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

Notice of Infringement Decision issued by CCS

Fixing of monthly salaries of new Indonesian Foreign Domestic Workers in Singapore

30 September 2011

Case number: CCS 500/001/11

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

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CHAPTER 1: THE FACTS

A. The Parties

1. Information received[1] by the Competition Commission of Singapore ("CCS") on 19 January 2011 indicated that the following undertakings (each a Party, collectively, the Parties) engaged in the fixing of monthly salaries of new Indonesian Foreign Domestic Workers[2] (FDWs) in Singapore:

   a) Arrow Employment Pte Ltd ("Arrow");
   b) Best Home Employment Agency Pte Ltd ("Best Home");
   c) Comfort Employment Pte Ltd ("Comfort");
   d) Crislo Employment Agency Pte Ltd ("Crislo Employment");
   e) Crislo Resources;
   f) Homekeeper International Pte Ltd ("Homekeeper");
   g) Jack Focus Management Pte Ltd ("Jack Focus");
   h) Javamaids;
   i) JPB International Services Pte Ltd ("JPB");
   j) Maid Management Services Pte Ltd ("Maid Management");
   k) Nation Employment Pte Ltd ("Nation");
   l) Net Resources Recruitment ("Net Resources");
   m) Nora Employment Agency ("Nora");
   n) SLF Green Maid Agency ("SLF");
   o) Swift Personnel Pte Ltd ("Swift"); and
   p) TM Global HR Consultancy ("TM Global").

   On 20 January 2011, CCS commenced investigations as to whether there had been a breach of the prohibition under section 34 ("the section 34 prohibition") of the Competition Act (Cap. 50B) ("the Act").

(i) Arrow Employment Pte Ltd

2. Arrow is a limited exempt private company registered in Singapore, providing maid agency services since 2007. Arrow's registered address is 10 Anson Road, #02-65/66 International Plaza, Singapore 079903. Arrow's turnover for the financial year ending 31 May 2010 was S$[✂][3]. Wong Hong Choon Eric ("Eric Wong"), a director and shareholder of Arrow, is referred to in this Infringement Decision ("ID").

[1] Refer to paragraphs 31 to 36
[2] Foreign Domestic Workers (FDWs) are also commonly known as foreign maids in Singapore.
[3] Information provided by Arrow on 22 Feb 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.

(ii) Best Home Employment Agency Pte Ltd

3. Best Home is a limited exempt private company registered in Singapore, providing maid agency services since 2009. Best Home's registered address is 170 Upper Bukit Timah Road, #04-33/34/37 Bukit Timah Shopping Centre, Singapore 588179. Best Home's estimated turnover for the financial year ending 31 October 2010 was S$[✂][4]. Tay Khoon Beng, the sole director and shareholder of Best Home, is referred to in the ID.

(iii) Comfort Employment Pte Ltd

4. Comfort is a limited private company registered in Singapore, providing agency services for maids and foreign workers[5] (non-domestic) since 2002. Comfort's registered address is 153A Rochor Road, Bugis village, Singapore 188428. Comfort's turnover for the financial year ending 31 December 2010 was S$[✂][6]. Liew Kok Keong, a director, shareholder, and managing director of Comfort, is referred to in the ID.

(iv) Crislo Employment Agency Pte Ltd

5. Crislo Employment is a limited exempt private company registered in Singapore, providing maid agency services since 2007. Crislo Employment's registered address is 1 Park Road, #03-01 People's Park Complex, Singapore 059108. Crislo Employment's turnover for the financial year ending 31 December 2010 was S$[✂][7]. Low Kooi Har, the sole director and shareholder of Crislo Employment, is referred to in the ID.

(v) Crislo Resources

6. Crislo Resources is a sole proprietorship registered in Singapore, providing maid agency services since 2007. Crislo Resources' registered address is 1 Park Road, #03-01 People's Park Complex, Singapore 059108. Crislo Resources' turnover for the financial year ending 31 December 2010 was

[4] Information provided by Best Home on 18 Feb 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[5] See Answer to Question 5 of Liew Kok Keong's Notes of Information/Explanation provided on 27 January 2011.
[6] Information provided by Comfort on 21 Feb 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[7] Information provided by Crislo Employment on 2 March 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.

S$[✂][8]. Chung Kin Soon, the sole proprietor of Crislo Resources, is referred to in the ID.

(vi) Homekeeper International Pte Ltd

7. Homekeeper is a limited private company registered in Singapore, providing maid agency services since 2009. Homekeeper's registered address is 170 Upper Bukit Timah Road, #04-60 Bukit Timah Shopping Centre, Singapore 588179. Homekeeper's turnover for the financial year ending 31 December 2010 was S$[✂][9]. Chin Moy Yong, a director and shareholder of Homekeeper, is referred to in the ID.

(vii) Jack Focus Management Pte Ltd

8. Jack Focus is a limited exempt private company registered in Singapore, providing maid agency services since 2009. Jack Focus' registered address is 170 Upper Bukit Timah Road, #03-43 Bukit Timah Shopping Centre, Singapore 588179. Jack Focus' estimated turnover for the financial year ending 30 September 2010 was S$[✂][10]. Lim Lam Choon, the managing director of Jack Focus[11], is referred to in the ID.

(viii) Javamaids

9. Javamaids is a sole proprietorship registered in Singapore, providing maid agency services since 2006. Javamaid's registered branch address is 21 Hougang Street 51, #01-14 Hougang Green Shopping Mall, Singapore 538719. Javamaids' turnover for the financial year ending 31 December 2010 was S$[✂][12]. Indarjitrai S/O Raj Pati Rai ("Indarjitrai"), the sole proprietor of Javamaids, is referred to in the ID.

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[8] Information provided by Crislo Resources on 2 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[9] Information provided by Homekeeper on 2 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[10] Information provided by Jack Focus on 25 Feb 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[11] See Answer to Question 2 of Lim Lam Choon's Notes of Information/Explanation provided on 27 Jan 2011.
[12] Information provided by Javamaids on 19 Feb 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.

(ix) JPB International Services Pte Ltd

10. JPB is a limited exempt private company registered in Singapore, providing maid agency services since 2007. JPB's registered address is 21 Hougang Street 51, #02-23 Hougang Green Shopping Mall, Singapore 538719. JPB's turnover for the financial year ending 30 September 2010 was S$[✂][13]. Natal Paung, general manager of JPB[14], is referred to in the ID.

(x) Maid Management Services Pte Ltd

11. Maid Management is a limited exempt private company registered in Singapore, providing maid agency services since 2003. Maid Management's registered address is 6001 Beach Road, #09-12 Golden Mile Tower, Singapore 199589. Maid Management's estimated turnover for the financial year ending 31 December 2010 was S$[✂][15]. Tan Tian Hock, a director, shareholder, and managing director of Maid Management, is referred to in the ID.

(xi) Nation Employment Pte Ltd

12. Nation is a limited private company registered in Singapore, providing maid agency services since 1994. Nation's registered address is 135 Jurong Gateway Road, #05-317, Singapore 600135. Nation's estimated turnover for the financial year ending 31 December 2010 was S$[✂][16]. Chin Mui Hiong, group director of Nation[17], is referred to in the ID.

(xii) Net Resources Recruitment

13. Net Resources is a sole proprietorship registered in Singapore, providing maid agency services since 2006. Net Resources' registered address is 14 Scotts Road, #05-48 Far East Plaza, Singapore 228213. Net Resources' turnover for the financial year ending 31 December 2010 was S$[✂][18]. Seet Ai Ching, the sole proprietor of Net Resources, and Ong Hock Chye

[13] Information provided by JPB on 10 Mar 2011 and 2 September 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011 and 19 August 2011 respectively.
[14] Answer to Question 3 of Natal Paung's Notes of Information/Explanation provided on 27 Jan 2011.
[15] Written representations by Maid Management dated 13 June 2011.
[16] Information provided by Nation on 7 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[17] Answer to Question 2 of Chin Mui Hiong's Notes of Information/Explanation provided on 21 Jan 2011.
[18] Information provided by Net Resources on 2 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.

Bernard ("Bernard Ong"), husband of Seet Ai Ching[19], are referred to in the ID.

(xiii) Nora Employment Agency

14. Nora is a sole proprietorship registered in Singapore, providing maid agency services since 2003. Nora's registered address is 144 Upper Bukit Timah Road, #02-37 Beauty World Centre, Singapore 588177. Nora's turnover for the financial year ending 31 December 2010 was S$[✂][20]. Syed Faisal Bin Syed Hussin ("Syed Faisal"), the sole proprietor of Nora, is referred to in the ID.

(xiv) SLF Green Maid Agency

15. SLF is a sole proprietorship registered in Singapore, providing maid agency services since 2008. SLF's registered address is 170 Upper Bukit Timah Road, #02-03 Bukit Timah Shopping Centre, Singapore 588179. SLF's turnover for the financial year ending 31 December 2010 was S$[✂][21]. Yeo Tong Poh, director[22] and withdrawn partner of SLF, is referred to in the ID.

(xv) Swift Personnel Pte Ltd

16. Swift is a limited exempt private company registered in Singapore, providing maid agency services since 2005. Swift's registered address is 14 Scotts Road, #05-121 Far East Plaza, Singapore 228213. Swift's turnover for the financial year ending 31 December 2010 was S$[✂][23]. Eric Wong, a director and shareholder of Swift, is referred to in the ID. Eric Wong is also a director and shareholder of Arrow[24].

(xvi) TM Global HR Consultancy

17. TM Global, formerly known as Tailor Maid Employment Services, is a partnership registered in Singapore, providing agency services for maids

[19] Answer to Question 7 of Ong Hock Chye Bernard's Notes of Information/Explanation provided on 28 Jan 2011.
[20] Information provided by Nora on 25 Feb 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[21] Information provided by SLF on 1 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[22] Answer to Question 2 of Yeo Tong Poh's Notes of Information/Explanation provided on 27 Jan 2011.
[23] Information provided by Swift on 3 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[24] See Answer to Question 3 of Wong Hong Choon Eric's Notes of Information/Explanation provided on 27 Jan 2011.

and foreign workers[25] (non-domestic) since 2006. TM Global's registered address is 170 Upper Bukit Timah Road, #01-14 Bukit Timah Shopping Centre, Singapore 588179. TM Global's turnover for the financial year ending 31 December 2010 was S$[✂][26]. Chan Sian Chong, a partner of TM Global, is referred to in the ID.

B. Background of Related Industry

Employment agencies in Singapore

18. The Parties are employment agencies ("EAs") in Singapore, in so far as they are business entities that are licensed by the Ministry of Manpower ("MOM"), under the Employment Agencies Act (Cap.92) to carry out procurement and placement of foreign domestic workers in Singapore[27]. Currently, while there are about 2,500 licensed EAs in Singapore placing foreign as well as local workers, only about 600 EAs are active in the placement of FDWs to employers in Singapore[28].

Recruitment process of new Indonesian FDWs

19. For the purpose of this ID, CCS focuses on the provision of placement services for new Indonesian FDWs in Singapore.

20. In order to place new Indonesian FDWs in Singapore, the Singapore EAs generally purchase the bio-data[29] of new Indonesian FDWs from Indonesian suppliers. The Indonesian suppliers include sole-proprietorships with one-man operations as well as larger companies with organised structures and training centres. The Singapore EAs will negotiate with their Indonesian suppliers the monthly salary of the FDWs for placement in Singapore. The Indonesian suppliers then source for potential FDWs from various parts of Indonesia who are willing to work in Singapore and then pass on the bio-data of these potential FDWs to the Singapore EAs.

21. The Singapore EAs will then furnish the bio-data of the new Indonesian FDWs and the terms of employment, which include monthly salary and repayment period of placement fee, to prospective employers in Singapore. If a prospective employer is keen to hire a particular new Indonesian FDW,

[25] See Answer to Question 5 of Chan Sian Chong's Notes of Information/Explanation provided on 28 Jan 2011.
[26] Information provided by TM Global on 5 Mar 2011 pursuant to the section 63 Notice issued by CCS dated 14 Feb 2011.
[27] See Section 6 of the Employment Agencies Act (Cap. 92)
[28] See the directory of EAs in MOM's website at http://www.mom.gov.sg/eadirectory/Pages/search.aspx.
[29] A bio-data consists of basic information about the FDW including but not limited to photograph, age, educational qualifications, language spoken, prior work experiences and/or special skill sets.

the EA will proceed to make the necessary arrangements for that FDW to enter Singapore and commence work.

22. Apart from the FDW levy, the total price paid by (or the total cost to) an employer for hiring a new FDW through an EA for a 2-year contractual term[30] chiefly consists of the agency fee, the insurance fee and FDW's monthly salary over the 2-year contractual term.

23. The agency fee is the administrative fee that the Singapore EA charges the Singapore employer at the time of hiring the FDW. The agency fee may cover some or all of the following: the cost of transportation, meals and lodging for the FDW upon her arrival in Singapore before she is deployed to the employer, cost of medical check-up, work permit application, safety awareness course ("SAC")[31] and entry test,[32] where applicable.

24. In addition, the Singapore EAs may also collect insurance fees on behalf of the insurance company as it is a MOM requirement[33] for the employer to purchase medical and personal insurance policies for the FDWs before the former can employ the FDWs.

25. Upon hiring the FDW, the employer will enter into an employment contract with the FDW that states the amount of monthly salary to be paid to that FDW during the 2-year contractual term. The employer and EA will also enter into a service agreement that stipulates the monthly salary of the FDW and the agency fee that the employer has to pay the EA for its service of procuring and providing the FDW.

26. The EA charges the FDW a fee (called 'placement fee') for finding her an employer in Singapore. As the FDW would usually not have money to pay

[30] MOM grants a 2-year work permit for successful application.

[31] MOM requires all first-time FDWs to attend a Safety Awareness Course that instructs them specifically on the safety precautions required for performing tasks such as cleaning windows and hanging laundry in an urban high-rise environment. First-time FDWs refer to workers who have no employment record with MOM's Work Pass Division or have Work Permit records with MOM but have not collected the Work Permit cards previously.

[32] All first-time FDWs are required to pass a written test within their first three attempts and within the first three working days of their arrival in Singapore. This Entry Test ensures that first-time FDWs can understand basic safety instructions and have adequate numeracy and literacy skills to perform household tasks. EAs would not be able to deploy FDWs for employment until they pass this. The FDWs are required to produce an acceptable certificate to show that they have a minimum of 8 years formal education before they are allowed to sit for the Entry Test.

[33] For medical insurance taken up or renewed on/or after 1 Jan 2010, the insurance coverage must be at least $15,000 per year for each FDW's inpatient care and day surgery during her stay in Singapore. In addition, the minimum sum assured for Personal Accident Insurance should be $40,000. Any compensation payable should be made to the FDW or her beneficiaries.

the placement fee upfront, the employer pays first on her behalf[34]. The FDW repays the employer out of the monthly salary she earns (minus any monthly allowance set aside for her use), until the "loan" is paid off. Investigations revealed that the loan repayment period ranges from 6 to 11 months[35].

27. The placement fee is divided between the Singapore EA and the Indonesia supplier in accordance with the commercial agreement between them. The placement fee typically ranges around $2,400-$3,500, of which around [✂] is retained by the Singapore EA, while the remaining of about [✂] is paid to the Indonesia supplier[36]. Many EAs submit that the quantum of placement fee that is paid to the Indonesia suppliers is largely determined by the Indonesia suppliers[37].

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[34] Depending on the practice of the EA, the employer can either pay the placement fee in full by cash or in parts with post-dated cheques.

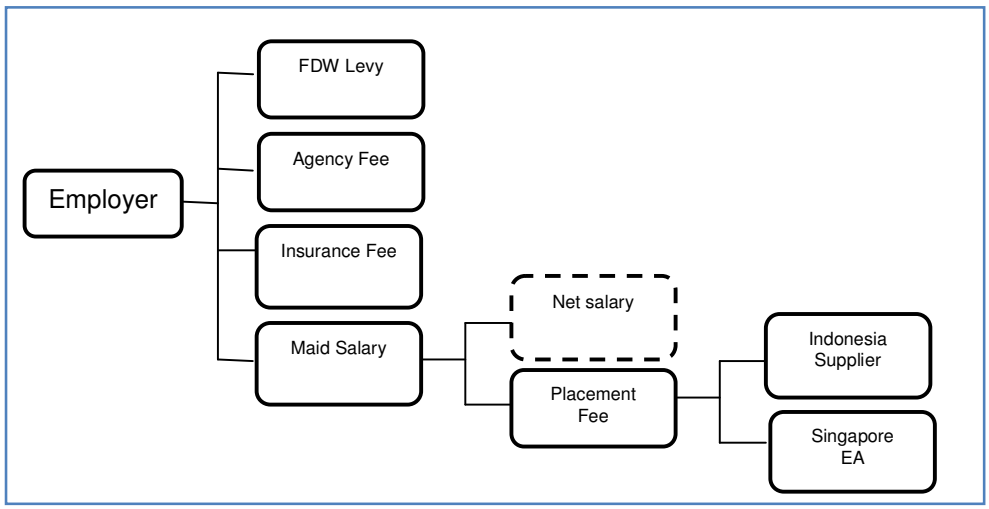
[35] See Answer to Question 25 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 10 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 78 of Liew Kok Keong Benny's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 11 of Low Kooi Har's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 13 of Chung Kin Soon's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 17 of Chin Moy Yong's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 14 of Lim Lam Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 14 of Indarjitrai's Notes of Information/Explanation dated 25 January 2011. See Answer to Question 15 of Natal Paung's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 12 of Tan Tian Hock's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 14 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 14 of Seet Ai Ching's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 13 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 17 of Yeo Tong Poh's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 10 of Chan Sian Chong's Notes of Information/Explanation dated 28 January 2011.

[36] See Answer to Question 25 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 11 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011. Se Answer to Question 14 and 15 of Liew Kok Keong Benny's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 13 of Chung Kin Soon's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 15 of Lim Lam Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 15, 16 and 27 of Indarjitrai's Notes of Information/Explanation dated 25 January 2011. See Answer to Question 12 and 13 of Natal Paung's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 12 of Tan Tian Hock's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 13 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 16 of Seet Ai Ching's Notes of Information/Explanation dated 28 January 2011.

[37] See Answer to Question 15 of Liew Kok Keong Benny's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 17 of Lim Lam Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 9 and 10 of Indarjitrai's Notes of Information/Explanation dated 25 January 2011. See Answer to Question 12 of Tan Tian Hock's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 14 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 10 of Chan Sian Chong's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 18 and 19 of Seet Ai Ching's Notes of Information/Explanation dated 28 January 2011.

28. A schematic diagram of the payment from the employer is provided as follows:

Diagram 1



29. Evidence obtained from the interviews[38] states that the placement fee is typically expressed in terms of a number of months of the FDW's salary. Since 1 April 2011, the amount of placement fee retained by a Singapore EA is capped at 2 months by MOM[39], while the Indonesia suppliers will largely determine the quantum of placement fee they receive. Having paid upfront the placement fee on the FDW's behalf, the employer will be reimbursed this fee by the FDW by deductions of her monthly salary (minus any monthly allowance set aside for her use) until the placement fee is fully recovered[40].

