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

Notice of Infringement Decision issued by CCS

Infringement of the Section 34 Prohibition in relation to the supply of ball and roller bearings

27 May 2014

Case number: CCS 700/002/11

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

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GLOSSARY

"Aftermarket Customers" refers to customers who use Bearings for repair and maintenance purposes and distributors who in turn on-sell Bearings to such customers.

"[✂]PL" refers to the [✂] Price List, also known as [✂] Common Fixed Price List in this ID.

"Bearings" refers to ball and roller bearings.

"CIF" means cost, insurance and freight, being the internal price paid by a Singapore Subsidiary Company to the relevant Japan Parent Company, also known as the internal transfer price in this ID.

"JPL" refers to the Japan Price List, also known as Japan Domestic Price List; Japan Common Price List and Common Price List in this ID.

"Japan Meetings" refers to meetings in Japan attended by representatives of the Japan Parent Companies, also referred to as [✂] Study Group meetings ("**ASG**"); [✂] Research Association meetings ("**ARA**") and Aji-Ken meetings in this ID.

"Japan Parent Companies" refers to JTEKT Corporation ("**JTEKT**"); NSK Ltd. ("**NSK Japan**"); NTN Corporation ("**NTN Japan**") and Nachi-Fujikoshi Corp ("**Nachi Japan**").

"Market Share and Profit Protection Initiative" refers to the common overall objective of the Japan Parent Companies and the Singapore Subsidiary Companies to co-ordinate on pricing of Bearings for sale to Aftermarket Customers in [✂] Singapore, so as to maintain each Party's market share and protect their profits and sales.

"Singapore Meetings" refer to meetings in Singapore attended by representatives of the Singapore Subsidiary Companies, also referred to as EM; the Singapore Exporters Meetings and Singapore Export Managers' Meetings in this ID.

"Singapore Subsidiary Companies" refers to NSK Singapore (Private) Ltd. ("**NSK Singapore**"); NTN Bearing-Singapore (Pte) Ltd ("**NTN Singapore**"); Nachi Singapore Private Limited ("**Nachi Singapore**") and Koyo Singapore Bearings (Pte) Ltd ("**KSBP**").

CHAPTER 1: THE FACTS

A. The Parties

1. Following information received from immunity applicant JTEKT Corporation and its subsidiary, Koyo Singapore Bearings (Pte) Ltd; and from leniency applicant NSK Ltd and its subsidiary NSK Singapore (Private) Ltd on 30 December 2011 and 25 January 2012 respectively, the Competition Commission of Singapore ("**CCS**") commenced an investigation into anti-competitive agreements in respect of the sales, distribution and prices of ball and roller bearings ("**Bearings**") in Singapore.

2. CCS's investigation indicates that the following undertakings described in more detail in paragraphs 4 to 7 below, entered into agreements and/or engaged in concerted practices with the object of preventing, restricting or distorting competition in the market for the sale of Bearings to Aftermarket Customers in Singapore:

    a. JTEKT Corporation ("**JTEKT**") and its subsidiary, Koyo Singapore Bearings (Pte) Ltd ("**KSBP**");

    b. NSK Ltd. ("**NSK Japan**") and its subsidiary, NSK Singapore (Private) Ltd. ("**NSK Singapore**");

    c. NTN Corporation ("**NTN Japan**") and its subsidiary, NTN Bearing-Singapore (Pte) Ltd ("**NTN Singapore**");

    d. Nachi-Fujikoshi Corp ("**Nachi Japan**") and its subsidiary, Nachi Singapore Private Limited. ("**Nachi Singapore**"),

    collectively, the "**Parties**".

3. In this Infringement Decision ("**ID**"), JTEKT, NSK Japan, NTN Japan and Nachi Japan are collectively referred to as the Japan Parent Companies. NSK Singapore, NTN Singapore, Nachi Singapore and KSBP are collectively referred to as the Singapore Subsidiary Companies.

(i) JTEKT Corporation and Koyo Singapore Bearing (Pte) Ltd

4. JTEKT is a Japanese company listed on the Tokyo, Nagoya and Osaka Stock Exchanges. It was established in January 2006 through the merger of Koyo Seiko Co., Ltd., and Toyoda Machine Works, Ltd. JTEKT's registered office is located at 5-8 Minami Semba 3-Chome Chuo-ku Osaka 542 Japan. The main business activities of JTEKT are the manufacture and sale of steering systems, driveline components, bearings, machine tools, electronic control

devices, home accessory equipment etc.[1] KSBP is a limited private company registered in Singapore since 1979. It is a wholly-owned subsidiary of JTEKT. KSBP's registered business address is 27 Penjuru Lane, #09-01, Singapore 609195. The principal activities of KSBP are the import and wholesale of Bearings. KSBP's turnover for the financial year ending 31 March 2013 was S$[✂].[2]

(ii) NSK Ltd. and NSK Singapore (Private) Ltd.

5. NSK Japan is a Japanese company listed on the Tokyo Stock Exchange. It was established in 1916.[3] NSK Japan's registered office is located at Nissei Building, 1-6-3 Ohsaki Shinagawa-ku Tokyo 141-8560 Japan. NSK Japan has two core business segments—the industrial machinery business (comprising industrial machinery bearings, precision machinery and parts) and the automotive products business (comprising automotive bearings and automotive components).[4] NSK Singapore is a limited private company incorporated in Singapore since 1975. SM Mechanical (S) Pte Ltd owns [✂]% of the shareholding of NSK Singapore while NSK Japan owns the remaining [✂]% of the shareholding of NSK Singapore.[5] SM Mechanical (S) Pte Ltd is a limited private company incorporated in Singapore since 1964. SM Mechanical (S) Pte Ltd is not a subsidiary of NSK Japan.[6] NSK Singapore's registered business address is No. 238A Thomson Road, #24-01/05, Novena Square, Singapore 307684. The principal activities of NSK Singapore are the import, export and distribution of Bearings, automotive and machine tools and related components. NSK Singapore's turnover for the financial year ending 31 March 2013 was S$[✂].[7]

(iii) NTN Corporation and NTN Bearing-Singapore (Pte) Ltd

6. NTN Japan is a Japanese company listed on the Tokyo, Nagoya and Osaka Stock Exchanges. It was incorporated in 1918. NTN Japan's registered office is located at 3-17, 1 Chome Kyomachibori, Nishi-ku, Osaka 550-0003 Japan. NTN Japan's main business activities are the production and sale of mechanical parts and equipment, including bearings, constant velocity joints,

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[1] http://www.jtekt.co.jp/e/company/profile.html
[2] Information provided by KSBP dated 9 September 2013 pursuant to the section 63 Notice issued by CCS dated 5 August 2013.
[3] http://www.nsk.com/company/profile.html
[4] http://www.nsk.com/company/overview/
[5] Extracted from ACRA record *Business Profile of NSK Singapore Pte Ltd*
[6] Extracted from ACRA record *Business Profile of SM Mechanical (S) Pte Ltd*
[7] Information provided by NSK Singapore dated 23 August 2013 pursuant to the section 63 Notice issued by CCS dated 5 August 2013.

and precision equipment.[8] NTN Singapore is a limited private company incorporated in Singapore since 1971. It is a wholly-owned subsidiary of NTN Japan. NTN Singapore's registered business address is No.9 Clementi Loop, Singapore 129812. The principal activities of NTN Singapore are the import and export of Bearings, and acting as the dealer and agent for Bearings and related products. NTN Singapore's turnover for the financial year ending 31 March 2013 was S$[✂].[9]

(iv) Nachi-Fujikoshi Corp and Nachi Singapore Private Limited

7. Nachi Japan is a Japanese company listed on the Tokyo, Nagoya and Osaka Stock Exchanges. The registered office for Nachi Japan is located at Shiodome Sumitomo Building, 1-9-2, Higashi-Shinbashi, Minato-Ku, Tokyo 105-0021, Japan. The main activities of Nachi Japan include the manufacture of machine tools, robots, materials for manufacturing purposes and manufacturing components, including Bearings.[10] Nachi Singapore is a limited private company incorporated in Singapore since 1974. It is a wholly-owned subsidiary of Nachi Japan. Nachi Singapore's registered business address is No. 2 Joo Koon Way, Jurong Town, Singapore 628943. The principal activities of Nachi Singapore include the distribution of cutting tools, Bearings and oil hydraulic equipment. Nachi Singapore's turnover for the financial year ending 30 September 2012 was S$[✂].[11]

B. Background of the Industry

(i) Bearings Suppliers in Singapore

8. The Parties are suppliers of Bearings in Singapore. The multinational Japan Parent Companies set up sales subsidiaries, i.e. the Singapore Subsidiary Companies, which import Bearings manufactured by their respective Japan Parent Company or related body corporate for sale in Singapore. In addition to the Singapore Subsidiary Companies, there are at least three other Bearings suppliers supplying customers in Singapore. These suppliers are Schaeffler (Singapore) Pte Ltd, Timken Singapore Pte Ltd and SKF Asia Pacific Pte Ltd.[12]

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[8] http://www.ntn.co.jp/english/corporate/outline/index.html

[9] Information provided by NTN Singapore dated 21 August 2013 pursuant to the section 63 Notice issued by CCS dated 5 August 2013.

[10] http://www.nachi-fujikoshi.co.jp/eng/ir/pdf/profile_2013.pdf

[11] Information provided by Nachi Singapore dated 19 March 2014 pursuant to the section 63 Notice issued by CCS dated 6 March 2014.

[12] Submissions from JTEKT dated 30 August 2013 at [3.2].

9. Given that Singapore is well connected geographically, it is commonly used as an export hub to re-export Bearings to other countries in the region.[13] The principal activities of the Parties in Singapore generally include the import, export, sale and distribution of Bearings. For example, KSBP is the sales and distribution centre for its parent company, JTEKT, responsible for sales of Bearings to the regional countries such as the Philippines, Indonesia, Malaysia, India, Pakistan, Sri Lanka and Bangladesh.[14]

(ii) <u>About Bearings</u>

10. Bearings are machine components that separate moving parts and take up loads. The basic function of a bearing is to reduce the friction between adjacent parts and to support and guide a rotating, sliding, or oscillating shaft, pivot or wheel. Standard materials used in bearings include high carbon chromium bearing steel or case hardening steel.

11. In general, Bearings may be classified based on various characteristics, for example:

    a. by bearing design, e.g. radial or thrust bearings;

    b. by rolling element, e.g. ball or roller bearings;

    c. by application, e.g. industrial applications or automotive applications; and

    d. by dimension, e.g. miniature bearings are generally classified as bearings with outer dimension of less than 9mm.

12. Bearings suppliers typically adhere to international standards developed by the International Organization for Standardization ("**ISO**")[15] for product specifications, including the outer and inner diameters of the Bearings.

13. Bearings can also be customised according to customer requests.[16] The design will be made according to the relevant standards of the Bearings

[13] Answer to Question 17 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.
[14] http://www.koyo-sin.com.sg/company.htm
[15] Answer to Question 24 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 6 March 2012; Answer to Question 23 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2012; Answer to Question 22 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2012.
[16] Answer to Question 33 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 8 March 2012; Answer to Question 27 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013; Answer to Question 22 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April

manufacturers and the coding of the customised bearing will be such that other Bearings manufacturers will be unable to reproduce the same customised Bearings.

(iii) Categories of Customers

14. Bearings suppliers typically sell Bearings to two main groups of customers, the Original Equipment Manufacturers ("**OEM**") customers and Aftermarket Customers.[17] The OEM customers are typically manufacturers in the industrial, automotive and electrical businesses, who use Bearings as a component in their own products. The Aftermarket Customers include customers who use Bearings for repair and maintenance purposes and distributors who in turn on sell Bearings to such customers. According to the Parties, the Singapore Subsidiary Companies in general do not have control over the subsequent resale of Bearings made by these distributors to their customers.[18]

(iv) Process by which Bearings are Sold

15. When the Singapore Subsidiary Companies import Bearings from their Parent Companies or their related bodies corporate,[19] they pay an internal sales price. The internal price paid by a Singapore Subsidiary Company to the relevant related corporate entity is commonly known as the CIF (being cost, insurance and freight) or internal transfer price.[20] The Japan Parent

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2013; Answer to Question 22 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013

[17] Answer to Question 20 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 7 March 2012; Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at [2.3.1]; Answer to Question 17 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013; Answer to Question 19 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013

[18] Answer to Question 104 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 7 March 2012; Nachi document dated 26 April 2013, entitled "Project Circle – Response of Nachi-Fujikoshi Corporation ("Nachi Japan") to the Competition Commission of Singapore's ("CCS") Further Request for Information/Documents" on 15 April 2013 at [S/N16]; Answer to Question 31 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013; Answer to Question 13 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013. [✂]

[19] Answer to Question 8 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 26 March 2012; Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at [2.4.1]; Answer to Question 9 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.

[20] JTEKT responses to CCS Questions to JTEKT/KSBP dated 24 July 2013 at [1.2]; Answer to Question 7 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013; Answer to Question 29 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013; Answer to Question 27 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

Companies will set the internal sales price based on production costs, market prices, administrative costs, overhead costs, market conditions and profit margins.[21]

16. The processes by which Bearings are sold to the two groups of customers are also different. For OEM customers, prices are negotiated between the sales team and the OEM customers. The OEM customers would then request quotations from the various suppliers.[22]

17. For Aftermarket Customers, particularly distributors, the suppliers produce a price list which is used as the basis for the price of Bearings. This is because these customers usually ask for a wider variety of Bearing products as compared to the OEM customers. Therefore, it is more efficient for Bearings suppliers to provide quotations based on the price lists.[23] The price list would typically include prices for different series of Bearings. It is noted that the prices of Bearings are generally higher for Aftermarket Customers compared with prices for OEM customers.[24]

C. Investigation and Proceedings

18. On 30 December 2011 and 25 January 2012, CCS received separate applications for a marker for immunity under CCS's leniency programme[25] from JTEKT/KSBP and NSK Japan/NSK Singapore respectively relating to anti-competitive agreements that they had entered into with other Bearings manufacturers in respect of the sales, distribution and prices of such Bearings.

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[21] Answer to Question 39 of Notes of Information/Explanation provided by [✂](JTEKT) dated 7 March 2012; Answer to Question 35 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013; Answer to Question 30 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013; Answer to Question 28 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[22] Answer to Question 52 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 8 March 2012; Answer to Question 14 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013; Answer to Question 25 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013; Answer to Question 16 of Notes of Information/Explanation provided by [✂] (NTN) dated 28 February 2013.

[23] Answer to Question 40 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 7 March 2012; Answer to Question 25 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[24] Answer to Question 19 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2012; Answer to Question 14 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.

[25] *CCS Guidelines on Lenient Treatment For Undertakings Coming Forward with Information on Cartel Activity Cases 2009*.

19. JTEKT/KSBP, represented by M/s Rajah & Tann LLP ("**R&T**"), was granted a marker in the leniency queue on 18 January 2012. NSK Japan/NSK Singapore, represented by M/s Allen & Gledhill LLP ("**A&G**"), was granted a marker in the leniency queue on 31 January 2012.

20. CCS found that there were reasonable grounds for suspecting that JTEKT/KSBP; NSK Japan/NSK Singapore; NTN Japan/NTN Singapore and Nachi Japan/Nachi Singapore had entered into anti-competitive agreements and/or had engaged in concerted practices in respect of the sales, distribution and prices of Bearings to Aftermarket Customers in Singapore, in breach of the prohibition under section 34 ("**the section 34 prohibition**") of the Competition Act (Cap. 50B) ("**the Act**").

21. On 10 October 2012, CCS informed JTEKT/KSBP that they had perfected the marker in respect of their application for immunity and commenced investigation under the Act. CCS informed A&G that immunity was not available on 31 January 2012. A&G subsequently informed CCS by telephone of their client's application for leniency under Paragraph 4 of *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2009* ("**CCS Leniency Guidelines**") on 4 December 2012 and followed up with written confirmation on 5 December 2012. On 6 February 2013, CCS carried out unannounced inspections under section 64 of the Act on the premises of NTN Singapore and Nachi Singapore. Interviews with key personnel of those Parties were also subsequently conducted pursuant to section 63 Notices. After the inspection, on 7 February 2013, M/s Wong Partnership LLP applied for leniency under Paragraph 4 of the *CCS Leniency Guidelines* on behalf of Nachi Japan and Nachi Singapore.

22. Further section 63 notices were issued to NTN Singapore and NTN Japan on 15 February 2013 and 22 February 2013 requiring interviews with NTN Singapore employees and requesting information and documents from NTN Japan and other subsidiaries. CCS received the information and documents from NTN Japan/NTN Singapore on 21 February 2013, 18 March 2013 and 28 May 2013. A further section 63 notice was sent on 22 April 2013 requiring interviews with NTN Singapore's employees.

23. In addition, CCS received information and documents from JTEKT and KSBP between 31 January 2012 and 31 July 2013 in response to section 63 notices. Nachi Japan and Nachi Singapore submitted information and documents to CCS between 18 March 2013 and 11 July 2013 in response to section 63 notices. NSK Japan and NSK Singapore provided CCS with information and documents between 24 February 2012 and 3 September 2013 in response to section 63 notices.

24. Many of the original documents containing contemporaneous records on which CCS relies for the purposes of this ID are in the Japanese language. During the course of the investigation, the Parties provided CCS with translations in the English language. CCS relies on those English language translations for the purpose of this ID. Where CCS quotes from those documents, the quotations are from the English language translations.

25. In summary, CCS carried out interviews with the relevant personnel of the Parties as detailed below.

Company	**Key Personnel Interviewed (Current Designation)**	**Dates of interview**	**Period of employment**	**Attendance at Singapore Meetings and Japan Meetings**
JTEKT/KSBP	[✂]	3-4 July 2013	Joined JTEKT in [✂]. Currently posted to [✂]	Attended Singapore Meeting once in 2004 or 2005. Attended Japan Meetings 2003 to 2010. Was absent from January 2007 to end 2008.
	[✂]	8-9 March 2012 27-28 June 2013	Joined JTEKT in [✂]. Posted to KSBP from [✂].	Attended Singapore Meetings from June 2001 to 14 March 2006.
	[✂]	6 March 2012 1-2 July 2013	Joined JTEKT in [✂]. Posted to KSBP from [✂].	Attended Singapore Meetings from July 2005 to March 2006.
	[✂]	7 March 2012	Joined JTEKT in [✂]. Posted to KSBP [✂].	Attended Japan Meetings from 1997 to 1999, and from 2007 to 2008.

	[✂]	26 March 2012	Joined KSBP in [✂]	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	26 March 2012	Joined KSBP in [✂]	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	8-9 March 2012	Joined JTEKT in [✂]. Posted to KSBP from [✂].	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	6-7 March 2012	Joined JTEKT in [✂]. Posted to KSBP between [✂]. Retired in [✂].	Attended Singapore Meetings from 2000 to 2005; attended Japan Meetings from 2007 to 2008.
NSK Japan/NSK Singapore	[✂]	16-18 April 2013	Joined NSK Japan in [✂]. Posted to NSK [✂].	Attended Singapore Meetings from 4 July 2000 to 13 January 2006.
	[✂]	29 May 2013	Joined NSK Japan in [✂]. Posted to NSK [✂].	Attended Japan Meetings on 8 July 2010 and 29 March 2011.
	[✂]	17-19 April 2013	Joined NSK Japan in April [✂].	Attended Japan Meetings from 6 June 2006 to 14 July 2009.
NTN Japan/NTN Singapore	[✂]	10-11 June 2013	Joined NTN Japan [✂]. Posted to NTN Singapore	Attended Singapore Meetings between August

			between [✂].	2003 and January 2006.
	[✂]	10-11 June 2013	Joined NTN Japan [✂]. Posted to NTN Singapore [✂].	Attended Singapore Meetings from November 2001 to January 2006.
	[✂]	10-11 June 2013	Joined NTN Japan [✂]. Posted to NTN Singapore [✂].	Attended Japan Meetings from April 2005 to August 2006.
	[✂]	6 February 2013	Joined NTN Japan in [✂]. Posted to NTN Singapore [✂].	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	28 February 2013	Joined NTN Singapore [✂].	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	28 February 2013	Joined NTN Singapore [✂].	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	28 February 2013	Joined NTN Singapore in [✂].	Did not attend Singapore Meetings or Japan Meetings.
Nachi Japan/Nachi Singapore	[✂]	22-23 May 2013	Joined Nachi Japan in [✂].	Attended Japan Meetings from 2004 to 2008.
	[✂]	9-10 May 2013	Employee of Nachi Japan for over [✂].	Attended Singapore Meetings from April 2005 to 2006.

	[✂]	14-16 May 2013	Joined Nachi Japan in April [✂]. Posted to Nachi Singapore from [✂].	Attended Singapore Meetings from Jan 2003 to 2006.
	[✂]	6 February 2013	N.A	Did not attend Singapore Meetings or Japan Meetings.
	[✂]	6 February 2013	N.A	Did not attend Singapore Meetings or Japan Meetings.

26. CCS sent further section 63 Notices to each Party on 5 August 2013, requiring documents and information relating to each Party's turnover for the financial year 2012. CCS received the responses between 16 August and 9 September 2013. CCS also sent section 63 Notices to [✂] on 11 November 2013, requiring an interview with [✂] and information and documents from [✂]. CCS carried out interview with [✂] on 18 November 2013.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

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

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

28. 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.

29. 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.

30. 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

31. Paragraph 2.10 of the CCS's Guidelines on the section 34 Prohibition ("***CCS Section 34 Guidelines***") states that:

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

32. The section 34 prohibition also applies to concerted practices. *CCS Section 34 Guidelines* state that the key difference between a concerted practice and an agreement is that a concerted practice may exist where there is informal co-operation, without any formal agreement or decision. A concerted practice would be found to exist if parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with cooperation between them.[26]

33. In the case of *Suiker Unie and others v Commission*,[27] which was referred to by CCS in the *Express Bus Operators Case*,[28] the parties contacted each other with the aim of removing, in advance, any uncertainties as to the future conduct of their competitors. The European Court of Justice ("**ECJ**") found that it was not necessary to prove there was an actual plan and held at [174]:

> 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***

[26] *CCS Guidelines on the Section 34 Prohibition* at [2.16].
[27] Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 [1975] ECR-1 1663, [1976] 1 CMLR295.
[28] [2009] SGCCS 2 at [51] to [54].

such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market."

[Emphasis added]

34. In the case of *Huls AG v. Commission*,[29] the ECJ said that the concept of a concerted practice implies, besides the parties' concertation, a subsequent conduct on the market and a relationship of cause and effect between the parties. The ECJ held at [162]:

> 162 "*However, subject to proof to the contrary, which the economic operators concerned must adduce, the presumption must be that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market.* ***That is all the more true where the undertakings concert together on a regular basis over a long period****, as was the case here, according to the findings of the Court of First Instance*."
>
> ***[Emphasis added]***

35. As CCS stated in the *Pest Control Case*,[30] and which was subsequently cited in the *Express Bus Operators Case*:[31]

> *"...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."*

36. It is also established law that it is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice. In the case of *SA Hercules Chemicals v Commission,*[32] which was referred to by CCS in the *Express Bus Operators Case*,[33] the Court of First Instance ("**CFI**") (now the European General Court) found that the appellant had taken part, over a period of years, in an integrated set of schemes constituting a single infringement, which progressively manifested itself in both unlawful agreements and unlawful concerted practices. As such, the European Commission was entitled to characterise that single

[29] Case C-199/92 [1999] ECR1-4287.
[30] [2008] SGCCS 1 at [42].
[31] [2009] SGCCS2 at [50].
[32] Case T-7/89 [1991] ECRII-1711.
[33] [2009] SGCCS 2 at [55] to [58].

infringement as "*an agreement and a concerted practice*" since the infringement involved, at one and the same time, factual elements to be characterised as "*agreements*" and factual elements to be characterised as "*concerted practices*".

37. Similarly, in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*[34] *("JJB")*, the Competition Appeal Tribunal ("**CAT**") in the United Kingdom (UK) stated at [644]:

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

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

38. Paragraph 2.11 of the *CCS Section 34 Guidelines* states:

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

39. The Court in *Westfalen Gassen Nederland BV v Commission of the European Communities*[35] ("***Westfalen***") reiterated that where an undertaking participates in a meeting at which anti-competitive agreements are concluded, if the undertaking has not manifestly opposed those agreements, then that undertaking bears the burden of proof to show that its participation in the meeting was without any anti-competitive intention. At [76], the Court stated:

> 76 *"…it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for the undertaking to put forward evidence to establish that its participation in those*

[34] [2004] CAT 17 at [644] and affirmed on appeal by the Court of Appeal [2006] EWCA Civ 1318 at [21].
[35] Case T-303/02 [2006] ECR II-4567, [2007] 4 CMLR 334.

meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different to theirs"

40. Again, in *Archer Daniels Midland Co v Commission,*[36] the ECJ stated at [119] to [120]:

> 119 *"In accordance with settled case-law, to prove to the requisite standard that an undertaking participated in a cartel, it is sufficient for the Commission to establish that the undertaking concerned participated in meetings during which agreements of an anti-competitive nature were concluded, without manifestly opposing them. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (see Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P Aalborg Portland and Others v Commission [2004] ECR I-123, paragraph 81).*
>
> 120 *Consequently, it is indeed the understanding which the other participants in a cartel have of the intention of the undertaking concerned which is of critical importance when assessing whether that undertaking sought to distance itself from the unlawful agreement. Accordingly, the Court of First Instance was fully entitled, in paragraph 247 of the judgment under appeal, to rule that the mere fact that the appellant had left the meeting of 4 October 1994 could not, in itself, be regarded as a public distancing from the cartel at issue and that it was for ADM to provide evidence that the members of the cartel considered that ADM was ending its participation.*"

41. Passive participation can also infringe the section 34 prohibition if the undertaking attends meetings without expressing disapproval or distancing itself from the cartel. In *Westfalen*, the Court was required to make a finding in relation to liability of the applicant in circumstances where it had attended a meeting at which other competitors were present and those other competitors agreed on a plan to increase prices by 5 to 6% and where it

[36] [2009] EUECJ C-510/06 P; [2009] ECR I-01843.

stated that, "*it did not commit to implementing a fixed increase in prices either at the meetings of 14 October or of 18 November 1994 or at any other time.*" The Court found that this is "*not equivalent to an express statement of opposition to the increase in prices*."[37]

42. Further the Court found at [83] and [84]:

> 83 *"It is apparent at least that the applicant did not express a clear view on the question of a price increase. Therefore, while it did not state expressly that it would increase its prices in 1995, it also did not say that there would be no price increase that year.*
>
> 84 *The applicant therefore did not express a view which would have left the other undertakings in no doubt that it was distancing itself from the idea of such an increase. Its conduct, which it describes as vague, is akin to tacit approval which effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable...*"

43. The Court also found at [124]:

> 124 "*Silence by an operator in a meeting during which the parties colluded unlawfully on a precise question of pricing policy is not tantamount to an expression of firm and unambiguous disapproval. On the other hand, according to case-law, a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable...*"

44. It is no defence that the participant did not put the initiatives into effect. Evidence of prices or other behaviour that do not reflect those discussed at the meeting is not sufficient to prove that an undertaking did not participate in the scheme.[38]

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[37] Case T-303/02 [2006] ECR II-4567, [2007] 4 CMLR 334, at [82].
[38] Case T-3/89, *Atochem v Commission* [1991] ECR II-867 at [100].

