale of AECs to Customers in Singapore in the financial year preceding the year when the infringement ended.[261]

Parties' Representations

247. In the Parties' representations on relevant turnover, the following issues and arguments were raised:

a. ***Categorisation of Customers***: Relevant turnover should exclude turnover attributable to those customers in Singapore who are customers of the parent company and/or its other subsidiaries.

b. ***Categorisation of Sales***: Relevant turnover should exclude turnover from sales to IPOs in Singapore because such sales relate, in substance, to customers located outside of Singapore;

c. ***Categorisation of AECs***: Relevant turnover should exclude large screw terminal AECs; and

d. ***Invoicing and delivery of AECs***: Relevant turnover should be calculated based on the place of delivery rather than the place of invoicing, i.e. the place of invoicing approach captures the impact of conduct which has no significant nexus to Singapore.

a. Categorisation of Customers

248. ELNA submitted that the turnover attributable to customers in Singapore that are customers of its parent company and/or the parent's other subsidiaries ("**Indirect Customers**"), are not customers of the infringing Party to which AECs are directly sold ("**Direct Customers**"). ELNA argued that sales to such Indirect Customers should be excluded from the computation of the relevant turnover, as the sales to Indirect Customers "were effected by and belonged to" ELNA Japan and/or its other subsidiaries ("**ELNA Entities**").[262] In particular, ELNA argued that it was ELNA Japan and/or the ELNA Entities that "negotiated and determined the prices of the AECs" for such Indirect Customers, and that ELNA "had no control over the sales of AECs" to these

[261] For turnover figures submitted in foreign currencies, CCS applied an average exchange rate for the calendar year, which has a greater overlap with the applicable financial year and period, for the conversion to Singapore dollars. The average exchange rate was obtained from the Monetary Authority of Singapore website at https://secure.mas.gov.sg/msb/ExchangeRates.aspx.

[262] See generally, ELNA's Written Representations dated 2 June 2017, at [6]-[9], [35]-[36].

Indirect Customers. ELNA submitted that it merely distributed the AECs to these customers for and on behalf of ELNA Japan and/or the ELNA Entities as their agent, [✂]. Notably, these Indirect Customers were distinct from ELNA's own Direct Customers, for which ELNA alone could determine the prices of the capacitors sold.

249. ELNA further sought to distinguish the *Ball Bearings Case*[263] from its own position, and argued that the turnover in relation to Indirect Customers was not derived from ELNA's sales of AECs to these customers.[264] Although the turnover relating to the sales to Indirect Customers appeared in ELNA's books as it was the party which issued the invoices, ELNA argued that such a record was merely administrative and that "substance should prevail over form" in recognising the "underlying economic reality" that ELNA was not involved in the sale of AECs to Indirect Customers, given that it had not negotiated or determined the prices of AECs sold to Indirect Customers, and accordingly, could not have fixed those prices.[265]

250. In the circumstances, ELNA contends that the relevant turnover should be [✂].

CCS's Conclusion on the Categorisation of Customers

251. CCS notes that ELNA does not dispute the fact that Indirect Customers fall within the relevant market definition as set out in the PID and this ID. It is also not disputed that ELNA was the entity that had received purchase orders from these Indirect Customers; had invoiced/billed them;[266] and was also the entity that bore the financial risk of non-payment by these Indirect Customers.[267] Given that the proceeds of these sales to Indirect Customers fell within ELNA's "ordinary activities in Singapore",[268] and were reflected in ELNA's accounts and **not** in the accounts of ELNA Japan or the other ELNA Entities, they form part of the relevant turnover of ELNA and not of ELNA Japan or any other ELNA Entities. For these reasons, CCS disagrees with ELNA's claims that it is an agent of ELNA Japan and/or other ELNA Entities in respect of Indirect Customers.

252. Second, ELNA had a hand in *influencing* the prices of AECs sold to Indirect

[263] [2014] SGCCS 5.
[264] Refer to ELNA's Written Representations dated 2 June 2017, at [34].
[265] Refer to ELNA's Written Representations dated 2 June 2017, at [38]-[48].
[266] Refer to ELNA's Written Representations dated 2 June 2017, at [8]-[9]; ELNA's Further Clarifications on Oral Representations dated 2 August 2017, at [8].
[267] ELNA's Further Clarifications on Oral Representations dated 2 August 2017, at [11]-[12].
[268] See paragraph 2.6 of the Penalty Guidelines.

Customers. As set out in the PID and this ID, the Parties would report back to the Japan Parent/Affiliate Companies on the discussions that took place during the SG Meetings, to give effect to the common overall objective of maintaining profits and market shares.[269] With particular regard to ELNA, [✂] and [✂] had admitted that information obtained at SG Meetings would be reported back to Japan via email, and that this information would have an "effect on the pricing decisions of the Japanese headquarters".[270] Thus, given the weight of the evidence, CCS is unable to accept that ELNA had completely no involvement in the sales of AECs to Indirect Customers.

253. Third, the concept of relevant turnover refers to the *entire* turnover of the infringing party in the relevant product and geographic market; and is not limited to the turnover directly affected/impacted by the infringement.[271] This position has been affirmed by the CAB, and is in line with EU and UK case law. Further, the imposition of financial penalties for anti-competitive practices is based on the twin objectives of punishment and deterrence as opposed to the disgorgement of gains received from the infringing conduct.

254. In view of the above, CCS rejects ELNA's representations to exclude turnover attributable to Indirect Customers in Singapore from the calculation of the relevant turnover.

b. Categorisation of Sales

255. SCC submitted that the relevant turnover should exclude turnover from sales to IPOs in Singapore because such sales relate in substance to customers located outside of Singapore.[272] SCC distinguished the CAB decision in the *Ball Bearings Case*[273] on the ground that there is a distinction between an IPO and a distributor that sells products to customers outside of Singapore.[274] SCC argued that the IPOs function only as an agent and hence, the locus of competition should be where the IPOs' end customer is located as it is an internal commercial decision on the part of the customer to choose whether to procure directly from SCC or to do so via an IPO.[275]

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[269] Refer to paragraphs 102, 193 and 194 of the ID.
[270] Refer to Answers to Questions 28 and 44 of Notes of Information/Explanation provided by [✂] (ELNA) dated 20 May 2015; Refer to Answer to Question 29 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015; Refer to Answers to Questions 65-68 of Notes of Information/Explanation provided by [✂] (ELNA) dated 21 May 2015.
[271] See generally, *Re IPP Financial Advisers Pte. Ltd.* [2017] SGCAB 1, at [30]-[44].
[272] Refer to SCC's Written Representation dated 26 May 2017 at [3.1] and [4.1].
[273] [2016] SGCAB 1 at [36].
[274] Refer to SCC's Written Representation dated 26 May 2017 at [4.3.3] and [4.3.7].
[275] Refer to SCC's Written Representation dated 26 May 2017 at [4.3.6].