30. According to the Parties, the industry is facing a supply shortage situation of new Indonesian FDWs to Singapore, and adjustments to the placement

[38] See Answers to Questions 17 and 31 of Indarjitrai's Notes of Information/Explanation dated 25 January 2011. See Answers to Questions 15 and 16 of Natal Paung's Notes of Information/Explanation dated 27 January 2011. See Answers to Questions 13 and 14 of Chan Sian Chong's Notes of Information/Explanation dated 28 January 2011. See Answers to Questions 14 and 15 of Chung Kin Soon's Notes of Information/Explanation dated 27 January 2011. See Answers to Questions 14 and 21 of Lim Lam Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answers to Questions 11 and 12 of Low Kooi Har's Notes of Information/Explanation dated 28 January 2011. See Answers to Questions 12 to 14 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011. See Answers to Questions 25 and 28 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answers to Questions 17 and 18 of Yeo Tong Poh's Notes of Information/Explanation dated 27 January 2011. See Answers to Questions 10 and 11of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011. See Answers to Questions 12 to 14 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011.

[39] Under the EA Act, from 1 April 2011 onwards, the Singapore commission payable to EA is capped to two months of the FDW's salary.

[40] See Answer to Questions 17 of Mr Indarjitrai's Notes of Information/Explanation dated 25 January 2011.

fee and the FDW's monthly salary would affect the supply[41]. A decrease in placement fee and/or an increase in the monthly salary of FDWs would attract more supply of FDWs (by effectively increasing the net salary[42] received by the FDW, see Diagram 1 above). Given that the Indonesia suppliers largely determine the quantum of the placement fee they receive, a decrease in the placement fee would mean the EAs' profit margins are reduced. An EA's ability to independently increase the monthly salary of the FDWs is constrained by competition from other EAs. In a market where EAs set the FDW salaries independently, employers have the option to compare the FDW salaries offered by each EA and decide which EA to source from, based on FDW salaries and other considerations. However, when EAs come together to collectively set FDW salaries, and reduce competition in the market, the employers' ability to compare the FDW salaries offered by each EA is reduced, as salary points in the market become set by collusive agreements between competitors rather than by market forces.

C. Investigation and Proceedings

31. On 19 January 2011, the Today newspaper and Channel News Asia ("CNA") reported that 17 major EAs in Singapore were going to increase the monthly salaries for new Indonesian FDWs to $450. On 20 January 2011, CCS commenced investigations as to whether there had been a breach of the section 34 prohibition of the Act.

32. On 21 January 2011, CCS conducted simultaneous inspections without notice at the premises of Nation and Best Home pursuant to section 64 Notices. Interviews with key personnels of these undertakings were also subsequently conducted pursuant to section 63 Notices.

33. From the inspections and interviews, CCS obtained evidence that there was a meeting at 2pm on Sunday 16 January 2011 at Keppel Club ("the Keppel

[41] See Answer to Question 17 and 21 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 24, 26 and 36 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 21 of Chan Sian Chong's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 21 of Chin Moy Yong's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 25, 43, 44, 46 and 47 of Liew Kok Keong Benny's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 37, 40 and 41 of Lim Lam Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 23 of Low Kooi Har's Notes of Information/Explanation dated 28 January 2011. See Answer to Question of 19 and 27 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 23 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011.

[42] Net salary refers to the total amount of payment that the FDW will keep after deducting the placement fee from her total salary over the contractual period.

Club meeting") involving the 16 EAs.[43] The Keppel Club meeting was organized by Best Home with the ostensible purpose of discussing the new regulatory framework for EAs to be implemented by MOM in April 2011. During the course of the meeting, the 16 EAs also discussed increasing the monthly salary of new Indonesian FDWs in order to resolve the problem of reduced supply of the same.

34. On 24 January 2011, CCS sent notices under section 63 of the Act to Crislo Resources, Comfort, Homekeeper, Jack Focus, Javamaids, JPB, Maid Management, Net Resources, Nora, SLF, Swift and TM Global. On 27 January 2011, CCS sent a notice under section 63 of the Act to Crislo Employment.

35. CCS carried out interviews with the relevant personnel of the Parties and some third parties as detailed below, under section 63 of the Act:

Name	Company	Designation	Date(s) of interviews
Tay Khoon Beng	Best Home	Managing Director	21 January 2011
Chin Mui Hiong (Desmond)	Nation	Group Director	21 January 2011
Siah Nguang Hong, Henry	Labour Express	General Manager	21 January 2011 15 February 2011
Indarjitrai S/O Raj Pati Rai	Javamaids	Sole-proprietor	25 January 2011
Chin Moy Yong	Homekeeper	Managing Director	27 January 2011
Chung Kin Soon	Crislo Resources	Sole Proprietor	27 January 2011
Liew Kok Keong, Benny	Comfort	Director	27 January 2011
Yeo Tong Poh	SLF	Director	27 January 2011
Wong Hong Choon, Eric	Swift Arrow	Director Director	27 January 2011
Natal Paung	JPB	General Manger	27 January 2011
Eric Lim Lam Choon	Jack Focus	Managing Director	27 January 2011 15 February

[43] Refer to paragraph 1.

Name	Company	Designation	Date(s) of interviews
			2011
Syed Faisal Bin Syed Hussin	Nora	Sole-proprietor	27 January 2011
Seet Ai Ching	Net Resources	Director	28 January 2011
Low Kooi Har	Crislo Employment	Director	28 January 2011
Ong Hock Chye, Bernard	Net Resources Recruitment; HK	Director	28 January 2011
Chan Sian Chong, Desmond	TM Global	Director	28 January 2011
Tan Tian Hock	Maid Management	Managing Director	28 January 2011

36. CCS sent further notices under section 63 of the Act to each of the Parties on 14 February 2011 and on 19 August 2011 requesting documents and information relating to each of the Parties' turnover for FY2010. CCS received the responses between 18 February 2011 and 11 March 2011, and on 2 September 2011 respectively.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

37. This section sets out the legal framework and economics based upon which CCS proposes to consider the evidence. This section also sets out, in relation to each undertaking, the extent of their involvement, the evidence and CCS' assessment of the evidence on which it relies.

A. The Section 34 Prohibition & Its Application to Undertakings

38. 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.

39. Specifically, section 34(2)(a) of the Act states that agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they directly or indirectly fix purchase or selling prices or any other trading conditions.

40. 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 Parties are "undertakings" within the meaning of the Act.

B. Agreements and/or Concerted Practices

41. An agreement is formed when parties arrive at a consensus on the actions each party will, or will not, take. The section 34 prohibition applies to both legally enforceable and non-enforceable agreements, whether written or oral, and to so-called gentlemen's agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means.[44] It has been held by the European Court of Justice ("ECJ") that even if only one of the participants at a meeting reveals its intentions on its future pricing policies, there can be an agreement or concerted practice, notwithstanding.[45]

42. The section 34 prohibition also applies to concerted practices. 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 practical co-operation between them.[46]

43. As CCS stated in the *Pest Control Case*[47], and subsequently followed in the *Express Bus Operators Case*[48] and the *Electrical Works Case*[49]:

> "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. This principle was set out in the decision of the ECJ in the case of *Cooperatiëve Vereniging Suiker Unie v Commission*[50]. The case involved major petrochemical producers of polypropylene which had, by a series of price initiatives, regularly set target prices and developed a system of

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[44] Paragraph 2.10 of the CCS Guidelines on the Section 34 Prohibition.
[45] Case T-202/98 Tate & Lyle v Commission [2001] ECR II-2035, [2001] 5 CMLR 859 at [54].
[46] Paragraph 2.16 of the CCS Guidelines on the Section 34 Prohibition. See also paragraph 206 (iii) of *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4.
[47] [2008] SGCCS 1 at [42]
[48] [2009] SGCCS 2, at [50].
[49] [2010] SGCCS 4 at [40].
[50] Joined cases 40 -8, 50, 54 -6, 111, 113 and 114/73 [1975] ECR-1 1663. See also Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85 to C-129/85, *Ahlström Osakeyhtiö and Others v Commission*, [1993] ECR I-01307 at [63].

annual volume control to share out the available market between them according to agreed percentage or tonnage levels. In its decision, the ECJ held that:

> 26 The concept of a 'concerted practice' refers to a form of coordination between undertakings, which, without having been taken to the stage where an agreement properly so-called has been concluded, knowingly substitutes for the risks of competition, practical cooperation between them, which leads to conditions of competition which do not correspond to the normal conditions of the market, having regard to the nature of the products, the importance and number of the undertakings as well as the size and nature of the said market.
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> 173 The criteria of coordination and cooperation laid down by the case-law of the court, which in no way require the working out of an actual plan, must be understood in the light of the concept inherent in the provisions of the treaty relating to competition that each economic operator must determine independently the policy which he intends to adopt on the common market, including the choice of the persons and undertakings to whom he makes offers or sells.
>
> 174 Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does, however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.

45. The principle that an economic operator must independently determine the policy it will adopt on the market and that that independence is presumed to be compromised as a consequence of concerted action, was reinforced by

the ECJ in *Hüls AG v. Commission*[51]. In that case, it was found that a number of polypropylene producers had set target prices and operated a system of volume control to share the available market by an agreed tonnage or percentage. The ECJ, in its 1999 decision, held:

> 161 It follows, first, that the concept of a concerted practice, as it results from the actual terms of Article 81(1) [now Article 101] EC, implies, besides undertakings concerting with each other, subsequent conduct on the market, and a relationship of cause and effect between the two.
>
> 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…

46. Finally, in *Tate & Lyle plc v Commission*[52], a case which concerned a series of meetings between British Sugar and its competitors, Tate & Lyle and Napier Brown, the CFI held:

> 54 Moreover, the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice.
>
> 58 In Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II -867, in which the applicant had been accused of taking part in meetings at which information was exchanged amongst competitors concerning, inter alia, the prices which they intended to adopt on the market, the Court of First Instance held that ***an undertaking by its participation in a meeting with an anti-competitive purpose, not only pursued the aim of eliminating in advance uncertainty about the future conduct of its competitors but could not fail to take into account, directly or indirectly, the information obtained in the***

[51] Case C-199/92 [1999] ECR I-4287.
[52] Case T-202/98, T-204/98 and T-207/98 [2001] ECR II-2035 (upheld by the Court of Justice in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission*)

> ***course of those meetings in order to determine the policy which it intended to pursue on the market*** (*Rhône-Poulenc*, paragraphs 122 and 123). ***This Court considers that that conclusion also applies where, as in this case, the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their market competitors***. (Emphasis added)

47. The section 34 prohibition applies to both agreements and concerted practices. For the purposes of finding an infringement, it has been established in EC law that it is not necessary to characterize the conduct in question as exclusively an agreement or a concerted practice.[53] This position was endorsed and followed by CCS in the *Pest Control Case*[54], *Express Bus Operators Case*[55] and the *Electrical Works Case*[56].It is established jurisprudence in the EC that the conduct may, one and the same, be a concerted practice and an agreement.[57] Instead, the important distinction is whether the behaviour is collusive or not – this was the decision of the European Commission in the *Polypropylene*[58]case. The case involved major suppliers of polypropylene meeting regularly to share the available market according to agreed tonnage or percentages and set target prices. The European Commission said that :

> "The importance of the concept of a concerted practice does not thus result so much from the distinction between it and an 'agreement' as from the distinction between forms of collusion falling under Article 85(1) [now Article 101] and mere parallel behaviour with no element of concertation."

48. Similarly, the Competition Appeal Tribunal ("CAT") in the United Kingdom, in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*[59], took the position that it is not necessary for the Office of Fair Trading ("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. In that case, a supplier and two

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[53] *SA Hercules Chemicals v Commission,* Case T-7/89 [1991] ECR II-711, see paragraph 264.
[54] See [2008] SGCCS 1, at [44] to [47].
[55] See [2009] SGCCS 2, at [55] to [58].
[56] See [2010] SGCCS 4, at [45] to [47].
[57] *The Community v Interbrew NV and others (re the Belgian beer cartel),* Case IV/37.614/F3 [2004] CMLR 2, see paragraph 223.
[58] Case 86/398 OJ 1986 L 230/1 at paragraph 87.
[59] [2004] CAT 17 at paragraph 654.

retailers were parties to the same agreement or concerted practice, where the supplier, acting as an intermediary in passing on pricing information, dealt separately with the two retailers. The parties had either agreed to or confirmed their respective intentions not to discount from a certain price or at the very least knowingly gave an intimation or assurance to that effect[60].

C. Party to an Agreement or a Concerted Practice – The Liability of an Undertaking

49. The mere fact that a party may have played only a limited part in setting up the agreement, or may not be fully committed to its implementation, or participated only under pressure from the other parties, does not mean that it is not party to the agreement.[61] In the *Pest Control Case*, one of the infringing parties, Aardwolf, had claimed that it had never intended to abide by the agreement/concerted practice to submit cover bids in support of the designated winner. Aardwolf had claimed that it gave the other parties the impression that it was participating in the agreement/concerted practice so that it could use the information on the tender it received from the other pest-control operators to gain a competitive advantage over the others. In rejecting Aardwolf's argument, CCS found:

> "…..that an agreement would still be caught under the section 34 prohibition even if it was not the intention of an undertaking so agreeing to implement or adhere to the terms of the agreement."[62]

50. The position espoused by CCS is consistent with that in the EC. In *Aalborg Portland AS v Commission*[63], the ECJ held that:

> 81. ...it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by

[60] [2004] CAT 17 at paragraph 207.
[61] Paragraph 2.11 of the CCS Guidelines on the Section 34 Prohibition.
[62] Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore (CCS 600/008/06), paragraphs 120 to 128
[63] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission*

demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs: see Case C-199/92P, *Hüls AG v. Commission* [1999] ECR I-4287, paragraph 155 and Case C-49/92P, *Commission v Anic* [1999] ECR I-4125, paragraph 96.

82. ***The reason underlying that principle of law is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking has given the other participants to believe that it subscribed to what was decided there and would comply with it.***

83. The principles established in the case-law cited at paragraph 81 of this judgment also apply to participation in the implementation of a single agreement. In order to establish that an undertaking has participated in such an agreement, the Commission must show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk (*Commission* v *Anic*, paragraph 87).

84. In that regard, a party which ***tacitly approves*** of an unlawful initiative, ***without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable in the context of a single agreement***.

85. ***Nor is the fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose such as to relieve it of responsibility for the fact of its participation in a cartel, unless it has publicly distanced itself from what was agreed in the meeting.***

> 86. Neither is the fact that an undertaking has not taken part in all aspects of an anti-competitive scheme or that it played only a minor role in the aspects in which it did participate material to the establishment of the existence of an infringement on its part. Those factors must be taken into consideration only when the gravity of the infringement is assessed and if and when it comes to determining the fine (see, to that effect, *Commission* v *Anic*, paragraph 90). (Emphasis added)

51. Likewise, in *Sarrio SA v Commission*[64], the CFI held that participation by an undertaking in meetings that have an anti-competitive object has the effect *de facto* of creating or strengthening a cartel and that the fact that an undertaking does not act on the outcome of those meetings is not such as to relieve it of responsibility for the fact of its participation in the cartel, unless it has publicly distanced itself from what was agreed in them.[65] Where public distancing is concerned, in *Adriatica v Commission*[66], the CFI held that:

> "the requirement that an undertaking publicly distance itself, is part of a legal principle, according to which, where an undertaking attends meetings involving illegality, it may be exonerated where the evidence shows that it formally distanced itself from the content of those meetings."[67]

52. In this respect, CCS notes that the mere participation by an undertaking in a meeting with an anti-competitive purpose, without expressing manifest opposition to or publicly distancing itself from, the same is tantamount to a tacit approval of that unlawful initiative. CCS further notes that disclosure of intention or conduct of the market serves to eliminate or reduce uncertainty associated with competition and is sufficient to prove that there has been a concerted practice. Indeed, in the case of *Cimenteries v Commission*[68], the appellants had argued that merely letting a competitor know of its intention could not have amounted to a concerted practice. In rejecting this argument, the CFI held that:

> 1849. In that connection, the Court points out that the concept of concerted practice does in fact imply the existence of reciprocal contacts (Opinion of Advocate

[64] C-291/98P [2000] ECR I-9991.
[65] C-291/98P [2000] ECR I-9991, at [50].
[66] Case T-61/99 *Adriatica di Navigazione SpA v Commission* [2003] ECR II-5349
[67] Case T-61/99 *Adriatica di Navigazione SpA v Commission* [2003] ECR II-5349 at [135].
[68] Case T-25/95 [2000] ECR II-491

> General Darmon in Woodpulp II, cited at paragraph 697 above, points 170 to 175). That condition is met where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it …
>
> 1852 ...In order to prove that there has been a concerted practice, it is not therefore necessary to show that the competitor in question has formally undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have colluded over their future conduct on the market. …. It is sufficient that, by its statement of intention, the competitor should have eliminated, or at the very least, substantially reduced uncertainty as to the conduct [on the market to be expected on his part].

53. The notion of public distancing must be based primarily on an antecedent participation in an unlawful initiative.[69] To this end, CCS notes that the unlawful initiative need not be the undertaking's attendance at the meeting, especially where the purpose of the meeting was not one which, taken on its own, constitutes an infringement; rather it is the subsequent participation during the meeting in an unanticipated discussion that constitutes evidence of an agreement and/or concerted practice amounting to an infringement under the Act.

54. In order to avoid liability by publicly distancing itself, an undertaking must inform the other companies represented with sufficient clarity, that, despite appearances, it disagrees with the unlawful steps which they have taken.[70]

55. In *Westfalen v Commission*[71] the CFI clarified that the notion of public distancing as a means of excluding liability should be interpreted narrowly.[72] Otherwise, it would be impossible to prevent infringements of competition law committed by cartels if it were to be accepted that undertakings may attend such meetings with impunity.[73]

56. Undeniably, the rationale behind a narrow interpretation of the concept of public distancing is to ensure that evasion of the law is not too easy. The act

[69] Joined cases C-204/00 P *Aalborg Portland v Commission* [2004] ECR I-123 at [84] and *JJB Sports PLC v Office of Fair Trading* [2004] CAT 17 at [1050].
[70] Case T-61/99 *Adriatica di Navigazione SpA v Commission* [2003] ECR II-5349 at [137].
[71] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334.
[72] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334 at [103].
[73] See paragraph 45 of the Opinion of Advocate General Mischo in Case C-291/98 P *Sarrio SA v Commission* [2000] ECR I-9991

of public distancing is meant to help preserve the risks of uncertainty which typically characterises the competitive process.[74] Whereas a cartel seeks to reduce or even remove the uncertainty of competition and compromises the undertakings' decision-making independence by, for instance, exerting pressure to adopt a specific line of conduct on the market, the act of public distancing seeks to achieve precisely the opposite.[75]

57. It was held in *Westfalen v Commission* that silence at a meeting during which undertakings colluded unlawfully on a precise question of pricing policy was not tantamount to an expression of firm and unambiguous disapproval.[76] Further, an undertaking's disagreement with what was proposed at the meeting is not sufficient to amount to public distancing. This position was endorsed by the CFI in *LR AF 1998 v Commission*[77] and by the CAT in *JJB Sports Plc v Office of Fair Trading.*[78] CCS thus notes that silence at a meeting or disagreement with the substance of the proposal does not constitute an unequivocal communication that the undertaking disagrees with the unlawful initiative.