45. The fact that a participant did not take part in all aspects of the cartel scheme or played only a minor role in the aspects in which it participated is not material to the establishment of an infringement, although this might have an influence on the assessment of the extent of the liability and the severity of the penalty.[39]

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

46. There is a presumption that an agreement and/or concerted practice continues to be in operation until the contrary is shown. This has been affirmed by the Competition Appeal Board ("**CAB**") in its decision on the appeal from the *Express Bus Operators Case*,[40] at [110]:

> 110. "*... as a matter of evidential burden, as it has been established that the MSP Agreement existed as at 1 June 2005,* ***there is a presumption that such agreement continued to be in existence, unless there are circumstances indicating to the contrary***."
>
> ***[Emphasis added]***

47. A concerted practice may be found to have continued even in the absence of active steps to implement it beyond a certain date. According to the Competition Appeal Tribunal ("**CAT**") in the *JJB* case at [928], citing the opinion of the Advocate General in SA *Musique Diffusion Francaise and Others v Commission of the European Communities*:

> *"... A concerted practice is capable of continuing in existence, even in the absence of active steps to implement it. Indeed, if the practice is sufficiently effective and widely known, it may require no action to secure its implementation. Cases may arise in which the absence of any evidence of measures taken to implement a concerted practice may suggest that the practice has come to an end. That, however, is a matter of evidence, which must depend upon the circumstances of the case ... It is perhaps of interest to observe the decision of the United States Court of Appeals in US v Stromberg and Others 268 F 2d. 256, in which it was held that*

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[39] Case T-99/04, *AC-Treuhand AG v Commission* [2008] ECR II-1501, at [129] to [132]. Also see the *CCS Guidelines on the Appropriate Amount of Penalty* for the basis on which the CCS will calculate financial penalties for infringements of the section 34 prohibition.

[40] [2011] SGCAB 1.

a conspiracy, once established, is presumed to continue until the contrary is shown."

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

48. The Court in *Westfalen* ruled on what constitutes termination of participation in a cartel. It held that in order to show to the requisite legal standard that an undertaking had terminated its participation in a cartel, it is necessary for the undertaking to show that it adopted fair and independent competitive conduct in the relevant market. The Court further held, at [139]:[41]

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

49. Based on existing case law, it can be said that the following common cumulative requirements should be satisfied for a successful plea by an undertaking that it has properly publicly distanced itself from the cartel and terminated its involvement:

> a. the objectives of the cartel must be denounced clearly and unequivocally to the other cartel members;[42]
>
> b. an undertaking must be able to prove that its subsequent conduct on the market was determined independently;[43] and
>
> c. the undertaking must not attend any further meetings.[44]

D. <u>Single Continuous Infringement</u>

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

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[41] Case T-303/02 [2006] at [139].
[42] T-61/99 *Adriatica di Navigazione v Commission* [2003] ECR II-5349 at [137] and [138]; T302/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334 at [103].
[43] Case T-62/02 *Union Pigments v Commission* [2005] ECR II-0000 at [42]; T302/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334 at [139].
[44] T302/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334 at [100] – [102].

51. In order to prove a single continuous agreement, the ECJ in *Aalborg Portland AS v Commission*[45] confirmed at [81] to [83] the elements established in *Anic*:

> 81 "*According to settled case-law, it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (see Case C-199/92 P Hüls v Commission [1999] ECR I-4287, paragraph 155, and Case C-49/92 P Commission v Anic [1999] ECR I-4125, paragraph 96).*
>
> 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).*"

52. In line with case law set out below, for CCS to establish that a series of acts or continuous conduct constitute a single continuous infringement, CCS must demonstrate that:

[45] Cases C-204, 205, 211, 213, 217 and 219/00 P, *Aalborg Portland AS v Commission* [2004] ECR I-123.

a. the agreements or concerted practices that made up the single continuous infringement were all in pursuit of the same common objective(s);

b. each party to the single continuous infringement intended to contribute by its own conduct to the common objectives of the single overall infringement;

c. the agreements and concerted practice establishing the single continuous infringement are complementary; and

d. each party was aware of or could reasonably have foreseen actual conduct planned or put into effect by other parties in pursuit of the common objective(s).

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

53. Where a group of undertakings pursues a common objective or objectives it is not necessary to divide the agreements or concerted practices by treating them as consisting of a number of separate infringements where there is sufficient consensus to adhere to a plan limiting the commercial freedom of the parties.[46]

54. CCS applied this principle in the *Price Fixing in Modelling Services*[47] case where it found that there was a common objective among the parties to collectively raise model rates through various meetings, correspondences and contacts between the parties over a number of years. In this regard, CCS stated that:

> "*CCS considers that it would not be reflective to split up such continuous conduct, characterised by a single purpose, and treating it as several separate infringements for different types of anti-competitive agreements, when what was involved was, in reality, a single infringement which manifested itself in a series of anti-competitive activities throughout the period of operation of the cartel. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments.*"

[46] Case T-1/89 *Rhone Poulenc v Commission* [1991] ECR II-867, at [126].
[47] [2011] SGCCS 11 at [207].

55. In the *Polypropylene* case,[48] the European Commission ("**EC**") found that the producers of polypropylene were party to a whole complex web of schemes, arrangements and measures decided in the framework of regular meetings and continuous contact which constituted a single continuing agreement.

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

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

(ii) <u>Participation in a Single Overall Infringement</u>

57. To demonstrate that each undertaking intended to contribute through its own conduct to the common objectives of the single overall infringement and that it was aware or could reasonably have foreseen actual conduct planned or put into effect by other undertakings in pursuit of the common objectives, it is not necessary to show that all the parties have given their express or implied consent to each and every aspect of the single overall infringement.[49] The parties may show varying degrees of commitment to the common objectives.

58. The concept of a single continuous infringement was elaborated on in the *Choline Chloride* case at both the EC[50] and CFI[51] level. Although the CFI overturned the decision of the EC, EC's decision on this issue was upheld, that is that the unequal and differing roles of each participant and the

[48] Case IV/31.149 *Polypropylene* [1986] OJ 1 230/1.
[49] Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125 at [80].
[50] Case COMP / B-2 / 37.533 - *Choline Chloride*
[51] Joined Cases T-10l/05 and T-ll1/05 *BASFAG and UCB SA v Commission of European Communities* at [159].

presence of internal conflict would not defeat the finding of a common unlawful enterprise.

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

> 146 *"Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role.* ***Some participants may have a more dominant role than others. Internal conflicts and rivalries, or even cheating may occur, but that will not prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the Treaty where there is a single common and continuing objective.***
>
> 147 ***The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anticompetitive effect.*** *An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk."*[52]
>
> ***[Emphasis added]***

60. Further guidance on the concept of a single and continuous infringement was provided by the CFI. In the appeal from the EC's decision, the CFI made clear that in order for the "common objective" to provide a sufficiently unifying umbrella such that the various activities can be said to comprise a single complex continuous infringement, these activities must be complementary in nature and contribute towards the realisation of that common objective.[53] The CFI also affirmed, in *S. A. Hercules Chemicals N.V. v Commission of the European Communities*,[54] that where it would be

[52] See also Case C-49/92 P *Commission v Anic Partecipazioni [1999] ECR I-4125.*
[53] Case COMP / B-2 / 37.533 - Choline Chloride at [149-154].
[54] Case T-7/89 [1991] ECRII-01711.

artificial to split up continuous conduct, characterised by a single purpose, by treating it as a number of separate infringements, a single continuous infringement can be found.

61. In addition, the fact that some members had reservations about whether to participate, or intended to cheat by deviating from the agreed conduct, did not mean that they were not party to an agreement.[55]

Global anti-competitive activities characterised as a single infringement

62. Arrangements carried out both at a local and a global level can be taken to form a single continuous infringement. In *BASF AG and UCB SA v Commission of the European Communities* [56] ("***BASF***"), the Court stated at [179]:

> 179 *"... It appears that, in the cases which the case-law envisages, the existence of a common objective consisting in distorting the normal development of prices provides a ground for characterising the various agreements and concerted practices as the constituent elements of a single infringement. In that regard, it cannot be overlooked that those actions were complementary in nature, since each of them was intended to deal with one or more consequences of the normal pattern of competition and, by interacting, contributed to the realisation of the set of anti-competitive effects intended by those responsible,* ***within the framework of a global plan having a single objective***."
>
> ***[Emphasis added]***

(iii) Complementarity

63. On the question of whether the agreements and concerted practices are "closely linked" in a way that is conducive to the overall cartel, the Court in *BASF* stated, at [181]:

> 181 *"The Court must…ascertain whether the two sets of [global and European] agreements and concerted practices penalised by the Commission in the Decision as a single and continuous infringement are complementary in the way*

[55] Richard Whish, *Competition Law*, 7th Ed., Oxford University Press, at 103; *Polypropylene*, OJ [1986] L 230/1, [1998] 4 CMLR 347.
[56] Joined Cases T-101/05 and T-111/05 [2007] ECR II-4949.

described at paragraph 179 above…In that regard, it will be necessary to take into account any circumstance capable of establishing or casting doubt on that link, such as the period of application, the content (including the methods used) and, correlatively, the objective of the various agreements and concerted practices in question."

64. In *Gas Insulated Switchgear*,[57] the EC considered that such complementarity existed between the texts and operation of the global and European cartel agreements, forming part of an overall scheme to distort competition in bidding for gas insulated switchgear projects. The global and European cartel activities shared a number of mutually reinforcing features: they occurred at the same time; the European producers were party to both; the European agreement was subordinated to the global one and, indeed, gave effect to it; and their enforcement mechanisms were interlinked. The same "*facilities, institutions, meetings, rules and codes*" applied to both arrangements.[58]

(iv) <u>Knowledge or reasonable foreseeability</u>

65. The existence of a single and continuous infringement does not necessarily mean that an undertaking participating in one or more manifestations of that infringement will be held liable for the infringement as a whole.[59] An undertaking must either know or should have known that when it took part in an unlawful agreement or concerted practice that, in doing so, it was joining a single, overall agreement.[60]

66. In *Carbonless paper*,[61] the CFI held that it was "scarcely conceivable" that the producers which operated only in Spain and who only attended meetings on the Spanish market were unaware that they were taking part in an Europe-wide cartel. The Court upheld the Commission's assessment that such national meetings were designed to implement the European cartel (organised under the auspices of a trade association). Indeed, the meetings enabled the Spanish producers to establish contact with representatives of the major producers involved in the European cartel meetings.[62]

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[57] Case COMP/38.899 *Gas Insulated Switchgear* [2008] OJ C5/7

[58] Case COMP/38.899 *Gas Insulated Switchgear* [2008] OJ C5/7 at [275].

[59] Case COMP/F/38.354 *Industrial Bags*, OJ 2007 L-282/41.

[60] Case C-49/92 P, *Commission v. Anic Partecipazioni*, [1999] ECR I-4125, [203]; see also Case COMP/F/38.354 *Industrial Bags*, Doc. C (2005) 4634 final OJ 2007 L-282.

[61] OJ 2004 L 115/1.

[62] See also "Single, overall agreement in EU Competition Law" (2010) Common Market Law Review, at page 503.

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

67. 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.

68. CCS had found in the *Pest Control Case*,[63] subsequently applied in its other decisions in relation to the section 34 prohibition, that the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into an agreement, but rather on:

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

69. An agreement or concerted practice whose aim is to fix prices is an object infringement. European jurisprudence has established that there can be an infringement even if an agreement does not have an effect on the market.[64] Similarly, there can be a concerted practice in the absence of an actual effect on the market.[65]

70. In *Argos Limited and Littlewoods Limited v OFT*,[66] the Office of Fair Trading ("**OFT**") 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 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*

[63] [2008] SGCCS 1 at [49].
[64] Case T-148/89 *Tréfilunion v Commission,* [1995] ECR II-1063 at [79].
[65] Case C-199/92 *Hüls AG v. Commission,* [1999] ECR I-4287 at [164] to [168].
[66] [2004] CAT 24.

what the actual effect was: see Cases 56 and 58/64 Consten and Grundig v Commission [1966] ECR 299, 342 and many subsequent cases."

71. CCS regards agreements or concerted practices involving price-fixing as always having an appreciable adverse effect on competition.[67]

(i) Price-Fixing Arrangements

72. CCS regards direct or indirect price-fixing to be restrictive of competition to an appreciable extent.[68] There are many ways in which prices can be fixed. In *Express Bus Operators Appeals Nos. 1 and 2 of 2009*,[69] the CAB held that the parties who participated in the price-fixing agreements must have been aware, or could not have been unaware, that the agreements had the object or would have the effect of restricting competition.

73. Price-fixing agreements may involve fixing either the price itself or an element or component of a price. CCS applied this principle in the *Express Bus Operators Case*,[70] where 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" because it amounted to an agreement to introduce a uniform increase in price.[71] This principle was also applied in *Ferry operators – Currency surcharges*[72] and *VOTOB*.[73] *In Ferry operators – Currency surcharges*, five ferry operators had an arrangement to bring about the imposition of a common currency surcharge on freight to be transported on United Kingdom-Continent routes following the devaluation of the pound sterling in September 1992. Identical surcharges were announced, with a common introduction date and common method of calculation. The EC found that the arrangement between the ferry operators amounted to a concerted practice to introduce a uniform increase in price notwithstanding that the surcharges were not implemented at all or that they were only partially implemented.[74]

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[67] *CCS Guidelines on the Section 34 Prohibition* at [2.19] and [2.20].
[68] *CCS Guidelines on the Section 34 Prohibition* at [3.2]..
[69] *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 [2011] SGCAB 1 at [143].
[70] [2009] SGCCS 2 at [77] and [78].
[71] [2009] SGCCS 2 at [294].
[72] Commission Decision (97/84/EC), OJ [1997] L 26/23.
[73] *Report on Competition Policy 1992* (Vol XXII) 177-186.
[74] Ibid, at [59] and [65].

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

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

75. The disclosure and/or exchange of price information may in particular infringe the section 34 prohibition where its purpose is to reinforce a single overall agreement or concerted practice. For example, the CFI in *Cimenteries* held that the purpose of exchanging price information was to reinforce the general agreement and that, as the general agreement had the object of

restricting competition, the exchange of price information also had the object of restricting competition.[75]

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

> *"...even if the evidence had established only that JJB had unilaterally revealed its future pricing intentions to Allsports and Sports Soccer a concerted practice falling within the Chapter I prohibition would thereby have been established. The fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition, which strictly precludes any direct or indirect contact between competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions."*[76]

77. The threat to effective competition is especially obvious where an arrangement involves the regular and systematic exchange of specific information as to future pricing intentions between competitors. The exchange of such information reduces uncertainties inherent in the competitive process and facilitates the coordination of the parties' conduct on the market.[77] Furthermore, and as the CAT confirmed in *JJB Sports plc v Office of Fair Trading*, the law presumes that a recipient of information about the future conduct of a competitor cannot fail to take that information into account when determining its own future policy on the market.[78]

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[75] Joined Case T-25/95 etc *Cimenteries CBR SA v Commission* ECRII-491, at [4027], [4060], [4109] and [4112].

[76] *JJB Sports plc v OFT* [2004] CAT 17, at [644], referring to Case T-305/94 *Limburgse Vinyl Maatschappij v Commission* [1999] ECR II-931 at [969] to [698] and Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125 at [131]-[133]; confirmed by the Court of Appeal in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2006] EWCA Civ 1318 at [21].

[77] OFT Competition law guideline *Trade associations, professions and self-regulating bodies* (OFT 408, Edition 12/04) at [3.10].

[78] *JJB Sports plc v Office of Fair Trading* [2004] CAT 17, at [644] referring to Case T-305/94 *Limburgse Vinyl Maatschappij v Commission* [1999] ECR II-931 at [969] to [698] and Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125 at [131] to [133]; confirmed by the Court of Appeal in *Argos Limited and LittlewoodsLimited v Office of Fair Trading* [2006] EWCA Civ 1318 at [21], at [873], citing Cases T-202/98 etc *Tate and Lyle* [2001] ECR II-2035 at [56] to [58] and Case T-1/89 *Rhône-Poulenc v Commission* [1991] ECR II-867 at [122] to [123].

78. In light of the foregoing, the disclosure and/or exchange of price information will restrict competition by object where it reinforces a single overall agreement.

F. Imputation of Liability on the Parent Companies (Single Economic Entity)

(i) Concept of Undertakings

79. As a preliminary point, the section 34 prohibition can only be infringed by undertakings or associations of undertakings.[79] The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.[80]

80. The ECJ has stated that the concept of an undertaking must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.[81] When an economic entity infringes the competition rules it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.[82]

(ii) When Two or more Persons Form Part of the Same Undertaking/Economic Unit

81. The law on single economic entities has been neatly summarised in the CAB decision in a separate appeal from the *Express Bus Operators Case*:[83]

> *"It is generally accepted that a single economic entity is a single undertaking between entities which form a single economic unit. In particular, an agreement between a parent and its subsidiary company, or between two companies which are under the control of a third company, will not be agreements between undertakings*

[79] Cases C-204, 205, 211, 213, 217 and 219/00 P, *Aalborg Portland AS v Commission* [2004] ECR I-123 at [59].

[80] Case C-189/02 P *Dansk Rørindustri and Others v Commission* at [112]; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289 at [107]; and Case C-205/03 *P FENIN v Commission*, [2006] ECR I-6295 at [25].

[81] Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987 at [40].

[82] Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125 at [145]; Case C-279/98 *P Cascades v Commission* [2000] ECR I-9693, at [78]; and Case C-280/06 *ETI and Others* [2007] ECR I-10893 at [39].

[83] [2011] SGCAB 2 at [67].

if the subsidiary has no real freedom to determine its course of action in the market and although having a separate legal personality, enjoys no economic independence. Ultimately, whether or not the entities form a single economic unit will depend on the facts and circumstances of the case ([2.7]-[2.8] of the CCS Guidelines on the section 34 prohibition; see also Akzo Nobel v Commission of the European Communities, 11 December 2003, at [54]-[66]).”

82. In determining whether one company is part of the same economic entity as another, the courts of the European Union (“**EU**”), in cases such as *Viho Europe BV v Commission*[84] (“***Viho***”), have focused on the concept of “autonomy”. In *Viho*, the ECJ confirmed that the EC had been correct to reject a complaint that Parker’s distribution agreements, concluded with its 100% owned subsidiaries, infringed Article 101. Parker controlled the sales, advertising and marketing policy of its subsidiaries. The subsidiaries had no real autonomy to determine their course of action and thus formed a “single economic entity” with Parker.

83. Where companies do not enjoy real autonomy in determining their course of action on the market, but instead carry out the instructions issued to them by their parent company, they will be seen as part of the same economic entity as the parent company. The crux of the matter lies in determining whether the parties to the agreement are independent in their decision-making or whether one has sufficient control over the other so that the latter does not, under the *Viho* test, have “*real autonomy in determining* [its] *course of action in the market*”.

84. Therefore, case law establishes that entities will constitute a single economic unit if a subsidiary “*enjoys no economic independence*”,[85] or if the entities “*form an economic unit within which the subsidiary has no real freedom to determine its course of action on the market*”,[86] but carries out the instructions issued by the parent company controlling them.

85. It follows that, where there is no agreement between economically independent entities, relations within an economic unit cannot amount to an agreement or concerted practice between undertakings which restricts competition within the meaning of the section 34 prohibition. Where the subsidiary, although having a separate legal personality, does not freely

[84] Case C-73/95 P, [1996] ECR I-5457.
[85] Case 22/71, *Béguelin Import v GL Import-Export* [1971] ECR 949 at [8].
[86] Case 15/74, *Centrafarm BV and Adnaan De Peijper v Sterling Drug Inc* [1974] ECR 1183 at [41]. See also e.g. Case T-11/89, *Shell v Commission* [1992] ECR II-884, at [311].

determine its conduct on the market but carries out the instructions given to it directly or indirectly by the parent company by which it is wholly-controlled, the section 34 prohibition does not apply to the relationship between the subsidiary and the parent company with which it forms an economic unit.

(iii) <u>Parent Company's Control over a Subsidiary</u>

86. The authorities in the EC have, in focussing on the issue of control in the context of the single economic entity doctrine, found that a single economic entity will exist if, on the facts, one undertaking does not decide independently upon its own conduct on the market but carries out the instructions given by another.[87]

87. Therefore, in the specific case where a parent company has a 100% shareholding in a subsidiary which has infringed the Act, the parent company can exercise a decisive influence over the conduct of the subsidiary,[88] and there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary.[89]

88. However, the single economic entity doctrine has also been applied in cases involving majority shareholding falling short of 100%. For example, in *Commercial Solvents*, [90] relied upon by CCS in its decision in the *Qantas and Orangestar Cooperation Agreement*,[91] the parent owned 51% of its subsidiary (with a 50% representation on its decision-making board and committee and held the right to appoint the subsidiary's Chairman, who held the casting vote). The ECJ ruled in that case that both companies were a single economic entity on account of the parent company's power of control over the subsidiary.

89. In these circumstances, it is sufficient for CCS to show either that the subsidiary is wholly-owned or effectively controlled by the parent company in order to presume that the parent exercises a decisive influence over the subsidiary. CCS will be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market.[92]

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[87] *J R Geigy AG v Commission* [1972] ECR 787, recitals 44 to 45; *Viho* at [16].
[88], Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619 at [136] and [137].
[89] Case 107/82 *AEG-Telefunken* v *Commission* [1983] ECR 3151 at [50].
[90] *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223.
[91] [2007] SGCCS 2.
[92] Case C-286/98 P *Stora Kopparbergs Bergslags* v *Commission* [2000] ECR I-9925 at [29].

(iv) Attribution of Liability

90. Consequent to the single economic entity doctrine, responsibility for a competition law infringement falls to the undertaking/economic unit as a whole. In *ICI v Commission (Dyestuffs)*,[93] the ECJ held that the actions of the subsidiary were attributable to the parent, rejecting the applicant's argument that the EC was not empowered to impose fines on it in respect of actions taken outside the EU. By use of its power to control its subsidiaries established within the EU, the applicant had been able to ensure that its decisions were implemented within that market. The subsidiary did not enjoy real autonomy in determining its course of action in the market.[94]

91. This approach has been generally affirmed by the courts of the EU, adhering to the view that where the "*parent company and its subsidiary form a single economic unit and, therefore, a single undertaking*" a decision imposing fines can be addressed "*to the parent company, without having to establish the personal involvement of the latter in the infringement*".[95]

92. In such a case, the parent and the subsidiary will be jointly and severally liable for the fine unless the parent company can adduce sufficient evidence to show that the subsidiary acts independently on the market or, otherwise, that the parent and subsidiary do not act as a single economic entity. In *Akzo Nobel*, at [65], the ECJ stated that "*it follows from that case-law, … that it is for the parent company to put before the Court any evidence relating to the economic and legal organisational links between its subsidiary and itself which in its view are apt to demonstrate that they do not constitute a single economic entity.*"

93. The ECJ in *Akzo Nobel* concluded by stating, at [77]:

> 77 *"**If the parent company is part of that economic unit, which…may consist of several legal persons, the parent company is regarded as jointly and severally liable with the other legal persons making up that unit for infringements of competition law**. Even if the parent company does not participate directly in the infringement, it exercises, in such a case, a decisive influence over the subsidiaries which have participated in it."*

[93] Cases 48, 49, 51-7/69, [1972] ECR 619.
[94] Cases 48, 49, 51-7/69, [1972] ECR 619 at [125] to [146].
[95] Case C-97/08 P, *Akzo Nobel v Commission* [2009] ECR I-8237 ("*Akzo Nobel*") at [58] to [59].

[Emphasis added]

G. Burden and Standard of Proof

94. CCS bears the legal burden of proving the infringements in question. Decisions taken by CCS under the Act follow a purely administrative procedure. As such, the standard of proof to be applied in deciding whether an infringement of the section 34 prohibition has been established is the civil standard, commonly known as proof on the balance of probabilities.[96]

95. CCS is mindful that an allegation of an infringement of the section 34 prohibition is a serious matter which may involve the issuance 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 has been established on the balance of probabilities. The evidence likely to be sufficiently convincing to prove an infringement will depend on the circumstances and the facts. In *JJB Sports plc and Allsports Limited v OFT,*[97] 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.

H. The Relevant Market

96. 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.

97. Agreements and/or concerted practices that involve directly or indirectly fixing prices, bid-rigging, sharing markets and/or limiting or controlling production or investments are, by their very nature, regarded as restrictive of competition to an appreciable extent.[98] In the present case, a distinct market definition is not necessary for the purpose of establishing an infringement of the section 34 prohibition because the restrictions at issue here relate to directly or indirectly fixing prices.

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[96] Appeal Nos. 1 & 2 Kn[2011] SGCAB 1 at [85].

[97] [2004] CAT 17 at [206].

[98] *CCS Guidelines on the Section 34 Prohibition* at 2.20 and 3.2.

98. However, once it is assessed that an undertaking has infringed the section 34 prohibition, and where CCS exercises its discretion to impose a financial penalty, it becomes necessary to define the relevant product and geographical market only for the purpose of assessing the appropriate level of penalties.

99. For the purposes of calculating the appropriate level of financial penalties in this case, CCS has determined that the relevant market is the market for the sale of Bearings to Aftermarket Customers in Singapore.[99] CCS assesses that the Parties are liable for infringement of the section 34 prohibition for an agreement and/or concerted practice with the object of restricting, preventing or distorting competition in the market for the sale of Bearings to Aftermarket Customers in Singapore.

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

(i) A Single Continuous Infringement by the Parties

(a) Introduction

100. In this ID, CCS concludes that the Parties engaged in a single continuous infringement, in pursuit of a common overall objective to co-ordinate on pricing of Bearings for sale to the aftermarket in [✂]Singapore, so as to maintain each Party's market share and protect their profits and sales,[100] during the period from at least 1998 until the end date of the infringement as set out in paragraph 394 below (the **"Market Share and Profit Protection Initiative"**). The Market Share and Profit Protection Initiative was made up of a number of different agreements and exchanges of information specifically for the [✂] Singapore. The evidence for each of these elements will be set out in this section. The Parties met regularly at meetings which occurred at two forums, the meetings in Japan and the meetings in Singapore. At these meetings, the Parties exchanged information, discussed and agreed

[99] Document marked [✂]-026 provided by [✂] (KSBP); Answers to Questions 57 and 60 of Notes of Information/Explanation provided by [✂] (KSBP) dated 3 July 2013; Answer to Question 38 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013; Answer to Question 45 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013; Answer to Question 12 of Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013; Answer to Question 49 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013; Answers to Question 24 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013; Answers to Questions 12, 33 and 34 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.

[100] Document marked [✂]-026 provided by [✂] (KSBP); Answers to Questions 142 to 148 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.

or attempted to agree on sales prices for Bearings to be sold to their respective Aftermarket Customers in Singapore. The objective of the parties in meeting, creating the [✂] Price List, reaching the minimum price agreements based on the[✂] Price List and the Japan Price List, exchanging information, reaching the price increase agreements and engaging in the concerted practices was to give effect to the Market Share and Profit Protection Initiative.

(b) <u>Background</u>

101. Representatives of the four Japan Parent Companies attended regular meetings in Japan in the period from as early as 1980 or 1990[101] until 31 March 2011[102] with the exception of NTN Japan which expressed its intention to stop attending the regular meetings in Japan from 6 September 2006.[103] Those regular meetings were known as [✂] Study Group meetings ("**ASG**"), [✂] Research Association meetings ("**ARA**") and Aji-Ken meetings. For the purposes of this ID, ARA, ASG and Aji-Ken meetings are referred to as the "Japan Meetings". At these meetings, among other things, the Japan Parent Companies discussed and agreed on overall strategies for the Singapore Subsidiary Companies to implement in pursuit of the Market Share and Profit Protection Initiative.