CCS's Conclusion on the Categorisation of Sales

256. CCS notes that IPOs are Customers of SCC in Singapore. SCC had acknowledged this fact in stating that it sells AECs to, *inter alia*, distributors or IPOs located in Singapore which in turn sell or supply such AECs to their customers or affiliates for use in Singapore and elsewhere.[276] SCC is not involved in the subsequent sale of AECs by the IPOs. IPOs therefore fall squarely within the definition of "Customers in Singapore" in this ID.[277]

257. As procurement arms (for various MNCs etc.) which are based in Singapore, these customers would be subjected to the distortion of the competitive process for the sale of AECs caused by the Parties and would have suffered the harm caused by the anti-competitive conduct. This was also the position taken in the *Ball Bearings* case where the "place of invoicing" approach was adopted as it reflected where competition affected by the cartel took place.[278]

c. Categorisation of AECs

258. SCC submitted that the relevant turnover should exclude large screw terminal AECs as the scope of the product market should be confined to the specific products affected by the infringing conduct.[279] As such, SCC argued that the infringing conduct did not relate to all types of AECs produced by SCC and hence, large screw terminal AECs should be excluded from the relevant turnover used to calculate the penalties.[280] SCC further submitted that CCS should follow the same approach as in the *Financial Advisers Case*[281] and not include all types of AECs given that AECs are heterogeneous products that have different specifications.[282]

CCS's Conclusions on the Categorisation of AECs

259. In relation to the scope of the products included in the relevant turnover, CCS has stated that the relevant product is AECs. Accordingly, turnover of the Parties in relation to the sale of AECs to Customers in Singapore forms the

[276] Information provided by SCC dated 27 October 2014 pursuant to the section 63 Notice by CCS dated by 13 October 2014, response to Question 5.
[277] Refer to Glossary, Page 5 of ID.
[278] [2014] SGCCS 5 at [441] to [459].
[279] Refer to SCC's Written Representation dated 26 May 2017 at [4.4.1].
[280] Refer to SCC's Written Representation dated 26 May 2017 at [4.4.2] and [4.4.3].
[281] Case Number: CCS 500/003/13 - *CCS Infringement Decision against Financial Advisors for Pressuring a Competitor to Withdraw Offer from the Life Insurance Market* (17 March 2016).
[282] Refer to SCC's Written Representation dated 26 May 2017 at [4.4.1], [4.4.5] and [4.4.7].

basis of deriving the relevant turnover. While all the products directly affected by the infringement may not be the entire universe of AECs, all sales of AECs to customers in Singapore should form the relevant turnover and CCS is not required to define the market more narrowly for the purposes of calculating the financial penalty. This has been established in *Putters International v Commission*[283] and further in the CAB decision in the *Financial Advisors Case*,[284] where it was held that the turnover should relate to the entire turnover of the relevant market and not necessarily the equivalent of the turnover obtained directly from the infringing conduct.

260. In any event, the evidence is that the discussions between the Parties concerned AECs in general and affected all AECs particularly when the discussions touched on price restoration/recovery and price increases.[285] SCC also did not provide any substantive evidence that large screw terminal AECs were deliberately left out of the discussions at the SG Meetings.

261. CCS therefore rejects SCC's representations that large screw terminal AECs should be excluded from the calculation of the relevant turnover.

d. Invoicing and Delivery of AECs

262. Rubycon submitted that the place of invoicing is not an appropriate factor to be considered when deriving relevant turnover, and instead the place of delivery is the most appropriate factor. Rubycon argued that the place of invoicing approach would capture the impact of conduct which has no significant nexus to Singapore and omit conduct which has nexus to Singapore. In this regard, Rubycon submitted that the key factor considered by the EC was to determine where the competition affected by the conduct took place and which approach could better ascertain the effects of the conduct. Rubycon highlighted the case of *TV and computer monitor tubes*,[286] wherein the place of delivery approach was adopted because the place of delivery ultimately determined the level of sales made within the EEA.[287] Rubycon also sought to differentiate the present case from the *Marine Hoses* case,[288] where the place of invoicing approach was used, by arguing that some of the AECs captured in the place of invoicing may not have a significant nexus in respect of impact on the market in Singapore as a portion of those

[283] Case T-211/08 *Putters International v Commission* at [57] – [59].
[284] See generally, [2017] SGCAB 1, at [30]-[44].
[285] ID at [137] and [157].
[286] EC Case No. AT 39437.
[287] Refer to Rubycon's Written Representations dated 26 May 2017 at [4.26].
[288] EC Case No. COMP/39406.

AECs, albeit invoiced and billed to Customers in Singapore, were not produced at, shipped from or delivered to locations in Singapore.[289]

263. Rubycon further submitted that the place of invoicing approach is incongruent with the way business is conducted in the capacitors market. Rubycon explained that the Singapore-based entities function as the regional headquarters for many operations, and some of its Customers process invoices and co-ordinate their regional procurement from Singapore, although some of the AECs procured might be used or delivered elsewhere. Rubycon said that it is not privy to the internal operations of its Customers in Singapore, but explained that possible reasons these Customers operate out of Singapore could include tax rates, operational costs and economies of scale. Therefore, Rubycon argues that the portion of sales to such Customers are not likely to result in significant onshore effects in Singapore.[290]

CCS's Conclusions on Invoicing and Delivery of AECs

264. Rubycon did not challenge CCS's definition of the relevant market. Rubycon also did not dispute the fact that the sales based on invoices to Customers in Singapore fell within CCS's definition of the relevant market. Instead, Rubycon's argument rests on the argument that Customers that procure the AECs for use or delivery elsewhere should not be considered to be Customers "in Singapore" as the end user of the AECs might be located elsewhere. The fact that these Customers were affected and harmed by the infringing conduct, e.g. cartelised pricing etc, is also not in dispute.

265. In fact, the arguments raised by Rubycon support the use of the place of invoicing approach as it takes into account the effects of the infringement, i.e. that the competitive process for the sale of AECs in Singapore had been restricted, and that harm was caused to the Customers that purchased from the Parties in Singapore at cartelised prices, as a result of that restriction of competition.