58. In summary, the approach of case-law is clear. A competitor should not, directly or indirectly, disclose information to another competitor that could influence its future pricing behaviour. A trader is unlikely to determine his commercial policy independently after attending a meeting where future pricing behaviour was shared and discussed. Furthermore this lack of independence may distort the competitive conditions in the market. In fact, meetings which seek to coordinate the amount, timing and manner of price changes are deemed to change the incentives, knowledge and behaviour of those in attendance.[79]

59. Lastly, CCS notes that the ECJ has established that an agreement and/or concerted practice to fix prices are prohibited under the Act irrespective of whether firms are operating under adverse market conditions.[80] In such a case, the decrease in supply of a relevant product was likely to result, *ceteris paribus*, in an increase in price of that product but that fact did not justify the undertakings seeking to manipulate the changed market

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[74] Refer to Opinion of AG in Case C-194/99 P, *Thyssen Stahl v Commission* [2003] ECR I-10821 at [118] and [200].
[75] See D Bailey, "*Publicly Distancing Oneself From a Cartel*", 2008 World Competition Journal 31(2) at pp 189 - 190.
[76] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334 at [124].
[77] Case T-23/99 *LR AF v Commission* [2002] ECR II-1705. See [55].
[78] *JJB Sports Plc v Office of Fair Trading* [2004] CAT 17, at [879].
[79] See D Bailey, "*Publicly Distancing Oneself From a Cartel*", 2008 World Competition Journal 31(2) at pp 181, 183 and 184.
[80] See Case T-14/89 *Montedipe v Commission* [1992] ECR II-1155. See also See D Bailey, "*Publicly Distancing Oneself From a Cartel*", 2008 World Competition Journal 31(2) at p 184.

condition through an agreement/concerted practice. In CCS' view, the underlying economic rationale is that a more competitive, flexible and efficient response to market conditions (e.g. supply constraints) can be achieved by firms taking independent commercial decisions according to their own business circumstances, rather than taking collective action to influence a market outcome.

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

60. 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.

61. CCS had found in the *Pest Control Case*[81], subsequently applied in the *Express Bus Operators Case*[82] and *Electrical Works Case*[83], 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:

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

62. An agreement or concerted practice whose aim is to fix prices is an object infringement. CCS Guidelines on the section 34 Prohibition state that agreements that have the object to fix or effect of fixing prices will, by their very nature, be regarded as restricting competition appreciably[84].

63. European jurisprudence has established that there can be an infringement even if an agreement does not have an effect on the market.[85] Similarly, there can be a concerted practice in the absence of an actual effect on the market.[86]In *Argos Limited and Littlewoods Limited v OFT*[87], the OFT had sought to support its case that there was a price-fixing agreement and/or concerted practice by drawing attention to the difference in prices in the

[81] [2008] SGCCS 1, at [49].
[82] [2009] SGCCS 2, at [71].
[83] See [2010] SGCCS 4, at [49].
[84] Paragraph 3.7 of CCS Guidelines on the Section 34 Prohibition
[85] *Tréfilunion v Commission,* Case T-148/89 [1995] ECR II-1063, see paragraph 79.
[86] *Hüls AG v. Commission,* Case C-199/92 [1999] ECR I-4287, see paragraph 164 to 168.
[87] [2004] CAT 24

relevant catalogues before the alleged agreements or concerted practices and the high degree of similarity in the relevant prices thereafter. In response, the CAT said:

> 357. However, the OFT does not in our judgment need to rely on the similarity of *prices to prove its case if other evidence* shows that relevant agreements or concerted practices came into existence. It is trite law that once it is shown that such agreements or practices had the object of preventing, restricting or distorting competition, there is no need for the OFT to show what the actual effect was: see Cases 56 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, 342 and many subsequent cases.

64. Even information exchange between competitors with the objective of restricting competition (for example regarding intended future prices) will be treated as a restriction of competition by object, meaning to say that an adverse effect on the market need not be demonstrated. This was set out in the recently issued EU Commission Guidelines on the applicability of Article 101 TFEU to Horizontal Co-operation Agreements[88] where it is stated:

> *"72. Any information exchange with the objective of restricting competition on the market will be considered as a restriction of competition* ***by object.*** *[...]*
>
> .....
>
> *74. Information exchanges between competitors of individualised data regarding intended future prices or quantities should therefore be considered a restriction of competition by object. In addition,* ***private exchanges between competitors of their individualised intentions regarding future prices or quantities would normally be considered and fined as cartels because they generally have the object of fixing prices or quantities****. [...]*"(emphasis added)

65. CCS notes that the EAs' exchange of individualised intentions regarding future prices replaced the normal risks of competition by practical cooperation, resulting in conditions of competition differing from those in a normal market situation.

[88] [2011] OJ C 11/1

66. Give that this case concerns price-fixing[89], and in view of the preceding paragraphs, CCS will treat this case as one involving an agreement or concerted practice with the object of preventing, restricting or distorting competition. For this reason, CCS will not proceed to show any adverse effects on competition.

E. Price-Fixing Agreements

67. As elaborated in the CCS Guidelines, agreements or concerted practices involving price-fixing (direct or indirect) are regarded as having an appreciable adverse effect on competition.

68. There are many ways in which prices can be fixed. Price-fixing agreements may involve fixing either the price itself or an element or component of a price[90]. CCS applied this principle in the *Express Bus Operators* case[91], in which CCS found that the agreement to impose a uniform surcharge (the fuel and insurance charge agreement), which constitutes a component of the total coach ticket price, was a "clear price-fixing agreement". CCS held that such amounted to an agreement to introduce a uniform increase in price[92], and applied the principles established in *Ferry operators – Currency surcharges* and *VOTOB.*

69. I*n Ferry operators – Currency surcharges*[93], five ferry operators had an arrangement to bring about the imposition of a common currency surcharge on freight to be transported on United Kingdom-Continent routes following the devaluation of the pound sterling in September 1992. Identical surcharges were announced, with a common introduction date and common method of calculation. The EC found that the arrangement between the ferry operators amounted to a concerted practice to introduce a uniform increase in price notwithstanding that the surcharges were not implemented at all or that they were only partially implemented[94].

70. The reasons why fixing an element or component of price amounts to price-fixing was explained in the case of *VOTOB*[95] which involved an association of six undertakings offering tank storage facilities in Amsterdam, Dordrecht and Rotterdam who decided to increase a component of their prices charged to their customers in a uniform, fixed amount. This uniform "environmental charge" was to cover the costs of investment required to reduce vapour

[89] See paragraph 71 below.
[90] See paragraph 3.3 of the CCS Guidelines on the section 34 Prohibition
[91] [2009] SGCCS 2, at [77] and [78].
[92] [2009] SGCCS 2, at [294].
[93] Commission Decision (97/84/EC), OJ [1997] L 26/23
[94] Ibid, at paragraph 59 and 65
[95] *Report on Competition Policy 1992* (Vol XXII) 177-186

emissions from members' storage tanks. The EC took objection to the charge as being incompatible with Article 85 for the following reasons:

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

The EAs have fixed a critical component of their placement fee

71. In the present case, as described in paragraph 29 above, the industry norm is that placement fee paid by the FDWs to the EAs is calculated in terms of a number of months of the FDW's salary. Evidence shows that at the meeting, the EAs discussed collectively raising the maid salary to $450 per month. As this is a component of placement fees, the agreement and/or concerted practice between the EAs amounts to price-fixing.

72. As noted in paragraph 30 above, an increase in the monthly salary of FDWs would attract more supply of FDWs by effectively increasing the net salary received by the FDW, provided the EAs do not proportionately increase placement fees. If an EA attempts on its own accord to increase monthly salary of FDWs, employers may opt for other EAs which do not increase the monthly salary. In a competitive environment, an EA may not be able to sustain a salary increase without losing market share. However, if the EAs

decide to collectively increase monthly salary of the FDWs to $450, the employers' ability to switch would be reduced. It should be noted that an increase in the net salary to FDWs can also come about by EAs competing to lower placement fees, instead of increasing maid salary. By collectively fixing and increasing the latter, it alleviates the pressure on the EAs to compete on the placement fee they receive.

73. Had there been no horizontal fixing of FDW salary, individual EAs would have to compete for the sourcing of Indonesian FDWs using multiple channels and take independent decisions on the extent to which they are able to increase maid salary or reduce placement fee to increase their supply of FDWs, having regard to prevailing market conditions and according to their own competitive position.

74. As such, CCS concludes that the agreement between the EAs to fix a common monthly FDW salary has the object of appreciable prevention, restriction and distortion of competition.

75. It is important to emphasise here that CCS does not take a position on what should be the appropriate salary for new Indonesian FDWs. The unlawful conduct that CCS is addressing in this decision is the collective fixing, by the EAs, of the salaries of new Indonesian FDWs, such that the employers' ability to switch would be reduced (by reducing the number of lower cost options available for the employers). Instead, EAs should independently determine the salaries of FDWs.

F. Burden and Standard of Proof

76. The burden of proof rests on CCS to prove the infringements in question. Infringements of the prohibition under section 34 of the Act are not classified as criminal offences. Hence, 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 the balance of probabilities.

77. CCS is mindful that an allegation of an infringement of the section 34 prohibition is a serious matter which may involve the issue of directions and the imposition of financial penalties. The quality and weight of the evidence must therefore be sufficiently strong before CCS concludes that the allegation is established on a balance of probabilities. The evidence likely to be sufficiently convincing to prove an infringement will depend on the circumstances and the facts and it can constitute a single item of evidence or wholly circumstantial evidence. In this regard, CCS notes that

in *JJB Sports plc and Allsports Limited v OFT*[96], the CAT was of the view that given the hidden and secret nature of cartels where little or nothing may be committed in writing, even a single item of evidence, or wholly circumstantial evidence, depending on the particular context and the particular circumstances may be sufficient to meet the required standard.

78. In the present case, the evidence that CCS proposes to rely on to make out the liability of the 16 EAs is set out in Chapter 2, Section H of the ID.

G. The Relevant Market

79. Market definition typically serves two purposes in the context of the section 34 prohibition. First, it provides 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.

80. Agreements and/or concerted practices that involve directly or indirectly fixing prices are, by their very nature, regarded as restrictive of competition to an appreciable extent[97]. Accordingly, a distinct market definition is not necessary to establish liability. However, a market definition is set out for the purpose of assessing the appropriate level of penalties. The relevant market is the provision of placement services for new Indonesian FDWs in Singapore.

H. The Evidence relating to the Agreement and/or Concerted Practice[98], CCS Analysis of the Evidence and CCS Conclusions on the Infringements

81. CCS has established that there was a meeting, initiated and organised by Tay Khoon Beng of Best Home, at Keppel Club, on the afternoon of Sunday 16 January 2011. It is also undisputed that the 16 EAs attended the Keppel Club meeting. During the Keppel Club meeting, the EAs discussed, among other things, the pressing issue of the increasing shortage of supply of Indonesian FDWs to Singapore. During the discussion, the solution proposed to increase the supply was to significantly raise the salaries offered to new Indonesian FDWs to S$450. Evidence obtained during CCS' investigations points towards both Tay Khoon Beng of Best Home and Chin Mui Hiong of Nation as having initiated the discussion to increase

[96] [2004] CAT 17 at paragraph 206.
[97] See paragraphs 2.20 and 3.2 of CCS Guidelines on the Section 34 Prohibition
[98] As earlier noted in Chapter 2, Section B, there is no necessity to characterise the infringing conduct as exclusively an 'agreement' or a 'concerted practice'. Therefore, for the purposes of setting forth the evidence and finding infringement, this ID will use "agreement" and "concerted practice" interchangeably.

the salary of new Indonesian FDWs[99]. CCS' investigations also showed that during the course of the meeting, there was consensus to raise the monthly salary, and while there was some debate over the final figure, the salary on which views converged was S$450.

Arrow

82. Eric Wong represented Arrow at the Keppel Club meeting. He stated in his Notes of Information ("NOI"), provided in his capacity as Director of both Swift and Arrow, that the EAs "talked about S$400 – S$450"[100] during the meeting. Eric Wong explained that the EAs discussed about raising the salaries of Indonesian FDWs to address the shortage of supply to Singapore.

83. Eric Wong said that "we found that there is no harm trying to raise the salary range to S$450 to solve the problem"[101].

84. CCS notes that Eric Wong did not, at any time during the discussion to increase salaries, publicly distance himself from nor voice his opposition to the unlawful conduct involving the discussion on the salary increase. In fact, his being agreeable to trying out the S$450 makes it clear that he did not oppose the infringing conduct.

85. In its written representations[102] to CCS, Arrow said that it was not aware of the seriousness of the matter or that it was actually committing an infringement. It also claimed that it did not benefit from the agreement and/or concerted practice.

86. CCS has noted from case law and the CCS Guidelines the position that agreements and/or concerted practices involving price-fixing (direct or indirect) are regarded as having an appreciable adverse effect on competition. In its representations, Arrow claimed that its customers did not acquire new Indonesian FDWs from it after the salaries were increased and

[99] See Answer to Question 10 and 17 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 20 of Low Kooi Har's Notes of Information/Explanation dated 28 January 2011. See Answers to Question 29 and 30 of Ong Hock Chye's Notes of Information/ Explanation dated 28 January 2011. See Answer to Question 22 of Chung Kin Soon's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 31 of Yeo Tong Poh's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 18 of Chan Sian Chong's Notes of Information/Explanation dated 28 January 2011. See Answer to Question 17 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011.

[100] See Answer to Question 18 of Mr Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011.

[101] See Answer to Question 19 of Mr Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011.

[102] Written representation by Arrow dated 24 June 2011.

that the customers therefore still had a choice. As noted at paragraph 72 above, if the EAs decide to collectively increase monthly salary of the FDWs to $450, the employers' ability to switch would be reduced. CCS also notes that had there been no horizontal fixing of FDW salary, individual EAs would have to take independent decisions on the extent to which they are able to increase maid salary or reduce placement fee to increase their supply of FDWs in order to source for Indonesian FDWs.[103]

87. In CCS' view, the crux of this infringement is not whether Arrow has not benefited from the agreement and/or concerted practice, instead, it is whether the competitive process has been harmed and if consumer's choice has been restricted. CCS is of the view that as a result of the agreement and/or concerted practice to fix the salary of the new Indonesian FDWs, the decision-making independence of the participating EAs has been appreciably reduced by the substitution of practical cooperation for the normal risks of competition. CCS considers that such conduct has the object of preventing, distorting or restricting competition and choice.

88. Taking the above into consideration, CCS finds that the elements of an agreement or, at the very least, of a concerted practice, in breach of the section 34 prohibition have been made out against Arrow. CCS finds that Arrow is liable for infringing the prohibition under section 34 of the Act, whether such infringement was committed intentionally or negligently.

Best Home

89. Best Home was represented at the Keppel Club meeting by Tay Khoon Beng, who admitted that he was part of the group that participated and decided to raise the salaries for new Indonesian FDWs to $450. He also admitted that the EAs arrived at a conclusion on the discussion to raise the said salaries to $450.[104]

90. By his own admission[105], and the evidence given by several other Parties[106], Tay Khoon Beng was the person who initiated and organised the Keppel Club meeting.

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[103] Refer to paragraph 73, above.

[104] See Answers to Questions 14 and 22 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011.

[105] See Answer to Question 10 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011.

[106] Low Kooi Har of Crislo Employment said that Tay from Best Home called her to attend the meeting, and asked her to gather a few other EAs to attend (see Answer to Question 15 of Low Kooi Har's Notes of Information/Explanation dated 28 January 2011. Tan Tian Hock of Maids Management said that "Mr Tay called me a few times when I was in Manila but I did not pick up the call. I received a few SMS from Mr Tay on 15th January 2011 to inform me on the venue, date and time of the "EAs get together" (see Answer

91. The evidence also shows that Tay Khoon Beng and Chin Mui Hiong were the primary drivers behind the press announcement about the salary increase. Chin Moy Yong of Homekeeper said that she received an SMS from Tay Khoon Beng that "he has discussed the issue on the pay increment for Indonesia FDW with MOM and will announce this in the local media"[107]. Low Kooi Har of Crislo Employment said that she did not know who coordinated the press release but that she received an SMS from Tay Khoon Beng asking her to attend a media interview, and that Tay Khoon Beng also called her again to tell her to watch the news that night[108]. Syed Faisal of Nora said that he received an SMS from Best Home "informing me to look out for the news on Channel 5 and Channel 8" in relation to the press release[109].

92. Tay Khoon Beng also continued to coordinate the price increases after the meeting. Tan Tian Hock of Maids Management said that Tay Khoon Beng called him after the meeting and "brought up the issue on the $450 increment"[110]. Indarjitrai of Javamaids said that Tay Khoon Beng had called him and told him that there were two other agencies which were going to $450.[111]

93. In its written representations dated 13 May 2011[112], Best Home contended that it never had the intention of colluding in secret or remaining silent "in

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to Question 18 of Tan Tian Hock's Notes of Information/Explanation dated 28 January 2011). Syed Faisal of Nora said he received a call from Tay of Best Homes to attend the meeting (see Answer to Question 17 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011) Natal Paung (JPB) said that Tay from Best Home contacted him to attend (See Answer to Question 21 of Natal Paung's Notes of Information/Explanation dated 27 January 2011). Chin Moy Yong of Homekeeper said she was invited by Mr Tay to attend the meeting See Answer to Question 17 of Chin Moy Yong's Notes of Information/Explanation dated 27 January 2011. Lim Lam Choon (Jack Focus) said that Mr Tay from Best Home was the person who informed him about the meeting See Answer to Questions 30 of Lim Lam Choon's Notes of Information/Explanation dated 27 January 2011. See also Answer to Question 27 of Ong Hock Chye's (Net Resources) Notes of Information/Explanation dated 28 January 2011, and Answer to Question 15 of Chan Sian Chong's (TM Global) Notes of Information/Explanation dated28 January 2011.

[107] See Answer to Question 24 of Chin Moy Yong's Notes of Information/Explanation dated 27 January 2011.

[108] See Answer to Question 30 of Low Kooi Har's Notes of Information/Explanation dated 28 January 2011.

[109]See Answer to Question 31 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011.

[110] See Answer to Question 31 of Tan Tian Hock's Notes of Information/Explanation dated 28 January 2011.

[111] See Answer to Question 61 of Indrajitrai's Notes of Information/Explanation dated 25 January 2011.

