Media Release

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COMPETITION APPEAL BOARD DISMISSED MOST GROUNDS OF APPEAL BY MODELLING AGENCIES

The Competition Commission of Singapore found that 11 modelling agencies had engaged in illegal price-fixing activities on 23 Nov 2011. Five of the 11 modelling agencies appealed to the Competition Appeal Board (CAB) on various grounds seeking a substantial reduction in financial penalties, but did not dispute that they had infringed the Competition Act. The CAB, after hearing the appeals, dismissed most of their grounds of appeal save in two instances.

In its decision, the CAB took into account that a large part of the turnover of the modelling agencies was paid to the models and consequently they received a low margin. It also decided not to impose an additional penalty for the involvement of senior management based on the facts of the case. In its decision[1], the CAB ordered that the penalties of the modelling agencies be adjusted from $291,067 to $243,077 in view of these considerations, and for the parties to bear their own legal costs. CAB also noted that price-fixing is regarded as one of the most serious forms of infringement of competition law.

CCS Assistant Chief Executive, Mr Toh Han Li, said, “Companies should remain alert to avoid illegal anti-competitive practices, and train their staff to comply with competition law. Trade and industry associations should take care not to allow themselves to be used as a front for their members to engage in price-fixing or other anti-competitive practices. It is important for all parties to clearly and publicly dissociate themselves from any price-fixing discussions and to report such conduct to CCS immediately.”

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[1] CAB decision on Appeal No. 2 of 2012 can be found at:
http://www.mti.gov.sg/legislation/Documents/Appeal%20no.%202%20of%202012.pdf
CAB decision on Appeal No. 3 of 2012 can be found at:
http://www.mti.gov.sg/legislation/Documents/Appeal%20no.%203%20of%202012.pdf

Competition Commission SINGAPORE

Key case facts

In the course of investigations by CCS, the modelling agencies had characterised their actions as price guidelines issued by a trade association known as the Association of Modelling Industry Professionals. But CCS found that the AMIP was essentially a 'front' for its individual members (namely the agencies) to coordinate on, and collectively raise, rates for modelling services in Singapore.

The agencies had fixed rates on a wide variety of modelling services, including editorials, advertorials, fashion shows and media loading usage. Customers who were impacted included publishers, photographers, show choreographers, show organizers and fashion labels.

The five modelling agencies had put forward a number of grounds of appeal to ask for a substantial penalty reduction. These were largely dismissed by the CAB, except in two instances where the CAB held that the involvement of the directors, managers and proprietors was not an aggravating factor in the present case and a further discount could be given to the modelling agencies in view of the mitigating fact that a large part of the turnover was paid to the models and consequently the parties received a low margin. A summary of the grounds of appeal and CAB's decision can be found in Annex A.

Adjusted Final Penalty imposed by the CAB

The final penalty for the five modelling agencies are as follows:

Name of agency	Original Penalty	Penalty upon Appeal
Bees Work	$44,112	$36,760
Diva	$72,891	$60,743
Impact	$10,508	$8,757
Looque	$31,241	$26,555
Ave	$132,315	$110,262
Total	**$291,067**	**$243,077**

The CAB ordered that each party would bear its own costs for both appeals.

About The Competition Commission of Singapore (CCS)

CCS is a statutory board established under the Competition Act (Chapter 50B) on 1 January 2005 to administer and enforce the Act. It comes under the purview of the Ministry of Trade and Industry. The Act empowers CCS to investigate alleged anti-competitive activities, determine if such activities infringe the Act and impose suitable remedies, directions and financial penalties.

For more information, please visit www.ccs.gov.sg.