102. Representatives of the four Singapore Subsidiary Companies met regularly at covert meetings in Singapore in the period from at least 1998[104] until 2006. Those regular meetings were known as EM, the Singapore Exporters Meetings and the Singapore Export Managers' Meetings. For the purpose of the ID; EM, the Singapore Exporters Meetings and the Singapore Export Managers' Meetings are referred to as the "Singapore Meetings". At those meetings, the Singapore Subsidiary Companies discussed the overall strategies decided by the Japan Parent Companies and discussed methods by

[101] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at paragraph [3.3.1].

[102] Answer to Question 20 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013 and Nachi document, Response to Competition Commission of Singapore's request for further information of 7 June 2013 dated 21 June 2013, Annex A, paragraph 26 at page 12; Answer to Question 14 of Notes of Information/Explanation provided by [✂] (NSK) dated 29 May 2013; [2.6] of JTEKT and KSBP's submission dated 18 May 2012.

[103] Refer to paragraphs 375 to 379 below.

[104] Document marked [✂]-009, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013 contains the following statement that suggests that EM meetings were on-going from at least 1998, *"…Hence, we suggest that the* [✂] *Study Group unify the opinions and that a joint meeting of* [✂] *Study Group and EM, which has not been held since 1998, to be held with this matter being one of the agendas*".

which to implement those strategies to give effect to the Market Share and Profit Protection Initiative.

103. The Market Share and Profit Protection Initiative was made up of a number of agreements and exchanges of information by the Parties. These agreements and exchanges of information are summarised below. Each of these agreements and exchanges of information had the object of preventing, restricting and distorting competition in the market for the supply of Bearings to Aftermarket Customers in Singapore:

a. [✂] **Price List agreement** – In the period between 2001 and 2003, the Singapore Subsidiary Companies reached an agreement on the gross sale price for each category of Bearings for Aftermarket Customers. The gross sales price was known as the [✂] Price List ("[✂]**PL**") which sets out prices at which Bearings should be sold by each Party in [✂] Singapore. This agreement was documented in an [✂]PL published by each of the four Singapore Subsidiary Companies. Evidence shows that the Singapore Subsidiary Companies agreed on the [✂]PL and that they agreed with each other to implement it.

b. **The** [✂]**PL bottom price agreement or minimum price agreement** - By December 2003, the Singapore Subsidiary Companies concluded an agreement on the maximum discount percentage that could be applied to the gross price for each category of Bearings in the [✂]PL. The maximum discount percentage was used by the Singapore Subsidiary Companies to derive the "bottom price" for each category of Bearings for sale to Aftermarket Customers in Singapore. The bottom price could be determined by applying the maximum discount to the gross price in the [✂]PL. Because the gross prices in the [✂]PLs were expressed in Japanese Yen, it was necessary for the participants at the Singapore Meetings to agree on an exchange rate to be applied to the [✂]PLs to derive a figure relevant to the Singapore market. This bottom price would be the net minimum price at which each type of Bearing could be sold in [✂] Singapore. The evidence from the Parties supports the position that the bottom price or minimum price agreement was largely adhered to by the Singapore Subsidiary Companies.

c. **The Japan Price List agreement** - In the period 2005 to 2006, the Singapore Subsidiary Companies agreed to and took steps to conclude a price list applicable to [✂] Singapore, based on the Japanese Price List ("**JPL**") that had been agreed between the Japan Parent Companies. It was intended that the JPL-derived price list should replace the [✂]PL. While there is some evidence to show that the JPL agreement was concluded prior to the cessation of the

Singapore Meetings, even if it was not in fact concluded, the CCS considers that the discussions regarding the JPL agreement demonstrates an exchange of pricing information and future pricing intentions between the Parties.

d. **The JPL minimum price agreement** – By 14 March 2006 (the last known Singapore Meeting), the Singapore Subsidiary Companies agreed that the minimum price of Bearings to be sold to Aftermarket Customers in Singapore would be 28% off the JPL and they also agreed on an applicable exchange rate. While there is evidence to support the position that the JPL minimum price agreement was concluded prior to the cessation of the Singapore Meetings, even if the JPL minimum price agreement was not in fact concluded, CCS considers that the discussions regarding the JPL minimum price agreement demonstrates an exchange of pricing information and future pricing intentions between the Singapore Subsidiary Companies.

e. **Price increase agreements in the period 2004 to 2008** – There is evidence that price increase agreements were made that were intended to apply to the sale of Bearings in the aftermarket in Singapore. Those agreements were made during the Japan Meetings on 25 June 2004, 25 February 2005, in 2007 and 12 May 2008, following price increases in Japan as a result of increases in material costs.

f. **Exchange of price information in 2009 and 2010** – There is evidence that representatives from JTEKT, Nachi Japan and NSK Japan attended Japan Meetings on 14 July 2009 and 8 July 2010 where Bearings' price-related information was shared. The last known Japan Meeting was held sometime in March 2011.

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

105. This section has been organised as follows:

a. first, this section sets out the evidence obtained by CCS in support of the common overall objective being the Market Share and Profit Protection Initiative;

b. second, this section sets out the evidence obtained by CCS in support of the Japan Meetings and Singapore Meetings attended by the Parties, and the method by which the Japan Parent Companies exercised control and influence over the Singapore Subsidiary Companies;

c. third, this section sets out the evidence obtained by CCS in support of each of the agreements and the exchanges of information made by the Parties in support of the Market Share and Profit Protection Initiative; and

d. fourth, CCS's conclusion on the evidence are set out.

(c) Background to the Market Share and Profit Protection Initiative

106. The evidence before CCS supports the finding of a common overall objective by the Parties to co-ordinate on pricing of Bearings for sale to Aftermarket Customers in [✂] Singapore, so as to maintain each Party's market share and protect their profits and sales. For the purposes of this ID, CCS will focus on the evidence which supports the common overall objective for pricing of Bearings for sale to Aftermarket Customers in Singapore.

107. In giving effect to the common overall objective, discussions took place at the Japan Meetings between the Japan Parent Companies and at the Singapore Meetings between the Singapore Subsidiary Companies. The Market Share and Profit Protection Initiative with respect to [✂] Singapore, was discussed at the Japan Meetings. The Japan Parent Companies who participated in the Japan Meetings agreed on strategies to implement the Market Share and Profit Protection Initiative and instructed their Singapore Subsidiary Companies to discuss these matters and agree strategies to implement them at the Singapore Meetings and to implement those strategies.[105] The implementation of the Market Share and Profit Protection Initiative was a concerted effort between the Japan Parent Companies and their Singapore Subsidiary Companies.

(i) Evidence from KSBP

108. The overall objective of the Singapore Meetings was best described by [✂] of KSBP in a contemporaneous "handover" document he prepared in [✂] on the Singapore Meetings prior to [✂]departure from Singapore. [✂] described the overall objective of the Singapore Meetings as meetings, "*to avoid sales war by cheaper pricings and to protect each member company's healthy profit and sales.*"[106]

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[105] Answer to Question 105 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012 together with Exhibit marked [✂]-08032012; Answers to Question 74 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013; Document marked [✂]-011 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[106] Document marked [✂]-026 provided by [✂] (KSBP) and Answer to Questions 142 to 148 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.

(ii) Evidence from NSK

109. [✂] of NSK Japan who had attended the Japan Meetings said, *"We exchange information on what our company do and what we intend to do. E.g. we tell our competitors that we increase prices in Singapore by 3%...It is useful to know such information e.g. if I know that my competitor is increasing prices by 3% I know that I would not lose any market share if I also increase my prices."*[107]

110. [✂]of NSK Singapore, who had attended the Singapore Meetings, stated that, "*[t]he EM representatives had decided that there arethree ways to improve profitability: reduce imitation, reduce parallel business, and after that set up price list.*"[108] [✂] added that it was agreed between the Singapore Meeting participants that the price list would apply to [✂] to "*manage prices* [✂] *more easily."*[109]

(iii) Evidence from Nachi Singapore

111. [✂] of Nachi Singapore said that, "*Our Japan HQ asked us to check with our competitors with regard to the increase in prices for their companies. As with any company, we would like to increase profit and to increase prices but would not want to increase prices alone as this will mean we will lose market shares to our competitors.*"[110]

(iv) Evidence from NTN Singapore

112. [✂] of NTN Singapore said that at the Singapore Meetings, *"We would agree and come up with a minimum price to be applied to the* [✂] *Price List to prevent our profits from being eroded by parallel imports and counterfeit bearings"*.[111] In a document [✂]-**003** prepared by [✂] in 2001, it was stated that the Parties had intended to, *"prevent prices from collapsing in* [✂] *and thereby raise the level of market price itself through coordination among the four makers as the industry"* and the Parties wanted to achieve this by setting a minimum price in [✂].[112][✂]further explained that this was done during

[107] Answer to Question 49 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[108] Answer to Question 72 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[109] Ibid.
[110] Answer to Question 24 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.
[111] Answer to Question 40 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[112] Document marked [✂]-003, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

the Singapore Meetings and that the intention of fixing the minimum price, *"was the common understanding among the 4 participants."*[113]

(d) <u>The Japan Meetings and Singapore Meetings</u>

113. Set out below is a description of the Japan Meetings and Singapore Meetings attended by representatives of the Parties.

114. The evidence obtained by CCS demonstrates a long history of contact, information exchange and agreements between the Parties. As stated in paragraph 101 above, the Japan Parent Companies attended Japan Meetings regularly from as early as between 1980 and 1990.[114] JTEKT, NSK Japan and Nachi Japan continued to meet until March 2011.[115]

115. The evidence shows that at the Japan Meetings, the Japan Parent Companies engaged in information exchange regarding each Party's business in [✂] Singapore; reached agreements on pricing for [✂] to be implemented by their subsidiary companies located in these [✂]; setting "bottom prices" for the sale of Bearings to Aftermarket Customers in Singapore; and exchanged information and/or agreed on a range of percentage price increases in response to increases in the price of steel. The evidence also shows that the Japan Meetings were the coordination centre for the Singapore Meetings between the Singapore Subsidiary Companies.

116. Based on the information available, the Singapore Meetings were held from at least 1998.[116] The last known Singapore Meeting was held on 14 March 2006.

117. At the Singapore Meetings, management level representatives from the Singapore Subsidiary Companies implemented the Market Share and Profit Protection Initiative discussed and agreed at the Japan Meetings. Evidence shows that participants of the Singapore Meetings deferred to participants of the Japan Meetings for decision-making in relation to implementation of

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[113] Answer to Question 41 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[114] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at [3.3.1]

[115] Answer to Question 20 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.

[116] Document marked [✂]-009, Notes of Information provided by [✂] (JTEKT) dated 27 June 2013, contains the following statement that suggests that EM meetings were on-going from at least 1998, *"...Hence, we suggest that the* [✂] *Study Group unify the opinions and that a joint meeting of* [✂]*Study Group and EM, which has not been held since 1998, to be held with this matter being one of the agendas*".

proposals discussed and agreed at the Singapore Meetings in order to ensure that these proposals gave effect to the overall objective of the Parties.[117]

118. Given the ownership of the relevant Singapore Subsidiary Companies by the Japan Parent Companies and the exercise of control that the Japan Parent Companies exercised over the Singapore Subsidiary Companies, CCS finds that each of the Japan Parent Companies and their respective Singapore Subsidiary Companies constitute single economic entities and are, therefore, jointly and severally liable for the single continuous infringement. CCS's detailed reasoning on this is set out in paragraphs 351 to 370.

(i) Overview of the Japan Meetings

(A) Evidence from NSK Japan

119. [✂]of NSK Japan attended Japan Meetings in the period from 6 June 2006 to 14 July 2009. He stated that the main purpose of the meeting was to exchange market information and to agree on a range of percentage price increases for Aftermarket Customers in the [✂] Singapore market.[118]

120. Information exchanged at the Japan Meetings included market information such as (1) growth ratio by industry, [✂]; (2) latest activities and market situation of competitors in each market; (3) the latest news from the bearing industry [✂]; (4) the pricing trends [✂]; (5) price increases; and (6) pricing history [✂]. In relation to price increases, the range of percentage price increases and time of implementation were discussed and agreed upon by NSK Japan and the other competitors. Information was also exchanged on the history of price increases.[119]

121. [✂] of NSK Japan said that, "*Aji-ken directed the Singapore subsidiaries to meet at the EM meeting. We could agree on most matters during the EM without having to seek permission from ASG.*"[120]

[117] See below "Exercise of control by Japan Meetings participants over the Singapore Meetings participants" at [133] to [134].
[118] Answers to Question 49 of Notes of Information/Explanation Provided by [✂] (NSK) dated 17 April 2013.
[119] Answer to Question 29 of Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.
[120] Answer to Question 71 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.

(B) Evidence from Nachi Japan

122. According to [✂]of Nachi Japan, after each Japan Meeting, a Singapore Meeting would be held to confirm the outcome of the Japan Meeting.[121] At the Singapore Meetings, the participants would share and discuss the information received from their counterparts who attended the Japan Meetings. [122]

(C) Evidence from NTN Japan

123. [✂] attended Japan Meetings in the period from April 2005 to August 2006. According to [✂], the participants of the Japan Meetings would "*discuss to agree"* a general price increase for Bearings. He would then pass the information to the NTN Singapore.[123]

(D) Evidence from JTEKT

124. [✂] attended Japan Meetings in the period from 2003 to 2010. According to [✂], the Japan Meetings discussed "*market situations*" in [✂] Singapore, "*price level and status of other competitors*".[124]

(ii) Overview of the Singapore Meetings

125. Singapore Meetings were "sub-meetings" of Japan Meetings, and were held in [✂] Singapore, to review details discussed at Japan Meetings, so that decisions made in Japan Meetings in relation to the [✂]PL[125] and price increases[126] could be applied locally by the respective [✂] subsidiaries.

126. NSK Japan, NTN Japan, JTEKT and Nachi Japan have admitted that representatives of each of their Singapore Subsidiary Companies attended the Singapore Meetings. The organiser of the Singapore meetings would change every year, and the organiser would inform the other participants of the date and venue of the meeting.[127] A meeting was held every one or two months.

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[121] Answer to Question 36 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[122] Ibid.
[123] Answer to Question 45 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[124] Answer to Question 17 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[125] Answer to Question 72 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[126] Answer to Question 15 of Notes of Information/Explanation provided by [✂] (NSK) dated 29 May 2013.
[127] Answer to Question 51 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013; Answer to Question 10 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June

In addition, there was no leader for discussions on price related matters in Singapore.[128]

(A) Evidence from KSBP

127. The objectives of the Singapore Meetings are summarised in the document [✂]-**026**[129] dated 28 June 2006 provided by KSBP. The title of the document translated into English is "*Handle with Care EM (4 member companies) related matter*". This document was identified by [✂] of KSBP as a document that he created in [✂].[130] On the objective of the Singapore Meetings, the document states:

> "*In Singapore, 4 major Japanese bearing manufacturers (Koyo, NSK, NTN, Nachi) regularly hold a meeting and discuss sales prices (Commonly called EM: Exporters' Meeting).*
>
> *The objective of the meeting is to avoid sales war by cheaper pricings and to protect each member company's healthy profit and sales. It collaborates with the* [✂] *Study Group (consisted of the 4 member companies' Japan Headquarters to discuss overall issues of* [✂]*).*
>
> *To be more precise, it coordinates prices for after-market. In main, it brings the member companies to agree with the bottom price levels and coordinates the harmonized price increases. It always discusses with the* [✂] *Study Group and adjusts its directions accordingly.*
>
> *…*
>
> *OEM businesses are not discussed at EM but are handled individually.* [✂] *for where EM discusses after-market pricing are* [✂]*…"*

128. Document [✂]-**026** also describes an agreement made by the participants at the Singapore Meetings as follows:

2013; Answer to Question 80 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013.

[128]Answer to Question 25 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.

[129] Document marked [✂]-026 provided by [✂] (KSBP).

[130] Answer to Question 143 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013

"(5) Singapore

EM has set the bottom prices for customers within the island. It has been set rather high as a precaution for re-export to the surrounding countries. KSBP intends to keep the business within the EM's agreement."

(B) Evidence from Nachi Singapore

129. The evidence from [✂]of Nachi and [✂]of Nachi Singapore, both of whom attended Singapore Meetings in the period April 2005 to 2006, corroborates the evidence contained in the document [✂]**-026** and adds some more detail about the agreements made and concerted practices engaged in by the participants of the Singapore Meetings. [✂] and [✂] stated that at the Singapore Meetings, the attendees engaged in the following conduct:

a. the exchange of information including each Party's pricing information for their Aftermarket Customers and pricing information exchanged at the Japan Meetings;[131]

b. reaching agreement on a minimum price for the sale of Bearings to Aftermarket Customers in [✂] Singapore;[132] and

c. attempting to agree a fixed price list [✂] similar to the Japan Price List for Aftermarket Customers and agreeing on a maximum discount to apply to that price list.[133]

130. When asked to describe the main purpose of the Singapore Meetings, [✂] said, "*We talked about minimum price to sell to* [✂] *in Export Meetings (EM).* ***I think that the purpose of EM meetings is to agree on a minimum price for bearings sold to*** [✂] ***for the aftermarket business…For the case of Singapore, we talk about minimum prices to distributors in Singapore.*** *For Nachi Singapore aftermarket business, we* [✂][134] *who will then* [✂]. ***At the EM meetings, we agreed to the minimum price proposed at the EM meetings*** *but Nachi Singapore did not follow the agreed prices.*" [135] ***[Emphasis added].***

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[131] Answer to Question 65 of Notes of Information provided by [✂] (Nachi) dated 9 May 2013.
[132] Answer to Question 17 of Notes of Information provided by [✂] (Nachi) dated 14 May 2013.
[133] Answers to Questions 86 and 87 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013.
[134] [✂].
[135] Answer to Question 17 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.

(C) Evidence from NTN Singapore

131. The evidence of [✂] of NTN Singapore,[136] who attended Singapore Meetings in the period between November 2001 and March 2006, is consistent with that of the evidence from Nachi Singapore and KSBP. [✂] stated that the objective of Singapore Meetings was to discuss prices for Aftermarket Customers in [✂] Singapore. Mr [✂] of NTN Singapore who attended Singapore Meetings in the period between August 2003 and January 2006 also added that the participants of the Singapore Meeting exchanged information on price increases, and on the shortage of Bearings.[137]

(D) Evidence from NSK Singapore

132. [✂] of NSK Singapore attended the Singapore Meetings in the period from July 2000 to 2006. He said that, "*prior to my involvement at the EM meetings, I came to understand that the EM meeting price discussion was based on the following:* [✂] *price level was lowest for a while and profitability was very low for the four companies. Customer negotiations were on individual basis and not based on price list, leading to low sales prices. The EM representatives had decided that there were three ways to improve profitability: reduce imitation, reduce parallel business, and after that set up price list…These matters were agreed upon in EM prior to my arrival to Singapore. Aji-Ken also initiated such agreement.*"[138]

(iii) Exercise of control by the Japan Meeting participants over Singapore Meeting participants

133. There is a strong link between the Japan Meetings and the Singapore Meetings as evidenced by the extract from the summary document [✂]**-026** set out in paragraph 127 above. The evidence shows that the Japan Meetings exercised control over the Singapore Meetings:

(a) [✂] of Nachi Singapore, when providing background about the Singapore Meetings, said, *"there is some mutual cooperation and relationship (framework of cooperation) between the 4 competitors in Japan and the EM meetings are just an extension of this cooperation. I*

[136] Answer to Question 38 of Notes of Information/Explanation provided by [✂] (NTN) dated10 June 2013.
[137] Answer to Question 49 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[138] Answer to Question 72 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.

think in Japan, they were discussing on the pricing of bearings to [✂] *from Japan."*[139]

(b) The earliest piece of documentary evidence concerning the Singapore Meetings and the [✂]PL is a document provided by Nachi entitled, *"(Confidential) Please dispose of this document after reading. May 25 2001.*" This document appears to be a minute of a Japan Meeting and Japan Heads of Sales Joint Meeting held Tokyo on 23 May 2001.[140] At the end of that document is a heading "*Singapore EM*" and the following minutes:

> "*Each company shall consider action plans for Singapore,* [✂] *in which introduction of the* [✂] *Common Fixed Price List is undecided, by the EM to be held on June 14th, and the companies shall report the result of the negotiation conducted at the EM on June 14th based on the proposed action plans to the persons in charge of sales at the respective companies through the* [✂]*Study Group.*"

(c) Further, according to [✂] of Nachi Japan, after each Japan Meeting, a Singapore Meeting would be held to confirm the outcome of the Japan Meeting. At Singapore Meetings, participants would share information they had received from their counterparts who attended the Japan Meetings.[141]

(d) The connection between the Singapore Meetings and the Japan Meetings can also be found in documents submitted by Nachi Japan to CCS which show that at least during the period when [✂]of Nachi Japan attended the Japan Meetings (in the period from 2004 to 2011), he sought and obtained updates from Nachi Singapore's attendees at the Singapore Meetings on the progress of discussions that had taken place at the Singapore Meetings.[142]

(e) The evidence from [✂] of NSK Singapore supports the conclusion that there was a connection between the Singapore Meetings

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[139] Answer to Question 24 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.

[140] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 document C(1)

[141] Answer to Question 36 of the Notes of information/Explanation provided by [✂] (Nachi) dated 22 May 2013.

[142] Documents marked [✂]-09; [✂]-10; [✂]-11; [✂]-12; [✂]-13, Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013.

and the Japan Meetings. During the interview with CCS, he stated that the [✂]PL was agreed by participants of Japan Meeting. An employee of NSK Japan who participated at the Japan Meetings would then email the [✂]PL to [✂] of NSK Singapore.[143] When the [✂]PL was issued by Japan Meetings, NSK Singapore was directed to apply the [✂]PL to the price list for [✂].[144]

134. There was also a flow of information from the Japan Meetings to the Singapore Meetings and from the Singapore Meetings to the Japan Meetings as reflected in the following evidence:

(a) [✂] of Nachi Japan stated that his role at the Singapore Meetings was to verify the accuracy of information obtained from the Japan Meetings.[145]

(b) [✂] of NSK Singapore stated that the NSK Japan representatives who attended the Japan Meetings would give [✂] instructions and suggestions on the implementation of the [✂]PL in Singapore [✂]. He stated that the [✂]PL was agreed by participants of the Japan Meetings, and an NSK employee who participated at those meetings would then email the price list to him.[146] [✂] of NSK Japan, who attended the Japan Meetings, added that NSK Singapore was required to report back to him on (i) the price increases and (ii) when such price increases were implemented.[147]

(c) In a document titled, "*Singapore EM meeting notes*" prepared by [✂] of NTN Singapore dated 30 June 2005, the contents of a Japan Meeting relating to the transition to the use of the JPL are recorded as having been reviewed at the Singapore Meeting held on 28 June 2005.[148]

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[143] Answer to Question 74 of the Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[144] Answer to Question 89 of the Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[145] Answer to Question 119 of Notes of Information/ Explanation provided by [✂] (Nachi) dated 9 May 2013.
[146] Answer to Question 74 of the Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[147] Answers to Question 49 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[148] Document marked [✂]-023, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013

(d) According to [✂] of NTN Singapore,[149] the Japan Meetings were attended by the Japan Parent Companies to discuss issues relating to [✂]. The Japan Parent Companies would then pass down information to their Singapore Subsidiary Companies. As the information passed down to the Singapore Subsidiary Companies may not be similar for each Party, the Singapore Subsidiary Companies would review and compare the information they received from their respective Japan Parent Companies that related to the [✂] during the Singapore Meetings. [✂] added that as a representative of NTN Singapore he was required to follow instructions from NTN Japan. He described the relationship as being similar to a parent and child relationship, and as he understood it, the Japan Meetings instructed the Singapore Meetings on important matters.

(e) In Nachi's records of a Japan Meeting dated 23 May 2001, demonstrating the early stages of implementation of the [✂]PL, the record states, "*Singapore EM: Each company shall consider action plans for Singapore,* [✂] *in which the introduction of the* [✂]*Common Fixed Price List is undecided, by the EM to be held on June 14th, and the companies shall report the result of the negotiation conducted at the EM on June 14th based on the proposed action plans to the persons in charge of sales at the respective companies through the* [✂] *Study Group.*"[150]

(f) [✂] of KSBP has stated that discussion at the Singapore Meetings on minimum prices and related information was reported to JTEKT and such information would be discussed at the Japan Meetings.[151] The evidence of [✂], KSBP reflects this where he states, "*At the Exporters Meetings we would make memos on what was discussed and what was agreed at the meetings and this was sent to head office. This memo then would be used at the ARG meeting or the person who attended the ARG meeting would have seen it. Then after the ARG they would send their memo to KSBP and I would see what was discussed and agreed at the ARG and sometimes in that memo, it would include advice or*

[149] Answer to Questions 40 and 56 of Notes of Information /Explanation provided by [✂] (NTN) dated 10 June 2013.
[150] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 21 February 2013, Document C-01.
[151] Answer to Question 117 of Notes of Information/Explanation provided by [✂] (KSBP) dated 6 March 2012.

instructions on what to discuss at the next Exporters Meeting in Singapore."[152]

(g) [✂] of KSBP stated that after the Japan Meetings were completed, the contents of the meeting were passed down to KSBP. [✂] would then attend the Singapore Meetings to confirm what was discussed in Japan.[153]

(h) [✂] of KSBP stated that discussions on non-compliance with the minimum price agreement at the Singapore Meetings were also reported to Japan Parent Companies, "*From time to time… I would bring* [complaints by my distributors that competitors were selling their bearings at a low price] *to the meeting and complain to the competitors and ask if they are following the minimum price that we had agreed. My competitors would also complain to me... and we complained to head office in Japan.*"[154]

(i) [✂] of Nachi Singapore stated, "*Information obtained from my competitors in the EM meetings would be useful for Nachi Japan to decide if prices should be increased in* [✂]. *The information obtained from the EMs would be one of the factors we consider for future price increases. For example, if my competitors informed me that they will not increase prices, I would report to Nachi Japan to reconsider the internal price increase. If the internal price increases, it will affect the price for sales to the aftermarket distributors and might affect our market share if none of our other competitors increase their prices.*"[155]

(iv) <u>Duration of the meetings</u>

135. Nachi Japan, in its submission to CCS dated 18 March 2013, stated that there was a long history of information exchange and co-operation between the Japan Parent Companies.

136. On the Japan Meetings, Nachi Japan explained that information exchange and co-operation took place predominately in face-to-face meetings, the first of which was held as early as between 1980 and 1990 and which ended

[152] Answer to Question 110 of Notes of Information/Explanation provided by [✂] (KSBP) dated 9 March 2012.
[153] Answer to Question 68 of Notes of Information/Explanation provided by [✂] (KSBP) dated 7 March 2012.
[154] Answers to Questions 98 and 100 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.
[155] Answer to Question 24 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.

around March 2011. During the Japan Meetings, the Japan Parent Companies discussed, amongst other things, the prices of each Party's Bearings including the prices applicable to Aftermarket Customers in Singapore. These exchanges of information increased in frequency during the period 2004 to 2008 when the price of steel, a key input cost into the price of Bearings, was increasing.[156] During that time, agreements were reached between the Japan Parent Companies in relation to percentage price increases to be implemented across Aftermarket Customers. This included Aftermarket Customers in Singapore.