[112] Received by CCS on 27 June 2011. Best Home also submitted further written representations on 23 July 2011. These further representations were received well past the deadline of 27 June 2011 and without any request from Best Home for an extension of time to file the same. Be that as it may, CCS is of the view that these further representations do not add anything further to the existing representations which have already been dealt with by CCS.

fixing a price decision", unlike "in many other cases"[113]. Best Home also argued that the 16 EAs ran the risk of losing business almost instantly through the announcement of the increase in salary, made to the public on Channel News Asia soon after the Keppel Club meeting.[114]

94. In addition to the above, Best Home also argued it has a general idea that the Competition Act prohibits them from gathering to discuss issues relating to prices. However, as employment agents, their perception of price is the fees charged to the employers. Hence, during the Keppel Club meeting, they did not discuss the fees charged to the employers. As such, Best Home claimed that this clearly showed that the EAs were mindful of anti-competitive practices during the Keppel Club meeting.[115] Best Home contended that it was not clear that the FDW's salary is "part of price", otherwise it would not have discussed the same during the Keppel Club meeting.[116]

95. Best Home also explained that, as it is a small business, CCS should take a sympathetic view towards its actions which were largely motivated by the facts:

i. that there has been a real shortage of new Indonesian FDWs arriving in Singapore;

ii. that there was a need to compete with Hong Kong and Malaysia which offers higher salaries and which has sought to improve many aspects of the new Indonesian FDWs' employment terms, respectively;

iii. that there was a fear of being bullied by the Indonesian suppliers; and

iv. that the EAs wanted to put up their "last collective defence against unreasonable requests by our suppliers to increase supplier's fee, placement fee and salary without seeing the possibility of improving the quantity of bio-data"[117].

96. Lastly, Best Home also asserted, in its written representations, that after CCS investigated it on 20 January 2011 and all other EAs on 22 January 2011, it understood the anti-competitive nature of their conduct. Best Home

[113] See paragraph (1) of Best Home's written representations dated 13 May 2011.
[114] See paragraph (1) of Best Home's written representations dated 13 May 2011.
[115] See paragraph (2) of Best Home's written representations dated 13 May 2011.
[116] See paragraph (2) of Best Home's written representations dated 13 May 2011.
[117] See paragraphs (2) and (3) of Best Home's written representations dated 13 May 2011.

argued that it therefore immediately backed down "on the issue". In the circumstances, CCS ought not to have considered the period of 3 months as the duration of the infringement for the purpose of calculating penalties.[118] Best Home explained that it had "already suffered financially due to our gathering", that "we have breeched (sic) the law with no profiteering intention" and requested that it is issued with a letter of warning instead of a financial penalty.[119]

97. As set out above at paragraph 71[120], CCS considers that the FDW's salary is a component of placement fees (received by the Singapore EAs in part), and thus the agreement and/or concerted practice between the EAs amounts to price-fixing. As part of its assessment, CCS was informed by the EAs that they were facing a supply shortage situation of new Indonesian FDWs to Singapore.[121] However, as noted at paragraph 59 above, an agreement and/or concerted practice to fix prices are prohibited under the Act irrespective of whether firms are operating under adverse market conditions. In CCS' view, a collective increase in FDW salary restricts independent responses to the supply shortage situation, restricts employers' choice, and therefore alleviates the competitive pressure faced by the EAs in increasing FDWs' salaries. A more competitive, flexible and efficient response to market conditions can be achieved via independent commercial decisions of the EAs rather than a collective one among them.

98. Further, in CCS' view, Best Home's submission that it had immediately backed down all its actions on the issue from 22 January 2011 is a bare assertion as it is not borne out in evidence nor had Best Home provided any evidence in support of its assertion. Best Home did not elaborate on what further steps it did to publicly distance itself or manifest opposition arising out of the unlawful conduct at the Keppel Club meeting of 16 January 2011. In CCS' opinion, Best Home's independence in the relevant market would have been compromised as the uncertainty surrounding the future conduct of its competitors would have been eliminated by the discussions at the Keppel Club meeting. CCS therefore finds that such a bare assertion is not sufficient to constitute public distancing or manifest opposition of the unlawful conduct, which persisted until 13 May 2011[122].

99. Taking all of the above into consideration, CCS finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition, have been made out against Best Home. CCS finds

[118] See paragraph (4) of Best Home's written representations dated 13 May 2011.
[119] See paragraph (4) of Best Home's written representations dated 13 May 2011.
[120] Refer to paragraphs 29, 30 and 71 to 74, above.
[121] Refer to paragraph 30, above.
[122] Refer to paragraphs 197 and 198 below for reasons why CCS regards 13 May 2011 as the cessation date.

that Best Home is liable for infringing the prohibition under section 34 of the Act, whether such infringement was committed intentionally or negligently. In addition, CCS notes that Best Home took an active leader and/or instigator role in the infringing activities.

Comfort

100. Liew Kok Keong represented Comfort at the Keppel Club meeting. Liew Kok Keong stated in his NOI that there was a need to raise the salaries of the Indonesian FDWs because of the shortage of supply to Singapore.[123] [✂][124]

101. Liew Kok Keong also went on record to say that "none of us came to a consensus that we have to raise the salary" but accepted that "we were just sharing our individual opinions on the market condition". He also said that the "S$450 was never what we wanted to do to stir the market but it was because of the shortage in supply that we had to".[125] Liew Kok Keong acknowledged that the discussion on salaries was "just a sharing session"[126] and that "everybody at the meeting, including me, shared our practice for the salaries but I must stress that there was no intention of raising wages"[127].

102. After the meeting, Liew Kok Keong sent a short message service (SMS) to Tay Khoon Beng of Best Home with details of, what appears to be, salary increase.[128] The SMS stated that the salary was $450 with 1 rest day, [✂] and the loan was 6.5 months. However, Liew Kok Keong explained that the contents of the SMS did not state the details of what was concluded during the discussion on salaries. Instead, he claimed that it only showed "what my business practice is. [✂]"[129].

[123] See Answers to Questions 43 and 44 of Liew Kok Keong Benny's Notes of Information/Explanation dated 27 January 2011.
[124] See Answer to Question 62 of Liew Kok Keong Benny's Notes of Information/ Explanation dated dated 27 January 2011.
[125] See Answer to Question 25 of Liew Kok Keong Benny's Notes of Information/ Explanation dated dated 27 January 2011.
[126] See Answer to Question 31 of Liew Kok Keong Benny's Notes of Information/ Explanation dated dated 27 January 2011.
[127] See Answer to Question 39 of Liew Kok Keong Benny's Notes of Information/ Explanation dated dated 27 January 2011.
[128] See Document "LKK-004" dated 27 January 2011 text message from Benny Liew on details of salary increase.
[129] See Answer to Question 41 of Liew Kok Keong Benny's Notes of Information/ Explanation dated 27 January 2011.

103. In another SMS[130] which Liew Kok Keong sent to Tay Khoon Beng, Liew Kok Keong informed Tay Khoon Beng that he had been told off by a customer for increasing the salary to S$450. Furthermore, Liew Kok Keong was quoted in an online article by The Straits Times[131] as one of the EAs that "jumped on the bandwagon" for the salary increase. During the investigation, Liew Kok Keong took the position that he was misquoted and misinterpreted by the reporter.[132]

104. As discussed above in paragraphs 49 to 56, the fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose, does not relieve the undertaking of liability under the section 34 prohibition, unless the undertaking has publicly distanced itself from unlawful discussion at the meeting. Even though Liew Kok Keong claimed there was no consensus to raise the salary, Comfort appeared to have endorsed the agreement with Liew Kok Keong's SMS messages exchange with Tay Khoon Beng, in addition to Liew Kok Keong being quoted in the Straits Times online article. Liew Kok Keong did not leave the meeting or disagree with the discussion to raise prices. CCS finds that Comfort participated in the unlawful discussion to increase the salaries of the new Indonesian FDWs.

105. CCS considers that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Comfort. CCS finds that Comfort is liable for infringing the prohibition under section 34 of the Act.

Crislo Employment

106. Low Kooi Har represented Crislo Employment at the Keppel Club meeting. Low Kooi Har said in her NOI that she "objected to the decision to raise the FDW's salary because we are not given enough time to consider the decision."[133]

107. However, after the meeting, Low Kooi Har continued to communicate with Tay Khoon Beng of Best Home via SMS on the decision to raise the salaries to $450.[134] In her SMSes to Tay Khoon Beng, Low Kooi Har stated that her [✂] did not agree to her offer and her headquarter office had [✂]

[130] See Document "LKK-006" dated 27 January 2011 text message from Benny Liew on details of salary increase.
[131] See Document "LKK-005" dated 27 January 2011 – copy of Straits Times online article.
[132] See Answer to Question 55 of Liew Kok Keong Benny's Notes of Information/ Explanation dated 27 January 2011.
[133] See Answer to Question 28 of Low Kooi Har's NOI dated 28 January 2011.
[134] See Answers to Question 31 to 37 of Low Kooi Har's Notes of Information/ Explanation dated dated 28 January 2011.

because they tried to offer salary at $450. In addition Low Kooi Har also received an SMS from Tay Khoon Beng asking her if she wanted to be interviewed by the media, to which she replied saying "No".[135]

108. On the face of it, Low Kooi Har's SMSes to Tay Khoon Tay suggests that she was implementing the $450 salary decision in spite of her claims that she "rejected the S$450 increase"[136].

109. While Low Kooi Har disagreed with the decision to increase the salaries to S$450, and was "not happy that the media reports had reported that 17 employment agencies agreed to the increase", she took no steps to demonstrate her opposition to the unlawful discussion, nor did she publicly distance herself from either the discussion or the media report.

110. The fact that she did not act on the outcome of the discussion or that she disagreed with the outcome of the discussion does not relieve Crislo Employment of liability under section 34 of the Act.

111. Low Kooi Har's participation in the discussion and continued negotiation of the salary served to affirm the unlawful conduct. In CCS' view, her participation and communication of her intentions removes or reduces uncertainty over her future behaviour on the market vis-à-vis the other EAs present at the Keppel Club meeting. It also supports CCS' view that following these discussions on salary, Crislo Employment's commercial policies on the market will no longer be independently determined.

112. In its written representations to CCS dated 26 June 2011, Crislo Employment sought a reduction in the penalty on the grounds that Low Kooi Har had voiced her disagreement during the meeting and she had sent the SMS[137] in question to Tay Khoon Beng "purely to get rid" of him.[138] Crislo Employment also claimed that Low Kooi Har had attended the meeting in the hope of discussing the new MOM framework and not the salaries of FDWs.[139]

113. CCS notes that the arguments put forth by Crislo Employment in its written representations had already been considered above at paragraphs 110 and 111. On balance, CCS does not agree with Crislo Employment's argument that the SMSs were intended to get rid of Tay Khoon Beng, in view of the

[135] See Document "LKH-005" dated 28 January 2011.
[136] See Answers to Question 22 to 31 of Low Kooi Har's Notes of Information/ Explanation dated dated 28 January 2011
[137] See Document "LKH-003" dated 28 January 2011.
[138] See paragraph 10 of Crislo Employment's written representation dated 26 June 2011.
[139] See paragraph 10 of Crislo Employment's written representation dated 26 June 2011.

constant communication between Low Kooi Har and Tay Khoon Beng on FDW salaries. Furthermore, CCS notes that Low Kooi Har participated in the unlawful discussion on FDW's salaries even when the discussion departed from the original agenda of discussing the new MOM framework, and that she subsequently did not take steps to publicly distance herself from either the unlawful conduct or the media report, despite her disagreement with the contents of the said report.

114. As noted in paragraph 53, the unlawful initiative was not Low Kooi Har's attendance at the meeting; rather it was the subsequent participation during the meeting to discuss the salaries of FDWs that is evidence of an agreement and/or concerted practice which amounts to an infringement under the Act.

115. As such, CCS considers that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Crislo Employment. CCS finds that Crislo Employment is liable for infringing the prohibition under section 34 of the Act.

Crislo Resources

116. Chung Kin Soon represented Crislo Resources at the Keppel Club meeting. He stated in his NOI that the EAs discussed raising the salaries of Indonesian FDWs during the Keppel Club meeting. Chung Kin Soon's reasons for disagreeing was because he felt that the increase to S$450 was "too big" for employers in Singapore to stomach, and also that he would no longer be able to source for lower-waged Indonesian FDWs[140]. CCS also notes that Chung Kin Soon produced documents showing that he did not implement the higher salaries after the meeting.

117. Chung Kin Soon had stated that he attended the meeting to "network" and not to "fix the salary". [141] However, CCS considers that an undertaking will not be relieved of liability even if the purpose of the meeting was not anti-competitive but during which unanticipated anti-competitive discussions arose.

118. Also, as discussed above in paragraphs 49 to 56, the fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose does not relieve the undertaking of liability under the

[140] See Answer to Question 30 of Chung Kin Soon's Notes of Information/ Explanation dated dated 27 January 2011.
[141] See Answer to Question 41 of Chung Kin Soon's Notes of Information/ Explanation dated dated 27 January 2011.

section 34 prohibition, unless the undertaking has publicly distanced itself from the anti-competitive conduct of discussing pricing policies and strategies. CCS notes that Chung Kin Soon did not leave the meeting nor disagree with the discussion to raise prices. Chung Kin Soon's disagreement appeared to be over the quantum of increase and that consequently he could no longer source for FDWs who are prepared to accept a lower salary. Chung Kin Soon's participation in the discussion by voicing his disagreement as to the quantum of increase serves to endorse the unlawful conduct and also or reduces uncertainty over the future behaviour of competitors. It also raises the presumption that an undertaking's commercial policies on the market will no longer be independently determined but instead, determined with knowledge and credence to the information shared/discussed during the meeting.

119. In its written representations to CCS seeking a reduction in the penalty, Crislo Resources reiterated that Chung Kin Soon had attended the meeting for networking purposes and that he had voiced his disagreement with the proposed increase to the salary of new Indonesian FDWs. Crislo Resources questioned if a passive participation in the discussion was sufficient to find liability under the section 34 prohibition of the Act.[142]

120. As noted in paragraph 53, the unlawful initiative was not Chung Kin Soon's attendance at the meeting; rather it was his subsequent participation during the meeting to discuss the salaries of FDWs that is evidence of an agreement and/or concerted practice which amounts to an infringement under the Act.

121. As noted at paragraph 118 above[143], CCS considers that by having voiced his disagreement as to the quantum of the salary increase, Crislo Resources' participation in the discussions does not relieve it of liability from the prohibition under section 34 of the Act because the very act of participation – active or passive – reduces or removes any uncertainty associated with competition, and raises the presumption that Crislo Resources' future behaviour on the market would not be determined independently. As set out in paragraph 57 above, CCS notes that an undertaking's disagreement with what was proposed at the meeting is not sufficient to amount to public distancing.

122. In light of the foregoing, CCS considers that the elements of an agreement or, at the very least, of a concerted practice, in breach of the section 34 prohibition, have been made out against Crislo Resources. CCS finds that

[142] Written Representations of Crislo Resources dated 26 June 2011 at paragraphs 8 to 10.
[143] See also paragraphs 49 and 50.

Crislo Resources is liable for infringing the prohibition under section 34 of the Act, whether such infringement was committed intentionally or negligently.

Homekeeper

123. Chin Moy Yong represented Homekeeper at the Keppel Club meeting. She insisted in her NOI that the Keppel Club meeting should be characterised as a "gathering"[144]. She recollected that during the "gathering" the EAs discussed the salaries of Indonesian FDWs when Chin Mui Hiong of Nation raised the issue. Chin Moy Yong said in her NOI that the meeting discussed the "salary range" and the "loan deduction period". She also claimed that she did not have to follow the "recommendations" because [✂]. Chin Moy Yong also said, in her NOI, that she had voiced out, at the "gathering" that she would "not follow the pricing", and will only "follow the pricing if the market forces determine that the salaries have to be increased". [145] She claimed that she "said this in a diplomatic way to turn down the suggestion...trying to 'hint' them I wouldn't follow the price."[146]

124. Chin Moy Yong claimed that Homekeeper continued to supply Indonesian FDWs with salaries ranging from S$[✂] – S$[✂] after the Keppel Club meeting of 16 January 2011. [147] CCS notes, from documents supplied by Chin Moy Yong, that Homekeeper offered Indonesian FDWs with salaries ranging from S$[✂] – S$ [✂] before and after 16 January 2011. CCS notes, from these same documents, that the FDWs are a mix of those with no prior experience at all, and those who have had worked as a domestic worker in other countries.

125. In Homekeeper's written representations dated 24 June 2011, Chin Moy Yong admitted that she had attended the Keppel Club Meeting on 16 January 2011, organised by Tay Khoon Beng.[148] Chin Moy Yong claimed that the EAs operated in a very competitiveness (sic) environment, and, although sceptical of the motive for the meeting, she nevertheless attended the "gathering".[149]

[144] See Answer to Question 16 of Chin Moy Yong's Notes of Information/ Explanation dated January 2011.
[145] See Answer to Question 17 of Chin Moy Yong's Notes of Information/ Explanation dated 27 January 2011.
[146] See Answer to Question 19 of Chin Moy Yong's Notes of Information/ Explanation dated 27 January 2011.
[147] See Answer to Question 29 of Chin Moy Yong's Notes of Information/ Explanation dated 27January 2011.
[148] See paragraph 2 of Homekeeper's written representations dated 24 June 2011.
[149] See paragraphs 3 and 4 of Homekeeper's written representations dated 24 June 2011.

126. Chin Moy Yong also claimed, in Homekeeper's written representations, that it was Nation that proposed the salary figure of $450. Chin Moy Yong pointed out that Homekeeper had already increased the salary of new Indonesian FDWs, [✂], prior to the Keppel Club meeting. As such, she mentioned at the meeting that she "will not follow the adjustment" and left the Keppel Club meeting "after listening to their discussions for a while more".