266. Rubycon further submitted that the place of invoicing approach may lead to a serious risk of double counting. However, CCS is of the view that this submission has no bearing on the use of the place of invoicing approach as CCS's concern is the impact of Rubycon's anti-competitive conduct in the relevant market, i.e. Singapore, and the said impact was borne by Customers in Singapore in its purchase of AECs, both for use or re-sale in Singapore or elsewhere.

[289] Refer to Rubycon's Written Representations dated 26 May 2017 at [4.30].
[290] Refer to Rubycon's Written Representations dated 26 May 2017 at [4.32 to 4.33].

267. In light of the above, CCS is of the view that the place of invoicing approach is appropriate in the circumstances to determine relevant turnover.

(ii) Step 2: <u>Duration of the Infringement</u>

268. After calculating the base penalty sum, CCS adjusts this sum by multiplying it by the duration of the infringement.[291] In this case, the duration is determined by having regard to the date when each became party to the single continuous infringement, and the date on which their participation ceased.

269. For infringements that lasted for more than one year, CCS considers it appropriate for the base penalty sum to be multiplied by the number of years of the infringement. For durations that are above one year, any part of a year may be treated as a full year for the purpose of calculating the duration of the infringement.[292] Therefore, the base penalty sum will be multiplied for as many years as the infringement remains in place. This ensures that there is sufficient deterrence against cartels operating undetected for a protracted length of time.

270. Although an infringement over a part of a year may be treated as a full year for the purposes of calculating the duration of the infringement,[293] CCS has, in a few cases, exercised its discretion to round down the period to the nearest month. Therefore, for infringements that lasted for more than one year, the duration multiplier used will be the actual length of the infringement rounded down to the nearest month. CCS is of the view that this will provide an incentive to undertakings to terminate their infringing conduct as soon as possible.

271. CCS will deal with the adjustment for duration applicable to each Party in the calculation of penalties below.

(iii) Step 3: <u>Aggravating and Mitigating Factors</u>

272. At this stage, CCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[294] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

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[291] See paragraph 2.9 of the Penalty Guidelines.
[292] See paragraph 2.10 of the Penalty Guidelines.
[293] See paragraph 2.10 of the Penalty Guidelines.
[294] See paragraph 2.13 of the Penalty Guidelines.

273. CCS did not find any aggravating factors in this case and as such, CCS did not make any adjustment for aggravating factors. The reduction for mitigating factors, where applicable, are described below, in relation to each Party.

(iv) Step 4: Other Relevant Factors

274. CCS also may adjust the penalty, to achieve its policy objectives, which include, the deterrence of the Parties and other undertakings from engaging in anti-competitive practices including price fixing. 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.

275. CCS considers that if the financial penalty to be imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of imposing said financial penalties, CCS will adjust the penalty to meet the objectives of deterrence.

(v) Step 5: Statutory Maximum Penalty

276. Section 69(4) of the Act provides that the maximum penalty CCS can impose on an undertaking is 10% of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum of three years (the "**Statutory Maximum Penalty**"). The Competition (Financial Penalties) Order 2007 states that applicable turnover shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities in Singapore after deduction of sales rebates, goods and services tax and other taxes directly related to turnover.[295]

277. Therefore, CCS will determine the respective Statutory Maximum Penalty for each Party by using the business' applicable turnover for the year preceding the infringement decision[296] and will multiply this figure by 10% and by the duration of the infringement (up to a maximum of three years).[297] If the penalty calculated after Steps 1 to 4 exceeds the Statutory Maximum Penalty, then the financial penalty payable will be adjusted downwards to ensure that the figure is less than the Statutory Maximum Penalty.

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[295] Paragraph 1 of the Schedule to the Competition (Financial Penalties) Order 2007.

[296] For turnover figures submitted in foreign currencies, CCS applied an average exchange rate for the calendar year, which has a greater overlap with the applicable financial year and period, for the conversion to Singapore dollars. The average exchange rate was obtained from the Monetary Authority of Singapore website at https://secure.mas.gov.sg/msb/ExchangeRates.aspx.

[297] Refer to section 69(4) of the Act.

(vi) **Step 6: <u>Adjustment for Leniency</u>**

278. An undertaking participating in cartel activity may benefit from total immunity from, or a significant reduction in the amount of, financial penalty to be imposed if it satisfies the requirements for immunity or lenient treatment set out in the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016*. CCS will make the necessary adjustments to the financial penalty calculated after Step 5 to take into account immunity or any leniency reductions conferred on an undertaking.[298]

D. <u>Penalty for ELNA</u>

279. ***<u>Step 1: Calculation of the Base Penalty</u>:*** ELNA was involved in the single continuous infringement with the object of preventing, restricting and distorting competition in the market for sale of AECs sold to Customers in Singapore from 1 January 2006 until 25 February 2009.

280. Its financial year commences on 1 January and ends on 31 December.[299] ELNA's relevant turnover figures for the sale of AECs to customers in Singapore for the financial year ending 31 December 2008 was S$[✂].[300]

281. In accordance with CCS's assessment of the seriousness of this infringement as set out at paragraphs 223 to 243 above, the starting point for ELNA is [✂]% of its relevant turnover. The quantum of the base financial penalty for ELNA is therefore S$[✂].

282. ***<u>Step 2: Duration of Infringement</u>:*** ELNA was party to the single continuous infringement from 1 January 2006 until 25 February 2009. In this respect, CCS adopted a duration multiplier of 3.08 for ELNA after rounding down the duration to three years and one month. Therefore, the financial penalty after adjustment for duration is S$[✂].

283. ***<u>Step 3: Aggravating and Mitigating Factors</u>:*** Having taken into consideration all the facts and circumstances of this case, including that ELNA is a leniency applicant, CCS considers that there are no aggravating factors applicable to ELNA.

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[298] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.21.
[299] Information provided by ELNA dated 7 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.
[300] Information provided by ELNA dated 22 February 2017 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.

284. ELNA raised the following arguments as mitigating factors warranting a reduction in penalties.

285. Minor and passive role: ELNA submitted that its role in the infringing conduct is minor in view of its small market share and its earlier cessation of its participation in the SG Meetings.[301]

286. CCS notes that ELNA's smaller market share, would be reflected in their own relevant turnover figure which is used in the calculation of financial penalties. Further, ELNA's cessation of participation in the infringing conduct was already taken into account when CCS calibrated the penalty to take into account the duration of the infringement.