137. Evidence shows that the Singapore Meetings were held from at least 1998.[157] [✂] of KSBP said that the Singapore Meetings were on-going when he moved from the Tokyo office of JTEKT to the Singapore office of KSBP in June 2001.[158]

138. Having regard to the documentary evidence and the evidence from the representatives interviewed by CCS, CCS has compiled:

    a. a list of Japan Meetings dates at Annex A; and

    b. a list of Singapore Meetings dates at Annex B.

139. The last known Singapore Meeting, held on 14 March 2006, was attended by [✂] of NSK Singapore, [✂] of KSBP, [✂] and [✂] of Nachi Singapore and Nachi Japan respectively and [✂] and [✂] of NTN Singapore.[159] A contemporaneous note of that meeting made by a representative from NTN Singapore shows that the participants had considered that, *"*[the] *Competition Act took effect in Singapore as of January 2006…*". However, the note states further that, "*if a meeting is needed separately, the meeting shall be held only by the Japanese employees."*

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[156] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at [3.1.2].

[157] Document [✂]-009 marked, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013, which contains the following statement that suggests that EM meetings were on-going from at least 1998, *"…Hence, we suggest that the* [✂] *Study Group unify the opinions and that a joint meeting of* [✂]*Study Group and EM, which has not been held since 1998, to be held with this matter being one of the agendas*".

[158] Answer to Question 98 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.

[159] Answer to Question 22 of Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013. Document [✂]-028, annexed to Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.

140. The totality of the evidence shows that even though the parties agreed to no longer meet at the Singapore Meetings, the single continuous infringement continued and it did so by continued operation of the Japan Meetings and instructions issued by the Japan Parent Companies to their Singapore Subsidiary Companies in pursuit of the Market Share and Profit Protection Initiative.

141. Even after the Singapore Meetings had ceased, the evidence shows that the Japan Meetings continued. For instance, KSBP representatives who attended the Japan Meetings continued to discuss information about pricing for the Bearings market [✂] after the last known Singapore Meeting.[160]

(v) <u>Conclusion on the Japan Meetings and Singapore Meetings</u>

142. Based on the evidence obtained, CCS has concluded that the Japan Parent Companies attended, through their representatives, regular Japan Meetings in the period from as early as 1980 or 1990[161] until March 2011[162] with the exception of NTN Japan which expressed its intention to stop attending the Japan Meetings from 6 September 2006.[163] At those meetings, among other things, the Japan Parent Companies discussed and agreed the overall strategies for the Singapore Subsidiary Companies to consider and implement in pursuit of the Market Share and Profit Protection Initiative. At those meetings, the Japan Parent Companies contributed to the Market Share and Profit Protection Initiative by discussing and agreeing the overall strategies and methods by which to implement those overall strategies for discussion by the Singapore Subsidiary Companies at the Singapore Meetings. The evidence set out in paragraphs 119 to 132 demonstrates that there can be no doubt that the participants in both the Japan Meetings and the Singapore Meetings were aware or could reasonably have foreseen that their contributions to those meetings was in pursuit of the Market Share and Profit Protection Initiative.

143. In pursuit of the Market Share and Profit Protection Initiative, in relation to the sale of Bearings to Aftermarket Customers in Singapore, the evidence shows that representatives of the Singapore Subsidiary Companies met regularly at covert Singapore Meetings in the period between at least 1998

[160] Answers to Question 117 of Notes of Information/Explanation provided by [✂] (KSBP) dated 7 March 2012.
[161] Nachi document, titled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at [3.3.1].
[162] Answer to Question 20 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[163] Refer to paragraphs 375 to 379 below.

until March 2006. At the Singapore Meetings, the Singapore Subsidiary Companies contributed to the Market Share and Profit Protection Initiative by discussing the overall strategies decided by the Japan Parent Companies and discussed methods by which to implement those overall strategies. [✂] of KSBP provided a document [✂]-**026** which states, "*[I]t collaborates with the* [✂] *Study Group (consisted of the 4 member companies' Japan Headquarters to discuss overall issues of* [✂]*) always discusses with the* [✂] *Study Group and adjusts its directions accordingly"*.[164] The evidence set out in paragraphs 119 to 132 demonstrates that there can be no doubt that the participants in those meetings were aware or could reasonably have foreseen that their contributions to those meetings was in pursuit of the Market Share and Profit Protection Initiative.

144. The last known Singapore Meeting was held on 14 March 2006. However, this fact does not lead to the conclusion that the agreements made at the Singapore Meetings came to an end. This is because the evidence obtained by CCS shows that while the Singapore Meetings ceased, the Market Share and Profit Protection Initiative continued. There is no evidence before CCS to show that the Parties had taken any steps to denounce the cartel or distance themselves from the arrangements and agreements and concerted practices made by the Parties at the Singapore Meetings or to publicly distance themselves from the cartel and its objectives. The statement, *"[the] Competition Act took effect in Singapore as of January 2006…*"[165] contained in the NTN document falls far short of what the legal authorities require for the purposes of publicly distancing. Similarly, the mere fact that the parties agreed to no longer meet at the Singapore Meeting also falls far short of the requirements by the authorities in public distancing as set out in paragraphs 40 and 48 to 49.

145. Further, the very same note of the 14 March 2006 Singapore Meeting goes on to state, if a meeting is needed separately, the meeting shall be held only by the Japanese employees.[166] Therefore, it is clear that the Parties had no intention of denouncing the cartel and ceasing the activities in pursuit of the Market Share and Profit Protection Initiative. Further, as will be discussed in the section on minimum price agreement below, at that very same meeting, the Parties reached a conclusion on the minimum price agreement to be applied in the sale of Bearings to Aftermarket Customers in Singapore.

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[164] Answer to Question 142 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013 and document marked [✂]-026.

[165] Document marked [✂]-028, Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.

[166] Document marked [✂]-027, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

Finally, the evidence supports the finding that the Parties did continue to meet, discuss and agree on price related matters for application to Aftermarket Customers in Singapore at the Japan Meetings. Set out below is the evidence obtained by CCS in relation to the agreements and concerted practices made between the Parties in pursuit of the common overall objective of the single continuous infringement.

(e) [✂]*PL and minimum price agreement*

(i) *Summary of the* [✂]*PL and minimum price agreement*

146. As stated above, [✂]PL was discussed by the participants of Japan Meetings. The participants of the Japan Meetings agreed on the implementation of the [✂]PL [✂]and instructed the participants of the Singapore Meetings to implement the [✂]PL in Singapore.[167]

147. The participants of the Singapore Meetings then worked out the details of the [✂]PL and its implementation as instructed by the Japan Meetings. After the Singapore Meeting participants had agreed on the [✂]PL: (1) NSK Singapore published a document titled, "[✂] *Price List Master 2002 NSK Ltd Japan*"[168]; (2) Nachi Singapore published a document titled, "[✂] *Price List Master 2003 Nachi Fujikoshi-Corp*"[169]; and (3) KSBP published a document titled "[✂] *Price List Master Koyo Seiko Co Ltd 2003*".[170] [✂] of NTN Singapore said that NTN had a hard copy of its 2003 [✂]PL when he arrived in Singapore in 2003.[171] The Singapore Subsidiary Companies also exchanged copies of each other's [✂]PL.[172]

148. The gross prices in the [✂]PLs were expressed in Japanese Yen. Therefore, it was necessary for the participants of the Singapore Meetings to agree on an exchange rate to be applied to the [✂]PLs to derive a figure relevant to the Singapore market. Details on the exchange rate agreements are set out in paragraph 229 to 235 below.

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[167] Answers to Question 105 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012 together with Exhibit marked [✂]-08032012; Answers to Question 74 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013; Document marked [✂]-011, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[168] Document [✂]-010 to Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.

[169] Document marked 002a, Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.

[170] Document marked [✂]-007, annexed to Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[171] Answer to Question 78 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[172] Answer to Question 66 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

149. Based on the evidence available to CCS, CCS finds that the participants at the Singapore Meetings discussed how to implement the [✂]PL for the sale of Bearings to their Aftermarket Customers in Singapore. However, CCS understands that the participants of the Singapore Meeting encountered some unique difficulties in implementing the [✂]PL in Singapore not encountered in the implementation of the [✂]PL in other[✂] jurisdictions.

150. Therefore, with the knowledge and consensus of the participants at the Japan Meetings, the participants at the Singapore Meetings concluded a minimum price agreement. In relation to the [✂]PL, both the Japan Meetings and the Singapore Meetings were involved in its creation and implementation, although the participants at the Singapore Meetings were tasked to work out the details of the [✂]PL. Matters discussed at the Japan Meetings were regularly reviewed at the Singapore Meetings; similarly, matters discussed at the Singapore Meetings, such as the [✂]PL and the minimum price agreement, were regularly reported to the participants at the Japan Meetings.[173] Details of the evidence available to CCS on these matters are set out below.

(ii) The [✂]PL

151. The [✂]PL is known by various names. It is known as the [✂] Price List, the [✂] Common Fixed Price List and the [✂]PL.[174] For the purposes of this ID, [✂]PL is used.

(A) The [✂]PL is based upon the JPL

152. The [✂]PL was based upon the JPL which is also known as the Common Price List or the Japan Common Price List.[175] For the purposes of the ID, JPL is used. The requirement to derive the [✂]PL was an agreement reached by the participants of the Japan Meetings and the participants in the Japan Meetings instructed the participants at the Singapore Meetings to review and implement the [✂]PL.[176]

[173] Answer to Question 60 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[174] Answer to Question 105 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012 and document 00[✂]PL.
[175] Answer to Question 122 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.
[176] Answer to Question 105 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012 together with Exhibit marked [✂]-08032012; Answer to Question 74 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.

153. The evidence obtained by CCS shows that during the period from 2000 to 2006 there were at least two iterations of the [✂]PL.[177] JTEKT produced to CCS a document [✂]-**02** titled *00*[✂]*LP* which was identified by [✂], KSBP as the [✂] Price List 2000.[178] This is the earliest known [✂]PL document provided to CCS. [✂] gave evidence that the [✂]PL 2000 was a gross price list based upon the 1993 JPL and that there was a revision to the [✂]PL in 2002 that was based on the 2000 or 2001 JPL.[179]

154. The evidence from [✂]of NTN Singapore substantiates the evidence of [✂], KSBP. According to [✂], "*The* [✂] *Price List ("*[✂]*PL") was originally established in 2000 or 2001 and it was based on the Japan Price List ("JPL")*."[180] However, [✂]stated that the domestic market in Japan, which is the basis of the JPL, and the [✂] markets were different. These differences in the markets were studied and taken into account when the [✂]PL was created.[181]

155. The evidence of [✂], KSBP corroborates this. [✂] gave a very detailed description of the method by which the [✂]PL was created. He stated "*The Competitors at the Exporters Meeting would agree on the gross price for each bearing individually and this would then form the* [✂] *Price List…*".[182]

(B) <u>The JPL</u>

156. The JPL is the gross price list for Bearings sold to Aftermarket Customers in the Japanese domestic market. There is evidence to suggest that the JPL published by each Japan Parent Company was roughly similar.[183]

157. The evidence available to CCS shows that the JPL was reviewed and issued yearly, save for the period between 1994 and 2000 where there were no new JPLs issued.[184] According to [✂] of KSBP, although new price lists were not

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[177] Answer to Question 130 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.

[178] Answer to Question 105 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012 together with Exhibit marked [✂]-08032012.

[179] Answers to Questions 122 to 130 of Notes of Information/Explanation provided by [✂] (KSBP) 8 March 2012.

[180] Answer to Question 8 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

[181] Answer to Question 8 of Notes of information/Explanation provided by [✂] (NTN) 11 June 2013.

[182] Answer to Question 106 of the Notes of information/Explanation provided by [✂] (KSBP) dated 8 March 2012.

[183] Answers to Questions 121, 122 and 123 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013.

Answer to Question 67 of Notes of Information/Explanation provided by [✂] dated 3 July 2013.

[184] Answer to Question 123 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.

issued during that period, price adjustments continued, and that was done by changing the discount rates which were applicable to the JPL.[185]

(C) The creation of the [✂]PL

158. The creation and review of the [✂]PL was not a simple task and it was discussed at both the Japan Meetings and Singapore Meetings. The evidence shows that the difficulty stemmed from adjusting the prices in the JPL to form an [✂]PL suitable for the [✂] market. This was further complicated by the fact that the JPL was revised every year.

159. Based on the Singapore Meeting minutes of 26 October 2001[186] provided by KSBP, it was recorded that NSK had, at the Japan Meeting, asked for a revision of the [✂]PL in accordance with the JPL for year 2000. KSBP's view however, was that the there was already in existence an [✂]PL and that the bottom prices had already been set in that price list. It was also recorded that NTN was strongly against the idea due to the time and effort spent in creating the existing list. KSBP was unclear as to why the [✂]PL should be in accordance with the JPL and noted that the participants at the Singapore Meeting were not in a position to decide to what extent the [✂]PL should be in accordance with the JPL, as the [✂]PL had not been introduced to the [✂] market yet.

160. This is consistent with NTN's records of the meeting, on the differing views and the tension between the [✂]PL and JPL. Based on the Singapore Meeting minutes of meeting on 7 December 2001[187] provided by NTN, it was reported that the participants at the Japan Meetings did not fully understand how the participants at the Singapore Meeting would use the [✂]PL. The participants at the Singapore Meeting also had differing views on the implementation of the [✂]PL, in particular, whether it should continually be adjusted to follow the changes to the JPL.

161. The extract of the meeting minutes on 7 December 2001 below captures the differing views on the purpose and significance of the [✂]PL.[188] NTN has stated that the letters used to represent the four companies in NTN's minutes

[185] Answer to Question 124 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.
[186] Document Appendix 53 on "EM 26 October" submitted by KSBP.
[187] Document marked [✂]-008, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[188] Document marked [✂]-008, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

were assigned as follows, "S" is NSK, "C' is Nachi, "T" is NTN and "K" is JTEKT.[189]

> *"S: It will be used as a common guideline for the different areas and the four companies. In the future, we wish to replace the local regular price list with the common list for* [✂]. *The common list for* [✂]*should be reviewed whenever the domestic prices are changed.*
>
> *T: If it is a guideline for the different areas and the four companies, the common regular price list for* [✂] *is already performing the function with no problems. We do not understand why we should expend so much energy to change the common list for* [✂] *to match the 2001 domestic price list of Japan.*
>
> *S: We are gradually adjusting the domestic prices for Japan to match the price curve of SKF.*[190] *The price curve of SKF matches with our cost curve, so we want to get as close as possible to the SKF curve.*
>
> *T: Though S's cost curve may be close, the situation of the other companies may not be the same. We wonder why it is necessary to match the market price curve for* [✂], *which was established over years, to the SKF curve. Rather than deal with this issue, we believe the priorities should be to prevent the flow of products made in China and Korea as well as parallel import products into the market.*
>
> *EM: The understanding for the common regular price list varies between the* [✂] *Study Group, EM, and also among the four companies. We will propose to the* [✂] *Study Group a joint meeting with the EM to reach a consensus for the future direction."*

162. KSBP also recorded similar issues in its Singapore Meeting minutes for 7 December 2001,[191] and that a joint meeting between the Japan Meeting participants and Singapore Meeting participants should be held. During the

[189] Answer to Question 48 Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[190] SKF refers to SKF Group, which is a global supplier of products, solutions and services within rolling bearings, seals, mechatronics, services and lubrication systems.
[191] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "EM 7 December".

Singapore Meeting held on 7 December 2001,[192] it was recorded that there were discussions between the Singapore Meeting participants about the "[✂]*common list price*" which CCS understands to be synonymous with the [✂]PL.[193] At this meeting, the Singapore Meeting participants discussed the operation of the [✂]PL and it was recorded that: "*With regard to the direction of* [✂] *common price list, we believe* [✂] *Study Group and EM should have the same understanding. Hence, we suggest that the* [✂] *Study Group unify the opinions and that a joint meeting of* [✂] *Study Group and EM, which has not been held since 1998, to be held with this matter being one of the agendas*". [194] This record is further evidence of the close inter-relationship between the Singapore Meetings and the Japan Meetings as set out in paragraph 133 to 134 above.

163. Further minutes provided by KSBP on the Japan Meeting on 17 December 2001[195] showed that the participants at the Japan Meeting decided that the new [✂]PL, based on the 2000 JPL, was to be implemented. Under the topic "*Matters confirmed by the* [✂] *Study Group*", it was recorded that "*Member companies agreed to consider the new* [✂] *Price List suggested by S (based on S' 2000 Japan domestic price list) as the new* [✂] *common price list…..Existing version of the* [✂] *Price List will be abolished. If need to refer by any means, it should be referred as "Old* [✂] *Price List.*"

164. In the same meeting minutes, the participants at the Japan Meeting also considered whether a joint meeting should be held with the Singapore Meetings as suggested by the participants of the Singapore Meetings. It would appear from the minutes that the Japan Meeting members did not do so and felt that it would need an agenda such as a price increase for the representatives in Japan to travel to Singapore. The Japan Meeting participants had no intention to travel to Singapore solely for the purposes of establishing a common understanding on the [✂]PL.

165. New [✂]PLs were issued in 2002. According to the minutes for the 20 March 2002 Japan Meeting provided by KSBP,[196] there was a review at a Singapore Meeting, and it was noted that the [✂]PLs of the four member

[192] Submission by JTEKT Corporation and Koyo Singapore Bearings Pte Ltd dated 8 August 2013, "Responses to CCS Questions to JTEKT/KSBP dated 24 July 2013" at [7.2].
[193] Document marked [✂]-009, Notes of information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[194] Document marked [✂]-009, Notes of information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[195] Appendix 64 to the Submission from JTEKT/KSBP dated 18 May 2012; Minutes of ARG Meetings entitled "[✂] Study Group 17 December".
[196] Appendix 64 to the Submission from JTEKT/KSBP dated 18 May 2012; Minutes of ARG Meetings 20 March 2002 entitled "[✂] Researching Group 20 March (Wed)".

companies were circulated at the Singapore Meeting. The Japan Meeting added, "*the next step after issuing* [✂]*PL is to strengthen the* [✂]*PL at EM. AGR will check the activities which follow the operation*."

166. According to NTN's minutes for the 10 May 2002[197] Japan Meeting, the implementation of the new 2002 [✂]PL as well as minimum price levels were discussed and reviewed. The minutes also recorded the following position taken by the Japan Meeting that, "*All the companies reaffirmed that the agreement for the lowest prices reached by* [✂] *Study Group must be observed. All the companies also reaffirmed that the regular price list is based on the 2002 regular price list for* [✂]."[198] CCS finds that the minutes for the 10 May 2002 Japan Meeting further proves that positions taken at the Japan Meetings are reviewed and complied with at the Singapore Meetings.

(D) Japan Meeting's instructions to and supervision of Singapore Meeting's implementation of [✂]PL

167. CCS has reviewed records of Japan Meeting's instructions to and supervision of the implementation of the [✂]PL through Singapore Meetings.

168. The earliest dated document available to CCS which evidences the Japan Meetings' instructions to the Singapore Meeting regarding the [✂]PL is a document provided by Nachi titled, *"(Confidential) Please dispose of this document after reading. May 25 2001*". This document appears to be a minute of a Japan Meeting and Japan Heads of Sales Joint Meeting held on 23 May 2001.[199] At the end of that document is a heading "*Singapore EM*", which records the following:

> "*Each company shall consider action plans for Singapore,* [✂] *in which introduction of the* [✂] *Common Fixed Price List is undecided, by the EM to be held on June 14th, and the companies shall report the result of the negotiation conducted at the EM on June 14th based on the proposed action plans to the persons in charge of sales at the respective companies through the* [✂] *Study Group*".

[197] See Document marked [✂]-011, Notes of Information/Explanation Provided by [✂] (NTN) dated 10 June 2013.
[198] See Document marked [✂]-011, Notes of Information/Explanation Provided by [✂] (NTN) dated 10 June 2013.
[199] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 document C(1).

169. This minute of the 23 May 2001 Japan Meeting shows that the participants at Japan Meetings exercised control over discussions at Singapore Meetings relating to implementation of the [✂]PL. Decisions were made at the Japan Meetings that Singapore Meeting participants were to discuss the introduction of the [✂]PL for Singapore [✂]. That level of control is also evident by the requirement for Singapore Meeting participants to, *"…report the result of the negotiation conducted at the EM on June 14th based on the proposed action plans to the persons in charge of sales at the respective companies through the* [✂] *Study Group.*"

170. A Singapore Meeting was in fact held where its participants noted the Japan Meeting's request for a report.[200] That Singapore Meeting was held on 15 June 2001 and not 14 June 2001.[201] Under the heading "*1.* [✂] *Study Group review*" it is recorded that, "*… Requests were received at the* [✂] *Study Group meeting on 4 June 'to hold talks on the procedure for implementation, such as the timing to start application'. With regard to this, response on the implementation schedule has already sent on 27 April*". The report goes on to document the progress of [✂]PL and for Singapore notes that the Singapore Meeting participants, "*[a]greed on lowest price based on common regular price list*".

171. CCS finds that records of the Singapore Meeting held on 7 December 2001[202], and of the Japan Meeting held on 10 May 2002[203] described in paragraphs 162 and 166 respectively are further evidence of the close inter-relationship between the Singapore Meetings and the Japan Meetings.

(E) Publication of the [✂]PL in Singapore

172. [✂] evidence was that an [✂]PL was in existence by October 2001. He stated, "*After the* [✂] *Price List was made, it took 2 to 3 years to be printed and published. So… in Oct 2001, the* [✂]*Price List did exist, but only in soft*

[200] Document entitled "18 June 2001 Minutes of Meeting on 15 June", which [✂] (NTN) has identified as minutes of an EM meeting (see Answer to Question 49 of Notes of Information/Explanation provided by [✂] dated 10 June 2012).
[201] Document marked [✂]-007, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[202] Submission by JTEKT Corporation and Koyo Singapore Bearings Pte Ltd dated 8 August 2013, "Responses to CCS Questions to JTEKT/KSBP dated 24 July 2013" at [7.2].
[203] Document marked [✂]-011, Notes of information/Explanation provided by [✂] (NTN) dated 10 June 2013.

copy."[204] The evidence shows that other participants at the Singapore Meetings published similar [✂]PLs.[205]

173. A Singapore Meeting note by KSBP dated 27 September 2001 records that at this meeting, the Singapore Meeting participants discussed the proposed [✂]PL and its use as stated by the Japan Meeting. The Singapore Meeting note records that participants concluded that the [✂] Price List, "…*will be issued from January 2002 to distributors. Timing of distribution should be different from other member company. Actual implementation should be discussed later. Style (booklet, CD-R or Excel file) is in each company's discretion. The prices should be denominated in Japanese Yen. Issuer should be in the name of each manufacturer*".[206]

174. The available evidence shows that prices reflected in the [✂]PLs of the Parties were similar. [✂] of NTN stated, "*The* [✂]*PL content (prices) is around 99% the same for all 4 competitors. Only the cover page is different. This is also the case for the Japan Price List. When I compared NSK and Nachi* [✂] *Price List, they are all the same prices. NTN has its own* [✂] *Price List Master too and the prices are also similar to our competitors'* [✂]*PLs. My competitors gave me their* [✂]*PLs in the EM meetings. We also gave them our* [✂]*PL*."[207] [✂] added that, "*We would exchange the* [✂]*PL book published by each company with our competitors at the EM meetings to ensure that each member published the* [✂] *Price List*."[208] This is corroborated by KSBP's evidence that the other Singapore Subsidiary Companies published similar [✂]PLs.[209]

175. The fact that the Singapore Subsidiary Companies took steps to publish and distribute the [✂]PL was also noted at the Japan Meetings during the Japan Meeting on 10 May 2002. The contemporaneous record entitled, "[✂]*Study Group meeting, 10 May 2002*"[210] states that in relation to the Singapore 2002 Regular Price List for [✂] (2002 Domestic Regular Prices), which CCS understands to be the [✂]PL, "*S bound and distributed the price list. K and*

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[204] Answer to Question 31 of Notes of information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[205] Answers to Questions 3 and 10 of Notes of information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[206] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings 27 September 2001.
[207] Answer to Question 66 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013
[208] Answer to Question 67 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013
[209] Answers to Question 3 and Question 10 of Notes of Information/Explanation provided by [✂]
[210] Document marked [✂]-011, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

T distributed it as an electronic file or in a booklet. C has yet to distribute it but plans to do so soon."

176. [✂]of NSK Singapore informed CCS that NSK Singapore did print the [✂]PL[211] and provided it to NSK Singapore's Aftermarket Customer in Singapore, [✂].[212] A contemporaneous record of the Singapore Meeting held on 28 March 2003 made by NTN dated 2 April 2003,[213] confirms that NSK Singapore and KSBP had printed, bound and distributed the [✂]PL, while NTN Singapore and Nachi Singapore had distributed their copies in the Excel format, although NTN Singapore did consider creating a booklet.

177. NTN's note of the 28 March 2003 Singapore Meeting also states, under the heading "*Review of* [✂] *Study Group Meeting"* that "*After [the standardized price list for]* [✂] *[has been revised in June 2003], the prices for Singapore* [✂] *will be reviewed according to the regular price list for* [✂]".[214]

(F) Implementation of the [✂]PL in Singapore

178. [✂] of NTN Singapore stated that the purpose of the [✂]PL was to prevent their profit margins from being affected by parallel imports and counterfeit bearings.[215]

179. [✂] of KSBP described the purpose as follows, "*Why we made the gross price list to the distributors is because when we send out the price to distributors we normally refer to the gross price list and apply a discount rate to give the distributors a net price. So when we discuss with our competitors about the pricing, it is convenient and easier to have a common price list and then agree on a common discount so that we can get a common minimum price rather than to agree on a net price for every item."*[216]

180. The [✂]PL was circulated at Singapore Meetings. [✂]of NTN stated that, "*My competitors gave me their* [✂]*PLs in the EM meetings. We also gave*

[211] Answer to question 78 of the Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[212] Answer to Question 78 of Notes of Information/Explanation provided by [✂] (NSK) on 16 April 2013.
[213] Document marked [✂]-014, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[214] Document marked [✂]-014, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[215] Answer to Question 40 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[216] Answer to Question 102 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.

them our [✂]*PL*."[217] He added that, "*We would exchange the* [✂]*PL book published by each company with our competitors at the EM meetings to ensure that each member published the* [✂] *Price List*."[218] [✂] of Nachi Singapore also stated, "*I brought [copies of our* [✂]*PLs] to the EM meetings to show my competitors that we follow the agreed decision to print the* [✂]*PL and distribute the* [✂]*PL to the distributors. The* [✂]*PL information was already shared with each other before the EM meetings although it was not consolidated into the booklet form you see now. I recalled that we discussed the necessity for each company to come up with an* [✂]*PL to distribute to our distributors*".[219]

181. When asked to explain the purpose of circulating the [✂]PL, [✂]of NTN said, "*we would also want to check that the prices stated in the* [✂]*PL are the same. This is required in order for us to calculate and agree on the minimum price. We would keep records of the agreed minimum price in the form of the discount ratio to be applied to the* [✂]*PL as seen from the table in* [✂]*-006....Theoretically, we would not sell below the agreed minimum price to distributors but practically we would still sell some items below the minimum prices. The relationship between NTN Singapore Price list and* [✂]*PL is that the lowest price found in NTN Singapore Price List should not be lower than the minimum price agreed from* [✂]*PL. The* [✂]*PL and the minimum price ratio would also apply to Singapore distributors*."[220]

182. [✂] of Nachi Singapore verified that NSK Singapore and Nachi Singapore had an agreement to "*use the same price*". In this regard he states, "*Looking at NSK* [✂]*PL (in* [✂]*-002b) and Nachi* [✂]*PL (in* [✂]*-002a), I note that prices for certain bearings are very similar. For example for bearings 6200 series, Open type is 330 yen in both NSK and Nachi* [✂]*PL, bearings 6201 series is 350 yen for both Nachi and NSK. They are completely the same. It was very likely that NSK and Nachi had an agreement to use the same price. I believed that JTEKT and NTN would also share the same price information and have the same price list in the* [✂]*PL…*"[221]

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[217] Answer to Question 66 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[218] Answer to Question 67 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[219] Answer to Question 32 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.
[220] Answer to Question 68 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[221] Answer to Question 32 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.