127. In Homekeeper's written representations, Chin Moy Yong explained that she was incensed upon reading the article about the interview given by Nation to CNA that the EAs had banded together to increase the salaries of new Indonesian FDWs, as, in her view, there had been no consensus on the increment.[150] She said that after Nation's interview was published, "there was a backlash against the increment" from the public so "I did not increase the salary to S$450 then, I was still trying to recruit FDW with slightly higher salary. As the major players were all increasing to S$450, it was proven that it was an uphill task to recruit FDW at a lower wage. Hence, after few months of trying, we have no choice but to adjust the minimum wage to S$450 to match the market norms".[151]

128. Chin Moy Yong also asserted that, although contacted by reporters, she declined their requests and remained silent. In addition, she chose "to shut out to all media interviews". She further claimed that she told them that she "was not involved and did not agree to the fixing of the salary". Chin Moy Yong is of the view that the above actions were sufficient to amount to public distancing.[152]

129. In Chin Moy Yong's opinion, the "minimum wage needs to be adjusted to match the needs of the market supply" – a move initiated by the overseas suppliers but that Homekeeper did not benefit "through this process". It was, in fact, the FDW that benefit from the salary increment.[153]

130. It is clear from Chin Moy Yong's evidence and written representations that Homekeeper participated in the discussion on increasing the salaries of the new Indonesian FDWs. CCS finds that Chin Moy Yong's assertion that she told reporters that she "was not involved and did not agree to the fixing of the salary" is not borne out by evidence. On the contrary, Chin Moy Yong's statement in her NOI showed that she did in fact participate in the discussion by voicing out her disagreement as to the *quantum* of the salary increase. Furthermore, as set out in paragraph 57 above, CCS notes that an

[150] See paragraphs 11 and 12 of Homekeeper's written representations dated 24 June 2011.
[151] See paragraph 13 of Homekeeper's written representations dated 24 June 2011.
[152] See paragraph 15 of Homekeeper's written representations dated 24 June 2011.
[153] See paragraph 18 of Homekeeper's written representations dated 24 June 2011.

undertaking's disagreement with what was proposed at the meeting is not sufficient to amount to public distancing. As such, CCS finds that Chin Moy Yong participated in the discussions and did not manifestly oppose or publicly distance herself from the illegal conduct.

131. CCS notes the EAs' comments that they were facing a supply shortage situation of new Indonesian FDWs to Singapore.[154] However, as noted at paragraph 59 above, an agreement or concerted practice to fix prices are prohibited under the Act irrespective of whether firms are operating under adverse market conditions. In CCS' view, the crux of this infringement is not whether Homekeeper has or has not benefited from the agreement and/or concerted practice, instead it is whether the competitive process has been harmed and whether consumers' choice has been restricted. CCS is of the view that as a result of the agreement and/or concerted practice to fix the salary of the new Indonesian FDWs, the decision-making independence of the participating EAs has been appreciably reduced by the substitution of practical cooperation for the normal risks of competition. CCS considers that such conduct has the object of preventing, distorting or restricting competition and choice. A more competitive, flexible and efficient response to market conditions can be achieved via independent commercial decisions of the EAs rather than a collective one among them.

132. In light of the above, CCS considers that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Homekeeper. CCS finds that Homekeeper is liable for infringing the prohibition under section 34 of the Act, whether such infringement was committed intentionally or negligently.

Jack Focus

133. Lim Lam Choon represented Jack Focus at the Keppel Club meeting. In his NOI, Lim Lam Choon also stated that he disagreed with Chin Mui Hiong of Nation when the latter said Nation was going to increase wages and that he had an argument with Chin Mui Hiong before leaving the meeting.[155] However, Lim Lam Choon's statements were contradicted by further assertions that he agreed with the need to raise wages to address the shortage of supply of Indonesian FDWs, although he did not agree to the decision to fix the loan period.[156]

[154] Refer to paragraph 30, above.
[155] See Answers to Question 31 and 35 of Lim Lam Choon's Notes of Information/Explanation dated 27 January 2011.
[156] See Answer to Question 38 of Lim Lam Choon's Notes of Information/Explanation dated 27 January 2011.

134. Lim Lam Choon appeared to be concerned with the impact that the increase to S$450 would have on his business. Lim Lam Choon, who claimed that he did not participate in the discussion, said that he did not know how the EAs arrived at the final figure of S$450 as the wages for new Indonesian FDWs, but that he had low supply of Indonesian FDWs and therefore if he could "match" that figure, he would.[157]

135. From the evidence, it appears that Lim Lam Choon did not object to the discussion on salary increases, although he did not expressly agree to the figure of S$450. CCS notes that a passive mode of participation does not relieve the undertaking of liability under the section 34 prohibition nor does the fact that it disagreed with aspects of the discussion as did Lim Lam Choon when he disagreed with the loan repayment period for the increased salaries. Unless an undertaking has manifestly opposed or publicly distanced itself from the discussion on salaries that took place during the meeting, it is likely to be found liable for infringing section 34 of the Act.

136. As discussed above in paragraph 57, passive participation in the discussion as what Lim Lam Choon did endorsed the unlawful objectives of the infringing conduct. It also removed or reduced any uncertainty associated with competition and raised the presumption that Lim Lam Choon's future behaviour on the market would not be determined independently. Indeed, Lim Lam Choon also said that he did increase the wages for the Indonesian FDWs on either 21st or 22nd January to S$450, [✂] after the meeting at Keppel Club because he knew that the "EAs at the meeting had agreed to increase the salaries to S$450". In addition, he had also done his own "discreet checks" and confirmed that some EAs present at the meeting had increased the wages to $450. [158]

137. Jack Focus argued, in its written representations, that Lim Lam Choon attended the meeting without the intention of discussing the salaries of FDWs, and claimed that he left the meeting before the conclusion of the discussion on salaries as he did not agree to the salary increase. It was also claimed that Jack Focus was forced to raise the salaries of Indonesian FDWs to $450 due to pressure from its Indonesian suppliers or risk not having enough supply.

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[157] See Answer to Question 52 of Lim Lam Choon's Notes of Information/Explanation dated 27 January 2011, and Answer to Question 11 of Lim Lam Choon's Notes of Information/Explanation dated 15 February 2011.

[158] See answer to Question 59 of Lim Lam Choon's Notes of Information/ Explanation dated 27 January 2011, and answers to Questions 5, 6, 8 and 12 of Lim Lam Choon's Notes of Information/ Explanation dated 15 February 2011.

138. As noted in paragraph 53, the unlawful initiative was not Lim Lam Choon's attendance at the meeting; rather it was his subsequent participation during the meeting to discuss the salaries of FDWs that is evidence of an agreement and/or concerted practice which amounts to an infringement under the Act.

139. Further, as set out in paragraph 136, Lim Lam Choon's participation in the discussion on salary during the meeting raises the presumption that Jack Focus' future behaviour on the market would not be determined independently. Lim Lam Choon knew the salary agreed upon by the EAs even though he claimed to have left the meeting early. Further, with respect to pressure exerted by Jack Focus' Indonesian supplies, as stated in paragraph 59 above, CCS notes that an agreement and/or concerted practice to fix prices are prohibited under the Act irrespective of whether firms are operating under adverse market conditions. In CCS' view, a collective increase in FDW salary restricts independent responses to the supply shortage situation, restricts employers' choice, and therefore alleviates the competitive pressure faced by the EAs in increasing FDWs' salaries. A more competitive, flexible and efficient response to market conditions can be achieved via independent commercial decisions of the EAs rather than a collective one among them.

140. For these reasons, CCS finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Jack Focus. Accordingly, CCS finds that Jack Focus is liable for infringing the prohibition under section 34 of the Act, whether such infringement was committed intentionally or negligently.

Javamaids

141. Javamaids was represented at the Keppel Club meeting by Indarjitrai who claimed that Javamaids was not agreeable to the increase in salaries.[159] However, he also stated that he "played along for a while" although he "didn't really want to" increase the salaries.[160]

142. CCS notes that Indarjitrai did not, at any time during the discussion to increase salaries, publicly distance himself from nor manifestly voice his opposition to the unlawful conduct of discussing the salary increase. In fact, he said he was "there more to get information about what the others were doing" and he wanted to do this so that he would not lose out as "it is a

[159] See Answer to Question 41 of Indarjitrai S/O Rai Pati Rai's Notes of Information/ Explanation dated 25 January 2011.
[160] See Answer to Question 42 of Indarjitrai S/O Rai Pati Rai's Notes of Information/ Explanation dated 25 January 2011.

norm in this industry to find out others were doing, everyone is backstabbing each other". [161] Indarjitrai's passive participation in the discussions, and tacit agreement to the salary raise, served to endorse the infringing conduct and therefore helped remove or reduce uncertainty over the future behaviour of competitors.

143. CCS considers that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition, have been made out against Javamaids. CCS finds that Javamaids is liable for infringing the prohibition under section 34 of the Act.

JPB

144. Natal Paung, JPB's General Manager, represented JPB at the Keppel Club meeting. From his NOI, it is clear that Natal Paung participated in the discussion between the EAs to raise the salaries of the new Indonesian FDWs.[162] Natal Paung admitted that he agreed to increase the salaries of the new Indonesian FDWs because "it would help if the FDW salary was increased to S$450"[163].

145. In JPB's written representations[164], Natal Paung stated that he is not the licensee of JPB. He also claimed that before the decision to go ahead with the proposed price fixing of the FDW's monthly salary, he had discussed the matter with the licensee[165] to increase the salary but that the licensee of JPB did not agree to effect the increase. Nevertheless, Natal Paung admitted to JPB's infringement but stated that it was "very much due to business survival reasons".[166]

146. JPB also stated that it was under severe pressure from the Indonesian suppliers to increase the salary of the new Indonesian FDWs and they were told that the other agencies in Singapore had already increased the FDW's monthly salary. As a result, JPB claimed that it had no choice but "to follow the rest of the EAs"[167], or it would not have been able to get new bio-data for new Indonesian FDWs.

[161] See Answer to Question 39 and Question 40 of Indarjitrai S/O Rai Pati Rai's Notes of Information/ Explanation dated 25 January 2011.
[162] See Answers to Questions 21 and 22 of Natal Paung's Notes of Information/ Explanation dated 27 January 2011.
[163] See Answer to Question 33 of Natal Paung's Notes of Information/ Explanation dated 27 January 2011.
[164] JPB's written representations dated 24 May 2011
[165] See paragraphs 2a and 2b of JPB's written representations.
[166] See paragraph 3 of JPB's written representations.
[167] See paragraph 2d of JPB's written representations.

147. During its investigation, CCS was informed by the EAs that they were facing a supply shortage situation of new Indonesian FDWs to Singapore.[168] However, as noted at paragraph 59 above, an agreement and/or concerted practice to fix prices are prohibited under the Act irrespective of whether firms are operating under adverse market conditions. In CCS' view, a collective increase in FDW salary restricts independent responses to the supply shortage situation, restricts employers' choice, and therefore alleviates the competitive pressure faced by the EAs in increasing FDWs' salaries. A more competitive, flexible and efficient response to market conditions can be achieved via independent commercial decisions of the EAs rather than a collective one among them.

148. Taking the above into consideration, CCS considers that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against JPB. Accordingly, CCS finds that JPB is liable for infringing the prohibition under section 34 of the Act.

Maid Management

149. Tan Tian Hock represented Maid Management at the Keppel Club meeting. In his NOI, Tan Tian Hock informed CCS that he was involved in the discussion on increasing the FDWs salaries to S$450 but that "he left half way at about 3.50pm and do not know what happened after that"[169]. Tan Tian Hock also pointed out that his "response at the meeting was neutral"[170]. He claimed that his neutrality was due to the fact that he "did not have any bad intention and in the first place, we are not able to dictate the FDWs salary".[171]

150. In its written representations[172], Maid Management submitted that although Tan Tian Hock attended the meeting, it was not fair to presume that Tan Tian Hock supported the plan of fixing the salary of the new Indonesian FDWs. The representations also argued that he was the first person to leave halfway through the meeting and therefore was not informed of what transpired and happened after he left.

[168] Refer to paragraph 30, above.
[169] See Answer to Question 20 of Tan Tian Hock's Notes of Information/ Explanation dated 28 January 2011.
[170] See Answer to Question 28 of Tan Tian Hock's Notes of Information/ Explanation dated 28 January 2011.
[171] See Answer to Question 28 of Tan Tian Hock's Notes of Information/ Explanation dated 28 January 2011.
[172] Written representation by Maid Management dated 14 June 2011.

151. However, CCS notes that despite having left before the conclusion of the discussion, it is clear that Tan Tian Hock was aware of the increase of the salaries to S$450 as he discussed the same, over the telephone, with Tay Khoon Beng of Best Home and other EAs after the meeting.[173]

152. Taking the above into consideration, CCS finds that Tan Tian Hock's passive participation in the discussion, and tacit agreement to the salary increase served to endorse the infringing conduct and therefore helped remove or reduce uncertainty over the future behaviour of competitors. In view of the evidence, CCS also finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Maid Management. In the circumstances, CCS finds that Maid Management is liable for infringing the prohibition under section 34 of the Act.

Nation

153. Nation was represented at the Keppel Club meeting by Chin Mui Hiong who admitted in his NOI that he participated in the discussion and agreed to increase the salaries he offered for new Indonesian FDWs to $450. During the Keppel Club meeting, Chin Mui Hiong also said that the EAs decided that they needed to raise the FDWs' salaries and that the EAs settled on S$450 as it would be "a good amount for the Indonesian maids". [174] Chin Mui Hiong further admitted that "Nation agreed to the increase at the meeting"[175]. Chin Mui Hiong also said that he "personally contacted CNA to inform them of the increase."[176]

154. There is also evidence which points to Chin Mui Hiong as the person who triggered or led the discussions on increasing the salary of the Indonesian FDWs to $450. Chin Moy Yong of Homekeeper said that "Desmond from Nation ... shared with us that his suppliers said that the problem was the low salary. People at the gathering agreed and echoed their views about the issue."[177] Lim Lam Choon of Jack Focus said that "Suddenly, Nation mentioned about the shortage of maids from Indonesia. He told us about the higher wage demands from the Indonesian suppliers... Nation said that he

[173] See Answers to Questions 31 to 33 of Tan Tian Hock's Notes of Information/ Explanation dated 28 January 2011.
[174] See Answer to Question 23 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011.
[175] See Answer to Question 30 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011.
[176] See Answer to Question 31 30 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011.
[177] See Answer to Question 17 of Chin Moy Yong's Notes of Information/Explanation dated 27 January 2011.

was going to increase the wage..."[178] Indarjitrai of Javamaids said that "The person who was talking about raising the salary was Nation", and that "Nation said that they were going to raise to $450"[179]. Chung Kin Soon of Crislo Resources said he did not know "for sure" who initiated the discussions to raise prices collectively but that "Desmond proposed to raise the Indonesia FDW's salary to $450... He asked us to increase the maid's salary but urged us not to increase our placement fees."[180] Chan Sian Chong of TM Global said that "If I can remember, it's Desmond Chin from Nation. He was quite the speaker of the house, and said the most things..."[181]

155. Tan Tian Hock of Maids Management said that "as far as I know, it was Desmond and Gary from Nation and Mr Tay from Best Home" who coordinated the press release about the decision to raise prices together.[182]

156. In Nation's written representations, it is contended that the salary of a new Indonesian FDW is not a "price" charged by the EAs to an employer. Instead, Nation argues that the salary is an employment term. As such, the conduct of the EAs of fixing the salary of new Indonesian FDWs does not amount to price-fixing. Nation further argued that it did not derive any financial benefit as a consequence of the conduct. Nation asserted that its conduct was a reaction to "an industry-wide shortage of supply of FDWs from the Philippines" and a response to pressure from its Indonesia suppliers. [183]

157. Secondly, Nation asserted that following the CCS inspection on 21 January 2011, it had written to CCS on 24 January 2011 "in the spirit of full cooperation", indicating its decision to "cease and desist from any actions in prohibition of the law". Nation claimed that from that point onwards, it did not give effect to any concerted practice and that the typical salary offered from 24 January 2011 to 13 May 2011 was about $430, which was the market-driven equilibrium. As such, the duration of Nation's infringement ought to be 3 days, as opposed to 3 months.[184]

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[178] See Answer to Question 31 of Lim Lam Choon's Notes of Information/Explanation dated 27 January 2011.
[179] See Answer to Questions 37 and 38 of Indarjitrai's Notes of Information/Explanation dated 25 January 2011.
[180] See Answer to Question 22 of Chung Kin Soon's Notes of Information/Explanation dated 28 January 2011. See also Answer to Question 31 of Yeo Tong Poh's (SLF Green) Notes of Information/Explanation dated 27 January 2011: Yeo said he thought it were the "two representatives from Nation" who suggested the salary increase but he "cannot confirm".
[181] See Answer to Question 20 of Chan Sian Chong's Notes of Information/Explanation dated 28 January 2011.
[182] See Answer to Question 30 of Tan Tian Hock's Notes of Information/Explanation dated 28 January 2011.
[183] See paragraphs 2, 3 and 14 to 16 of Nation's written representations dated 23 June 2011.
[184] See paragraphs 4 and 5 of Nation's written representations dated 23 June 2011.

158. Lastly, Nation has pointed out that its "breach arose out of ignorance of the law and was completely unintentional", and is demonstrated by the fact that it released a press statement immediately after the Keppel Club meeting and its "actions were taken openly".[185]

159. As set out above at paragraph 69[186], CCS considers that as the FDW's salary is a component of placement fees, the agreement and/or concerted practice between the EAs amounts to price-fixing. As part of its assessment, CCS was informed by the EAs that they were facing a supply shortage situation of new Indonesian FDWs to Singapore.[187] However, as noted at paragraph 59 above, an agreement and/or concerted practice to fix prices are prohibited under the Act irrespective of whether firms are operating under adverse market conditions.

160. In CCS' view, the crux of this infringement is not whether Nation has not benefited from the agreement and/or concerted practice, instead it is whether the competitive process has been harmed and if consumers' choice has been restricted. CCS is of the view that as a result of the agreement and/or concerted practice to fix the salary of the new Indonesian FDWs, the decision-making independence of the participating EAs has been appreciably reduced by the substitution of practical cooperation for the normal risks of competition. CCS considers that such conduct has the object of preventing, distorting or restricting competition and choice.

161. As regard's Nation's claim that it had written to CCS, by way of an e-mail dated 24 January 2011, indicating its decision to "cease and desist from any actions in prohibition of the law"[188], CCS notes that the e-mail dated 24 January 2011 does not state that Nation had decided to "cease and desist" from any unlawful conduct, nor does it state that any steps being taken to revise the salary scheme were "in the spirit of full cooperation". In fact, the e-mail merely states that Nation would be revising the salary scheme for FDWs "in view of the public perception" that followed the announcement to raise the salary to $450. The e-mail also informed CCS that the steps were being taken in the hope that it would "ease the tension of Indo FDWs supply".[189]

162. CCS finds that Nation's e-mail dated 24 January 2011 is not sufficient to constitute public distancing or manifest opposition of the unlawful conduct;

[185] See paragraph 13 of Nation's written representations dated 23 June 2011.
[186] Refer to paragraphs 29, 30 and 69 to 72, above.
[187] Refer to paragraph 30, above.
[188] See paragraphs 4 and 5 of Nation's written representations dated 23 June 2011.
[189] Annex A of Nation's written representations dated 23 June 2011.

and CCS therefore considers that the unlawful conduct persisted until 13 May 2011.

163. Taking into consideration all of the above, CCS finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Nation. CCS finds that Nation is liable for infringing the prohibition under section 34 of the Act, even if such infringement was committed intentionally or negligently. In addition, CCS notes that Nation took an active leader and/or instigator role in the infringing activities.

Net Resources

164. Net Resources was represented in the investigations by its Director, Seet Ai Ching and her husband, Bernard Ong, the Managing Director of Net Resources Recruitment (Hong Kong).