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Annex A – List of points of appeal and CAB's determination on each point

On 20 January 2012, 5 out of the 11 modelling agencies filed appeals to the CAB. They did not challenge their liability for price-fixing and only appealed against the level of financial penalties imposed by CCS. The Appellants are:

I. **Appeal No 2 of 2012**: Bees Work Casting Pte Ltd ("Bees Work"), Diva Models (S) Pte Ltd ("Diva"), Impact Models Studio ("Impact") and Looque Models Singapore Pte Ltd ("Looque"); and

II. **Appeal No 3 of 2012**: Ave Management Pte Ltd ("Ave").

Appeal No 2 of 2012

The following issues were raised on appeal:

a) CCS did not correctly determine the market share of the cartelists;
b) The cartel did not have an appreciable adverse effect on competition in Singapore;
c) CCS had erred in using gross turnover in calculating penalties and should have used net turnover, namely the modelling agencies' turnover net of the amounts paid to the models;
d) CCS's additional uplift on account of the involvement of directors, managers and proprietors were not justified;
e) CCS's additional uplift on Looque in view of their director's central role in the cartel was not justified;
f) CCS had erred in taking casting/production fees into consideration in calculating Bees Work's financial penalty as these were non modelling services; and
g) CCS did not give sufficient consideration that this was a high turnover low profit industry;

On a), the CAB found that CCS had made reasonable efforts in taking steps to obtain financial information from as many modelling agencies as possible in order to arrive at an accurate market share computation and that a certain point in time, CCS must be entitled to close the investigations and proceed to issue its decision as it did in the present case.

On b), the CAB noted that price-fixing is regarded as one of the most serious forms of infringement of competition law. As this was a price-fixing case, it will always have an appreciable adverse effect on competition and there is therefore no need for CCS to

demonstrate any appreciable adverse effect. In any event, it was an undisputed fact that there was a 60% increase in rates for fashion shows and editorials since the inception of the AMIP from 2005 to 2009.

On c), the CAB found that CCS had correctly used gross turnover in calculating penalties and rejected the modelling agencies' submission that the turnover used to calculate the financial penalties should be their turnover net of the amounts paid to the models. In this regard, the CAB noted that the agencies had fixed the entire rate charged to the client and not just the commission rates payable to the models.

On d), the CAB found that the mere involvement of the directors, manager and proprietor did not justify CCS's additional uplift as an aggravating factor for each of the agencies.

On e), the CAB found that CCS was justified in finding that Looque's director was a central figure as he had taken the lead in setting agreed rates for modelling services. As such, CCS was justified in imposing an additional uplift on Looque as he had done so in his capacity as director and shareholder of Looque.

On f), the CAB agreed that CCS had correctly included casting/production fees in the calculation on penalties as these were modelling services.

On g), the CAB was of the view that the modelling industry in Singapore was a high turnover low margin industry and a further discount in penalties should be given to the agencies as a mitigating factor, over and above the discount CCS had given to the modelling agencies on account of their cooperation.

Appeal No 3 of 2012

The following issues were raised on appeal:

a) CCS had erred in finding that Ave operated on the same business model as the other modelling agencies;
b) CCS had erred in using gross turnover in calculating penalties and should have used net turnover, namely the modelling agencies' turnover net of the amounts paid to the models as its different business model meant that net turnover should be used instead of gross turnover;
c) CCS's additional uplift on account of the involvement of directors, managers and proprietors were not justified;

d) CCS did not give sufficient consideration that this was a high turnover low profit industry; and
e) There was genuine uncertainty on the part of the modelling agencies as to whether their conduct had infringed the Act.

On a), the CAB agreed with CCS that Ave's business model is not significantly different from the other modelling agencies in the cartel. The CAB agreed with CCS that the modelling agencies in the cartel were the "central actor" in the provision of modelling services. This is because amongst other things, each agency is responsible for the negotiation of modelling terms and fees with clients and also bears the costs and risks associated with bringing in models and collecting payment for modelling services rendered.

On b), the CAB found that CCS was correct in using gross turnover as the relevant turnover for calculating financial penalty. In particular, CAB noted that the agency fixes the entire fee charged to client and not just the commission rate that is received and that these were the amounts directly affected by the infringement. It was therefore appropriate for CCS to use gross turnover as relevant turnover in assessing the impact and effect of the infringement on the market.

On c) and d), similar to Appeal No 2 of 2012, CAB found that the involvement of the directors, manager and proprietor did not justify an additional uplift as an aggravating factor for each of the agencies. As the modelling industry was a high turnover, low margin industry; the CAB held that a further discount should be given to the agencies as a mitigating factor, over and above the discount that CCS had given to the agencies on account of cooperation.

On e), the CAB did not accept Ave's contention that there was any genuine uncertainty in the law and even if there was, this would have been taken into account by the CCS.