(G) Revision of the [✂]PL

183. The JPLs were issued yearly, save for the period between 1994 and 2000 when no new JPLs were issued. In contrast, the prices in the [✂]PL had not been revised since it was created in 2000/2001. This matter was noted in the minutes of the Singapore Meeting on 19 May 2003 and 3 June 2003 prepared by [✂] of NTN Singapore for the purposes of reporting to [✂] of NTN Japan and [✂] of NTN Singapore. Those minutes state, "*In Japan, the domestic regular price list for FY2003 has been issued…While the domestic regular price list in Japan is revised every year, EM agreed that it would continue to use the price list for* [✂] *created based on the FY2000 domestic list without revising it.*"[222]

184. This matter was also of concern to the Japan Meetings participants. In the minutes recorded by KSBP for the Japan Meeting held on 20 November 2003,[223] the [✂]PL was discussed and the Japan Meeting stated that, "*Each member company will think on how to maintain the Price List in the future. Perhaps unifying it eventually in to the Japan domestic LP maybe ideal way*".

(H) Conclusion on the [✂]PL

185. In summary, in pursuit of the Market Share and Profit Protection Initiative, the evidence obtained by CCS demonstrates that in the period between 2001 to 2003, the Singapore Subsidiary Companies, by agreement following instructions from the Japan Parent Companies, agreed to implement the [✂]PL which set out the prices for Bearings supplied to Aftermarket Customers in Singapore.

186. Each of the Parties have confirmed that the prices contained in the [✂]PLs were shared between each Party, with [✂]of NTN confirming that the prices were the same or bore 99% similarity to each Party's [✂]PL. [224]

187. The evidence is clear that the Parties to the [✂]PL agreement intended to contribute by their own conduct to the common objective of the Market Share and Profit Protection Initiative. They did this by agreeing on and finalising the [✂]PL, agreeing on the publication date of the [✂]PL and publishing the [✂]PL to their Aftermarket Customers. Also, at the Japan

[222] Document marked [✂]-015, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[223] Appendix 64 to the Submission from JTEKT/KSBP dated 18 May 2012; Minutes of ARG Meetings entitled "[✂] Study Group 20 November 2003".
[224] Answers to Questions 3 and 10 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.

Meeting on 10 May 2002, the evidence shows that the Parties "*reaffirmed that the agreement for the lowest prices reached by* [✂] *Study Group must be observed* [and that] [A]*ll the companies also reaffirmed that the regular price list is based on the 2002 regular price list for* [✂]*".*[225] CCS also considers that there can be no doubt that the parties to the [✂]PL agreement were aware or could reasonably have foreseen that their contributions to discussing and agreeing the [✂]PL were in pursuit of the Market Share and Profit Protection Initiative.

188. Therefore, CCS has formed the view that the Japan Meeting participants, through their Singapore Subsidiary Companies had the object of reaching an agreement or arrangement to implement substantially the same prices for the sale of Bearings to Aftermarket Customers in Singapore. Further, the [✂]PL was used by the companies to derive the minimum prices which were used by the companies as the floor or bottom prices in Singapore. This is discussed further in the section on "The Minimum Price Agreement" below.

(iii) <u>The Minimum Price Agreement</u>

(A) <u>Background to the minimum price agreement</u>

189. The evidence demonstrates that the [✂]PL was used to derive the bottom or minimum prices for Bearings sold to Aftermarket Customers in Singapore. [✂]of Nachi Singapore confirmed that the "[✂]PL Minimum Price Agreement" dated 19 December 2003 contained in the email from [✂] of NSK Singapore to [✂] and [✂]can be used to derive the bottom prices for Bearings sold to Aftermarket Customers in Singapore. The minimum prices were derived by reading the [✂]PL together with the minimum price level agreement document **[**[✂]**-004]** to obtain the bottom price for the Bearings sold to Aftermarket Customers in Singapore.[226] [✂] also confirmed that, *"The* [✂]*PL would be used to set up the minimum price level in Singapore*."[227]

190. Of the witnesses interviewed by CCS, [✂] of NSK Singapore was one of the longest serving representatives at the Singapore Meetings. Shortly after [✂] had arrived in Singapore on 2 July 2000 as the [✂] of NSK Singapore, he attended his first Singapore Meeting which was either on 14 July 2000 and/or

[225] Document marked [✂]-011, Notes of Information/Explanation Provided by [✂] (NTN) dated 10 June 2013.
[226] Answer to Question 38 of Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013.
[227] Answer to Question 88 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

28 July 2000. He attended the Singapore Meetings until he left Singapore in 2006. When asked whether he had discussed the implementation of the [✂]PL in Singapore with his competitors in the Singapore Meeting he responded, "*Yes but we agreed that we are unable to apply the same price formula used to determine the* [✂] *Price List prices in Singapore. Therefore, we discussed and agreed on the minimum prices instead*".[228] As noted by [✂] of KSBP, "*As the* [✂] *Price List contains common prices for the standard bearings sold by all 4 competitors, we would be able to adjust the bottom price either upwards or downwards by just agreeing on a new maximum discount for the bearings in question. And if we all applied the new maximum discount we would then also have a new common bottom price for those bearing*."[229]

191. The Parties had difficulties trying to set a uniform price list due to various different sales channels used by the Parties that made monitoring of prices difficult.[230] Representatives of the Parties attended the Singapore Meetings to minimise this problem, and the Parties agreed to set a minimum price list, which would be based on the [✂]PL.[231] A discount ratio and exchange rate for Singapore would be agreed at the Singapore Meetings and applied to the [✂]PL[232] to derive common minimum prices of Bearings sold to Aftermarket Customers in [✂]Singapore.[233] The minimum prices were discussed by Bearing series and country.[234]

192. The fact that the Parties derived minimum prices for application in Singapore during discussions at the Singapore Meetings is supported by the evidence set out at paragraphs 193 to 235 below.

(B) Records of Singapore Meetings

193. The evidence shows that the discussions and agreements on minimum prices commenced as early as 2001.

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[228] Answer to Question 75 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[229] Answer to Question 56 of Notes of Information/Explanation provided by [✂] (KSBP) dated 9 March 2012.
[230] Answer to Question 42 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[231] Ibid.
[232] Answer to Question 54 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[233] Answer to Question 102 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.
[234] Answer to Question 51 of Notes of Information/Explanation provided by [✂] (KSBP) dated 6 March 2012.

194. Records obtained by CCS show that a Singapore Meeting was held on 15 June 2001. The document entitled, "*Minutes of Meeting on 15 June*" dated 18 June 2001 which [✂] has identified as minutes of that Singapore Meeting[235] records NTN Singapore's position that the minimum prices were discussed and agreed at this meeting. When asked to explain that document, [✂] of NTN Singapore said he believed that the document was the minutes of a Singapore Meeting and there was an agreement on the minimum price and exchange rate at the meeting. When asked to explain the agreement, [✂] said, "*the figures under lowest price (ratio to* [✂]*PL) are the discount ratio to obtain the agreed minimum price. The exchange rate of S$1 = 61.96 yen would also be discussed and agreed*." [✂] said that "*there was a shikiri for Singapore agreed in the Exporters Meeting*."[236] During his interview on 9 March 2012, [✂] confirmed that "*Shikiri*" was a reference to the "*maximum discount*".[237]

195. The contemporaneous Singapore Meeting record produced by KSBP and dated 8 August 2001 evidences that the Singapore Subsidiary Companies worked towards the implementation of a minimum price agreement for Bearings sold by each of them to their Aftermarket Customers. The document records, "*Each company will check with its HQs. As EM, we believe the first step should be to set up bottom price (by country) and then linear use as a next step*."[238] Consistent with the exercise of control by the Japan Parent Companies, the Singapore Meeting note reflects that each Singapore Subsidiary Company agreed to check with its headquarters. CCS understands this to mean that the Singapore Subsidiary Companies would check with their respective Japan Parent Companies before steps were taken by the Singapore Meeting participants in relation to the minimum price.

196. During the Singapore Meeting held on 21 February 2002,[239] the Singapore Meeting participants discussed the minimum price agreement and currency fluctuations. The Singapore Meeting note shows that the meeting participants thought that it was important to agree an exchange rate because they sold

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[235] Answer to Question 49 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[236] Answer to Question 162 of Notes of Information/Explanation provided by [✂] (KSBP) dated 9 March 2012. For instance, exhibit dated October 2001 marked [✂]-004 (Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013) shows the minimum discount rate agreed for [✂] based on the [✂] Price List.

[237] Answer to Question 71 of Notes of Information/Explanation provided by [✂] (KSBP) dated 9 March 2012.

[238] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "Minutes of EM 8 August".

[239] Document marked [✂]-010, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.

their bearings in different currencies and, therefore, it was important to agree on an exchange rate to fix the minimum price ("**MP**"). The Singapore Meeting participants reached the following agreement to handle exchange rate movements:

> "*Each dollar based company needs to price down when Yen becomes weak. But they do have to keep minimum price. When yen becomes strong, yen-based company may be requested to price down. Each dollar based company [sic]but they need to keep MP. Each dollar based company needs to price increase up to minimum price.*
>
> - *Re-exam exchange rate every 6 months.*
> - *Re-exam the MP by using the rate of the end of last year – compare area."*[240]

197. The next contemporaneous record meeting record is titled, "[✂] *Study Group meeting, 10 May 2002*,"[241] which contains an affirmation by the participants at the Japan Meetings in relation to the minimum price agreement. It states, "*All the companies reaffirmed that the agreement for the lowest prices reached by* [✂] *Study Group must be observed. All the companies also reaffirmed that the regular price list is based on the 2002 regular price list for* [✂]."

198. In explaining the minutes of the Singapore Meeting of 21 May 2002, [✂] confirmed that, *"there was an agreement reached at the EM on lowest prices and exchange rates, as well as the revision of exchange rates at the EM. It was stated that the exchange rates are to be reviewed every 6 months. However, this was only a general guide. Exchange rates can be fixed on a yearly basis too. EM has the power to fix the exchange rates.*"[242]

199. At the Singapore Meeting on 8 July 2002, the Singapore Meeting participants discussed the applicable minimum prices for Singapore. The note records the following: "*Because the exchange rate has changed a lot from the time when we set the exchange rate (Yen 61.95), we have to re-exam the rate. But, because practically we have been using local LP (which are based in*

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[240] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings 21 February 2002.

[241] Document marked [✂]-011, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[242] Answer to Question 63 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

Singapore dollar), there has been no change in Net Price. Reconfirm it at next EM."[243]

200. The next contemporaneous Singapore Meeting record is the note made by KSBP dated 1 November 2002.[244] The Singapore Meeting note records that during this meeting, the Singapore Subsidiary Companies discussed the [✂]PL. The note records that, "*Each company agreed that we are going to reflect LP ("shikiri") to* [✂]*PL. We will finish reflecting by June 2003 for* [✂]*, by the end of 2003 for the others.*"[245]

201. CCS has obtained a contemporaneous meeting record of the Singapore Meeting held on 28 March 2003. This record was made by NTN and was dated 2 April 2003.[246] During this meeting, as noted in paragraph 200 above, participants confirmed publication of the [✂]PL and confirmed that after the standardised price list for [✂] was reviewed, the Singapore Subsidiary Companies would review the prices for Singapore and [✂].[247] At a subsequent Singapore Meeting held on 28 April 2003, the record of the meeting states that, "*Member companies exchanged opinions on Shikiri (by types and sizes) for the transition from the current common price list to* [✂] *Price List*".[248]

202. CCS has obtained a contemporaneous Singapore Meeting record made by KSBP dated 16 October 2003.[249] This document records that the participants at the Singapore Meeting discussed, among other things, price increases as well as the implementation of the [✂]PL:

> *"[Price Increase]*
>
> - *At the next EM, we will discuss* [✂] *price increase together with top management of each member company…*

[243] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings 8 July 2002.
[244] Document marked [✂]-013, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013
[245] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings 1 November 2002.
[246] Document marked [✂]-014, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[247] Document marked [✂]-014, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[248] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "28 April EM".
[249] Document marked [✂]-15, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013. Where it is noted in the English translation of the document that "S" represents NSK; "T" represents NTN; "K" represents NSK and "C" represents Nachi.

[[✂] Price List]

- *All the 4 member companies have already implemented it in [✂]. S [NSK] has completed it in [✂], [✂] and [✂].*

- *K [KSBP] has completed it in [✂] and is implementing it in [✂] in next January.*

- *T [NTN] is facing difficulties to implement it locally, due to its purchase being based on cost from Japan.*

- *Member companies will work out their own implementation schedule of [✂] Price List to Shikiri price [✂] by next EM. Meanwhile, EM will discuss whether it can be applied to prices in Singapore*".

203. The contemporaneous record of the Singapore Meeting made by KSBP dated 5 December 2003[250] records that the Parties had, "*adopted* [✂] *Price List on to common price list for distributors. (1 September by S and C, 1 October by T and K) As for revision of local price list, member companies will summarize own distributors' opinions and make it as common price list for the 4 companies*"[251]. This note also records under the heading, "[Action plan]" that the Singapore Meeting participants, *"…plan to revise bottom prices which were implemented since 2001. It will be based on revised exchange rates*". Under the heading "[[✂] *list price*]", the record further states "*Applying [the* [✂]*PL] to Singapore has no problem. We will discuss the Shikiri rate at the next EM.*"

204. Records of the Singapore Meeting made by KSBP dated 6 February 2004 records that, "*S is the organiser of EM meetings from now on and the main activities of the year include price increase and introducing* [✂]*PL.*"[252]

205. On 31 March 2004, [✂] circulated document [✂]-**014** amongst Singapore Meeting participants ([✂] (KSBP); [✂] (Nachi); [✂] (NTN); and copied to [✂] (NTN)) by email to facilitate discussion at the Singapore Meetings to

[250] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings 5 December 2003. Where it is noted in the English translation of the Singapore Meeting Minutes that document "S" represents NSK; "T" represents NTN; "K" represents KSBP and "C" represents Nachi.
[251] Document marked [✂]-016, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013. Where it is noted in the English translation of document [✂]-016 that "S" represents NSK; "T" represents NTN; "K" represents KSBP and "C" represents Nachi.
[252] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings 6 February 2004. Where it is noted in the English translation of document [✂]-016 that "S" represents NSK; "T" represents NTN; "K" represents KSBP and "C" represents Nachi.

amend minimum prices.[253] In his explanation of the document, [✂] said, "*I sent it to the addressees in my email because most of them were new participants at the EM meeting and therefore they might not be aware of the historical minimum price agreement*".[254] He also confirmed, "*It was my understanding and belief that the agreement recorded in that document should be applied until there was a discussion at the EM to amend the minimum prices*".[255] Finally, [✂] confirmed that the document [✂]-**014**, "Singapore [✂]PL Convert Structure" shows the percentage discounts applied to the different categories of bearings.[256]

206. Minutes taken by KSBP at the Singapore Meeting on 28 January 2005 show that Singapore Meeting participants discussed reviewing prices in the [✂]PL. In particular, NSK stated that, "*in accordance with the movement of the list price revision in* [✂], *whole* [✂] *should consider revising the prices following 2005 Japan Domestic Price List.*"[257] There was also discussion that bottom prices had to be revised as there had been changes in exchange rates and increases in manufacturing and metal costs. As such prices to Aftermarket Customers were to be increased; Singapore Meeting participants were to revert at the next Singapore Meeting to present their input on the minimum price list which had the same format as [✂]-**011**.[258]

207. A contemporaneous record of a Singapore Meeting held on 30 May 2005 at Jurong Country Club reflects the Singapore Meeting participants' discussion on the reconciliation of the [✂]PL and the JPL. The minutes record, "*As a result of comparison of the current* [✂] *Price List and 2005 Japan domestic price list, nothing can be reconciled, hence it is anticipated to be extremely difficult to simply transit from one to the other*".[259] Records show that a further Singapore Meeting was held on 28 June 2005 at Jurong Country

[253] Answers to Questions 26 and 27 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[254] Answer to Question 26 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[255] Answer to Question 27 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[256] Answer to Question 27 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[257] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "28 January 2005 EM".
[258] Answer to Question 12 of the Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.
[259] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "30 May 2005 EM".

Club,[260] where a transition to the use of the JPL was again discussed at the Singapore Meeting following a Japan Meeting.[261]

(C) Move from [✂]PL to JPL pricing

208. The evidence shows that the participants at the Singapore Meetings worked on a project to move from the structure of pricing as set out in the [✂]PL to the pricing structure adopted in the JPL, and that there was tension as a result of the project. This was an initiative of the participants at the Japan Meetings that was passed from that forum to the Singapore Meetings to discuss, negotiate and implement.

209. At the Japan meeting on 13 May 2005,[262] the minutes provided by KSBP state that the Japan Meeting participants noted that the transition to the JPL had not been decided at the Singapore Meetings yet. However, KSBP, NSK Singapore and Nachi Singapore would accept the transition. The minutes further state, "*We will choose the better one after comparing the prices between* [✂]. *We will try to use the same price list, whichever Japanese price List or* [✂] *Price List to make it possible to compare each minimum price all of the time.*"

210. The evidence shows that some participants at the Singapore Meetings believed that using the [✂]PL, in circumstances where it was not revised annually as contrasted with the JPL, which was revised annually, was problematic. This is because revisions to the JPL, may have resulted in lower prices of bearings originating from [✂], and this might lead to problems of parallel importation into [✂].[263]

211. Indeed, the Japan Meetings recognised that it would not be an easy task to review and revise the [✂]PL in a way such that the [✂]PL would be able to correct the price differences [✂]. In the minutes of the Singapore Meeting held on 28 January 2005 provided by KSBP, those difficulties were recorded.[264] NSK Singapore raised the issue of revising the [✂]PL based on the 2005 JPL and NTN Singapore queried if the [✂]PL would be revised every year, adding that it would be too much work. In the Singapore meeting

[260] Appendix 56 to the submission from JTEKT/KSBP dated 18 May 2012, email dated 22 June 2005.
[261] Document marked [✂]-023, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[262] Answer to Question 67 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[263] Answer to Question 8 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013, together with Document marked [✂]-023.
[264] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "28 January 2005 EM".

minutes on 4 March 2005,[265] NSK Singapore suggested, "*unification to the Japan domestic price list*" *to minimise differences* [✂] *and suggested that it should be revised properly every year…*". The responses of the other member companies were also recorded and they queried the reversion to the JPL when the [✂]PL was created on the basis that the JPL could not be used [✂]. In the Singapore Meeting minutes on 30 May 2005,[266] it was noted that it was very difficult to reconcile the [✂]PL and the 2005 JPL and that the transition to a new price list would be tough. The minutes also highlighted the difficulties for the transition due to some differences in the pricing of each company's JPL and some differences in the range and types of bearings in each company's JPL.

212. Nachi Singapore also recorded the same issues in the minutes of meeting for the Singapore Meeting held on 30 May 2005,[267] i.e. that there were issues faced in the transition to the JPL such as the fact that there were some products which were not listed in the JPL.

213. In the minutes of the Singapore Meeting on 28 June 2005[268] provided by NTN, the Singapore Meeting reviewed the discussions at the Japan Meeting on the [✂]PL, stating that, "[✂] *Study Group ("Aji-ken") understands that it will not be easy to simply transition to the use of Japan Price List as a yardstick for correcting the price differences* [✂]. *For the unification of* [✂] *standards (yardsticks) for the revision of price levels, however, the discussions are to be continued among member companies.*"

214. In the same minutes, the "*Management of the* [✂] *Price List and Japan Domestic Price List*" was also on the agenda and it was agreed that each of the member companies was expected to study how to relate the [✂]PL to the JPL, and that there was also a need to examine the status quo. It was further recorded that, "*We should compare the Japan Domestic Price List with prices* [✂] *to make sure that the floor (lowest) prices are cleared.*"[269]

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[265] Appendix 53 to the submission from JTEKT/KSBP dated 18 May 2012, Minutes of EM Meetings entitled "4 March 2005 EM".

[266] Nachi document, titled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore", dated 18 March 2013 document H8 titled "Monday May 30 2005 Singapore EM meeting".

[267] Nachi document, titled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore dated 18 March 2013 document H8 titled "Monday May 30 2005 Singapore EM meeting".

[268] Document marked [✂]-023, Notes of Information/Explanation provided by Mr [✂] (NTN) dated 11 June 2013.

[269] Document marked [✂]-023, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

215. [✂] of Nachi Singapore sent an email dated 11 July 2005 to [✂] of Nachi regarding the "*introduction of domestic prices for 2005"* that was discussed at the 28 June 2005 Singapore Meeting. The email highlighted the various difficulties in transiting to the JPL from the [✂]PL and noted that each company would have to determine the items to be listed in the price list.

216. By September 2005, Nachi Singapore had started work on the revision from the [✂]PL to the JPL and on how to match the [✂]PL prices for each product to the JPL. Nachi recognised that it would require a lot of time, but felt that it was an important task for them to determine their pricing strategy. This was contained in an email report between [✂],[✂] and [✂] (all from Nachi) dated 27 September 2005[270] on Singapore meetings discussions held on 5 September 2005. [✂], Nachi Singapore also verified that "*at that time our price was still based on* [✂]*PL but we agreed to change it to it[sic] JPL, so we worked on the conversion to JPL. I believe it is likely that* ***the move to JPL would also apply to Singapore****."*[271] ***[Emphasis added]***

217. Of the proposal to use the JPL in place of the [✂]PL, [✂] of Nachi said: "***We reached an understanding that we will consider whether the JPL will be utilized in place of the*** [✂] ***price list. In addition, all companies shared the understanding that there would be benefits to use common prices based on the JPL,*** *but it would be very difficult to make a sudden change to the JPL. The competitors would have to meet monthly to discuss on the difficulties in making the switch to the JPL. At other meetings, in the course of sharing information with each other, we were able to reach an understanding that we would be able to derive prices in certain markets as a percentage of that in Japan, for example the prices in* [✂] *would be CP24, ie 24% of the prices in Japan*". [272] **[*Emphasis added*]**.

(D) <u>Conclusion on the move from the [✂]PL to the JPL</u>

218. In 2005, the Parties agreed to and did take steps to conclude a price list applicable to [✂] Singapore, based on the JPL that had been agreed between the Japan Parent Companies.

219. It was intended that the JPL should replace the [✂]PL. The evidence indicates that the JPL agreement may have been concluded prior to the

[270] Document marked [✂]-018, Notes of Information/Explanation provided by [✂] (Nachi) dated 15 May 2013.
[271] Answer to Question 22 of Notes of Information/Explanation provided by [✂] (Nachi) dated 15 May 2013.
[272] Answer to Question 37 of Notes of Information/Explanation provided by [✂] (Nachi) dated 10 May 2013.

cessation of the Singapore Meetings. However, whether or not the JPL agreement was in fact concluded, CCS considers that the discussions regarding the JPL agreement demonstrate an exchange of pricing information and future pricing intentions between the companies.

220. The evidence is clear that the parties to the JPL agreement intended to contribute by their own conduct to the common objective of the Market Share and Profit Protection Initiative. The move to the JPL was to unify pricing and make it easier to compare the minimum prices [✂]. The Parties achieved this in Singapore by discussing and agreeing on the JPL for Singapore. CCS also considers that there can be no doubt that the Parties in those meetings were aware or could reasonably have foreseen that their contributions towards discussing and agreeing the JPL were in pursuit of the Market Share and Profit Protection Initiative.

(E) Minimum price agreement – based on the JPL

221. The evidence shows that by 2006, there was consensus amongst the Parties that the minimum price agreement would be based on the JPL.

222. In an email dated 1 March 2006[273] from [✂] of NTN to both [✂] of NTN and [✂] of NTN reporting the contents of the 13 January 2006 Singapore Meeting, it is recorded that the minimum price agreement for Singapore would be set at 28% against the JPL. The email states that, "*in consideration of the enforcement of the Competition Act, no specific agreement was made [at the 13 January 2006 EM].*" This was followed by the sentence "*It was agreed to by the companies that the floor (lowest) prices be 28% of the new Japan Domestic Prices for all product types.*"

223. According to [✂] of NTN, "*For Singapore, we discussed and agreed that prices should have the highest minimum price to prevent exporters from re-exporting to other countries under the control of Singapore. We agreed on a maximum discount ratio of 28% which would apply to Singapore as well*".[274] He also said that "*... a general discount ratio of 28% from the JPL which was to be applied to Singapore, setting the minimum price was agreed at the EM*."[275]

[273] Document marked [✂]-026, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[274] Answer to Question 14 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013 together with document marked [✂]-026.
[275] Answer to Question 16 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013 together with document marked [✂]-026.

224. [✂] also confirmed, "*There was an agreement between the EM participants that for Singapore, the minimum floor price would be 28% of the Japan Domestic Prices. Different percentage rates were discussed for specific products sold in* [✂]".[276]

225. KSBP also recorded the "*Readjustment of Minimum price based on JPL*" for [✂],[✂],[✂] and Singapore, in its agenda for the Singapore Meeting held on 13 January 2006.[277]

226. The evidence shows that there was a Singapore Meeting held on 13 January 2006 and this Singapore Meeting involved specific discussion on bottom prices for Singapore, based on Japan domestic prices.[278]

227. CCS notes that by the time of the Singapore Meeting in March 2006, the Parties had reached a consensus on the minimum price agreement based on the JPL. This is evidenced by the email sent by [✂] of NTN dated 1 March 2006,[279] which states that, "*[I]t was agreed to by the companies that the floor (lowest) prices be 28% of the new Japan Domestic Prices for all product types*". This is further supported by the evidence of [✂] (NTN) where he stated that, "*...the EM participants decided not to discuss and agree minimum percentage discounts for each of these bearing types, in view of the Competition Act. Instead, the EM participants agreed a 28% discount against the Japan Price List as the minimum selling price for Singapore."*[280]

228. The contemporaneous record of the Singapore meeting held on 13 January 2006 made by [✂] of KSBP (dated 24 January 2006) further records that the Singapore Subsidiary Companies reviewed the exchange rates used in determining bottom prices.[281] In relation to a separate table found in [✂]-**025**, prepared for the Singapore Meeting held on 14 March 2006, [✂] stated that, *"[the discount rate of 28% for Singapore market] information listed in [the table] must have been discussed at an EM meeting otherwise such information would not be in the table*."[282]

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[276] Answer to Question 26 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[277] See Document Appendix 53 Page 191 "Singapore EM [✂] Jurong Country Club" submitted by KSBP.
[278] Appendix 53 (EM Minutes) to the submission from JTEKT/KSBP dated 18 May 2013 being email from [✂] dated 24 January 2006.
[279] Document marked [✂]-020B, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[280] Answer to Question 46 of the Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[281] Document marked [✂]-024, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[282] Answer to Question 139 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013 together with Exhibit marked [✂]-025.

(F) The exchange rate agreements

229. Because the gross prices in the [✂]PLs and the JPLs were expressed in Japanese Yen; and as the minimum price agreement was derived having regard to those price lists, agreements between the Parties on exchange rates were necessary to derive a figure in Singapore dollars relevant to the Singapore market.