287. CCS further notes that ELNA participated in most, if not all, of the SG Meetings from September 1997 to February 2009, which shows that ELNA was an active member of the cartel. ELNA also actively participated in the infringing conduct as evidenced by some of the minutes recorded during the SG Meetings.[302]

288. Termination of conduct: ELNA submitted that it had terminated its participation in the SG Meetings on 25 February 2009, long before CCS started its investigation. ELNA also claimed that it was difficult to withdraw from the meetings prior to February 2009 because it feared reprisals from competitors.[303]

289. As stated earlier, the earlier cessation of ELNA's participation in the SG Meetings would be taken into account by the duration multiplier in the calculation of penalties, and a further reduction in penalties on this point is not warranted. In relation to the fear of reprisals from competitors, ELNA did not provide evidence to show that competitors had exerted severe duress or pressure on it to continue its participation in the SG Meetings. The regularity of ELNA's attendance at the SG Meetings, of an almost perfect attendance, also suggests otherwise.

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[301] Refer to ELNA's Written Representations dated 2 June 2017 at [51].

[302] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H – SG Meetings on 30 May 2006: of not yielding to price reduction requests; 27 June 2006: reporting on price increases on the Japan side as well as when the price increases will be effective and which customers it had implemented the prices increases; 25 July 2006: the percentage price increase to a specific customer; 19 October 2006: reporting on the status of price increase as well as the percentage price increase on quotes to a specific customer; 18 April 2007: the price increase situation in Japan in line with other competitors; 21 November 2007 and 24 December 2007: the rejection of price reduction requests made by its customers; and 18 August 2008: status of price recovery actions.

[303] Refer to ELNA's Written Representations dated 2 June 2017 at [53] and [54].

290. Co-operation: ELNA submitted that it had provided quality information and evidence that added significant value to CCS's investigations.

291. CCS considers that ELNA cooperated with CCS during the course of investigations. However, this was a condition of it being granted leniency and therefore no extra mitigation is given for the same.

CCS's conclusion on mitigating factors

292. Having carefully considered ELNA's representations on mitigating factors, CCS is of the view that no further adjustments to the penalty is warranted at this stage.

293. Thus, at the end of Step 3, the financial penalty to be imposed on ELNA remains at S$[✂].

294. ***Step 4: Adjustment for other factors:*** CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to ELNA and to other undertakings which may consider engaging in price fixing arrangements. No adjustments were made to the financial penalty at this stage.

295. ***Step 5: Adjustment to prevent Statutory Maximum being exceeded:*** The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCS may impose in accordance with section 69(4) of the Act, which is S$[✂] for the financial year ending 31 December 2016.[304] The financial penalty at the end of this stage is therefore S$[✂].

296. ***Step 6: Adjustment for leniency*:** ELNA came forward with its leniency application on 21 January 2015. ELNA's leniency application was received after CCS had commenced its investigations, and particularly only after CCS had exercised its formal powers of investigation by issuing ELNA with a formal notice under section 63 of the Act. ELNA was not the first undertaking to come forward for lenient treatment. As such, ELNA is entitled to a reduction of up to 50% of financial penalties.[305] In this regard, CCS considers that ELNA has provided quality information and evidence, assisting/adding significant value to CCS's investigations.

297. Taking into consideration all the facts and circumstances of this case, including the stage at which ELNA came forward, the evidence already in

[304] Information provided by ELNA dated 25 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.
[305] Refer to paragraph 4 of the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*.

CCS's possession and the quality of the information provided by ELNA, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. ELNA's financial penalty is therefore reduced to S$853,227.00.

E. Penalty for Nichicon

298. ***Step 1: Calculation of the Base Penalty:*** Nichicon was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale of AECs sold to Singapore Customers from 1 January 2006 until 25 March 2013. Nichicon's financial year commences on 1 April and ends on 31 March. Nichicon's relevant turnover figures for the sale of AECs to customers in Singapore for the financial year ending 31 March 2012 was S$[✂].[306]

299. In accordance with CCS's assessment of the seriousness of this infringement as set out at paragraphs 223 to 243 above, the starting point for Nichicon is [✂]% of its relevant turnover. The base penalty for Nichicon is therefore S$[✂].

300. ***Step 2: Duration of Infringement:*** Nichicon was a party to the single continuous infringement from 1 January 2006 until 25 March 2013. In this regard, CCS adopted a duration multiplier of 7.17 for Nichicon after rounding down the duration to seven years and two months. Therefore, the penalty after adjustment for duration is S$[✂].

Nichicon's representation

301. Nichicon submitted that the SG Meetings which occurred after 25 February 2009 were for a significantly different purpose and nature from the earlier SG Meetings which occurred between 1 January 2006 and 25 February 2009.[307]

302. In particular, Nichicon submitted that there were no SG Meetings that took place between 26 February 2009 and 24 January 2010 and argued that CCS ought to find no infringement in respect of this period.[308] Nichicon further submitted that the meetings from 2010 to 2013 occurred less frequently and that the discussions were of a different nature and did not share the same anti-competitive object.[309]

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[306] Information provided by Nichicon dated 6 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.
[307] Refer to Nichicon's Written Representation dated 1 June 2017 at [4.18].
[308] Refer to Nichicon's Written Representation dated 1 June 2017 at [4.25].
[309] Refer to Nichicon's Written Representation dated 1 June 2017 at [4.29] and [4.32].

CCS's Conclusions on Duration

303. Between 26 February 2009 and 24 January 2010, there were internal email correspondence which showed that there was contact between Nichicon and Rubycon. In an internal email dated 22 December 2009 circulated within Rubycon, [✂] of Rubycon stated that "*I had long conversations over the phone again with [✂] of Nichicon yesterday and [✂] of NCC this morning*".[310] In another email dated 5 January 2010, [✂] of Rubycon said that [✂] of Nichicon *"appreciated my New Year's greeting and agreed to act in concert in the industry and avoid unnecessary fights*".[311]

304. The discussions during the meetings from 2010 to 2013 also had the same anti-competitive object, contrary to Nichicon's claim that they were of a different nature. In fact, the Parties continued to exchange information of a similar nature, i.e. commercially sensitive information on business and pricing strategies. At the SG Meeting on 25 January 2010, Rubycon shared that: "*it is necessary to have a place for information exchange and collaboration in order for Japanese aluminium electrolytic capacitor manufacturers to survive"* and that *"we have carried out substantial price recovery…*", while Nichicon shared on 21 July 2011 that "*there have been instructions from the head office 'Don't solicit business from consumer electronics customers* "".[312]

305. Accordingly, CCS rejects Nichicon's representations on duration.

306. ***Step 3: Aggravating and Mitigating Factors:*** CCS considers that Nichicon co-operated with CCS during the course of the investigations and has facilitated interviews by CCS with the employees of Nichicon Japan which aided CCS's investigations. Accordingly, a discount of [✂]% is extended for its cooperation.