165. Seet Ai Ching claimed ignorance of the fact that the Keppel Club meeting took place and the fact that there was a discussion on increasing the salaries of the Indonesian FDWs. Bernard Ong informed CCS that he and Seet Ai Ching "help each other in the running of each others' business". He also stated that "she is the one who makes and implements decisions in Singapore. But because I am the one who knows more, I am able to give her suggestions on how to run her business...".[190]

166. [✂[191]] and demonstrated, in his NOI, full knowledge of how the business of Net Resources is run. Further, CCS finds that Bernard Ong had participated in the meeting as a representative, even if not as a Director or Senior Management, of Net Resources.[192]

167. Bernard Ong attended the Keppel Club meeting and participated in the meeting from the start. He claimed that Net Resources was not part of the group that decided to raise the salaries[193] and that everyone at the meeting "understood that S$450 was to be a guideline"[194]. He also highlighted that

[190] See Answer to Question 7 of Ong Hock Chye's Notes of Information/ Explanation dated 28 January 2011.
[191] See Answer to Question 18 of Ong Hock Chye's Notes of Information/ Explanation dated 28 January 2011.
[192] See Answers to Questions 15, 16, 18, 16, 17, 15 and 50 of the NOIs of Tay Khoon Beng dated 21 January 2011, Chin Mui Hiong dated 21 January 2011
[193] See Answer to Question 23 of Ong Hock Chye's Notes of Information/ Explanation dated 28 January 2011.
[194] See Answers to Questions 34 and 41 of Ong Hock Chye's Notes of Information/ Explanation dated 28 January 2011.

he warned the group that they had to be "very careful of what we discuss because of the fair competition law in Singapore".[195]

168. However, despite the above assertions that S$450 was merely a guideline and the demonstration of his knowledge of the existence of competition law in Singapore, CCS finds that Bernard Ong's actions after the meeting are not aligned with the said assertions. After the meeting, Bernard Ong sent text messages sent to Tay Khoon Beng of Best Home containing statements such as "powerful 2011 for all Singapore maid agencies", "better future for Singapore maid agencies business income, conditions and competitiveness", "cover each other", "I charge you cover, you charge I cover", "today is a good chance that we grab" and that "I am very excited that we have achieved this after the Sunday fruitful meeting".[196] CCS draws an adverse inference from the gross inconsistencies in Bernard Ong's NOI. Further, when weighed against the evidence obtained from the other EAs, it is clear that S$450 was not merely a guideline.

169. In its written representations[197] to CCS, Net Resources claimed that Bernard Ong did not represent Net Resources at the Keppel Club meeting, and therefore Net Resources was not party to the agreement and/or concerted practice. Net Resources claims that it could not have sent Bernard Ong as its representative to the Keppel Club meeting as it was never informed of the meeting. In this connection, Net Resources claimed that Bernard Ong is only responsible for Net Resources Recruitment (HK) Ltd, of which he is the licensee and owner.[198]

170. Net Resources also asserted that Bernard Ong is not involved with its business, but it also stated that the licensee of Net Resources, Seet Ai Ching, seeks Bernard Ong's advice and help on business management, [✂], and gets Bernard Ong involved in the discussion of "each other business matters over the dining table as husband and wife".[199]

171. First, CCS notes that the Keppel Club meeting was clearly called to discuss matters relating to the EAs' situation in Singapore, not Hong Kong. There would therefore have been no other purpose for Bernard Ong to attend if not to represent Net Resources. Secondly, CCS finds that the conduct of

[195] See Answer to Question 29 of Ong Hock Chye's Notes of Information/Explanation dated 28 January 2011. See also Answer to Question 50 of Lim Lam Choon's Notes of Information/ Explanation dated 27 January 2011.
[196] See Exhibits OHC-002 and OHC-003 of Ong Hock Chye's Notes of Information/Explanation dated 28 January 2011. See also Answers to Questions 46, 50, 52, 53 and 54 of Ong Hock Chye's Notes of Information/ Explanation dated dated 28 January 2011.
[197] Written representation by Net Resources dated 23 June 2011.
[198] See paragraphs 3 and 4 of Net Resources' written representations dated 23 June 2011.
[199] See paragraph 6 of Net Resources' written representations dated 23 June 2011.

Bernard Ong during and after the Keppel Club meeting, as evidenced by his NOI, was one of representing the concerns of Net Resources in Singapore.

172. Thirdly, on the facts and evidence of the case, it is clear that the other EAs at the meeting, in particular, the organiser Best Home, treated Bernard Ong as representing Net Resources. Lastly, CCS is satisfied that Bernard Ong's participation in the discussion on salary during the Keppel Club meeting, coupled with his involvement in Net Resources' business to the extent described by Net Resources in its written representations, are sufficient to compromise Net Resources' independence on the market when determining its future conduct, and lead to a reduction in the uncertainty associated with competition.

173. Based on the above, CCS considers that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been made out against Net Resources. Therefore, CCS finds that Net Resources is liable for infringing the prohibition under section 34 of the Act.

Nora

174. Syed Faisal represented Nora at the Keppel Club meeting. When asked about Nora's response at the Keppel Club meeting, to the discussions on raising the salaries of new Indonesian FDWs, he said that Nora will "just follow with the increment to S$450" as it was similar to what the Indonesian suppliers were asking for.[200]

175. Syed Faisal also said that he received a telephone text message from Tay Khoon Beng of Best Home to "look out for the news on Channel 5 and Channel 8". He said that his staff also told him that the media called his office but that he did not manage to talk to the media as he was not around[201].

176. CCS notes that a passive mode of participation or the fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose, does not relieve the undertaking of liability under the section 34 prohibition, unless the undertaking has publicly distanced itself from the discussion on salaries that took place during the meeting. For these reasons, CCS finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition have been

[200] See Answer to Question 28 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011.
[201] See Answer to Question 31 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011.

made out against Nora. Therefore, CCS finds Nora liable for infringing the prohibition under section 34 of the Act.

SLF

177. Yeo Tong Poh represented SLF at the Keppel Club meeting. In his NOI, he informed CCS that he did not raise any "strong objection(*sic*) to the decision"[202] and that he "merely went along with the rest"[203]. CCS also notes that SLF did not, in fact, implement the increase of salaries for new Indonesian FDWs after the meeting.

178. In SLF's written representations, Yeo Tong Poh stated that he never had any intention "to fix a price from the onset"[204]. He went to the meeting with the intention of seeking clarification of the new MOM framework. CCS notes that Yeo Tong Poh did not, at any time during the discussion to increase salaries, publicly distance himself from nor manifestly voice his opposition to the unlawful conduct of discussing the salary increase.

179. As noted in paragraph 53, the unlawful initiative need not be Yeo Tong Poh's attendance at the meeting, especially where the purpose of the meeting was not one which, taken on its own, constitutes an infringement; rather it is the subsequent participation during the meeting to discuss the salaries of FDWs that is evidence of an agreement and/or concerted practice amounting to an infringement under the Act.

180. CCS notes that a passive mode of participation in a discussion or the fact that an undertaking does not act on the outcome of the same having an anti-competitive purpose, does not relieve the undertaking of liability under the section 34 prohibition, unless the undertaking has publicly distanced itself from the anti-competitive discussion that took place during the meeting.

181. Taking the above into consideration, CCS finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition, have been made out against SLF. Hence, CCS finds SLF liable for infringing the prohibition under section 34 of the Act.

Swift

182. Eric Wong also represented Swift at the Keppel Club meeting. He stated in his NOI, provided in his capacity as Director of both Swift and Arrow, that

[202] See Answers to Questions 30 and 40 of Yeo Tong Poh's Notes of Information/ Explanation dated dated 27 January 2011.
[203] See Answer to Question 40 of Yeo Tong Poh's Notes of Information/ Explanation dated dated 27 January 2011.
[204] SLF's written representations dated 16 May 2011.

the EAs "talked about S$400 – S$450"[205] during the meeting. Wong explained that the EAs discussed about raising the salaries of Indonesian FDWs to address the shortage of supply to Singapore.

183. Eric Wong said that "we found that there is no harm trying to raise the salary range to S$450 to solve the problem"[206].

184. In light of the foregoing, CCS notes that Eric Wong did not, at any time during the discussion to increase salaries, publicly distance himself from nor voice his opposition to the unlawful conduct involving the discussion on the salary increase. His agreement to try out the S$450 makes it clear that he did not oppose the infringing conduct.

185. In Swift's written and oral representation[207], Loh Jit Yong, director of Swift said that because he did not attend the Keppel Club meeting, Swift was not a party to the agreement and/or concerted practice. Loh Jit Yong said that although Eric Wong is a shareholder and co-director of Swift, it is Loh Jit Yong who is the licensee of Swift.

186. Loh Jit Yong clarified with CCS that Eric Wong did inform him of the Keppel Club meeting, but that he was not interested to attend. Loh Jit Yong also clarified that Eric Wong had updated him briefly of the decision to increase salaries and his response was to "see how it goes".[208] Loh Jit Yong further asserted that they had no choice but to increase the salaries, otherwise Swift's suppliers in Indonesia would cease supplying new Indonesian FDWs.

187. CCS notes, from ACRA records that Eric Wong holds [✂]% of the ordinary shares of Swift, and Loh Jit Yong the other [✂]%. Both Eric Wong and Loh Jit Yong are directors of Swift which has a paid up capital of [✂]. On balance, CCS finds that Eric Wong had represented Swift at the Keppel Club meeting. In any event, Loh Jit Yong's conduct when he learnt of the meeting from Eric Wong before it took place and his reaction to Eric Wong's update on the meeting are insufficient to amount to a manifest opposition of or public distancing from the unlawful conduct. As a consequence of Eric Wong's attendance at the Keppel Club meeting, the uncertainty related to competition would have been reduced and Swift is unlikely to determine its future conduct on the market independently.

[205] See Answer to Question 18 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011.
[206] See Answer to Question 19 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011.
[207] Written and oral representations by Swift dated 23 June 2011 and 5 July 2011 respectively.
[208] Refer to paragraphs 9 and 10 of the Record of Oral Representations dated 5 July 2011.

188. In respect of the claim that Swift had no choice but to increase the salaries, CCS has earlier noted that even if Swift had not increased the salaries, the mere fact of its participation at the Keppel Club meeting, when salaries were being discussed, without public distancing itself or manifestly opposing the unlawful conduct, is sufficient for a finding of liability.

189. Taking the above into consideration, CCS finds that the elements of an agreement or, at the very least, of a concerted practice, in breach of the section 34 prohibition have been made out against Swift. Accordingly, CCS finds that Swift is liable for infringing the prohibition under section 34 of the Act.

TM Global

190. Chan Sian Chong attended the Keppel Club meeting with his business partner (one "Darren") who is the licence holder for TM Global. In his NOI, Chan Sian Chong told CCS that he attended the meeting because he "wanted to understand how the new ruling from MOM would affect" the EAs. Chan Sian Chong was of the view that there was no collective decision to raise salaries but that the EAs had a discussion on salaries.[209]

191. Chan Sian Chong also stated that he disagreed with the proposal to increase the salaries to S$450 and told Tay Khoon Beng that "if I were to adjust salaries, I would do so slowly".[210] [✂][211]

192. CCS is of the view that the evidence shows that Chan Sian Chong participated in the discussion relating to the salaries for new Indonesian FDWs. By not manifestly objecting to the unlawful conduct of discussing salaries, or publicly distancing himself from the same, TM Global is deemed to have endorsed the infringing conduct. As stated above, Chan Sian Chong's disagreement to the proposed amount of S$450 is not material to the finding of liability. His participation in the discussion served to remove or reduce any uncertainty involved with the competitive process and raises the presumption that his future behaviour on the market in relation to salary policies will not be independently determined.

193. In light of the foregoing, CCS finds that the elements of an agreement or, at the very least, of a concerted practice in breach of the section 34 prohibition

[209] See Answers to Questions 15 and 17 of Chan Sian Chong's Notes of Information/ Explanation dated dated 28 January 2011.
[210] See Answer to Question 25 of Chan Sian Chong's Notes of Information/ Explanation dated dated 28 January 2011.
[211] See Answers to Questions 7 and 25 of Chan Sian Chong's Notes of Information/ Explanation dated dated 28 January 2011.

have been made out against TM Global. Accordingly, CCS finds that TM Global is liable for infringing the prohibition under section 34 of the Act.

CHAPTER 3: DECISION OF INFRINGEMENT

194. CCS is satisfied that there is sufficient evidence to find that the 16 Parties listed at paragraph 1 have infringed the section 34 prohibition by entering into an agreement or, at the very least, a concerted practice, to fix the salaries of new Indonesian FDWs. CCS therefore issues this decision that the Parties have infringed the prohibition under section 34 of the Act, and imposes penalties on the Parties in respect of the aforesaid conduct.

195. CCS finds each of the Parties liable for infringement of the prohibition under section 34 of the Act for one or more of the following reasons:

i. Participation in the discussion during the meeting to fix the monthly salaries of new Indonesian FDWs;

ii. Disclosing/sharing pricing strategies and intentions, particularly future pricing during the discussion which resulted in a reduction or elimination of the uncertainty/risks related to competition; this is regardless of the fact that some EAs were more active than others during the discussion as passive participation amounts to a tacit approval of the unlawful initiative;

iii. The EAs' future behaviour and independence in relation to determining their own pricing strategies is compromised as a result of their participation in the price-fixing discussion or their receipt of information concerning the future conduct of their market competitors;

iv. No manifest opposition from any of the 16 EAs to the unlawful conduct relating to the discussion to fix the monthly salaries of new Indonesian FDWs; or

v. Even though some EAs disagreed with the specific salary amount proposed during the discussion, all 16 EAs failed to publicly distance themselves from the infringing agreement and/or unlawful practice.

CHAPTER 4: CCS' ACTION

196. CCS' action stated in this section is based on the matters set out in this ID, and after consideration of the representations made by the Parties following service of the proposed ID.

A. Directions

197. Section 69(1) of the Act provides that where CCS has made a decision that an agreement has infringed the section 34 prohibition, it may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end. Pursuant to this, CCS directed each Party to provide a written assurance to CCS not to discuss the salaries of new Indonesian FDWs with other EAs and to set the monthly salaries of the new Indonesian FDWs independently. All the Parties have individually provided CCS their respective written assurances, dated 13 May 2011.

198. In the circumstances of this case and in the absence of evidence to the contrary, CCS has treated the receipt of the written assurances from the Parties as an indication that the infringement has been brought to an end.

B. Financial Penalties - General Points

199. Under section 69(3) of the Act, CCS may impose a financial penalty on the Parties if it is satisfied that the infringement has been committed intentionally or negligently. The financial penalty serves two objectives: to reflect the seriousness of the infringement, and to deter parties from engaging in anti-competitive practices.

200. The financial penalty may not exceed 10% of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum of 3 years.

201. As established in the *Pest Control Case*[212],the *Express Bus Operators Case*[213] and the *Electrical Works Case*[214], the circumstances in which CCS might find that an infringement has been committed intentionally include the following:
    a) the agreement has as its object the restriction of competition;
    b) the undertaking in question is aware that its action will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or
    c) the undertaking could not have been unaware that its agreement or
    d) conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

[212] See[2008] SG CCS 1, at [355]
[213] See[2009] SG CCS 2, at [445]
[214] See[2010] SG CCS 4, at [282]

In *Appeals Nos. 1 and 2 of 2009*[215], the Competition Appeal Board held that the parties who participated in the price-fixing agreements must have been aware, or could not have been unaware, that the agreements had the object or would have the effect of restricting competition. At the very least, the parties ought to have known that such would be the case.

202. The intention relates to the facts, not the law. Ignorance or a mistake of law is thus no bar to a finding of intentional infringement under the Act.

203. 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[216].

204. CCS finds that price-fixing is a serious infringement of the section 34 prohibition, which has as its object the restriction of competition. CCS finds that the Parties must have been aware, or at least ought to have known, that fixing the salaries of new Indonesian FDWs would have the object of preventing, restricting or distorting competition. CCS is therefore satisfied that each Party intentionally or negligently infringed the section 34 prohibition.

205. CCS hereby imposes a financial penalty on each of the 16 EAs as set out in the following Section

C. Calculation of Penalties

206. The *CCS Guidelines on the Appropriate Amount of Penalty* provides that in calculating the amount of penalty to be imposed, CCS will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement ("the relevant turnover") in the undertaking's last business year, the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors. CCS adopted this approach in *Express Bus Operators Case*[217] and proposes to similarly adopt this approach for the present case.

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[215] *In the matter of Case No. CCS 500/003/08: Notice of Infringement Decision issued by the Competition Commission of Singapore, Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand, 3 November 2009, between Konsortium Express and Tours Pte Ltd, Five Stars Tours Pte Ltd, GR Travel Pte Ltd, Gunung Travel Pte Ltd and the Competition Commission of Singapore,* Decision of 28 February 2011, at paragraph 143.

[216] See paragraphs 4.7 to 4.10 of CCS Guidelines on Enforcement.

[217] See [2009] SG CCS 2 at [452] to [455].

207. CCS notes that the European Commission and the OFT adopt similar methodologies in the calculation of penalties. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

(i) Seriousness of the Infringements and Relevant Turnover

208. CCS considers that the seriousness of the infringement and the relevant turnover of each undertaking would be taken into account by setting the starting point for calculating the base penalty amount as a percentage rate of each undertaking's relevant turnover. The relevant turnover[218] for each EA in this case would be the turnover arising from the provision of placement services of new Indonesian FDWs in Singapore.

209. In assessing the seriousness of the infringement, CCS will consider a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement and the effect on competitors and third parties. The impact and effect of the infringement on the market, direct or indirect, will also be an important consideration[219].

210. The relevant turnover in the last business year will be considered when CCS assesses the impact and effect of the infringement on the market[220]. The "last business year" is the business year preceding the date on which the decision of CCS is taken, or if figures are not available for that business year, the one immediately preceding it[221].

211. The seriousness of the infringement may also depend on the nature of the infringement. CCS considers that the price-fixing agreement in this case is a serious infringement of the Act.

212. Nature of the product - The provision of placement services of new Indonesian FDWs in Singapore. The relevant geographic market is Singapore.

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[218] On the facts and circumstances of this investigation, CCS accepts Nation's representations that the EAs' relevant turnover (i.e. the turnover arising from the provision of placement services of new Indonesian FDWs in Singapore), should not include the transaction amounts relating to provision of insurance and Banker's guarantee and adjustments have accordingly been made, refer to paragraph 353.

[219] See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.3.

[220] See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.4.

[221] See Competition (Financial Penalties) Order 2007, paragraph 3 and CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.5.

213. Structure of the market and market share of the Parties – There are more than 2500 EAs that are licensed by MOM under the Employment Agencies Act to conduct recruitment or placement activities of foreign and local workers in Singapore. Out of the 2500 EAs, about 600 EAs are active in the placement of FDWs to employers in Singapore[222]. Market players consist of sole-proprietorships to larger companies with numerous branches and more organised structures. In the present case, CCS notes that the Parties are among the top 20 EAs in the market in terms of the total number of FDWs placed, and the Parties have a moderately high collective market share as they account for about [✂]%[223] of the total number of new Indonesian FDWs placed in Singapore.