230. [✂] of NTN Singapore stated that, "*There was a need to define these exchange rates in order for us to fix the minimum price. The* [✂]*PL is based on Japanese yen. However, each company sells their bearings using SGD, USD or local currency. In order for us to set the minimum price, we need to fix the exchange rate. All the competitors would agree on a fixed exchange rate. In the case of Singapore, SGD is the currency used."*[283]

231. [✂]of Nachi Singapore stated that, "*the exchange rate used would be …agreed and fixed in the EM meetings*". [✂] added that, "[W]e *discussed and agreed on the exchange rate figures at the EM meetings. This is because exchange rate fluctuates so we set the exchange rates so that it would be easier to set the minimum price."*[284]

232. [✂] of NSK Singapore stated that he made decisions on the exchange rates that were discussed and agreed at the Singapore Meetings, which he then reported to Aji-ken.[285]

233. The evidence of [✂] of KSBP was also consistent. [✂] stated that exchange rates were fixed and agreed at the Singapore Meetings.[286] In relation to document [✂]-**004** dated October 2001 headed, "*Minimum Price (Ex-Singapore)*" which includes a statement "*Base: US$=¥ 105, S$=¥63 Re-examination in every 6 months*" [✂] said that "*…from the contents of the minutes, the first sentence "Re-exam exchange rate every 6 months" means we shall review the exchange rate every 6 months, and exchange rate means the agreed exchange rate as seen in* [✂]-***004****...*".[287]

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[283] Answer to Question 53 of Notes of information/Explanation provided by [✂] (NTN) dated 10 June 2013.

[284] Answer to Question 42 of Notes of Information/Explanation provided by [✂] (Nachi) provided on 14 May 2013.

[285] Answer to Question 91 of Notes of information/Explanation provided by [✂] (NSK) dated 16 April 2013 and Answer to Question 71 Notes of information/Explanation provided by [✂] (NSK) dated 17 April 2013.

[286] Answer to Question 51 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.

[287] Answer to Question 64 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013 together with Exhibit marked [✂]-004.

234. During his interview, [✂] further added, *"... we had to agree on the exchange rate. Otherwise the agreement on minimum price doesn't work".*[288]

(G) Conclusion on the Exchange Rate Agreements

235. Based on the evidence from the notes of Singapore Meetings and Japan Meetings, the Parties discussed and or made exchange rate agreements on or about the following dates:

a. On 26 October 2001, the Singapore Subsidiary Companies confirmed the relevant exchange rate to be applied from Japanese Yen to Singapore Dollars as follows: "*Currently, the exchange rates differ* [✂]. *We will standardize it as US: Yen 125, S$: Yen 68*."[289]

b. On 17 December 2001 at a Japan Meeting, the Japan Parent Companies confirmed that the Japan Meeting participants "respect" the agreements made at Singapore Meetings regarding exchange rates. The Japan Meeting record made by KSBP dated 17 December 2001 records, "*Exchange rate for each currency* [✂] *Study Group respects the agreement reached by Singapore EM*."[290]

c. On or about 3 January 2002, the Singapore Subsidiary Companies agreed to change the exchange rate from 1 SGD to 61.95 Yen to 1 SGD to 68 Yen. [✂] of NTN gave evidence of this. Describing the handwritten document marked [✂]-**006** in his Notes of Interview/Explanation, [✂] of NTN stated: "*Under the Singapore column, the table shows that we have to convert Yen to SGD. S$:Yen 61.95 to 68 means we agreed to change the fixed exchange rate from 1 SGD to 61.95 Yen to 1 SGD to 68 Yen.*" [291]

d. At the Singapore Meeting on 21 February 2002, the Singapore Subsidiary Companies reached an agreement as to how to handle exchange rate movements and maintain the minimum price agreement. That agreement is recorded in the Singapore Meeting record made by

[288] Answer to Question 30 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[289] Document marked [✂]-08, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013 entitled, "EM 26 October".
[290] Appendix 64 to the Submission from JTEKT/KSBP dated 18 May 2012 ; Minutes of ARG Meetings 17 December 2001entitled, "[✂] Study Group 17 December".
[291] Answer to Question 45 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

KSBP dated 21 February 2002 as follows,[292] "*Each dollar based company needs to price down when Yen becomes weak. But they have to keep minimum price. When yen becomes strong, yen-based company may be requested to price down. Each dollar based company [sic] but they need to keep MP. Each dollar based company needs to price increase up to minimum price*.

- *Re-exam exchange rate every 6 months.*

- *Re-exam the MP by using the rate of the end of last year* – [✂]." [293]

e. On 20 March 2002 the Japan Parent Companies discussed the exchange rate to be applied by the Singapore Meetings' participants. NTN provided CCS with an email from NTN Japan to NTN Singapore [✂] and other subsidiary companies reporting on the discussions which had occurred at the Japan Meeting on 20 March 2002. When asked to explain this email, [✂] of NTN stated: *"This is the meeting minutes of Ajiken. This is from* [✂] *to relevant parties in NTN overseas subsidiaries.* [✂] *attends ASG and would send us the minutes. ...Para 3 under Singapore "Price increase for general bearings", this refers to price increase for non-automotive bearings. Based on the ASG meeting, it was recorded that the EM should be the one setting the minimum price. In order to do so, the exchange rate should be fixed. ASG discussed this and instructed EM to fix the exchange rate and to increase the prices for general bearings.*"[294]

f. The relevant exchange rate as at 28 March 2002, is evidenced by the minutes of the meeting drafted by NTN Japan and circulated to its relevant subsidiaries including NTN Singapore. The decision on the exchange rate is evidence by the following heading in the minutes: "*Review of Lowest Priced based on Agreed Exchanges Rates (S$1=¥68 and US$1=¥122).*"[295]

g. It appears from the minutes of the Singapore Meeting held on 21 May 2002 recorded by NTN that as at that date the exchange rate

[292] Document marked [✂]-010, Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[293] Document marked [✂]-010, of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[294] Document marked [✂]-009 and Answer to Question 54 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[295] Document marked [✂]-010 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

remained at S$1=¥68 and the Singapore Meetings participants confirmed, *"(i) The agreed exchange rates are reviewed every six months. (ii) When the exchange rates change radically, EM and* [✂] *Study Group shall discuss and review them as necessary".*[296]

h. The agreement between the Singapore Subsidiary Companies to review the exchange rate every six months was also confirmed in the Japan Meeting note made by KSBP dated 23 July 2002. That document records the following: "*The review of exchange rate should be every 6 months in EM agreement (Therefore next time will be end of Dec).*"[297]

i. The Singapore Meeting note recorded by KSBP dated 5 December 2003 records the following: "*All the members companies agreed to promote price increase*" and "*We plan to revise the bottom prices which were implemented since 2001. It will be based on revised exchange rates.*"[298]

j. The document marked [✂]-**027**, made by NTN dated 5 June 2006, summarises the Singapore Meeting held on 14 March 2006. Under the heading "*Review of applicable exchange rates*" in Annex B, the following is recorded: " *EM agreement of the floor (lowest) price is made on the basis of yen… Exchange rates against the yen have been 'US$=107 yen' and 'S$=64 yen' since June 2005. It might be appropriate to review the rates to be 'US$=115 yen' and 'S$=67yen' on the basis of the actual exchange rates in the recent 6 months.=> It will be reviewed in the companies concerned whether to apply exchanges rates 'US$=115 yen' and 'S$ =67 yen'.*"[299]

(H) Implementation of the minimum price agreement

236. Evidence from NSK shows that the minimum price agreement made at the Singapore meetings applied to aftermarket dealers in Singapore.[300]

[296] Document marked [✂]-012 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013

[297] Appendix 64 (ARG minutes) to the submission from JTEKT/KSBP dated 18 May 2012; minutes of Japan Meeting for 23 July 2002.

[298] Appendix 53 (EM minutes) to the submission from JTEKT/KSBP dated 18 May 2012; minutes of EM meeting for 5 December 2003.

[299] Document marked [✂]-027, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

[300] Answer to Question 4 of the Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.

237. Although minimum prices were agreed at the Singapore meetings, NSK submitted that NSK did not fully implement the agreement. [✂] of NSK Singapore stated, "*I did agree with my competitors in the EM meeting but secretly I would only apply the minimum price agreement if the agreement would benefit NSK*".[301]

238. [✂] of Nachi gave evidence that, "*I agreed to follow the minimum price agreements during the discussions at the EM meetings…*". [302] However, he went on to say, "*…I did not adhere to it.*"[303]

239. When asked to explain the purpose of circulating the [✂]PL, [✂] of NTN said "*We would keep records of the agreed minimum price in the form of the discount ratio to be applied to the* [✂]*PL as seen from the table in* [✂]-*006....Theoretically, we would not sell below the agreed minimum price to distributors but practically we would still sell some items below the minimum prices.*"[304]

240. [✂] of KSBP confirmed that, "*We agreed on the minimum price that no one can sell below such a price*".[305] He also stated, "*Yes Koyo Singapore was supposed to apply the minimum price. However, I don't recall if we actually followed the minimum pricing or not.*"[306]

(I) Conclusion on the minimum price agreement

241. In pursuit of the Market Share and Profit Protection Initiative, the Parties made a minimum price agreement that was to set the floor or bottom prices for the sale of Bearings to Aftermarket Customers in Singapore.

242. By December 2003, and with the full knowledge and support of the Japan Parent Companies, the Singapore Subsidiary Companies concluded an agreement on the maximum discount percentage that could be applied to the gross price for each category of Bearings in Singapore. This was known as the [✂]PL.

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[301] Answer to Question 7 of the Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[302] Answer to Question 38 of the Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013 7 April 2013.
[303] Answer to Question 38 of the Notes of Information/Explanation provided by [✂] (Nachi) dated 14 May 2013 7 April 2013.
[304] Answer to Question 68 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[305] Answer to Question 148 of the Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.
[306] Answer to Question 141 of the Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013.

243. The maximum discount percentage was used by the Singapore Subsidiary Companies to derive the "bottom price" for each category of Bearing for sale to Aftermarket Customers in Singapore. The bottom price could be determined by applying the maximum discount rate as agreed between the Singapore Subsidiary Companies to the gross price in the [✂]PL. Because the gross prices in the [✂]PLs were expressed in Japanese Yen, it was necessary for the Singapore meetings participants to agree an exchange rate to be applied to the [✂]PLs to derive a figure relevant to the Singapore market. The conclusions drawn on the evidence in relation to the exchange rate agreements is set out in paragraph 235 above.

244. There is evidence to support the position that in 2005 the Parties agreed to move from the [✂]PL to the JPL pricing structure.

245. The contemporaneous record of the Singapore meeting made by [✂] (KSBP) dated 24 January 2006 shows that Singapore Subsidiary Companies reviewed the exchange rates used in determining bottom prices at the Singapore Meeting.[307] Further, in relation to the separate table found in [✂]-**025**, prepared in relation to the Singapore meeting on 14 March 2006, [✂] stated that, *"[the discount rate of 28% for Singapore market] information listed in [the table] must have been discussed at an EM meeting otherwise such information would not be in the table*."[308]

246. By 14 March 2006 (the last known Singapore Meeting), the evidence shows that the Singapore Subsidiary Companies agreed the minimum price for Bearing to be sold to Aftermarket Customers in Singapore would be 28% of the price listed in the JPL and they also agreed an applicable exchange rate.

247. This JPL minimum price agreement is evidenced by the email sent by [✂] (NTN) dated 1 March 2006, which states "*It was agreed to by the companies that the floor (lowest) prices be 28% of the new Japan Domestic Prices for all product types*".[309] This is further supported by the Notes of Information/Explanation of [✂] of NTN, where he clarified that the Singapore meetings participants decided not to discuss and agree minimum percentage discounts for each bearing type in view of the coming into force

[307] Appendix 53 (EM Minutes) to the submission from JTEKT/KSBP dated 18 May 2013 being email from [✂] dated 24 January 2006

[308] Answer to Question 139 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013 together with Exhibit marked [✂]-025.

[309] Document marked [✂]-020B to the Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

of the Competition Act, and instead agreed on a 28% discount against the JPL as the minimum selling price in Singapore.[310]

248. The evidence from the four Singapore Subsidiary Companies supports the position that the bottom price or minimum price agreement was in some cases adhered to by the Singapore Subsidiary Companies and in other cases, the Singapore Subsidiary Companies indicated to the Singapore meetings participants that they would adhere to it but in fact did not. That is, the evidence from the Singapore Subsidiary Companies is that the minimum price agreements were sometimes applied when setting customers' prices and in other cases, they might not have been used.

249. It is, however, no defence that the Singapore Subsidiary Companies did not put the initiatives into effect and evidence of prices or other behaviour not reflecting those discussed at the meeting would not be sufficient to prove that they had not participated in the scheme.[311]

250. CCS finds that the Singapore Subsidiary Companies made minimum price agreements, including the minimum price agreement based on the [✂]PL and the minimum price agreement based on the JPL and that the objective of the Singapore Subsidiary Companies in concluding those minimum price agreements was in pursuit of the Market Share and Profit Protection Initiative.

251. Based on the evidence set out above, it is clear that the parties to the minimum price agreement intended by their own conduct to contribute to the Market Share and Profit Protection Initiative. The minimum price agreement itself was an initiative of the Parties because they had difficulties trying to set a uniform price list due to various sales channels that made monitoring of prices difficult.[312] Representatives of the Companies attended Singapore Meetings to minimise this problem, and the Singapore Subsidiary Companies agreed to set a minimum price list.[313] A discount ratio and exchange rate for Singapore were also agreed at the Singapore Meetings and applied to the [✂]PL[314] to derive common minimum prices of bearings[315] in pursuit of the Market Share and Profit Protection Initiative.

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[310] Answer to Question 46 of the Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[311] Case T-3/89, *Atochem v Commission* [1991] ECR II-867, at [100].
[312] Answer to Question 42 of Notes of Information/Explanation provided by [✂] (NSK) dated 16 April 2013.
[313] Ibid.
[314] Answer to Question 54 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

252. Therefore, it is clear that each of the Parties was aware or could reasonably foresee that that their conduct planned and, where applicable, put into effect was in pursuit of the Market Share and Profit Protection Initiative.

253. Whether or not the JPL minimum price agreement was applied or whether the [✂]PL minimum price agreement was applied or continued, CCS considers that the discussions regarding the [✂]PL minimum price agreement and the JPL minimum price agreement (including the exchange of information about pricing Bearings as well as the exchange of information and agreements regarding the [✂]PL and the JPL and the exchange rate agreements) demonstrates an exchange of pricing information and future pricing intentions between the Parties.

254. Further, there is no strong evidence as to the end date for these agreements. As noted above, the mere cessation of the Singapore meetings is not, of itself, exculpatory for the Parties.

255. There is no evidence before CCS to show that the Parties took any steps, at that time, to denounce the cartel and the arrangements, agreements and concerted practices made by the parties at the Singapore meetings or to properly publicly distance themselves from the cartel or its objectives. The statement, *"[the] Competition Act took effect in Singapore as of January 2006…*"[316] contained in the NTN document[317] falls far short of what the authorities require for the purposes of public distancing. Similarly, the mere fact that the parties agreed to no longer meet at the EM forum in Singapore also falls far short of the requirements by the authorities on public distancing. In fact, the very same note of the 14 March 2006 meeting goes on to state, "*if a meeting is needed separately, the meeting shall be held only by the Japanese employees*".[318] Therefore, it is clear that the Parties had no intention of denouncing the cartel and ceasing the activities in pursuit of the single overall objective.

256. CCS considers that the minimum price agreements made (including the exchange of information about pricing of ball and roller bearings as well as the exchange of information and agreements regarding the [✂]PL and the JPL and the exchange rate agreements) and the exchanges of information

[315] Answer to Question 102 of Notes of Information/Explanation provided by [✂] (KSBP) dated 8 March 2012.
[316] Document marked [✂]-028, Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.
[317] Document marked [✂]-020B, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[318] Document marked [✂]-027, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

between the Parties constitutes an agreement and/or concerted practice and, in the absence of evidence demonstrating that the Parties or any one of them had publicly distanced themselves from the single continuous infringement, the infringement continued post 30 June 2006 and therefore is liable to a penalty under the Competition Act.

(f) Price increase agreements

257. After the cessation of the Singapore Meetings, the meetings between the Parties continued in Japan at the ARA level and these meetings were attended by representatives from the Japan Parent Companies.

258. As described in the earlier paragraph at 107, at the Japan Meetings the Japan Parent Companies engaged in information exchange as to each Party's business in [✂] Singapore, and reached agreements on a range of percentage price increases in response to increases in the price of steel. Steel is a key component in the manufacture of ball and roller bearings. The evidence shows that in pursuit of the Market Share and Profit Protection Initiative, during periods when the price of steel increased, the meetings between the Japan Parent Companies increased in frequency.

259. Nachi Japan has submitted to CCS[319] that exchanges of information at the Japan Meetings increased during the period 2004 to 2008 when the price of steel was increasing. During that time, agreements were reached between those competitors in relation to percentage price increases to be implemented across distributor customers. This included Aftermarket Customers in Singapore.

260. CCS has set out below the evidence obtained regarding the price increase agreements that can be said to have the object of preventing, restricting or distorting competition in Singapore.

261. CCS has also set out the evidence which demonstrates the implementation of the price increase agreements in Singapore. However, it must be noted that it is not necessary for CCS to demonstrate that the price increase agreements were implemented. It is established case law that where a participant does not put the initiatives into effect and evidence of actual prices or other behaviour does not reflect those discussed at the meeting, this does not preclude a finding of infringement, nor does it preclude a finding that the

[319] Nachi's document "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013. See paragraph 3.1.2 and 3.2.1 of Nachi's Submission at Tab A (A1).

undertaking participated in the infringement.[320] The liability of a particular undertaking in respect of the infringement is properly established where it participated in those meetings with knowledge of their anti-competitive object, even if it did not proceed to implement any of the measures agreed at those meetings.[321] Therefore, it is sufficient for CCS to demonstrate that the Japan Parent Companies had made an agreement or had engaged in a concerted practice to, as one of its objectives, increase prices for Bearings for sale to Aftermarket Customers in Singapore. However, for completeness and where available, CCS has set out below the evidence made available to it which demonstrates that the price increase agreements were implemented.

(i) Price increase agreement made in 2004 (also known as price increase agreement following the first price increase in Japan[322])

262. As a result of material cost increases the Japanese Parent Companies, at the Japan Meetings, reached agreements about the price increase of Bearings sold [✂]. There were discussions about the range of price increases in percentages i.e. 5-7% increase, as well as the implementation dates of the price increase.[323] In 2004, there was a domestic price increase in Japan. Following the domestic price increase in Japan, there were agreements made at the Japan Meetings to implement a corresponding price increase in [✂] Singapore .[324] The agreement on the first price increase in Japan in 2004 was made in or around April 2004 at a different forum from the Japan Meeting, which the Japan Meetings participants then followed.[325]

(A) Evidence of the agreement made

263. The agreement to apply a corresponding price increase in [✂] following the first price increase in Japan was made by the Japan Parent Companies at the Japan Meeting on 25 June 2004 held in Tokyo. According to [✂] of Nachi Japan,[326] the Parties to the agreement were the Japan Parent Companies, and they were represented by [✂] of NSK Japan, [✂] of JTEKT, [✂] of NTN

[320] Case T-3/89 *Atochem v Commission* [1991] ECR II-867, at [100].
[321] Joined Cases C 238/99 P, C 244/99 P, C 245/99 P, C 247/99 P, C 250/99 P to C 252/99 P and C 254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I 8375, at [508] and [509].
[322] Answers to Questions 5 to 11 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[323] Answer to Question 33 of the of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[324] Answer to Question 39 of the of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[325] Answer to Question 4 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[326] Answer to Question 7 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

Japan and [✂] of Nachi Japan. At the 25 June 2004 Japan Meeting, representatives from the Japan Parent Companies agreed to apply a corresponding price increase for Bearings sold to Aftermarket Customers in [✂] Singapore. This price increase followed the first price increase in Japan due to an increase in material cost.[327]

264. According to NSK Japan, representatives of NSK Japan, JTEKT, NTN Japan and Nachi Japan discussed and agreed on percentage price increases for the [✂] in 2004, although NSK Japan was unable to pinpoint precisely which month in 2004 the agreement was made.[328]

265. The evidence of NTN Japan also revealed that the Japan Parent Companies arrived at a price increase agreement to be applied in Singapore. [✂] explained that there was a price increase for Bearings, "*… in relation to the price increase of steel in Japan, 5% in 2004 and 10% in 2005. All four companies agreed at the ASG in Japan to increase prices for the domestic market in Japan, i.e. distributors in Japan. ASG also said that* [✂] ***Singapore*** *must increase prices. I remember steel prices were increased twice during my time, and we did discuss this during the EM.*"[329] ***[Emphasis added]***

266. Finally, the evidence of JTEKT is also consistent with the evidence supplied by the other Japan Parent Companies. JTEKT supplied CCS with evidence of Japan Meetings held on 11 May 2004 and 25 June 2004. In the first meeting, participants at the Japan Meetings discussed increasing the price of Bearings due to the increase in metal prices. During the 25 June 2004 meeting, Japan Meeting participants continued discussion on price increases for Bearings for [✂] Singapore. In the minutes for the Japan Meeting held on 25 June 2004 provided by JTEKT, it was stated under the heading "*(4) Singapore*" that, "*C- Settled in about 4% increase based on order from June. S/T-Discussing. K-No deal*."[330] Based on the documents provided by JTEKT, CCS notes that

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[327] Document H(4) attached to Nachi's submission contains a contemporaneously made record of the 24 June 2005 Japan Meeting. That document contains a summary of each Party's position in relation to price increases as a result of steel price increases for [✂] Singapore. For the year 2004, that document notes the following position by each of the parties in respect of Singapore:

S (representing NSK) – Internal Sales unconfirmed
O (representing Koyo) – 4% determination of applying all order backlogs
T (representing NTN) – Internal sales unconfirmed
A (representing Nachi) – From July, 3% completed.

[328] NSK's submission in response to CCS's request for further information dated 3 September 2013. See Answer to Question 1.

[329] Answer to Question 1 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

[330] Appendix 64 to the submission from JTEKT/KSBP dated 18 May 2012; Minutes of Japan Meeting entitled "ARG minutes for 25 June 2004".

JTEKT utilises code references for each of the participants, where S=NSK; T=NTN; K=KSBP and C=Nachi.[331] This document shows that the Japan Parent Companies discussed the relevant price increase to be applied to the sale price of Bearings in the aftermarket in Singapore. With respect to JTEKT, [✂] stated that, "…*JTEKT has no dealings in Singapore so JTEKT played no part*".[332] However, CCS notes that its subsidiary company in Singapore, KSBP, did in fact have dealings in Singapore.[333] The evidence shows that [✂] confirmed that he had forwarded the minutes of the 25 June 2004 Japan Meeting to [✂] of KSBP in Singapore. [✂] said, "*Yes, I forwarded this minute to* [✂]*, who was in charge of KSBP at that time*". [334]

267. CCS notes that even if JTEKT was a "passive participant" at that meeting, such passive participation at a meeting during which agreements were concluded would be sufficient to constitute an infringement.[335]

(B) Detail of the agreement reached in 2004

268. In determining the price increase for [✂], the Japan Meeting participants referred to the Japan domestic price and the increase in material cost in Japan. For Singapore, [✂] of Nachi Japan believed that the Japan Meeting participants agreed on a price increase of about 4 to 5% for all Bearings but he could not remember the exact percentage. There was no agreement on the specific date of implementation for Singapore, but the participants were expected to implement the price increase as soon as possible. For Nachi Japan, the price increase was completed in Singapore in July 2004. According to [✂], there was no validity period for the price increase in 2004.[336]

269. NSK has provided the following details of the agreement. [✂] of NSK Japan and other participants at the Japan Meetings in 2004 discussed the date of implementation and the percentage price increase for Aftermarket

[331] Answer to Question 48 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[332] Answer to Question 53 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[333] Answer to Question 73 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[334] Answer to Question 54 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[335] *Westfalen Gassen Nederland BV v Commission of the European Communities Case* T-303/02 at [84]
[336] Answer to Questions 7 and 8 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

Customers in [✂] Singapore.[337] The details of the agreement were as follows:

> *"NSK Japan:* *5 per cent increase in External Sales Prices from July 2004*
>
> *NTN Japan:* *5-8 per cent increase in External Sales Prices from July 2004*
>
> *JTEKT:* *7 per cent increase in External Sales Prices from July 2004*
>
> *Nachi Japan:* *increase in CIF by 3 per cent for orders received in June 2004. 3 per cent price increase from January 2005".*

(C) Implementation in Singapore of the price increase agreement made in 2004

(1) Implementation by Nachi Singapore

270. According to [✂] of Nachi Japan, there was a corresponding increase in the CIF to Nachi Singapore because of the price increase agreement at the Japan Meeting. He went on to state that, "*There was an agreement on CIF price list signed between Nachi Japan and Nachi Singapore.*"[338] [✂].[339]

(2) Implementation by NTN Singapore

271. According to [✂] of NTN Singapore, when steel prices increased, NTN Japan increased prices because of an increase in manufacturing cost. He said, "*All four companies faced the same situation of price increases and we will then also discuss and agree on price increases at the EM for the* [✂]*".*[340] During the Singapore Meeting on 4 March 2005, [✂] also said that, "*At this EM, we reviewed the instruction from ASG to increase prices to the distributors,*"[341] and that, "*prices to distributors were also increased and we*

[337] NSK's submission in response to CCS's request for further dated 3 September 2013. See Answer to Question 1.
[338] Answer to Question 10 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[339] Answer to Question 44 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[340] Answer to Question 4 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[341] Answer to Question 4 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

discussed at the EM on how much to increase prices by to our distributors". While the price increase was discussed at the Singapore Meeting, [✂] was not sure whether the price increase was finally implemented.[342]

(3) Implementation by NSK Singapore

272. NSK was unable to provide any evidence of implementation of the 2004 agreement in Singapore, although it did not deny that the agreement was implemented in Singapore. NSK had stated that it was not able to provide information about the implementation of the 2004 price agreement in Singapore for the following reasons:[343]

a. NSK's document retention policy is that sales records of more than seven years are not retained; and

b. The relevant employees who may have been able to provide that information are no longer with NSK.

(4) Implementation by KSBP

273. As noted in paragraph 266 above, the minutes of the agreement reached between the Japan Parent Companies at the Japan Meeting on 25 June 2004 was forwarded by [✂] of JTEKT to [✂] of KSBP.[344] CCS is, therefore, of the view that this act creates a presumption that JTEKT/KSBP had acknowledged and had likely used, or could not have ignored this information in relation to its actions and decisions on the Singapore market.