Nichicon's representations

307. Nichicon raised the following arguments as mitigating factors warranting a reduction in penalties.

308. Minor and passive role: Nichicon submitted that its role in the infringing conduct was passive and predominantly reactive and that their representatives at the meetings attended in their personal capacities.[313]

[310] Refer to SM3-026 of Notes of Information provided by [✂] of Rubycon dated 19 November 2015.
[311] Refer to SM3-027 of Notes of Information provided by [✂] of Rubycon dated 19 November 2015.
[312] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H.
[313] Refer to Nichicon's Written Representations dated 1 June 2017 at [3.12] to [3.25] and [3.34] to [3.38].

309. CCS notes that Nichicon's representatives at the SG Meetings were at all material times employed by Nichicon and held senior positions at management-level with the power to make decisions on sales and pricing. CCS further notes that Nichicon participated regularly in most, if not all of the SG Meetings, and continued attending the meetings even after ELNA and Panasonic stopped attending the meetings. At no time did Nichicon make any attempt to publicly distance themselves from the infringing conduct.

310. Contrary to its claims, Nichicon's role was far from a minor or passive participant in the infringing conduct, and participated actively during the SG Meetings as evidenced in the various meeting minutes.[314]

311. Genuine uncertainty: Nichicon also submitted that its representatives at the meetings were genuinely uncertain as to whether their conduct constituted an infringement of the prohibition under section 34 of the Act. Nichicon claimed that the SG Meetings (after 25 February 2009 and up till 25 March 2013) did not discuss specific prices of AECs and the meetings were focused on general topics.[315]

312. Nichicon's representation is contrary to the evidence. There was evidence, including minutes of SG Meetings, showing discussions and exchange of information relating to pricing and customer RFQs. As noted in Annex B of the ID, Nichicon has participated in most, if not all, of the SG Meetings starting from 26 September 1997 up until 25 March 2013. On an individual basis, CCS also notes that Nichicon's representatives attended multiple meetings. For example, [✂] had attended all the SG Meetings from 21 November 2005 to 21 July 2008. It is therefore not plausible that Nichicon's representatives were not aware of the contents of the discussions during the meetings. Nichicon also introduced a code of conduct and measures starting in 2005 to educate their employees on competition compliance, including tests which the employees had to take. In this regard, CCS is of the view that it is unlikely that Nichicon's

[314] Information provided by Rubycon dated 19 December 2014 pursuant to the section 63 Notice issued by CCS dated 13 October 2014, Annex 8H - SG Meeting Minutes on 27 June 2006: its rejection of price reductions requests; 19 October 2006: pricing instructions from Nichicon Japan; 28 November 2006: timing of price increase negotiations; 27 March 2007: its continuation of price recovery; 24 May 2007: reporting of price increase efforts; 21 July 2008: status of price increase requests to specific customers and timings of future pricing negotiations; 18 August 2008: its indication to accelerate price recovery efforts and which customers it had gone ahead with price recovery efforts; 29 October 2008: instruction from Nichicon Japan to increase the prices of AECs; and 25 January 2010: instructions from Nichicon Japan on solicitation of customers.

[315] Refer to Nichicon's Written Representations dated 1 June 2017 at [3.39] to [3.42].

representatives, who held senior roles, were unaware that their conduct could possibly infringe the Act.

313. Pressure from competitors: Nichicon submitted that it had been subject to considerable pressure from competitors to increase its AEC prices and to resist customer requests for price reductions. Notwithstanding that, Nichicon submitted that they did not succumb to the pressure and avoided applying any anti-competitive conduct on the market.[316]

314. Nichicon's claim on whether it succumbed to the alleged pressure is irrelevant, as its continued participation at the regular SG Meetings would have compromised its ability to make independent pricing and commercial decisions. Despite the alleged pressure, Nichicon continued its participation in the SG Meetings with full knowledge of its anti-competitive object up until the last known meeting on 25 March 2013, and even after ELNA and Panasonic dropped out of the said meetings in 2009.

315. In this regard, Nichicon's submission that it had been subject to considerable pressure from competitors to increase its AEC prices and to resist customer requests for price reductions, both of which clearly involved the exchange of commercially sensitive information and information relating to pricing decisions, contradicts its submission cited earlier at paragraph 311 above that there was genuine uncertainty as to whether the conduct constituted an infringement.

316. Non-implementation of agreements: Nichicon submitted that it had continued to compete fiercely in the market from 2006 to 2013 and had on many occasions between 1 January 2006 and 25 February 2009 been non-compliant with the arrangements discussed at the SG meetings.[317]

317. CCS notes that Nichicon did not provide any evidence to show that its prices were determined independently from the information obtained from the SG Meetings and as a recipient of information on the future pricing intentions of competitors, it cannot fail to take into consideration that information in its own future pricing decisions in the market. Nichicon's conduct in this respect is not a mitigating factor at all. Even if there were occasions of non-adherence and non-implementation, the fact is that Nichicon continued to attend and participate in the SG Meetings without fail, and actively participated in the discussions.

[316] Refer to Nichicon's Written Representations dated 1 June 2017 at [3.43] to [3.48].
[317] Refer to Nichicon's Written Representations dated 1 June 2017 at [3.49] to [3.62].

318. Limited impact on the Singapore market: Nichicon submitted that the information obtained during the SG Meetings was of a general nature and had limited or no influence on the pricing decisions of Nichicon.[318] Nichicon further submitted that the arrangements would have a limited impact on the Singapore market because [✂].

319. As set out in Annex B of the ID, CCS notes that there were numerous SG Meetings held from 1997 until 2013, with Nichicon showing an almost perfect attendance. At these meetings, in addition to general industry and production trends, the information exchanged and discussed were neither general or of limited value to the Parties involved as they involved exchanges of strategic information including future pricing intentions and collective pricing strategies either to increase prices or prevent price reductions. Nichicon's involvement at the SG Meetings was well documented in the minutes of the same. Further, in an email dated 5 January 2010, [✂] of Rubycon said that [✂] of Nichicon "*appreciated my New Year's greeting and agreed to act in concert in the industry and avoid unnecessary fights*".[319]

320. As regards Nichicon's assertion that most of its Singapore Customers consume the AECs outside of Singapore, CCS notes that Nichicon did not dispute CCS's definition of the relevant market. In this regard, the fact that its Singapore Customers consume the AECs outside of Singapore is irrelevant as CCS's concern is the impact of Nichicon's anti-competitive behaviour in the relevant market, i.e. Singapore, and the said impact was borne by Customers in Singapore in their purchase of AECs, both for use or re-sale in Singapore or elsewhere.