214. While there may be regulatory entry barriers to the relevant market as an EA has to obtain the relevant licence from MOM before the EA can conduct recruitment and placement activities of workers in Singapore, the regulatory entry barriers appear to be low and it is relatively easy to obtain the required licences in view of the large number of licensed EAs.

215. Effect on employers, FDWs, competitors and third parties - It is difficult to quantify the amount of any loss caused because of the agreement to fix the salaries of new Indonesian FDWs. This is due to the unavailability of the actual salary information of the FDWs under the "counterfactual" scenario, i.e. the salaries of FDWs during the infringement period had the Parties not engaged in price-fixing. In addition, as the infringement took place from January 2011, it would be preliminary for CCS to quantify the effects[224].

216. Having regard to the nature of the product, the size of the projects, the structure of the market, the market shares of the Parties, the potential effect of the infringements on employers, FDWs, competitors and third parties and that price fixing is one of the more serious infringements of the Competition Act, CCS considers it will be appropriate to fix the starting point at [✂]% of relevant turnover for each of the Parties.

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[222] See the directory of EAs in MOM's website at http://www.mom.gov.sg/eadirectory/Pages/search.aspx.

[223] Confidential information provided by the Ministry of Manpower

[224] However, investigations revealed that a number of the participating EAs had planned or implemented the increase of salary for new Indonesian FDWs to $450 after the Keppel club meeting on 16 January 2011. See Answer to Question 20 of Wong Hong Choon Eric's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 10 and 11 of Tay Khoon Beng's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 4 and 5 of Lim Lam Choon Eric's Notes of Information/Explanation dated 15 February 2011. See Answer to Question 58-60 of Indarjitrai's Notes of Information/Explanation dated 25 January 2011. See Answer to Question 37 of Natal Paung's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 33 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011. See Answer to Question 13 of Syed Faisal Bin Syed Hussin's Notes of Information/Explanation dated 27 January 2011. See Answer to Question 25 of Seet Ai Ching's Notes of Information/Explanation dated 28 January 2011.

(ii) Duration of the Infringements

217. After calculating the base penalty sum, the next step is to consider whether this sum should be adjusted to take into account the duration of the infringement. The duration for which the Parties infringed the section 34 Prohibition will depend on when they became party to the agreement, and when they ceased to be party to the same.[225] According to the CCS Guidelines, an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of the infringement. Notwithstanding, CCS has decided for this case to adopt an approach of rounding down the period to the nearest month, subject to a minimum of 1 month, provided the infringement period is less than a year.

218. CCS deals with the adjustment for duration applicable to each Party in the calculation of penalties for each Party in the following paragraphs.

(iii) Aggravating and Mitigating Factors

219. At this next stage, CCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty[226], i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors. These points are considered in relation to each of the Parties.

220. CCS considers cooperation, which enables the enforcement process to be concluded more effectively and/or speedily[227], as a mitigating factor. The amount of the penalty will be adjusted downwards to reflect cooperation by an undertaking during CCS' investigation. In the present case, CCS has considered, in addition to all facts and circumstances, including but not limited to the fact that there was only one meeting, the likelihood that the infringement could have been committed negligently, as reflected by the quantum of mitigating discount given to each EA.

221. CCS considers the involvement of directors or senior management as an aggravating factor[228]. The amount of the penalty will be adjusted upwards to reflect their direct involvement in or knowledge of any decision leading to the infringement, or the failure to take the necessary steps to avoid an infringement.

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[225] See CCS Guideline on the Appropriate Amount of Penalty, Paragraph 2.8
[226] See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.10
[227] See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.12.
[228] See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11

222. CCS notes that the role of an undertaking as a leader in, or an instigator of, an infringement may be an aggravating factor[229]. CCS considers that a merely passive or follower role in an infringement is not sufficient to justify a reduction in the penalty. In the present case, CCS finds that Nation and Best Home acted as leaders and/or instigators in the infringements by initiating the discussions to fix the monthly salaries of new Indonesian FDWs as well as taking follow up actions with the rest of the EAs.

(iv) Other Relevant Factors

223. CCS considers that the penalty may be adjusted as appropriate to achieve policy objectives, particularly to impose a strong deterrent effect for price-fixing, which is considered to be one of the most serious infringements of the Act.

224. If the financial penalty after the adjustment for duration is insufficient to meet the deterrent objective, CCS may uplift the penalty to meet the objective of deterrence. In *Appeal No.3 of 2009*[230], the CAB revised the financial penalty against Regent Star to $10,000 to achieve the objective of deterrence.

225. CCS notes that this practice is in line with the UK position where provision is made in the OFT's "Guidance as to the Appropriate Amount of Penalty" for such a situation[231]. It states that:

> "*in exceptional circumstances, where the relevant turnover of an undertaking is zero (for example, in the case of buying cartels) and the penalty figure reached after the calculation in Steps 1 and 2 is therefore zero, the OFT may adjust the amount of this penalty at this stage*"

226. Where a party is unable or unwilling to provide information to determine its relevant turnover, CCS will impose a penalty that will reflect the seriousness of the infringement and with a view to deterring the undertaking as well as other undertakings from engaging in similar practices. In considering the appropriate penalty to be paid, CCS will consider the turnover of the other Parties that are party to the infringement in estimating the same of those undertakings that were unable or unwilling to provide CCS with the necessary information on their relevant turnover.

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[229] See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11

[230] *In the matter of Notice of Infringement Decision issued by the Competition Commission of Singapore on Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand, 3 November 2009 in Case No. CCS 500/003/08 Between Transtar Travel Pte Ltd Regent Star Travel Pte Ltd And the Competition Commission of Singapore,* decision dated 28 February 2011, at paragraph106.

[231] Paragraph 2.13 of the OFT's Guidance as to the Appropriate Amount of Penalty

227. While the financial position of the Parties is a relevant consideration in determining whether the penalty imposed will be sufficiently deterrent, the Parties should not rely on their economic difficulties and those of the market in seeking a reduction of the penalties imposed.[232] The mere finding of an adverse or loss-making financial situation is not sufficient reason to justify a reduction in the financial penalty.[233] A party seeking more lenient treatment because of its financial position must provide CCS with all information and documentation it wishes to have taken into account.[234]

D. Penalty for Arrow

228. Starting point: Arrow was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

229. Arrow's financial year commences on 1 June and ends on 31 May each year. Arrow's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 May 2010 was S$[✂][235].

230. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Arrow at [✂]% of relevant turnover. The starting amount for Arrow is therefore S$[✂].

231. Adjustment for duration: Arrow was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Arrow after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

232. Adjustment for aggravating and mitigating factors: CCS considers the involvement of one of Arrow's director, namely Eric Wong, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Arrow was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

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[232] *Tokai Carbon Ltd and others v European Commission* [2004] ECR II-1181, [2004] 5 CMLR 28.
[233] *Achilles Paper Group Limited v OFT* [2006] CAT 24 see paragraph 56
[234] *Sepia Logistics Limited (formerly known as Double Quick Supplyline Limited) and Precision Concepts Limited v OFT* [2007] CAT 13.
[235] Information provided by Arrow on 22 February 2011 and 25 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011and 19 August 2011 respectively.

233. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Arrow, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$7,305.

234. Adjustment for other factors: CCS considers that the figure of S$7,305 is sufficient to act as an effective deterrent to Arrow and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

235. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$7,305 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$7,305.

236. Representations by Arrow in respect of penalty: Arrow did not make any representations in respect of the financial penalty to be imposed.

237. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$7,305 on Arrow.

E. Penalty for Best Home

238. Starting point: Best Home was involved in the agreement/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

239. Best Home's financial year commences on 1 November and ends on 31 October. However Best Home was incorporated on 26 November 2009 and so was not able to produce a full set of accounts from 1 November 2009 to 31 October 2010. Therefore, using the period from 26 November 2009 to 31 October 2010, Best Home's estimated relevant turnover figures adjusted over 12 months for the provision of placement services of new Indonesian FDWs in Singapore was S$[✂][236].

240. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Best Home at [✂]% of relevant turnover. The starting amount for Best Home is therefore S$[✂].

241. Adjustment for duration: Best Home was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at

[236] Information provided by Best Home on 18 February 2011 and 26 August 2011 pursuant to the section 63 Noticse issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

paragraph 217, CCS will adopt a duration multiplier of 0.25 for Best Home after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

242. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Best Home's sole director, namely Tay Khoon Beng, in the infringement to be an aggravating factor and increases the penalty by [✂]%. As Best Home also acted as a leader and/or instigator in the infringements, by initiating the discussion to fix the salaries of new Indonesian FDWs as well as taking follow up actions with the rest of the EAs as stated at paragraphs 81, 90 to 92, CCS increases the penalty by a further [✂]%.

243. CCS considers that Best Home was cooperative during the inspection and interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

244. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Best Home, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$9,382.

245. Adjustment for other factors: CCS considers that the figure of S$9,382 is sufficient to act as an effective deterrent to Best Home and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

246. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$9,382 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$9,382.

247. Representations by Best Home in respect of penalty: Best Home asserted, in its written representations, that after CCS investigated it on 20 January 2011 and all other participants by 22 January 2011, it had understood the anti-competitive nature of the conduct. Best Home said that it immediately backed down on the issue. Best Home therefore argued that CCS ought not to have considered the period of 3 months as the duration of the infringement for the purpose of calculating penalties.[237] Best Home explained that it had "already suffered financially due to our gathering",

[237] See paragraph (4) of Best Home's written representations dated 13 May 2011.

that "we have breeched [sic] the law with no profiteering intention" and requested that it is issued with a letter of warning instead of imposing a financial penalty.[238]

248. CCS has considered the representations. As Best Home did not take specific action to publicly dissociate itself from the unlawful discussion or the media report, CCS treats this as a continuing infringement until 13 May 2011 when it received a specific written assurance. The points about suffering financially and that Best Home infringed the Act with no profiteering intention are not sufficient grounds for further reducing the penalty. Lastly, and as set out at paragraph 220 above, that the infringement may have been committed negligently was considered by CCS when it took into account all the facts and circumstances of this case when granting the [✂]% reduction of the penalty in mitigation of the infringing conduct.

249. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$9,382 on Best Home.

F. Penalty for Comfort

250. Starting point: Comfort was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

251. Comfort's financial year commences on 1 January ends on 31 December. Comfort's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][239].

252. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Comfort at [✂]% of relevant turnover. The starting amount for Comfort is therefore S$[✂].

253. Adjustment for duration: Comfort was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Comfort after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

[238] See paragraph (4) of Best Home's written representations dated 13 May 2011.
[239] Information provided by Comfort on 2 Mar 2011 and 31 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

254. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Comfort's director, namely Liew Kok Keong, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Comfort was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

255. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Comfort, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$[✂].

256. Adjustment for other factors: CCS is in fact of the view that the amount reached after adjustment for aggravating and mitigating factors is not a significant sum to Comfort for it to act as an effective deterrent to Comfort and to other undertakings which may consider engaging in price fixing arrangements. As stated above at paragraph 223, CCS will adjust the penalty at this stage to S$5,000.

257. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$5,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

258. Representations by Comfort in respect of penalty: Comfort did not make any representations.

259. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$5,000 on Comfort.

G. Penalty for Crislo Employment

260. Starting point: Crislo Employment was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

261. Crislo Employment's financial year commences on 1 January and ends on 31 December. Crislo Employment's relevant turnover figures for provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][240].

[240] Information provided by Crislo Employment on 2 Mar 2011 and 26 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

262. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Crislo Employment at [✂]% of relevant turnover. The starting amount for Crislo Employment is therefore S$[✂].

263. Adjustment for duration: Crislo Employment was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Crislo Employment after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

264. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Crislo Employment's sole director, namely Low Kooi Har, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Crislo Employment was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

265. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Crislo Employment, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$13,048.

266. Adjustment for other factors: CCS considers that the figure of S$13,048 is sufficient to act as an effective deterrent to Crislo Employment and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

267. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$13,048 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$13,048.

268. Representations by Crislo Employment in respect of penalty[241]: Crislo Employment sought a reduction in the penalty on the grounds that Low Kooi Har had voiced her disagreement during the meeting and she had sent the SMS[242] in question to Tay Khoon Beng "purely to get rid" of him.[243]

[241] Written representations by Crislo Employment dated 26 June 2011
[242] See Document "LKH-003" dated 28 January 2011.
[243] See paragraph 10 of Crislo Employment's written representation dated 26 June 2011.

269. CCS has considered the representations. The claims that Low Kooi Har had voiced her disagreement and subsequently sent an SMS to Tay Khoon Beng are not sufficient grounds for further reducing the penalty.

270. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$13,048 on Crislo Employment.

H. Penalty for Crislo Resources

271. Starting point: Crislo Resources was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

272. Crislo Resources' financial year commences on 1 January and ends on 31 December. Crislo Resources' relevant turnover figures for provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][244].

273. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Crislo Resources at [✂]% of relevant turnover. The starting amount for Crislo Resources is therefore S$[✂].

274. Adjustment for duration: Crislo Resources was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Crislo Resources after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

275. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Crislo Resources' sole proprietor, namely Chung Kin Soon, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Crislo Resources was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

276. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Crislo Resources, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$8,776.

[244] Information provided by Crislo Resources on 2 Mar 2011and 26 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

277. Adjustment for other factors: CCS considers that the figure of S$8,776 is sufficient to act as an effective deterrent to Crislo Resources and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

278. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$8,776 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$8,776.

279. Representations by Crislo Resources in respect of penalty[245]: Crislo Resources sought a reduction in the penalty to be imposed on the grounds that Chung Kin Soon had attended the meeting for networking purposes and that he had voiced disagreement against the proposed increase.

280. CCS has considered the representations. As to the claim that Chung Kin Soon had attended the meeting for networking purposes, and had voiced disagreement, CCS has dealt with this in paragraph 120.

281. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$8,776 on Crislo Resources.

I. Penalty for Homekeeper

282. Starting point: Homekeeper was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

283. Homekeeper's financial year commences on 1 January and ends on 31 December. Homekeeper's relevant turnover figures for provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][246].

284. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Homekeeper at [✂]% of relevant turnover. The starting amount for Homekeeper is therefore S$[✂].

285. Adjustment for duration: Homekeeper was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for

[245] Written representation by Crislo Resources dated 26 June 2011.
[246] Information provided by Homekeeper on 2 Mar 2011 and 25 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

Homekeeper after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

286. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Homekeeper's director, namely Chin Moy Yong, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Homekeeper was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

287. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Homekeeper, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$6,787.

288. Adjustment for other factors: CCS considers that the figure of S$6,787is sufficient to act as an effective deterrent to Homekeeper and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

289. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$6,787does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$6,787.

290. Representations by Homekeeper in respect of penalty: Chin Moy Yong explained that she was not aware that "discussing of minimum would constitute price-fixing" and that she was similarly unaware that she needed to demonstrate her opposition to the unlawful discussion by publicly distancing herself from the same.

291. CCS has considered the representations, and has taken into account that the infringement may have been committed negligently[247] when it considered all the facts and circumstances of this case at paragraph 287.

292. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$6,787 on Homekeeper.

[247] Refer to paragraph 220 above.

J. Penalty for Jack Focus

293. Starting point: Jack Focus was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

294. Jack Focus' financial year commences on 1 October and ends on 30 September. However, Jack Focus was only incorporated on 6 November 2009 and so was not able to produce a full set of accounts from 1 October 2009 to 30 September 2010. Therefore, using the period from 6 November 2009 to 30 September 2010, Jack Focus' estimated relevant turnover figures adjusted over 12 months for provision of placement services of new Indonesian FDWs in Singapore was S$[✂][248].

295. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Jack Focus at [✂]% of relevant turnover. The starting amount for Jack Focus is therefore S$[✂].

296. Adjustment for duration: Jack Focus was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Jack Focus after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

297. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Jack Focus' managing director, namely Lim Lam Choon, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Jack Focus was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

298. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Jack Focus, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$[✂].

299. Adjustment for other factors: CCS is in fact of the view that the amount reached after adjustment for aggravating and mitigating factors is not a significant sum to Jack Focus for it to act as an effective deterrent to Jack Focus and to other undertakings which may consider engaging in price

[248] Information provided by Jack Focus on 25 February 2011 and 22 August 2011] pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

fixing arrangements. As stated above at paragraph 223, CCS will adjust the penalty at this stage to S$5,000.

300. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$5,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

301. Representations by Jack Focus in respect of penalty: Jack Focus sought leniency on the grounds that Lim Lam Choon attended the meeting with no intention of discussing the salaries of FDWs and claimed that he left the meeting before the conclusion of the discussion on salaries as he did not agree to the salary increase. It was also claimed that Jack Focus was forced to raise the salaries of Indonesian FDWs to $450 due to pressure of his Indonesian suppliers or risk not having enough supply.

302. CCS has considered the representations. As Jack Focus did not take specific action to publicly dissociate itself from the unlawful discussion or the media report, CCS treats this as a continuing infringement until 13 May 2011 when it received a specific written assurance. As to the claim that Lim Lam Choon had attended the meeting with no intention of discussing salaries, and had left the meeting because he did not agree to the salary increase, this has been dealt with earlier in paragraph 135. Participation in unlawful price discussions is a serious infringement, and the grounds advanced by Jack Focus are not sufficient to merit a further reduction of the penalty.

303. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$5,000 on Jack Focus

K. Penalty for Javamaids

304. Starting point: Javamaids was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

305. Javamaids' financial year commences on 1 January and ends on 31 December. Javamaids' relevant turnover figures for provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][249].

[249] Information provided by Javamaids on 19 Feb 2011 and 19 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

306. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Javamaids at [✂]% of relevant turnover. The starting amount for Javamaids is therefore S$[✂].

307. Adjustment for duration: Javamaids was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Javamaids after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

308. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Javamaids' sole proprietor, namely Indarjitrai, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Javamaids was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

309. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Javamaids, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$6,161.

310. Adjustment for other factors: CCS considers that the figure of S$6,161 is sufficient to act as an effective deterrent to Javamaids and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

311. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$6,161 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

312. Representations by Javamaids in respect of penalty: Javamaids did not make any representations.

313. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$6,161 on Javamaids.

L. Penalty for JPB

314. Starting point: JPB was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

315. JPB's financial year commences on 1 October and ends on 30 September. JPB's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 30 September 2010 was S$[✂][250].

316. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for JPB at [✂]% of relevant turnover. The starting amount for JPB is therefore S$[✂].

317. Adjustment for duration: JPB was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for JPB after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

318. Adjustment for aggravating and mitigating factors: CCS considers the involvement of JPB's general manager, namely Natal Paung, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that JPB was fairly cooperative during interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

319. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by JPB, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$12,257.

320. Adjustment for other factors: CCS considers that the figure of S$12,257 is sufficient to act as an effective deterrent to JPB and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

[250] Information provided by JPB on 10 Mar 2011 and 2 September 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

321. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$12,257 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$12,257.