(ii) Price increase agreement made in 2005 (also referred to as the Price increase [✂] *following the second price increase in Japan)*[345]

(A) Evidence of the agreement made in 2005

274. The agreement to apply a corresponding price increase [✂] following the second price increase in Japan was made by the Japan Parent Companies at the Japan Meeting on 25 February 2005.[346] According to [✂] of Nachi

[342] Answer to Question 5 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[343] NSK's submission in response to CCS's request for further information dated 3 September 2013. See Answer to Question 1.
[344] Answer to Question 54 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[345] Answers to Questions 12 to 19 of provided by [✂] (Nachi) dated 23 May 2013
[346] Answer to Question 13 of the Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013

Japan, representatives of the Japan Parent Companies who were parties to the agreement included [✂] of NSK Japan, [✂] of JTEKT, [✂] of NTN Japan and [✂] of Nachi Japan.[347] At the 25 February 2005 Japan Meeting, representatives from the Japan Parent Companies agreed to apply a corresponding price increase to Aftermarket Customers in [✂] Singapore, following the second price increase in Japan due to an increase in material cost.[348] [✂] could not recall the exact percentage but he believed that the Japan Meetings participants agreed on a 4% price increase for all Bearings sold in Singapore to Aftermarket Customers.[349] The agreed implementation date for the price increase in Singapore was around July 2005.[350] According to [✂], the second price increase was expected to last until the next change to prices took place.[351]

275. [✂]'s evidence is confirmed by document [✂]-**004.**[352] This is a contemporaneous record made of the Japan Meeting on 25 February 2005. The document records:

> *"1) Second price increase and price increase in* [✂]
>
> - *The participants confirmed that the second domestic price increase in FY2005 would be implemented on April 1.*
>
> *(Content) In addition to the 4.5% increase in steel prices reported previously, each company decided to notify the market of a price increase of 7.6% to 8% (reflecting an increase in external processing costs, production and employee overtime allowance), based on the same grounds as the first price increase.*
>
> - *As a result of the above decision, the second market price increase will be implemented, as we are required to follow suit*

[347] Answer to Question 14 of the Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013 and document [✂]-004

[348] Answer to Question 15 of the Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013

[349] Answer to Question 15 of the Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013

[350] Answer to Question 15 of the Notes of Information/Explanation Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

[351] Answer to Question 16 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

[352] Document marked [✂]-004, of the Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013, where "S" represents NSK; "O" Represents JTEKT; "T" represents NTN and "A" represents Nachi (Nachi's document "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan")" dated 18 March 2013)

in the [✂]. *As there may be a third price increase implemented in the future, we cannot avoid implementing a price increase. If we fall behind, it would be difficult to raise prices and the rate of increase would have to be large.*

However, it would be difficult to follow the price increase in April as we have continuously raised our prices in the [✂] *market in the past. We will hold discussions, but the price increase would have to be around July at the earliest. The rate of increase will be in accordance with the rate of domestic price increase.*

…"

276. The table annexed to document [✂]-**004** contains the following record for Singapore:

** Settled ** Negotiations ongoing or not settled*

Country	*(S)*		*(O)*		*(T)*		*(A)*	
Singapore	*Targets January of next year*	**	*Decided on a 4% increase applicable to all outstanding orders*	*	*Internal sales: not determined*	**	*Completed a 3% price increase in July*	*

277. This table demonstrates that price increases by the Singapore subsidiaries were discussed between the Japan Parent Companies as this table was appended to the record of the Japan Meeting held on 25 February 2005. This record is evidence that the Japan Parent Companies had exchanged information about their current and/or future pricing intentions in relation to the sale of Bearings in the aftermarket in Singapore.

278. [✂] also gave evidence that, "*to the best of my knowledge* [I] *sent the 25 Feb 2005 ARA minutes (document marked* [✂]*-004) to* [✂] *and* [✂]*, who was based in* [✂] *at that period.*[353] CCS notes that [✂] and [✂] of Nachi (after

[353] Answer to Question 18 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

[✂] passed away) had the responsibility for pricing of Bearings in Singapore.[354]

279. NTN Japan submitted to CCS an email (document marked [✂]-**021**) dated 17 January 2005, from [✂] of NTN to various addressees including [✂], of NTN in Singapore reporting on the Japan Meeting on 14 January 2005.[355] This document appears to record discussions at the Japan Meeting held prior to the February 2005 Japan Meeting for which Nachi Singapore had provided evidence recorded in paragraph 275 above. [✂] explained that the information in his 17 January 2005 email came from the Japan Meetings.[356] He stated that "*This was in relation to the price increase of steel in Japan, 5% in 2004 and 10% in 2005. All four companies agreed at the ASG in Japan to increase prices for the domestic market in Japan, i.e. distributors in Japan. ASG also said that* [✂] *Singapore must increase prices. I remember steel prices were increased twice during my time, and we did discuss this during the EM."*[357]

280. [✂]'s evidence is confirmed by his email of 17 January 2005 which records:[358]

> *"Domestic actions for price increase*
>
> *To reflect the second wave of requests for price increase received from steel manufacturers.*
>
> *-5% in 2004 and 10% in 2005, for a total increase of 15% in the price of steel*
>
> *-Since the steel accounts for 30% of the bearing cost, the price increase is to be set at 4.5% (15% x 30%) and is to be implemented effective April 1 to the domestic distributors. (Agreed to by the four companies).*
>
> *S and K say that they are going to instruct their overseas sales companies to increase the prices for the overseas distributors in*

[354] Answer Questions 6, 10 and 11 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013.
[355] Document marked [✂]-021, of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[356] Answer to Question 1 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[357] Answer to Question 1 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[358] Document marked [✂]-021, of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

line with such price increase. (The rate and time of increase are to be decided through talks.) The increase of CIF prices from Japan to overseas sales companies is not decided yet at this moment for all manufacturers, including ourselves. But it is highly possible. With the progress of the yen appreciation, if the CIF prices are raised, the [✂] *sales companies that are purchasing the products in yen will be put in a financially stringent situation. We need to powerfully promote the increase in the external sales prices.*"

281. NSK has admitted that [✂] of NSK Japan met with representatives from JTEKT, NTN Japan and Nachi Japan at the Japan Meetings to discuss price increases [✂] in 2005.[359] NSK Japan's evidence is that during the Japan Meeting held on 14 January 2005, the Japan Parent Companies discussed increasing prices by 4.5% for Aftermarket Customers.[360] NSK Japan also admitted that during the Japan Meeting held on 25 February 2005, representatives of the Japan Parent Companies agreed on an 8% price increase guideline for Aftermarket Customers in 2005 which would apply to [✂].[361]

282. [✂] of NTN gave evidence that he sent an email to the Japan Meeting participants on 27 July 2005 to inform them of the date and venue of the next Japan Meeting. The agenda for that meeting was to discuss whether the increase in bearings prices from distributor to end-user had been implemented. He was not sure about the exact date of the agreement on price increase made at the Japan Meetings. However, he did give evidence that for the Japan Meeting on 4 August 2005, the Japan Meeting participants intended to discuss whether the price increase had been implemented in [✂].[362]

283. Finally the documentary evidence supplied by JTEKT supports the fact that the Japan Parent Companies had reached an agreement by the Japan Meeting held on 25 February 2005. The minutes of that meeting (document marked [✂]-**015**)[363] provided by JTEKT states as follows:

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[359] NSK's submission in response to CCS' request for further information dated 3 September 2013. See Answer to Question 2.

[360] Email from [✂] to various recipients dated 16 January 2005 at 22:38 (Document NO28 to NSK's submission in response to CCS's request dated 3 September 2013).

[361] Email from [✂] to various recipients dated 27 February 2005 11:53 (Document NO29 to NSK's submission in response to CCS's request for further information dated 3 September 2013).

[362] Answer to Question 7 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

[363] Document marked [✂]-015 of Notes of Information/Explanation provided by [✂] (KSBP) dated 3 July 2013.

"*1. Additional price increase*

All the member companies agree that price increase for domestic customers of industrial machineries needs to be done. Following this idea, negotiations of price increase will start targeting same percentage of increase. First, EM in [✂]*and Singapore will discuss in the meeting on 3 and 4 March and decide the percentage for each market and timing of implementation."*

(B) Details of the agreement made

284. NSK Japan has submitted that during the Japan meetings held in 2005, NSK Japan, NTN Japan, JTEKT and Nachi Japan, discussed and exchanged the following in relation to the Aftermarket Customers in Singapore:[364]

"NSK Japan: 3 per cent price increase from July 2005

NTN Japan: [no indication given by NSK]

JTEKT: 4 per cent price increase from July 2005

Nachi Japan: 5 per cent price increase from May 2005."

285. The documentary evidence that CCS has obtained for the February 2005 Japan Meeting from Nachi Japan contains the following record:[365]

** Settled ** Negotiations ongoing or not settled*

Country	*(S)*		*(O)*		*(T)*		*(A)*	
Singapore	*Targets January of next year*	**	*Decided on a 4% increase applicable to all outstanding orders*	*	*Internal sales: not determined*	**	*Completed a 3% price increase in July*	*

[364] NSK's submission in response to CCS's request for further information dated 3 September 2013. See Answer to Question 2.
[365] Document marked [✂]-004, Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

286. [✂] of Nachi Japan could not recall the exact percentage but he believed the Japan Meeting participants agreed on a 4% price increase for all Bearings sold in Singapore. [366]

287. Based on the information available to CCS, the agreed implementation date for the price increase in Singapore was around July 2005. [367]

(C) Implementation in Singapore of the price increase agreement made in 2005

(1) Implementation by Nachi Singapore

288. [✂] confirmed that the implementation of the second price increase in Singapore was by way of an increase in the corresponding CIF price from Japan to Singapore. [✂] said that he determined the corresponding increase in the CIF prices to Nachi Singapore. His subordinate based in Japan liaised with Nachi Singapore to ensure that the increase to Nachi's Singapore customer, [✂] , was implemented.[368]

289. In explaining the implementation of the increase in CIF prices, [✂] stated that the price increases in Singapore in 2005 were implemented in a few tranches. He stated that following the second price increase in Japan in 2005, there was a corresponding increase in CIF prices in Singapore [✂].[369] However, he was not certain whether the January 2005 increase in CIF was implemented following the first price increase or second price increase in Japan. [✂] also could not recall if the [✂] was discussed at the Japan Meeting.[370]

290. Nachi Japan has also provided unsigned price list agreements between Nachi Japan and Nachi Singapore [371] that showed the mentioned changes in the CIF prices. Nachi was able to provide a document[372] that showed a corresponding increase in price to [✂] from June 2006 at [✂]. [✂]'s evidence is consistent with the minutes of Singapore Meetings prepared by [✂]. At a

[366] Answer to Question 15 of the Notes of Interview of [✂] (Nachi) dated 23 May 2013.
[367] Answer to Question 15 of the Notes of Interview of [✂] (Nachi) dated 23 May 2013.
[368] Answers to Questions 15 and 17 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[369] Answers to Questions 48 of the Notes of information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[370] Answers to Questions 45 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[371] Nachi's document "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan")" dated 18 March 2013. See Tab E document E(3), E(4), E(5) and E(6).
[372] Nachi's document "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan")" dated 18 March 2013. See Tab F document F(1).

Singapore Meeting held on 28 April 2005, he reports that, *"Each company agreed to implement a price increase of at least 5%, or 7-8% for 2005. Any percentage that may have already been increased will be considered to be included in the aforementioned percentage*".[373]

(2) Implementation by NTN Singapore

291. According to [✂]of NTN, if there was any discussion and agreement to increase price, [✂] would inform NTN Singapore to revise its in-house price list. [374]

292. According to [✂] of NTN Singapore, when steel prices increased, their headquarters in Japan had to increase prices as manufacturing costs would increase. The Japan Parent Companies faced the same price increases and the Singapore Meeting participants would then also discuss and agree on price increases at the Singapore Meetings for the [✂] market. At the Singapore Meeting on 4 March 2005, [✂] said that the Singapore Meeting participants reviewed the instruction from the Japan Meetings to increase prices to the distributors and he confirmed that there was an agreement at the Singapore Meetings to increase prices to the distributors.[375]

(3) Implementation by NSK Singapore

293. NSK Singapore was unable to supply any evidence of implementation of the 2005 agreement in Singapore, although it did not deny that the agreement was implemented in Singapore. NSK Singapore has stated that it is not able to provide information about the implementation of the 2005 price agreement in Singapore for the following reasons:[376]

a. NSK Singapore's document retention policy is that sales records of more than seven years are not retained; and

b. The relevant employees who may have been able to provide that information are no longer with NSK Singapore.

[373] Document [✂]-07 of Notes of Information/Explanation provided by [✂] (Nachi) dated 9 May 2013.
[374] Answers to Question 48, 50, 51 and 52 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[375] Answers to Question 4 and 6 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[376] NSK's submission in response to CCS's request for further information dated 3 September 2013. See Answer to Question 2.

(4) Implementation by KSBP

294. The information from KSBP as to implementation of the price increase agreement is scant. However, it is clear from the 25 February 2005 document that KSBP agreed to implement the price increase in Singapore. The KSBP document also records that the participants discussed the percentage price increase and timing for its implementation in Singapore during the Singapore Meeting held on 3 and 4 March 2005.[377]

(iii) Price increase agreement made in 2007 (also known as price increase [✂] *following the third price increase in Japan)*[378]

295. Following the third domestic price increase in Japan due to material cost increases, Nachi Japan, NSK Japan and JTEKT made agreements at the Japan Meetings to implement corresponding price increases in [✂] Singapore.

(A) Evidence of the agreement made

296. The agreement to apply a corresponding price increase in [✂] following the third price increase in Japan was made at a Japan Meeting in 2007. According to [✂] of Nachi Japan, representatives of the Japan Parent Companies who attended the meeting included [✂] of NSK Japan, [✂] of JTEKT and [✂] of Nachi Japan. At that Japan Meeting, the representatives from NSK Japan, JTEKT and Nachi Japan agreed to apply, "*corresponding price increase to the distributors in* [✂] *Singapore, following the third price increase in Japan due to an increase in material cost."*[379] However, [✂] could not remember the exact percentage increase agreed between the participants at the Japan Meeting.

(B) NTN Japan's non-participation in the 2007 price increase agreement

297. NTN Japan stopped sending representatives to the Japan Meetings from September 2006.[380] Evidence from [✂] of NSK Japan corroborates this

[377] Document marked [✂]-015, of Notes of Information/Explanation provided by of [✂] (JTEKT) dated 3 July 2013.
[378] Answers to Questions 20 to 28 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013
[379] Answers to Questions 23 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[380] Refer to paragraphs 375 to 379 below.

when he stated that the last Japan Meeting attended by [✂] of NTN Japan was in June 2006.[381]

(C) Implementation in Singapore of the price increase agreement made in 2007

298. The Japan Meeting participants agreed to implement the 2007 price increase agreement in Singapore in or around April 2008.[382]

(1) Implementation by Nachi Singapore

299. [✂] of Nachi Japan also stated that he believed a 3% price increase was implemented in Singapore. Document [✂]**-015**, is a price list agreement between Nachi Singapore and its distributor customer in Singapore, which shows a price increase to that customer. [✂] gave evidence that this agreement was made with Nachi Singapore's distributor customer following the agreement at the Japan Meeting to apply a price increase in Singapore.[383] [✂] confirmed that his subordinate in Japan, [✂], had determined the increase in CIF price to Nachi Singapore and [✂] has liaised with Nachi Singapore directly to ensure that the price increase to [✂] was implemented.[384]

300. [✂] confirmed that document [✂]**-014** was the price list agreed between Nachi Japan and Nachi Singapore following the agreement at the Japan Meeting to implement the third price increase in Singapore.[385]

301. In explaining document [✂]**-015**, [✂] also referred to an email from [✂] to [✂] dated 21 May 2008 and based on these documents, stated that he believed the new price list was a result of discussion between competitors and the [✂]% price increase could be a result of co-operation and agreement between competitors.[386]

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[381] Answer to Question 24 of Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.
[382] Answer to Question 23 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[383] Answer to Question 49 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013 together with Document marked [✂]-015.
[384] Answer to Question 27 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[385] Answer to Question 48 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[386] Answer to Question 14 of Notes of Information/Explanation provided by [✂] (Nachi) dated 16 May 2013.

(2) Implementation by NSK Singapore

302. According to the evidence, NSK Singapore did not implement price increases to its Aftermarket Customers in Singapore in 2007. [✂] said that:

> *"[a]lthough we had discussed the price increase in Singapore during the ASG meetings, but we did not implement it for 2006, 2007 and 2008… I cannot remember the exact reason why prices were not increased for Singapore. I think it is because* [✂]*… I was involved in the process of building up our business relationship with* [✂]*. In 2007/2008, we managed to get* [✂] *to distribute our products. As it is the early stages of our business relationship with* [✂]*, it would be hard [for] SNSK* [✂] *I did discuss general price increases during the ASG meetings with my competitors for the Aftermarket including Singapore*".[387]

303. As established by case law, the liability of a particular undertaking in respect of the infringement is properly established where it participated in those meetings with knowledge of their anti-competitive object, even if it did not proceed to implement any of the measures agreed at those meetings.[388] The finding of NSK Japan's participation in the infringement in question cannot be undermined by arguments that the agreed price increase measures were not applied to Aftermarket Customers in Singapore.

(3) Implementation by JTEKT

304. No evidence was available to show that the price increase agreement made in 2007 was implemented in Singapore. Nonetheless, even if the agreed price increase measures had not been applied by JTEKT to its Aftermarket Customers in Singapore, this will not undermine a finding of JTEKT's participation in the infringement in question.[389]

(iv) Price increase agreement in 2008 (also referred to as price increase [✂] *following the fourth price increase in Japan)*[390]

305. The agreement to apply a corresponding price increase in [✂] following the fourth price increase in Japan was made between Nachi Japan, NSK Japan

[387] Answer to Question 53 of Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.
[388] Joined Cases C 238/99 P, C 244/99 P, C 245/99 P, C 247/99 P, C 250/99 P to C 252/99 P and C 254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I 8375, at [508] and [509].
[389] Ibid.
[390] Answers to Questions 29 to 34 of the Notes of information/Explanation provided by [✂] (Nachi) dated 23 May 2013.

and JTEKT at the Japan Meeting held on 12 May 2008. According to [✂] of Nachi Japan, parties to the agreement included [✂] of NSK Japan, [✂] of JTEKT and [✂] of Nachi Japan. At the 12 May 2008 Japan Meeting, representatives from NSK Japan, JTEKT and Nachi Japan agreed to apply a corresponding price increases to Aftermarket Customers in [✂] Singapore, following the fourth price increase in Japan due to an increase in material cost. According to [✂], there was an agreement on the percentage of price increase for Singapore and the implementation date but he could not recall specifically those details. In a document provided by [✂] marked [✂]-**008** which is an internal email sent by [✂] to his Nachi colleagues, it states "*Prior to the 4th steel material price increase, the current status of competitions and market trend have been reported as follows…"*. The email states under the heading "[✂]" as follows, "*Prior to the 4th price increase, all the companies should start reviewing the prices in* [✂]. *Also, across the board price increase for* [✂] *Singapore intensely*". When explaining this document, [✂] admitted that the 4th price increase as stated under the section headed "[✂]" was agreed upon at the Japan Meeting.[391]

306. This is consistent with the explanation from [✂] of Nachi Singapore of the fourth price increase. He stated that the fourth price increase "*refers to the price increase in steel which will lead to a price increase in the price of bearings*".[392] He also stated that Nachi intended to implement the fourth price increase in Singapore.[393]

307. On 21 May 2008, [✂] of Nachi reported to [✂] of Nachi Japan via email that, "*After the agreement on a 10% increase for retail products in* [✂], *we have reached agreement with K and S companies to move towards price increase at a similar rate in Singapore*."[394] In relation to this document, [✂] stated, "*I reported to* [✂] *that Koyo, NSK and Nachi agreed to a price increase*." He also stated in relation to this document that, "*Koyo, NSK and Nachi wanted to check if NTN also had the intention to increase its prices. The 10% increase related to aftermarket bearings sold in* [✂] *which may have* [✂] *Singapore*."[395]

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[391] Answer to Questions 54 of the Notes of information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[392] Answer to Question 58 of Notes of Information/Explanation provided by [✂] (Nachi) dated 15 May 2013.
[393] Answer to Question 62 of Notes of Information/Explanation provided by [✂] (Nachi) dated 15 May 2013.
[394] Document marked [✂]-23, Notes of Information/Explanation provided by [✂] (Nachi) dated 10 May 2013; where "K" represents KSBP and "S" represents NSK.
[395] Answer to Question 68 of Notes of Information/Explanation provided by [✂] (Nachi) dated 10 May 2013.

308. Evidence from NSK confirms that a Japan Meeting was held on 12 May 2008.[396] According to [✂] of NSK Japan, he believed that the fourth price increase in Japan occurred within the first half of 2008[397] but there was no direct effect of the fourth price increase in Singapore. He added that "*However as* [✂] *suggested since prices in Japan increases by a certain ratio, prices in Singapore should also increase by the same quantum*". NSK has been unable to provide any additional information to CCS on the agreements reached at this meeting.

309. JTEKT indicated that it has no record of an agreement reached at the Japan Meeting in 2008 on percentage price increases due to steel price increases that affected Singapore.[398] In relation to the meetings in 2008, JTEKT submitted that there were Japan Meetings held in 2008 and the meetings were held about two to four times. However, JTEKT was unaware of the exact dates of the Japan Meetings in 2008. JTEKT supplied a document[399] in relation to a Japan Meeting on 15 January 2008 held in Tokyo. [✂] of JTEKT explained that the email dated 9 January 2008 in document [✂]**-018** stated that there was a Japan Meeting to be held on 15 January 2008 and the participants planned to exchange information on status of price increases in Singapore, [✂], [✂], [✂], [✂], [✂], [✂] and [✂] at this meeting.[400]

310. As supported by evidence[401] provided by Nachi Japan, NSK Japan and JTEKT, NTN Japan did not attend any Japan Meetings in 2008.

(A) <u>Implementation in Singapore of the price increase agreement made in 2008</u>

311. CCS understands that Nachi Japan was unable to implement the fourth price increase agreed between the relevant Parties. [✂] of Nachi Japan stated, although there was an agreement to implement the price increase in

[396] NSK submission in response to CCS's request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013 Answer to Question 5.
[397] Answer to Question 67 of Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.
[398] Supplemental Responses to CCS's Questions to JTEKT/KSBP dated 24 July 2013 at [5.4].
[399] Supplemental Responses to CCS's Questions to JTEKT/KSBP dated 24 July 2013 at [5.2].
[400] Answer to Question 75 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013
[401] Answers to Questions 68 and 69 of Notes of Information/Explanation provided by [✂] (Nachi) dated 10 May 2013; Answer to 47 of the Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013; Answer to Question 109 of Notes of Information/Explanation provided by [✂] (KSBP) dated 7 March 2012.

Singapore, Nachi Singapore did not manage to implement the price increase.[402]

312. JTEKT submitted that it was unaware of the outcome of any proposed price increase in Singapore in 2008, and could not provide any information on the implementation. [403] However, JTEKT has produced document marked [✂]-**042**[404] being a letter on the letterhead of Koyo Singapore Bearing (Pte) Ltd dated 9 June 2008 which provides are follows,

> *"....As we announced in this year distributors meeting in Awaji Japan, due to the drastic price hike of scrap iron, iron alloys and coals, every steel maker has requested huge price increase for their products supply from July 1 onwards....*
> *On this note, kindly understand that we had no choice but to raise our prices due to the increasing costs that are beyond our control, so that we can stably provide our products....*
>
> *Price revision ratio: 8% (please see below)*
> *Effective: from shipment of August 1, 2008 onwards.*
>
> *<Request >*
> *Please provide competitors' price increase information to KSBP, so we may study carefully the price revision ratio in order not to lose competitiveness in the market as much as possible..."*

313. The 8% price increase noted in the letter at [✂]-**042**, is similar to the 10% price increase that [✂] had noted was the subject of the agreement between JTEKT; Nachi and NSK. Further, the date from which the price increase would be effective is a date after the alleged price increase agreement admitted by [✂] and NSK. Therefore, CCS assesses that, on the balance of probabilities, the price increase described in [✂]-**042** was either the subject of a price agreement between the parties or alternatively, it can be characterised as a price increase that was not the subject of independent decision-making by JTEKT. Either way, on the balance of probabilities, CCS assesses that document [✂]-**042** together with the evidence supplied by the other parties concerning the 4th price increase is evidence of a concerted practice constituted by the exchange of price increase information which

[402] Answer to Question 32 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
Answer to Question 48 of Notes of Information/Explanation provided by [✂] (Nachi) on 22 May 2013.
[403] Supplemental Responses to CCS' Questions to JTEKT/KSBP dated 24 July 2013 at [5.11].
[404] See document marked [✂]-042, Notes of Information/Explanation Provided by [✂] (KSBP) dated 28 June 2013

reduces uncertainties inherent in the competitive process and facilitates the coordination of the parties' conduct on the market.

(v) Exchange of pricing information in 2009 and 2010

314. NSK Japan submitted that there were two Japan Meetings in 2009 and 2010; one held on 14 July 2009 and one held on 8 July 2010.[405] The meeting held on 8 July 2010 was held in Tosho Kaikan.[406] The attendees at those Japan Meetings were as follows:[407]

a. JTEKT – [✂] ([✂]attended two of the Japan Meetings during this period, including the meeting on 8 July 2010);

b. Nachi Japan – [✂]; and

c. NSK Japan– [✂].

315. According to [✂] of Nachi Japan, there was a fifth price increase in Japan in 2010 due to an increase in material cost but there was no Japan Meeting at that time. Therefore, there was no agreement to implement a corresponding price increase in [✂] following the fifth price increase in Japan. It was noted that the price increase intended for Singapore in 2008, following the third price increase in Japan, was the last price increase which was agreed upon at Japan Meeting and which was successfully implemented by Nachi.[408]

316. NSK Japan has admitted that, "*Although information on NSK's competitors' price increases may have been shared during ASG meetings, there was no agreement between NSK and its competitors to increase prices for the Singapore market in FY2009. In this regard, information on NSK's competitors' price increases may have influenced, among other factors, the* [✂] *issued by NSK Headquarters in Japan to its local subsidiaries, and therefore influencing the final rate of price increase. However, such influence may be limited as such*[✂] *was only one of the factors taken into consideration during SNSK's price increase determination process*".[409]

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[405] NSK submission in response to CCS's request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013, Answer to Question 5.
[406] NSK submission in response to CCS's request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013, Answer to Question 5.
[407] Private and Confidential document entitled, "Further Information Requested by CCS on 24 July 2013 in Relation to the Investigation Under the Competition Act – 11Th Submissions by Koyo and JTEKT dated 12 August 2013.
[408] Answers to Questions 36 of the Notes of information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[409] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013, Answer to Question 3.

317. NSK Japan has further stated that NSK Singapore did not implement any price increase for the aftermarket business in Singapore in 2009.[410]

318. Whilst there is no clear evidence of the implementation of the price increases discussed in 2009 and 2010, or what would be the fifth price increase, as mentioned in paragraph 315, it bears repeating that the fact that a party does not act on or subsequently implement an agreement or concerted does not preclude a finding that an infringement existed.

319. In addition, NSK Japan has admitted that, "…[✂]."[411] For [✂], a distributor located in Singapore, two price increases were implemented: [✂].[412]

320. NSK Japan has submitted that its price increases in October and December 2010 were independently determined.[413] However, CCS notes that NSK Japan's evidence is that there was a Japan Meeting in July 2010 and the NSK Singapore's claim that the price increases were independently determined is a bare assertion, and not supported by evidence. There is also no evidence that NSK Japan withdrew its participation from the continued Japan Meetings in 2009 and 2010, or denounced the objectives of the Japan Meetings where commercially sensitive information had been exchanged. In the circumstances, CCS is unable to accept [✂]'s claim and the assertion from NSK Singapore that its price increases in Singapore in 2010 were determined independently.

321. In this regard, CCS notes that in *Westfalen v Commission*,[414] the CFI (now General Court) was of the view that given the clandestine nature of cartels, where little or nothing may be committed in writing, every piece of evidence, even wholly circumstantial evidence, depending on the context and the particular circumstances, may be sufficient to find an infringement.