321. High Turnover/Low Profit Industry: Nichicon submitted that a downward adjustment to the financial penalty is warranted on the basis that the AEC industry is a high turnover/ low profit industry.

322. CCS is of the view that the fact that an undertaking operates in an industry with high turnovers but low margins may be taken into consideration in adjusting the financial penalty. However, the CAB in the *Pang's Motor Trading*[320] decision, stated that reductions made on this basis was based on evidence that a significant portion of the turnover figures consisted of "monies passed through" (e.g. payments made to models and their agencies as in the

[318] Refer to Nichicon's Written Representations dated 1 June 2017 at [3.68] to [3.69].
[319] Refer to SM3-027 of Notes of Information provided by [✂] of Rubycon dated 19 November 2015.
[320] [2014] SGCAB 1 at [54] to [57].

case of the CAB's *Modelling Appeal Decisions*[321]) or the fact that a significant proportion of a firm's turnover comprised of monies paid over to sub-contractors.

323. This is not the case here and CCS further notes that none of the other Parties, all of whom are operating in the same industry, has made similar claims.

324. Compliance Programme: Nichicon submitted that it has a compliance programme which was implemented in 2002 and existed during the infringement. Nichicon also took additional measures since the infringement to ensure compliance with competition law.[322]

CCS's conclusion on mitigating factors

325. Having carefully considered Nichicon's representations on mitigating factors, CCS considers that Nichicon's compliance programme, in place since 2002, is a mitigating factor. In this regard, CCS notes that Nichicon had in place competition compliance measures during the period of infringement which included a Code of Conduct and clear instructions regarding its policy of prohibiting employees from engaging in conduct that may be seen to obstruct or restrict fair competition. In addition, full-time employees were also provided with a hardcopy of Nichicon's Code of Conduct. However, having regard to the ineffectiveness of the programme given the infringement, CCS considers that a reduction of [✂]% is appropriate. In respect of the other mitigating factors raised, CCS considers that no further adjustments are warranted.

326. Therefore, at the end of Step 3, the penalty is reduced to S$[✂].

327. ***Step 4: Adjustment for other factors:*** CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Nichicon and to other undertakings which may consider engaging in price fixing arrangements. No adjustment was made to the financial penalty at this stage.

Nichicon's representations

328. Nichicon submitted that adjustments should be made to the penalty given that the relevant turnover used to calculate the financial penalty would be lower if the conduct had continued for a longer period of time, i.e. if it continued until

[321] *Re Price-fixing in Modelling Services: Bees Work Casting Pte Ltd, Diva Models (S) Pte Ltd, Impact Models Studio and Looque Models Singapore Pte Ltd* [2013] SGCAB 1; *Re Price-Fixing in Modelling Services, 23 November 2011: Ave Management Pte Ltd* [2013] SGCAB 2.
[322] Refer to Nichicon's Written Representations dated 1 June 2017 at [3.27] to [3.33].

or beyond 1 April 2013 instead of ending on 25 March 2013. Nichicon submitted that if that were the case, the relevant turnover for the period ending 31 March 2013 would be used, and it would result in a substantially lower penalty by [$✂].

329. CCS considers the argument to be a non-starter as the business year that CCS uses for the calculation of penalty is the undertaking's "*financial year preceding the year when the infringement ended"* and this is clearly stated in the Penalty Guidelines[323] and would apply equally to all Parties. In this case, given that the conduct ended on 25 March 2013, Nichicon's business year preceding the end of the infringement i.e. April 2011 to March 2012 was used.

330. ***Step 5: Adjustment to prevent Statutory Maximum being exceeded:*** The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCS can impose in accordance with section 69(4) of the Act, which is S$[✂] based on the financial year ending 31 March 2017.[324] The financial penalty at the end of this stage is therefore S$6,987,262.00.

F. Penalty for Panasonic

331. ***Step 1: Calculation of the Base Penalty***: Panasonic was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale of AECs to customers in Singapore from 1 January 2006 until 25 February 2009.

332. Its financial year commences on 1 April and ends on 31 March. Panasonic's relevant turnover figures for the sale of AECs to customers in Singapore for the financial year ending 31 March 2008 was S$[✂]. [325]

333. In accordance with CCS's assessment of the seriousness of this infringement as set out at paragraphs 223 to 243 above, the starting point for Panasonic is [✂]% of its relevant turnover. The quantum of the base financial penalty for Panasonic is therefore S$[✂].

334. ***Step 2: Duration of Infringement***: Panasonic was party to the single continuous infringement from 1 January 2006 until 25 February 2009. In this regard, CCS adopted a duration multiplier of 3.08 for Panasonic after rounding

[323] See paragraph 2.1 of the Penalty Guidelines.
[324] Information provided by Nichicon dated 30 September 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.
[325] Information provided by Panasonic dated 7 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.

down the duration to three years and one month. Therefore, the financial penalty after adjustment for duration is S$[✂].

335. ***Step 3: Aggravating and Mitigating Factors***: Having taken into consideration all the facts and circumstances of this case, including that Panasonic is a leniency applicant, CCS considers that there are no aggravating or mitigating factors applicable to Panasonic. Thus, at the end of step 3, the financial penalty remains at S$[✂].

336. ***Step 4: Adjustment for other factors***: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Panasonic and to other undertakings which may consider engaging in price fixing arrangements. No adjustment was made to the financial penalty at this stage.

337. ***Step 5: Adjustment to prevent Statutory Maximum being exceeded***: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCS can impose in accordance with section 69(4) of the Act, which is S$[✂] based on the financial year ending 31 March 2017.[326] The financial penalty at the end of this stage is therefore S$[✂].

338. ***Step 6: Adjustment for leniency***: Panasonic is the immunity applicant which came forward to CCS on 4 October 2013. Panasonic's leniency application was received before CCS commenced its investigation. As such, Panasonic is entitled to total immunity from financial penalties or a reduction of 100% of financial penalties.[327] CCS considers that Panasonic has provided quality information and evidence to CCS and have cooperated with CCS throughout the investigation. In this regard, Panasonic was granted conditional immunity on 19 June 2014.