322. Representations by JPB in respect of penalty: JPB sought a reduction in penalty to be imposed on the ground that its conduct was due to "business survival reasons"[251].

323. CCS has considered the representation. Participation in unlawful price discussions is a serious infringement, and cannot be mitigated on the grounds of "business survival reasons".

324. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$12,257 on JPB.

M. Penalty for Maid Management

325. Starting point: Maid Management was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

326. Maid Management's financial year commences on 1 January and ends on 31 December. Maid Management's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31December 2010 was S$[✂][252].

327. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Maid Management at [✂]% of relevant turnover. The starting amount for Maid Management is therefore S$[✂].

328. Adjustment for duration: Maid Management was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Maid Management after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

329. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Maid Management's director, namely Tan Tian Hock, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Maid Management was cooperative during the

[251] See paragraph 3 and 4 of JPB's written representations dated 24 May 2011.
[252] Written representations by Maid Management dated 13 June 2011 and information provided by Maid Management on 25 August 2011 pursuant to the section 63 Notices issued by CCS dated 19 August 2011.

interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

330. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Maid Management, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$6,906.

331. Adjustment for other factors: CCS considers that the figure of S$6,906 is sufficient to act as an effective deterrent to Maid Management and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

332. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$6,906 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$6,906.

333. Representations by Maid Management in respect of penalty: Maid Management submitted that a portion of the placement fee collected from the employer is paid to its Indonesian supplier. Hence, that portion of the placement fee should not be considered as Maid Management's gross income because the money is collected on behalf of the Indonesian supplier.

334. As noted in paragraph 208 above, CCS considers the relevant turnover as turnover for the provision of placement services of new Indonesian FDWs in Singapore as opposed to profits earned from the same. Hence the placement fees should not be net of the costs incurred by Maid Management for providing the said placement services. The placement fee is the amount derived from the provision of placement services of new Indonesian FDWs in Singapore. The amounts paid to the suppliers are the business costs incurred by Maid Management in sourcing for the FDWs from the suppliers and the cost of the biodata.

335. While it is noted that Maid Management [✂], CCS considers that Maid Management still bears a sizeable degree of inherent risk in acquiring the biodata. Maid Management is generally responsible for the welfare of the FDW when she is in Singapore. [✂][253] This business risk, absorbed upon acquiring the biodata, should be accounted for by the entire placement fee,

[253] [✂], provided by Maid Management on 18 February 2011 pursuant to the section 63 Notice issued by CCS dated 14 February 2011

including the amount paid to the recruiter. Thus, CCS is of the view that the placement fee in its entirety should be considered as part of Maid Management's relevant turnover.

336. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$6,906 on Maid Management.

337. Accordingly, CCS provisionally concludes that a financial penalty of S$6,906 is to be imposed on Maid Management.

N. Penalty for Nation

338. Starting point: Nation was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

339. Nation's financial year commences on 1 January and ends on 31 December. However, Nation has not been able to produce a full set of accounts from 1 January 2010 to 31 December 2010. Therefore, using the period from 1 January 2010 to 30 June 2010, Nation's estimated relevant turnover figures adjusted over 12 months for the provision of placement services of new Indonesian FDWs in Singapore was S$[✂][254].

340. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Nation at [✂]% of relevant turnover. The starting amount for Nation is therefore S$[✂].

341. Adjustment for duration: Nation was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Nation after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

342. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Nation's sole director, namely Chin Mui Hiong, in the infringement to be an aggravating factor and increases the penalty by [✂]%. As Nation also acted as a leader and/or instigator in the infringements by initiating the discussion to fix the salaries of new Indonesian FDWs as well as taking follow up actions with the rest of the EAs as stated in Paragraphs 81, 154 and 155, CCS increases the penalty by [✂]%. CCS considers that Nation was cooperative during the inspection

[254] Information provided by Nation on 7 March 2011 and 26 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

and interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

343. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Nation, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$42,317.

344. Adjustment for other factors: CCS considers that the figure of S$42,317 is sufficient to act as an effective deterrent to Nation and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

345. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$ S$42,317 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$ S$42,317.

346. Representations by Nation in respect of penalty: Nation argued that CCS has invalidly double-counted the aggravating factors, by increasing the penalty by [✂]% for the involvement of Nation's sole director and by a further [✂]% for Nation's role in initiating the discussion on the FDW salary.[255] Nation contends that the involvement of its director is not an aggravating factor as "it is the company that stands accused of the breach". Nation argued that the fact that it sends its director, employee or agent should not be a relevant consideration as would be "arbitrary that a company should be penalised more simply due to its fortuitous choice of representative".[256]

347. As set out in the CCS Guidelines on the Appropriate Amount of Financial Penalty[257] and at paragraphs 220 and 222 above, CCS considers both the involvement of directors or senior management and the role played by an undertaking as the instigator, as aggravating factors. On the evidence before CCS, as set out in paragraphs 153–162 above, CCS finds that Nation, the undertaking, played an instigator role. In addition, in relation to its own participation of the infringing conduct, CCS also finds that it is the directors/senior management who are the controlling mind behind Nation's involvement in fixing the salary of new Indonesian FDWs. For this reason, CCS considers the involvement of the directors at the Keppel

[255] See paragraphs 6 and 8 of Nation's written representations dated 23 June 2011.
[256] See paragraph 7 of Nation's written representations dated 23 June 2011.
[257] Refer to paragraph 2.11.

Club meeting, in and of itself, an aggravating factor. CCS notes that the aggravating factors are calculated cumulatively to give [✂]% increase in the same way that the mitigating factors – of the full facts, circumstances of the case and cooperation of Nation – were added to give a [✂]% reduction in Nation's financial penalty.

348. Second, Nation argued that the financial penalty to be imposed on it is disproportionately higher than those imposed on the other 15 EAs. The amount of penalty for Nation is also more than four times the penalty imposed on Best Home which, together with Nation, has also been identified as instigators. It is Nation's contention that there should be parity of penalties between the 16 EAs. In Nation's view, section 69 of the Act only specifies the cap on the penalty. CCS should treat like offenders similarly and impose penalties that are proportionate "vis-a-vis the parties".[258]

349. In addition to the above, Nation has also argued that CCS' calculation of each EAs' revenue may not be accurate. In support of this argument, Nation has claimed that the volumes of FDWs placed by the respective EAs, according to figures provided by MOM, do not correspond with the penalties imposed on the same. Nation has suggested that this disparity shows that "the basis of calculations used for the other agencies may not be accurate".[259] Nation argues that the disparity is a consequence of CCS' failure to treat like offenders similarly and that CCS' calculation of the EAs' revenue may have been inaccurate in relation to the volume of FDWs placed by the respective EAs.

350. In relation to the calculation of penalties, CCS' application of the starting point of [✂]% of the respective EAs' turnover is indistinguishable between the 16 EAs. CCS has ensured that the 16 EAs have been treated in a consistent manner, without discrimination and with due regard to the individual circumstances of each EA, throughout the investigative process and in the calculation of penalties. In CCS' view, the disparity in the quantum of the fines is a direct consequence of the varying turnover figures of the respective EAs in relation to new Indonesian FDWs which represents their economic strength on the market. The relevant turnover figures employed by CCS relate only to those derived from the placement of new Indonesian FDWs, as this is the relevant market. In contrast, the figures provided by MOM on the volume of FDWs placed by the EAs captures the total volume of FDWs placed by the EAs. The figures include FDWs of all nationalities and make no distinction as to their levels of experience. Thus,

[258] See paragraphs 9 and 10 of Nation's written representations dated 23 June 2011.
[259] See paragraph 11 of Nation's written representations dated 23 June 2011.

the MOM figures in terms of placement volume are not an appropriate comparison of the proportionality of the financial penalties in this context. CCS has applied the same principle in calculating the penalties for undertakings that have infringed the prohibition under section 34 of the Act in the *Pest Control Case*[260], the *Express Bus Operators Case*[261] and the *Electrical Works Case*[262].

351. Third, Nation argued that the turnover figure used in the computation of its financial penalty ought not to have included the fee paid to the recruiters in Indonesia. Nation contended that the fees paid to the recruiters in Indonesia amount to expenses incurred in Indonesia. The EAs collect this fee from the FDWs on behalf of the recruiters and then remit the fee back to Indonesia. The said fees are "held on trust on behalf of the Indonesian recruiter, and at no point does the Singapore EA exercise any proprietary rights over the monies".[263] In addition, Nation argued that the turnover should not include the "Banker's Guarantee", "Insurance Cost" and "Medical Cost" as these are paid towards the FDW's work permit application.[264]

352. As noted in paragraph 208 above, CCS considers the relevant turnover as turnover from the provision of placement services of new Indonesian FDWs as opposed to profits earned from the same. Hence the placement fees should not be net of the cost incurred by Nation for providing the said services. The placement fee is the amount derived from the provision of placement services of new Indonesian FDWs in Singapore. The amount paid to the recruiters is Nation's business cost of sourcing for the FDWs from the recruiters and the cost of the biodata. In this regard, CCS considers that Nation bears a sizeable degree of inherent risk in acquiring the biodata of new Indonesian FDWs from the recruiters in Indonesia. Nation is generally responsible for the welfare of the new Indonesian FDWs when they are in Singapore. [✂][265] CCS considers that this risk, taken on at Nation's own cost, should be accounted for by the entire placement fee, including the amount paid to the recruiters. In the circumstances, CCS is of the view that the placement fee in its entirety should be considered as part of Nation's relevant turnover

[260] [2008] SGCCS 1 at [42]
[261] [2009] SGCCS 2, at [50].
[262] [2010] SGCCS 4 at [40].
[263] See paragraph 12 of Nation's written representations dated 23 June 2011.
[264] See paragraph 12 of Nation's written representations dated 23 June 2011.
[265] [✂], provided by Nation on 21 January 2011 pursuant to the section 64 Notice issued by CCS dated 21 January 2011, and see also Answer to Question 11 of Chin Mui Hiong's Notes of Information/Explanation dated 21 January 2011.

353. CCS also regards the "Medical Cost" as necessary business costs that have to be incurred by Nation in providing the placement services of new Indonesian FDWs in Singapore As an essential part of its placement service, the EAs carry the obligation to ensure that the new Indonesian FDWs are medically fit for work. As such, CCS considers that the "Medical Cost", which is paid out from the monies received for the provision of placement services of new Indonesian FDW in Singapore, should form part of the relevant turnover for the provision of placement services of new Indonesian FDWs in Singapore.

354. On examination of the facts of this case, and for the purposes of this case, CCS accepts Nation's submission that the relevant turnover should not include the components "Banker's Guarantee" and "Insurance Cost" and hence, these monies should not form part of the turnover for the provision of placement services of new Indonesian FDWs in Singapore. As noted in paragraph 339 and 208, CCS has adjusted the relevant turnover to exclude transaction amounts relating to the provision of Banker's Guarantee and Insurance.

355. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$ S$42,317 on Nation.

O. Penalty for Net Resources

356. Starting point: Net Resources was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

357. Net Resources' financial year commences on 1 January and ends on 31 December. Crislo Resources' relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][266].

358. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Net Resources at [✂]% of relevant turnover. The starting amount for Net Resources is therefore S$[✂].

359. Adjustment for duration: Net Resources was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for

[266] Information provided by Net Resources on 2 March 2011 and 27 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

Net Resources after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

360. Adjustment for aggravating and mitigating factors: CCS notes that the sole-proprietor of Net Resources, namely Seet Ai Ching, was not involved in the infringement. Accordingly, CCS will not make any adjustment for aggravating factor.

361. CCS considers that Net Resources was fairly cooperative during interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

362. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Net Resources, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$6,748.

363. Adjustment for other factors: CCS considers that the figure of S$6,748 is sufficient to act as an effective deterrent to Net Resources and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

364. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$6,748 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$6,748.

365. Representations by Net Resources in respect of penalty: Net Resources sought a waiver of the financial penalty to be imposed on the grounds that Bernard Ong did not represent Net Resources at the Keppel Club meeting, and therefore Net Resources was not party to the agreement/concerted practice.

366. For the reasons set out at paragraphs 171 and 172 above, CCS finds that Bernard Ong's participation in the Keppel Club meeting was as a representative of Net Resources and therefore Net Resources is liable of infringing the prohibition under section 34 of the Act.

367. Accordingly, CCS does not consider that a waiver or further reduction in the financial penalty is appropriate in the circumstances and imposes a financial penalty of S$6,748 on Net Resources.

P. Penalty for Nora

368. Starting point: Nora was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

369. Nora's financial year commences on 1 January and ends on 31 December. Nora's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore was S$[✂][267].

370. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Nora at [✂]% of relevant turnover. The starting amount for Nora is therefore S$[✂].

371. Adjustment for duration: Nora was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Nora after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

372. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Nora's sole proprietor, namely Syed Faisal, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Nora was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

373. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Nora, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$[✂].

374. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to Nora to act as an effective deterrent to Nora and to other undertakings which may consider engaging in price fixing arrangements. As stated above at paragraph 223, CCS will adjust the penalty at this stage to S$5,000.

[267] Information provided by Nora on 25 February 2011 pursuant to the section 63 Notice issued by CCS dated 14 February 2011. Nora did not respond to the section 63 Notice of 19 August 2011.

375. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$5,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

376. Representations by Nora in respect of penalty: Nora did not make any representations.

377. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$5,000 on Nora.

Q. Penalty for SLF

378. Starting point: SLF was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

379. SLF's financial year commences on 1 January and ends on 31 December. SLF's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][268].

380. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for SLF at [✂]% of relevant turnover. The starting amount for SLF is therefore S$[✂].

381. Adjustment for duration: SLF was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for SLF after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

382. Adjustment for aggravating and mitigating factors: CCS considers the involvement of SLF's director, namely Yeo Tong Poh, in the infringements to be an aggravating factor and increases the penalty by [✂]%. CCS considers that SLF was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

383. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by SLF, CCS reduces the

[268] Information provided by SLF on 1 Mar 2011 and 26 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$[✂].

384. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to SLF to act as an effective deterrent to SLF and to other undertakings which may consider engaging in price fixing arrangements. As stated above at paragraph 223, CCS will adjust the penalty at this stage to S$5,000.

385. Adjustment to prevent maximum penalty being exceeded: The financial penalty of S$5,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

386. Representations by SLF in respect of penalty: SLF sought a waiver of or reduction in, the penalty to be imposed, on the ground that running an employment agency in Singapore is costly.

387. CCS has considered the representations. SLF's grounds are not sufficient reason to justify a further reduction in the financial penalty.

388. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$5,000 on SLF.

R. Penalty for Swift

389. Starting point: Swift was involved in the agreement and/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

390. Swift's financial year commences on 1 January ends on 31 December. Swift's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][269].

391. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for Swift at [✂]% of relevant turnover. The starting amount for Swift is therefore S$[✂].

[269] Information provided by Swift on 3 Mar 2011 and 25 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

392. Adjustment for duration: Swift was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for Swift after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

393. Adjustment for aggravating and mitigating factors: CCS considers the involvement of Swift's director, namely Eric Wong, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that Swift was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

394. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by Swift, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$7,876.

395. Adjustment for other factors: CCS considers that the figure of S$7,876 is sufficient to act as an effective deterrent to Swift and to other undertakings which may consider engaging in price fixing arrangements and will not be making adjustments to the penalty at this stage.

396. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$7,876 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$7,876.

397. Representations by Swift in respect of penalty: Swift sought a reduction in penalty on the grounds that its licensee, Loh Jit Yong, did not participate in the meeting with the other EAs and did not agree to raise the salaries of the FDWs. Swift also made oral representations requesting that, in the event that it is found liable, CCS exercise leniency by reducing the financial penalty to be imposed on Swift.[270]

398. CCS has considered the representations. Swift was represented at the meeting by Eric Wong, who is a shareholder and co-director of Swift. Loh Jit Yong was kept informed of what had transpired. Swift did not take specific action to publicly dissociate itself from the unlawful discussion or

[270] See paragraph 12 of the Record of Swift's Oral Representations dated 5 July 2011.

the media report. In view of the circumstances, there are no sufficient grounds to justify a further reduction in the financial penalty.

399. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$7,876 on Swift.

S. Penalty for TM Global

400. Starting point: TM Global was involved in the agreement/or concerted practice to fix the monthly salaries of the new Indonesian FDWs.

401. TM Global's financial year commences on 1 January ends on 31 December. TM Global's relevant turnover figures for the provision of placement services of new Indonesian FDWs in Singapore for the financial year ending 31 December 2010 was S$[✂][271].

402. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 208 to 216 above and fixed the starting point for TM Global at [✂]% of relevant turnover. The starting point for Swift is therefore S$[✂].

403. Adjustment for duration: TM Global was a party to the agreement and/or concerted practice from 16 January 2011 until 13 May 2011. As stated at paragraph 217, CCS will adopt a duration multiplier of 0.25 for TM Global after rounding down the duration to 3 months. Therefore, the penalty after adjustment for duration is S$[✂].

404. Adjustment for aggravating and mitigating factors: CCS considers the involvement of TM Global's director, namely Chan Sian Chong, in the infringement to be an aggravating factor and increases the penalty by [✂]%. CCS considers that TM Global was cooperative during the interview and in providing timely replies to CCS' request for documents via the section 63 notices despite tight timelines which allowed CCS to conclude its investigations efficaciously in a short space of time.

405. Having taken into consideration all the facts and circumstances of this case, including the degree of cooperation rendered by TM Global, CCS reduces the penalty by [✂]% in mitigation of the infringing conduct. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [✂]% to S$[✂].

[271] Information provided by TM Global on 5 March 2011 and 26 August 2011 pursuant to the section 63 Notices issued by CCS dated 14 February 2011 and 19 August 2011 respectively.

406. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to TM Global to act as an effective deterrent to TM Global and to other undertakings which may consider engaging in price fixing arrangements. As stated above at paragraph 223, CCS will adjust the penalty at this stage to S$5,000.

407. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$5,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

408. Representations by TM Global in respect of penalty: TM Global did not make any representations.

409. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S$5,000 on TM Global.

T. Conclusion on penalties

In conclusion, pursuant to section 69(2)(d) of the Act, CCS has decided to impose the following financial penalties on the Parties:

Undertaking	**Financial Penalty**
Arrow	S$7,305
Best Home	S$9,382
Comfort	S$5,000
Crislo Employment	S$13,048
Crislo Resources	S$8,776
Homekeeper	S$6,787
Jack Focus	S$5,000
Javamaids	S$6,161
JPB	S$12,257
Maid Management	S$6,906
Nation	S$42,317
Net Resources	S$6,748
Nora	S$5,000
SLF Green	S$5,000
Swift	S$7,876
TM Global	S$5,000
Total	**S$152,563**

410. All Parties must pay their respective penalties to the Commission by no later than 5 p.m. on 30 November 2011. 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.

Yena Lim
Chief Executive
Competition Commission of Singapore