339. Having taking into consideration all the facts and circumstances of this case, including the stage at which Panasonic came forward, the evidence already in CCS's possession and the quality of the information provided by Panasonic, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. Panasonic's financial penalty is therefore reduced to nil.

G. Penalty for Rubycon

340. ***Step 1: Calculation of the Base Penalty***: Rubycon was involved in the single continuous infringement with the object of preventing, distorting and

[326] Information provided by Panasonic dated 29 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.

[327] Refer to paragraphs 2.2 and 2.3 of the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*.

restricting competition in the market for the sale of AECs sold to customers in Singapore from 1 January 2006 until 25 March 2013.

341. Its financial year commences on 1 October and ends on 30 September.[328] Rubycon's relevant turnover figures for the sale of AECs to customers in Singapore for the financial year ending 30 September 2012 was S$[✂].[329]

342. In accordance with CCS's assessment of the seriousness of this infringement as set out in paragraphs 223 to 243 above, the starting point for Rubycon is [✂]% of its relevant turnover. The quantum of the base financial penalty for Rubycon is therefore S$[✂].

343. ***Step 2: Duration of Infringement***: Rubycon was party to the single continuous infringement from 1 January 2006 until 25 March 2013. In this regard, CCS adopted a duration multiplier of 7.17 for Rubycon after rounding down the duration to seven years and two months. Therefore, the penalty after adjustment for duration is S$[✂].

344. ***Step 3: Aggravating and Mitigating Factors***: Having taken into consideration all the facts and circumstances of this case, including that Rubycon is a leniency applicant, CCS considers that there are no aggravating or mitigating factors applicable to Rubycon. Thus, at the end of Step 3, the financial penalty remains at S$[✂].

345. ***Step 4: Adjustment for other factors***: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Rubycon and to other undertakings which may consider engaging in price fixing arrangements. No adjustment was made to the financial penalty at this stage.

346. ***Step 5: Adjustment to prevent Statutory Maximum being exceeded***: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCS can impose in accordance with section 69(4) of the Act, which is S$[✂] based on the financial year ending 30 September 2016.[330] The financial penalty at the end of this stage remains at S$[✂].

[328] Information provided by Rubycon dated 7 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.
[329] Information provided by Rubycon dated 19 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.
[330] Information provided by Rubycon dated 29 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.

347. ***Step 6: Adjustment for leniency***: Rubycon was the second undertaking to come forward with its leniency application on 8 August 2014. Rubycon's leniency application was received after CCS commenced its investigation. As Rubycon was not the first undertaking to come forward with a leniency application, it is entitled to a reduction of up to 50% of financial penalties.[331] In this regard, CCS considers that Rubycon has provided quality information and evidence to CCS which facilitated and added value to CCS's investigation.

348. Taking into consideration all the facts and circumstances of this case, including the stage at which Rubycon came forward, the evidence already in CCS's possession and the quality of the information provided by Rubycon, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. Accordingly, Rubycon's financial penalty is reduced to S$4,718,170.00.

H. Penalty for SCC

349. ***Step 1: Calculation of the Base Penalty***: SCC was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale of AECs to customers in Singapore from 1 January 2006 until 25 March 2013.

350. Its financial year commences on 1 April and ends on 31 March.[332] SCC's relevant turnover figures for the sale of AECs to customers in Singapore for the financial year ending 31 March 2012 was S$[✂].[333]

351. In accordance with CCS's assessment of the seriousness of this infringement as set out in paragraphs 223 to 243 above, the starting point for SCC is [✂]% of its relevant turnover. The quantum of the base financial penalty for SCC is therefore S$[✂].

352. ***Step 2: Duration of Infringement***: SCC was party to the single continuous infringement from 1 January 2006 until 25 March 2013. In this regard, CCS adopted a duration multiplier of 7.17 for SCC after rounding down the duration to seven years and two months. Therefore, the financial penalty after adjustment for duration is S$[✂].

[331] Refer to paragraph 4 of the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*.
[332] Information provided by SCC dated 7 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.
[333] Information provided by SCC dated 22 December 2016 pursuant to the section 63 Notice issued by CCS dated 22 November 2016.

353. ***Step 3: Aggravating and Mitigating Factors***: Having taken into consideration all the facts and circumstances of this case, CCS considers that there are no aggravating factors applicable to SCC.

SCC's representations

354. SCC submitted that it took immediate steps to prevent any recurrence of anti-competitive conduct by introducing measures in April 2014 to ensure compliance and to develop and implement an internal compliance program since the infringement.[334]

CCS's conclusion on mitigating factors

355. Having carefully considered SCC's representations, CCS notes that SCC's compliance programme was implemented after investigations started overseas[335] and SCC is therefore not eligible for a further mitigating discount.

356. Thus at the end of Step 3, the financial penalty remains at S$[✂].

357. ***Step 4: Adjustment for other factors***: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to SCC and to other undertakings which may consider engaging in price fixing arrangements. No adjustments were made to the financial penalty at this stage.

358. ***Step 5: Adjustment to prevent Statutory Maximum being exceeded***: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCS can impose in accordance with section 69(4) of the Act, which is S$[✂] based on the financial year ending 31 March 2017.[336] The financial penalty at the end of this stage remains at S$[✂].

359. ***Step 6: Adjustment for leniency***: SCC was the third undertaking to come forward with its leniency application on 20 November 2014. SCC's leniency application was received after CCS commenced its investigation. As SCC was not the first undertaking to come forward with a leniency application, it is entitled to a maximum reduction of up to 50% of financial penalties.[337] In this

[334] Refer to SCC's Written Representation dated 26 May 2017 at Annex 1 – Table A

[335] China's National Development and Reform Commission conducted dawn raids on 19 March 2014, Taiwan Fair Trade Commission started investigations on 28 March 2014, Korea Fair Trade Commission conducted inspections as early as 8 May 2014.

[336] Information provided by SCC dated 29 August 2017 pursuant to CCS's email dated 24 August 2017 and the section 63 Notice issued by CCS dated 22 November 2016.

[337] Refer to paragraph 4 of the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*.

regard, CCS considers that SCC has provided quality information and evidence to CCS which facilitated the conclusion of CCS's investigation.

360. Taking into consideration all the facts and circumstances of this case, including the stage at which SCC came forward, the evidence already in CCS's possession and the quality of the information provided by SCC, CCS reduces the penalty by [✂]% as part of the CCS's leniency programme. Accordingly, SCC's penalty is reduced to S$6,993,805.00.

SCC's representations

361. SCC argued that they should be granted the maximum leniency discount of 50% available to subsequent leniency applicants on the basis that it had provided full assistance, including information and evidence of quality to CCS.

362. As stated above, CCS has to take into account the fact that SCC was the third undertaking to come forward for leniency, the evidence already in CCS's possession at that stage, as well as the quality of the information provided by SCC. Having regard to all relevant circumstances, CCS considers that a higher leniency discount is not warranted.

I. Conclusion on Penalties

363. In conclusion, pursuant to section 69(2)(d) of the Act, CCS directs each of the Parties to pay the following financial penalties:

Party	Financial Penalty
ELNA	$853,227.00
Nichicon	$6,987,262.00
Panasonic	NIL
Rubycon	$4,718,170.00
SCC	$6,993,805.00
Total	**$19,552,464.00**

364. All Parties must pay their respective financial penalties to the Commission by no later than 5 p.m. on 6 March 2018. If any of the Parties fail to pay the penalty within the deadline specified above, and no appeal within the meaning of the Act against the imposition or the amount, of a financial penalty, has been brought or such appeal has been unsuccessful, the Commission may apply to register the direction to pay the penalty in a District Court. Upon registration, the direction shall have the same force and effect as an order originally obtained in a District Court and can be executed and enforced accordingly.

Toh Han Li
Chief Executive
Competition Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCS

Undertaking	Key Personnel (Current Designation)	Dates of interview	Period of employment	Attendance at Japan Meetings	Attendance at Singapore Meetings
Panasonic	[✂]	18 May 2015	[✂]	[✂].[338]	
	[✂[339]]	18-19 May 2015	[✂]	[✂]	
	[✂[340])]	28-29 October 2015	[✂] [✂] [341]		Attended the SG Meetings (also known as the ATC Meetings) in Singapore from 2004 to 2009.
Rubycon	[✂]	13-14 May 2015 18-19 November 2015	[✂]	[✂]	
	[✂]	24-25 November 2015	[✂]		Attended the SG Meetings (also known as the ASEAN SM Meetings) and the

[338] Refer to Panasonic's Written Representations dated 26 May 2017 at [3.1.1].
[339] Refer to Panasonic's Written Representations dated 26 May 2017 at [4.1.3].
[340] Refer to Panasonic's Written Representations dated 26 May 2017 at [4.1.3].
[341] Refer to Panasonic's Written Representations dated 26 May 2017 at [3.1.2].

Undertaking	Key Personnel (Current Designation)	Dates of interview	Period of employment	Attendance at Japan Meetings	Attendance at Singapore Meetings
					Singapore Parts Association Meetings (also known as the Parts Meetings), both in Singapore
ELNA	[✂]	20-21 May 2015	[✂]		Attended the SG Meetings (also known as the ATC Meetings) in Singapore from 2005 to 2006.
	[✂]	20-21 May 2015	[✂]		Attended the Parts Meetings and SG Meetings (also known as the ATC Meetings) in Singapore from 2006 to 2008
SCC	[✂]	3-4 June 2015	[✂]		Attended the SG Meetings (also known as the MD Meetings) in Singapore from 2004 to 2012.

Undertaking	Key Personnel (Current Designation)	Dates of interview	Period of employment	Attendance at Japan Meetings	Attendance at Singapore Meetings
	[✂]	18-19 November 2015	[✂]	[✂]	Attended SG Meetings (also known as the SM Meetings) in Singapore from 1999 to 2004
Nichicon	[✂]	13-15 July 2016	[✂]		Attended the SG Meetings (also known as the Goshakai Meetings) in Singapore from 2005 to 2008. Attended Parts Meetings (also known as the Buhinkai Meetings) in Singapore.
	[✂]	27 May 2015	[✂]		Attended one Parts meeting in Singapore in 2001, and subsequently continued to attend in 2013.

ANNEX B: TABLE OF SG MEETINGS

Serial No.	Date	Participants
1	26 September 1997	SCC: [✂] [✂] (SCC): [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
2	25 November 1997	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
3	12 December 1997	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
4	12 January 1998	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
5	6 February 1998	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
6	16 March 1998	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
7	23 April 1998	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]

8	22 September 1998	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
9	15 December 1998	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
10	23 February 1999	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
11	13 April 1999	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
12	24 June 1999	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
13	17 November 1999	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
14	25 April 2000	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
15	23 May 2000	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
16	3 July 2000	SCC: [✂] Panasonic: [✂] Nichicon: [✂]

		ELNA: [✂] Rubycon: [✂]
17	27 July 2000	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
18	20 September 2000	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
19	21 November 2000	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
20	16 January 2001	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
21	3 August 2001	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
22	30 May 2002	Information not available
23	20 January 2003	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
24	27 May 2004	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
25	10 December 2004	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂]

		Rubycon: [✂]
26	18 January 2005	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
27	9 June 2005	Information not available
28	19 September 2005	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
29	21 November 2005	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
30	28 December 2005	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
31	23 January 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
32	15 March 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
33	30 May 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
34	27 June 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]

35	25 July 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
36	19 October 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
37	28 November 2006	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
38	24 January 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
39	14 February 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
40	27 March 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
41	18 April 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
42	24 May 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
43	25 July 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂]

		ELNA: [✂] Rubycon: [✂]
44	23 August 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
45	20 September 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
46	21 November 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
47	24 December 2007	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
48	22 January 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
49	10 March 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
50	21 April 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
51	30 June 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]

52	21 July 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
53	18 August 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
54	29 September 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
55	29 October 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
56	17 December 2008	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
57	22 January 2009	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
58	25 February 2009	SCC: [✂] Panasonic: [✂] Nichicon: [✂] ELNA: [✂] Rubycon: [✂]
59	25 January 2010	SCC: [✂] Nichicon: [✂] Rubycon: [✂]
60	21 July 2011	SCC: [✂] Nichicon: [✂] Rubycon: [✂]
61	9 December 2011	SCC: [✂]

		Nichicon: [✂] Rubycon: [✂] Via telephone: [✂]
62	9 March 2012	SCC: [✂] Nichicon: [✂] Rubycon: [✂]
63	15 June 2012	SCC: [✂] Nichicon: [✂] Rubycon: [✂]
64	14 September 2012	SCC: [✂] Nichicon: [✂] Rubycon: [✂]
65	14 December 2012	SCC: [✂] Nichicon: [✂] Rubycon: [✂]
66	25 March 2013	SCC: [✂] Nichicon: [✂] Rubycon: [✂]