322. Further, the fact that the Japan Meetings continued on the part on NSK Japan, Nachi Japan and JTEKT, is evidence of the continued participation by those Parties in the single continuous infringement and the Market Share and Profit Protection Initiative. Indeed, as mentioned in paragraph 115, the main

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[410] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013 Answer to Question 3.
[411] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013 Answer to Question 4.
[412] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013 Answer to Question 4.
[413] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013 Answer to Question 4.
[414] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334 at [106]-[107].

purpose of the Japan Meetings was to exchange market information in relation to the [✂] markets, including commercially sensitive information such as pricing information, including price increases.

(vi) Conclusion on the price increase agreements

323. The Parties made price increase agreements that were intended to apply to the sale of Bearings in the aftermarket in Singapore. The evidence supports the position that all four of the Japan Parent Companies made a price increase agreement in 2004 in Japan that was intended to apply to the sale of Bearings to Aftermarket Customers in Singapore. The details of the price increase agreement varies between participants.

324. It is recorded by NSK Japan as follows: [415]

> *"NSK Japan: 5 per cent increase in External Sales Prices from July 2004*
>
> *NTN Japan: 5-8 per cent increase in External Sales Prices from July 2004*
>
> *JTEKT: 7 per cent increase in External Sales Prices from July 2004*
>
> *Nachi Japan: increase in CIF by 3 per cent for orders received in June 2004. 3 per cent price increase from January 2005."*

325. It is recorded by Nachi Japan as follows:[416]

> *S (representing NSK) – Internal Sales unconfirmed*
>
> *O (representing Koyo) – 4% determination of applying all order backlogs*
>
> *T (representing NTN) – Internal sales unconfirmed*
>
> *A (representing Nachi) – From July, 3% completed.*

326. There is no independent record provided by NTN Japan in relation to the price increase agreement. However, [✂] of NTN said that the Singapore Meetings participants reviewed the instructions from the Japan Meetings to

[415] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013, Answer to Question 1.

[416] Document marked H(4), attached to Nachi's submission contains a contemporaneously made record of the 24 June 2005 ARA meeting. That document contains a summary of each Undertakings' position in relation to price increases as a result of steel price increases for [✂] Singapore.

increase prices to the distributors and he confirmed that there was an agreement at the Singapore Meetings to increase prices to the distributors.[417]

327. It is recorded by JTEKT as follows: [418]

> "*C- Settled in about 4% increase based on order from June. S/T-Discussing*
> *K-No deal*."

328. However, as noted in paragraph 273 above, the agreement on percentage increases reached at the Japan Meeting in 2004 was shared with KSBP by [✂] of JTEKT. This creates a presumption that while JTEKT may not have agreed on a percentage price increase to be applied in Singapore, JTEKT/KSBP had acknowledged and had likely used, or could not have ignored this information, in relation to its actions on the Singapore market.

329. CCS acknowledges that there is some inconsistency between the Japan Parent Companies as to the precise percentage increase that had been agreed upon. However, this fact does not detract from the finding that the Japan Parent Companies had made a price increase agreement for application to the Bearings sold to Aftermarket Customers in Singapore.

330. The evidence supports the position that all four Japan Parent Companies made a price increase agreement by February 2005 following discussions at the Japan Meeting attended by [✂] of Nachi Japan; [✂] of NSK Japan; [✂] of JTEKT and [✂] of NTN Japan.

331. The detail of the price increase agreement as described by NSK Japan was as follows:[419]

> *"NSK: 3 per cent price increase from July 2005*
>
> *NTN: [no indication given by NSK]*
>
> *JTEKT: 4 per cent price increase from July 2005*
>
> *Nachi: 5 per cent price increase from May 2005."*

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[417] Answers to Questions 4 and 6 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

[418] See Appendix 64 (ARG minutes) to the submission from JTEKT/KSBP dated 18 May 2012; Minutes for 25 June 2004.

[419] NSK submission in response to CCS' request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013 Answer to Question 2b.

332. The documentary evidence that CCS has obtained from Nachi Japan for the February 2005 Japan Meeting contains the following record:[420]

** Settled ** Negotiations ongoing or not settled*

Country	*(S)*		*(O)*		*(T)*		*(A)*	
Singapore	*Targets January of next year*	**	*Decided on a 4% increase applicable to all outstanding orders*	*	*Internal sales: not determined*	**	*Completed a 3% price increase in July*	*

333. However, while he could not recall precisely, [✂] of Nachi Japan stated that he believed that the Japan Meeting participants agreed on a 4% price increase for all Bearings sold in Singapore. [421]

334. [✂] of NTN could not recall precisely the percentage price increase agreed by the participants at the Japan Meetings. However, he gave evidence that, *"All four companies agreed at the ASG in Japan to increase prices for the domestic market in Japan, i.e. distributors in Japan. ASG also said that* [✂] *Singapore must increase prices. I remember steel prices were increased twice during my time, and we did discuss this during the EM."*[422] NTN Japan's evidence is supported by [✂]'s email reporting on the Japan Meeting discussions to the relevant representatives in NTN Singapore dated 17 January 2005.[423]

335. The information from JTEKT does not state precisely the percentage price increase agreed upon by the Japan Parent Companies. However, it is clear from 25 February 2005 that JTEKT had agreed to implement the price increase in Singapore. JTEKT's email also shows that the participants had intended that the Singapore Meeting should discuss during the meeting

[420] Document marked [✂]-004, Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[421] Answer to Question 15 to Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[422] Answer to Question 1 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[423] Document marked [✂]-021, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.

proposed for 3 and 4 March the percentage price increase and timing for its implementation in Singapore.[424]

336. CCS notes that the witnesses' evidence and the records in relation to the price increase in 2005 contain different information as to the percentage price increase to be applied and the timeframe for its implementation in relation to Singapore. However, what is consistent across all witnesses and all records is:

    a. that a price increase was discussed at the Japan Meetings between the Japan Parent Companies in response to steel price increases;

    b. that the discussions and agreements reached in Japan took place in January and February 2005;

    c. that price increase was also to be implemented in Singapore; and

    d. that the parties intended to or did in fact implement a price increase in Singapore in response following from the discussions and agreements reached in Japan.

337. The evidence supports the position that three of the four Japan Parent Companies attended a meeting or meetings and discussed the implementation of a price increase for the price of Bearings for sale to Aftermarket Customers in Singapore in 2007. The representatives who attended the meeting(s) where that price increase was discussed included [✂] of NSK Japan; [✂] of JTEKT and [✂] of Nachi Japan. There is little evidence about the exact percentage price increase agreed.

338. The evidence supports the position that three of the four Japan Parent Companies attended a meeting or meetings and discussed the implementation of a price increase for the price of Bearings for sale to Aftermarket Customers in Singapore in 2008, most likely in a meeting held on 12 May 2008. The representatives who attended the meeting(s) where that price increase was discussed included [✂] of NSK Japan; [✂] of JTEKT and [✂] of Nachi Japan. There is little evidence on the exact percentage price increase agreed.

339. CCS is of the view that the continued existence of the Japan Meetings in 2009 and 2010, and that fact that the Parties continued to remain active on the market, raises the presumption that the Parties would have taken into

[424] Document marked [✂]-015, Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.

account the information exchanged, for the purposes of determining its conduct on that market. This is especially so as the Parties in this case had concerted together on a regular basis over a long period of time. Therefore, the Parties cannot fail to take that information into account when determining its own future policy on the market.

340. In this regard, CCS notes that NSK Japan has admitted as much, in that the information shared during the Japan Meetings would have been "*one of the factors taken into consideration during SNSK's price increase determination process.*"[425] Therefore, the continued existence of the Japan Meetings would mean that the parties would not be able to determine independently the policy it intended to adopt on the market.

341. The evidence is clear that the Parties reached agreements and/or exchanged information on the percentage price increases to be applied in the sale of Bearings to Aftermarket Customers in Singapore in 2004, 2005, 2007, 2008, 2009 and 2010. Agreeing, coordinating or simply exchanging information about percentage price increases to be applied in Singapore is conduct that falls squarely within the Market Share and Profit Protection Initiative. Without such agreements or exchanges of information, there is a risk that a Party might lose market share if a customer switches supplier when faced with a price increase for Bearings in Singapore. CCS also considers that there can be no doubt that the participants to the agreements and exchanges of information were aware or could reasonably have foreseen that their contributions towards discussing and/or agreeing percentage price increases was in pursuit of the Market Share and Profit Protection Initiative.

(ii) <u>CCS's Conclusions on the Evidence</u>

342. In summary, based on the evidence set out above, CCS concludes that all four of the Japan Parent Companies, JTEKT, NTN Japan, NSK Japan and Nachi Japan were engaged in a long standing arrangement of regular meetings and systematic exchanges of strategic information as to future pricing intentions through the Japan Meetings in the period from as early as 1980 or 1990[426] until March 2011.[427] CCS notes, however, that NTN Japan had expressed its intention to stop attending the Japan Meeting in Japan from

[425] NSK submission in response to CCS's request for further information relating to the investigation under the Competition Act Chapter 50B of Singapore dated 3 September 2013, Answer to Question 3.
[426] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore dated 18 March 2013 at [3.3.1].
[427] Answer to Question 20 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.

6 September 2006.[428] At the Japan Meetings, the Japan Parent Companies discussed and agreed the overall strategies for their Singapore subsidiaries to consider and implement in pursuit of the overall common objective.

343. The evidence has also shown that the Singapore Meetings formed a subset of the Japan Meetings and were complementary in nature to the Japan Meetings. The Singapore Meetings involved regular meetings between the Singapore Subsidiary Companies since at least 1998 to 2006, where discussions between the Singapore Subsidiary Companies on strategic information and agreements on pricing were made, often with directions and input from their Japan Parent Companies attending the Japan Meetings.

344. In light of the foregoing, it is clear that in pursuit of the Market Share and Profit Protection Initiative, the Parties engaged in a series of actions, through both the Japan Meetings and Singapore Meetings to give effect to the Market Share and Profit Protection Initiative.

345. Over the years, that series of actions included setting the [✂]PL for Singapore, making the minimum price agreement for Singapore, agreeing on relevant exchange rates to be applied to derive the minimum price for Singapore and, when the price of steel began to increase, agreeing on percentage price increases and/or exchanging information about the likely percentage price increases to be applied to Aftermarket Customers in Singapore. Such price-fixing action by the Parties causes serious harm to competition. Additionally, the exchanges and disclosure of price information, amongst other things, reduces the uncertainties inherent in the competitive process and facilitates the coordination of the Parties' conduct on the market. CCS therefore considers that the disclosure and/or exchange of pricing information will restrict competition by object where it reinforces the single continuous infringement.

346. The characterisation of a complex cartel as a single continuous infringement is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute infringements.[429] Therefore, even though the actions engaged in by the Parties could individually constitute infringements, this does not preclude CCS from finding that the Parties have engaged in a single continuous infringement.

[428] Answer to Question 15 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013. See also paragraphs 375 to 379 below.
[429] Case C-49/92 P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125 at [81].

347. CCS also considers that it would be artificial and contrary to the commercial reality of the situation to seek to split up such continuous conduct where it is characterised by a single objective, by treating it as consisting of a number of separate infringements. That holds true for the current cartel arrangements between the Parties and is accepted case law as highlighted in section D above.

348. In addition, arrangements such as those in the present case, constituted by agreements spanning [✂] has also been found to form a single and continuous infringement where the parties' conduct was within a framework of a [✂] having a single or common objective.[430]

349. The last known Singapore Meeting was held on 14 March 2006 and the last known Japan Meeting was held sometime in March 2011. For the period of the infringement, CCS notes that there is no evidence before it to show that the Parties took any steps, at that time, to denounce the cartel and the agreements and concerted practices made by the parties at both the Singapore Meetings and Japan Meetings or to properly publicly distance themselves from the cartel or its objectives. NTN Japan and NTN Singapore are the only exception. NTN Japan signaled its intention to stop its participation from 6 September 2006. This is discussed further in paragraphs 375 to 379 below.

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

a) the agreements and/or concerted practices that made up the single continuous infringement were all in pursuit of the Market Share and Profit Protection Initiative. CCS recognises that, over time, the method by which the Parties implemented that the Market Share and Profit Protection Initiative in Singapore evolved, from the creation of the [✂]PL, to the creation of the minimum price agreement, to the creation of the minimum price agreement based on the JPL and finally by way of agreements and exchanges of information as to price increases to be applied to Aftermarket Customers in Singapore. However, at all times, the common overall objective remained the same, with the various actions taken based on the prevailing market circumstances;

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

[430] Joined Cases T-101/05 and T-111/05 *BASF AG and UCB SA v Commission of the European Communities* [2007] ECR II-4949 ("*BASF*") at [179].

reasonably have foreseen the actual conduct planned or put into effect by other Parties in pursuit of the common objective. This is evident from the participation of the Parties in the meetings as recorded in the contemporaneous records of those meetings that have been provided to CCS and demonstrated by the witnesses to the various meetings who have been interviewed by CCS and the notes of information of those interviews;

c) the agreements and/or concerted practice establishing the single continuous infringement are complementary; and

d) the Parties to the single continuous infringement remained the same, throughout the entire infringement period, with the exception of NTN which took some steps to withdraw from the cartel on or about 6 September 2006.[431]

CHAPTER 3: DECISION OF INFRINGEMENT

A. Attribution of liability

351. In attributing liability for both the infringement and calculation of financial penalties to be imposed, it is necessary to identify the legal or natural person or persons who may be held responsible for the infringement. The relevant case law on attribution of liability has been set out at paragraphs 79 to 93.

352. CCS is of the view that different companies belonging to the same group can form a single economic unit and, therefore, an undertaking within the meaning of Section 2 of the Act if the companies do not independently determine their own conduct on the market. The mere fact that a subsidiary has a separate legal personality is not sufficient to exclude the possibility that its conduct may be attributed to its parent company.

353. Where a parent company exerts decisive influence on a subsidiary company's commercial conduct at the time of an infringement of section 34 of the Act, that parent company can be held jointly and severally liable for the infringement committed by its subsidiary company.

354. Where a parent company owns the totality (or almost the totality) of the shares of a subsidiary company it can be presumed that the parent company actually exerted a decisive influence over the subsidiary company's conduct and that the parent and subsidiary company constitute a single undertaking.

[431] Refer to paragraphs 375 to 379 below.

355. This presumption is rebuttable. It is, however, for the parent company (or the Party) to rebut that presumption by adducing evidence demonstrating that its subsidiary company independently determined its conduct.

356. In the circumstances, where a subsidiary is majority-owned, rather than wholly-owned by the parent company, the principles applicable to presuming that the parent exercised decisive influence may nevertheless apply where there is a clear ability to exercise control. Thus, where the level of shareholding, coupled with any other economic and legal organisational links are such as to allow the parent to direct the conduct of its subsidiary, CCS is entitled to presume, in the absence of evidence to the contrary, that the parent company did in fact exercise decisive influence over its subsidiary.

(i) CCS's approach to assessing liability

357. For each Party that CCS has found to have infringed the Act, CCS has identified the legal entity that was directly involved in the infringement during the infringement period. Those legal entities as described in paragraphs 2 to 7 of this ID. It has then determined whether liability for the infringement should be shared with another legal entity, in which case each legal entity's liability for the conduct would be joint and several.

358. Where a parent company exercises decisive influence over the commercial policy of a legal entity that was directly involved in the infringement, whether directly or indirectly through other wholly-owned subsidiaries, CCS has found the parent entity and the legal entity to be jointly and severally liable for the infringement. This includes where a parent company owns the totality (or almost the totality) of the shares of its subsidiary, whether directly or indirectly through other wholly-owned subsidiaries, in which case the rebuttable presumption described at paragraph 355 above applies.

359. In relation to the involvement of both the parent and subsidiary companies, the evidence has shown that the agreements, discussions and decisions at the Japan Meeting level (where the representatives were mostly from the Japan Parent Companies) and the Singapore Meeting level (where the representatives were mostly from the Singapore Subsidiary Companies) were intimately linked. Agreements reached at the Japan Meetings concerning the [✂] would be passed on to the Singapore Meetings for review or implementation in Singapore. The evidence has also revealed that the Singapore Subsidiary Companies had to follow the instructions of their Japan Parent Companies. In this regard, CCS notes that the relationship has been aptly described by a participant of the Singapore Meetings as a "*parent and*

child relationship, with ASG instructing the EM on important matters".[432]

360. Examples of the manifestation of the exercise of control exerted by the Japan Parent Companies on the Singapore Subsidiary Companies insofar as the Market Share and Profit Protection Initiative is concerned is set out below.

(a) Evidence from NTN Singapore

361. [✂] of NTN Singapore said that, *"As the local subsidiaries, we have to follow the instructions of our Japanese HQs. The relationship is like a parent and child relationship, with ASG instructing the EM on important matters. This is the reason why we have to review the decisions made at ASG at the start of every EM meeting"*.[433]

(b) Evidence from Nachi Singapore and Nachi Japan

362. [✂] of Nachi Singapore said of [✂] General Manager Nachi Japan, *"He* [✂] *was my superior and was a general manager in Japan, I needed to get instructions from him on how to act in the EM meeting"*[434] [✂]added that *"If there was a price increase eventually, it was because of instructions from Japan HQ"*.[435]

363. [✂] of Nachi Japan said that in his experience, price negotiations were conducted directly between Nachi Japan and [✂], Nachi Singapore's [✂] distributor in Singapore. Nachi Singapore acts as an intermediary for Nachi Japan and Nachi Singapore will sign the sales agreement with [✂].[436]

(c) Evidence from NSK Singapore and NSK Japan

364. [✂]stated that when he was the [✂] of NSK Singapore, he would report on pricing issues and imitation product issues to the General Manager of the aftermarket business, who was based in Japan.[437] [✂] said that the General Manager also attended the Japan Meetings and added that the Japan

[432] Answer to Questions 40 and 56 of the Notes of Information /Explanation provided by [✂] (NTN) dated 10 June 2013.
[433] Answer to Question 56 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[434] Answer to Question 24 of Notes of Information/Explanation provided by [✂] (Nachi) dated 15 May 2013.
[435] Answer to Question 35 of Notes of Information/Explanation provided by [✂] (Nachi) dated 15 May 2013.
[436] Answer to Question 7 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
[437] Answer to Question 56 of Notes of Information/Explanation provide by [✂] (NSK) dated 16 April 2013.

Meetings, *"directed the Singapore subsidiaries to meet at the EM meeting."*[438] The Japan Meeting would, on occasion, give the Singapore Meeting participants orders on certain matters and the Singapore Meeting participants would have to follow these orders.[439]

365. [✂]of NSK Japan said that,*"... my instruction on the guidelines for price increases would apply to the individual price list* [✂]*."*[440]

(d) <u>Evidence from KSBP and JTEKT</u>

366. [✂] of KSBP said that when he was the Managing Director of KSBP his responsibilities included, among others, reporting to the head office and implementing sales strategy to incresae sales. He added that, *"Any instructions on price increases in response to increases in material costs were always given by the head office in Japan"*,[441] and that there was an instruction, *"from the JTEKT head office in Japan on the fourth price increase."*[442]

367. [✂] of JTEKT said that during the period when he was in the Aftermarket Department in Japan, he was in charge of the, *"aftermarket business in Japan and in overseas market, including Singapore market."*[443]

368. In *J R Geigy v Commission,*[444] the parent was held liable for its subsidiary's participation in a price-fixing concerted practice because the subsidiary was found to follow the parent's instructions as to what price to charge. It was held that:

> 13. *"Where an undertaking established in a third country, in the exercise of its power to control its subsidiaries established within the community, orders them to carry out a decision to raise prices, the uniform implementation of which together with*

[438] Answer to Question 71 of Notes of Information/Explanation provide by [✂] (NSK) dated 17 April 2013.
[439] Answer to Question 71 of Notes of Information/Explanation provide by [✂] (NSK) dated 17 April 2013.
[440] Answer to Question 49 of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[441] Answer to Question 18 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 2 July 2013.
[442] Answer to Question 23 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 2 July 2013.
[443] Answer to Question 4 of Notes of Information/Explanation provided by [✂] (JTEKT) dated 3 July 2013.
[444] *J R Geigy AG v Commission* [1972] ECR 787 at [13].

other undertakings constitutes a practice prohibited under Article 85 (1) of the EEC treaty, the conduct of the subsidiaries must be imputed to the parent company."

369. In the circumstances, CCS concludes that the Japan Parent Companies involved in the Japan Meetings had exercised decisive influence over the commercial policy of the Singapore Subsidiary Companies, in particular, in their execution of the Market Share and Profit Protection Initiative. Therefore, they are jointly and severally liable for the purposes of the infringement. This includes where the parent company owns a totality of the shares of its subsidiary, in which case the presumption that the parent company exerts a decisive influence over the subsidiary company's conduct applies and that the parent and subsidiary company constitute a single undertaking.

370. Given the manifestly anti-competitive object of the Market Share and Profit Protection Initiative, there is no need to show that the arrangement had effects which were restrictive of competition. In view of the evidence laid out above, CCS concludes that the evidence unequivocally establishes the elements of an agreement, or at the very least, a concerted practice with the object of restricting, preventing or distorting competition in the market for the sale of Bearings to Aftermarket Customers in Singapore.

371. CCS finds:

    a. **JTEKT and KSBP** (collectively referred to in this section as "Koyo") jointly and severally liable for the infringement that is the subject of this ID.

    b. **NSK Japan and NSK Singapore -** (collectively referred to in this section as "NSK") jointly and severally liable for the infringement that is the subject of this ID.

    c. **NTN Japan and NTN Singapore** - (collectively referred to in this section as "NTN") jointly and severally liable for the infringement that is the subject of this ID.

    d. **Nachi Japan and Nachi Singapore** - (collectively referred to in this section as "Nachi") jointly and severally liable for the infringement that is the subject of this ID.

372. CCS is satisfied that there is sufficient evidence as described in Chapter 2, Section I of this ID to find that the Parties listed in the preceding sub-paragraphs, infringed the section 34 prohibition by entering into an

agreement or, at the very least, a concerted practice with the object of restricting, preventing or distorting competition in the market for the sale of Bearings to Aftermarket Customers in Singapore.

373. Therefore, CCS has made a decision that the Parties have infringed the prohibition under section 34 of the Act and to impose penalties on the Parties above, i.e. Koyo, NSK, NTN and Nachi.

374. The evidence supporting CCS's finding of liability for each of the Parties is summarised below:

a. During the period from at least 1998 until March 2006, the Singapore Subsidiary Companies attended the Singapore Meetings. The purpose of the Singapore Meetings was to (among other things) exchange information about prices, discounts and selling conditions; to agree an [✂]PL and to make a minimum price agreement referable to the [✂]PL and later in time, referable to the JPL.

b. The Japanese Parent Companies attended the Japan Meetings in the period from as early as 1980 or 1990[445] until 29 March 2011,[446] with the exception of NTN Japan which expressed its intention to stop attending the Japan Meetings from 6 September 2006.[447] At Japan Meetings, among other things, the Japan Parent Companies discussed and agreed on the overall strategies to be implemented by the Singapore Subsidiary Companies in pursuit of the Market Share and Profit Protection Initiative. There was a flow of information from the Japan Meetings to Singapore Meetings and from the Singapore Meetings to the Japan Meetings. Some witnesses describe the Japan Meetings as a forum of cooperation between the four Japan Parent Companies and that the Singapore Meetings were an extension of that cooperation.

c. In the period between 2001 and 2003, the Singapore Subsidiary Companies reached an agreement on the gross sale price for each category of Bearings for Aftermarket Customers in Singapore. The gross sales price was known as the [✂]PL which sets out prices at which Bearings should be sold by each Party in [✂] Singapore. This

[445] Nachi document, entitled, "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013 at paragraph [3.3.1].
[446] Answer to Question 20 of Notes of Information/Explanation provided by [✂] (Nachi) dated 22 May 2013.
Answer to Question 14 of Notes of Information/Explanation provided by [✂] (NSK) dated 29 May 2013.
[2.6] of JTEKT and KSBP's submission dated 18 May 2012.
[447] Refer to paragraphs 375 to 379below.

agreement was documented in an [✂]PL published by each of the four Singapore Subsidiary Companies.

d. By December 2003, the Singapore Subsidiary Companies concluded an agreement on the maximum discount percentage that could be applied to the gross price for each category of Bearings.

e. The maximum discount percentage was used by the four Singapore Subsidiary Companies to derive the "bottom price" for each category of Bearings for sale to Aftermarket Customers in Singapore. The bottom price could be determined by applying the maximum discount to the gross price in the [✂]PL. This bottom price would be the net minimum price at which each type of Bearing could be sold in [✂] Singapore.

f. The Singapore Subsidiary Companies also agreed at various intervals the applicable exchange rate from Japanese Yen to the various currencies in which the sales affiliates sold to distributors/and or customers in the aftermarket. This was necessary to convert the price of Bearings supplied from each Japan Parent Company to their Singapore Subsidiary Company according to a consistent and agreed exchange rate.

g. In the period 2005 to 2006, the Singapore Subsidiary Companies agreed and did take steps to conclude a price list applicable to [✂] Singapore, based on the JPL that had been agreed between the four Japan Parent Companies. It was intended that the JPL should replace the [✂]PL.

h. In March 2006, the Singapore Subsidiary Companies agreed on a percentage rate to be applied to the proposed new price list based on the JPL to determine a minimum price agreement.

i. The meeting on 14 March 2006 marked the last known Singapore Meeting between the Singapore Subsidiary Companies. However, the mere fact that the Singapore Subsidiary Companies agreed to no longer meet at the Singapore Meetings falls far short of the requirements by CCS in public distancing. Further, the evidence shows that at the last known Singapore Meeting, the Singapore Subsidiary Companies agreed that if a meeting is needed separately, the meeting shall be held only by the Japanese employees.[448] Therefore, it is clear that the Singapore

[448] Document marked [✂]-021, Notes of Information/Explanation provided by [✂] dated 10 June 2013.

Subsidiary Companies had no intention of denouncing the cartel and ceasing the activities in pursuit of the Market Share and Profit Protection Initiative. Further, at that very same meeting, the Parties reached a conclusion on the minimum price agreement to be applied in the sale of Bearings in the aftermarket in Singapore. Finally, the evidence supports the finding that the Japan Parent Companies did continue to meet and discuss and agree price related matters for application in Singapore at the Japan Meetings.

j. The Japan Parent Companies made price increase agreements that were intended to apply to the sale of Bearings in the aftermarket in Singapore. The evidence shows that during periods when the price of steel increased, the Japan Meetings increased in frequency. During the period 2004 to 2008, agreements were reached at the Japan Meetings between the Japan Parent Companies in relation to the percentage price increase and the date of implementation of such price increases across aftermarket customers for Singapore. Those price increase agreements were made on the following dates:

i. 25 June 2004, also known as the price increase agreement following the first price increase in Japan as a result of increase in material costs;

ii. 25 February 2005, also known as the price increase agreement following the second price increase in Japan as a result of increase in material costs;

iii. in 2007, also known as the price increase agreement following the third price increase in Japan as a result of increase in material costs;

iv. 12 May 2008, also known as the price increase agreement following the fourth price increase in Japan as a result of increase in material costs.

k. There is evidence that representatives from JTEKT; Nachi Japan and NSK Japan attended Japan Meetings on 14 July 2009 and 8 July 2010 where Bearings' price-related information was shared.

(ii) <u>NTN's non-participation in the 2007 price increase agreement</u>

375. There is evidence to show that NTN Japan stopped sending representatives to the Japan Meetings since September 2006. According to [✂] of NTN Japan, [✂] of Nachi Japan sent an email to [✂] on 6 September 2006 as set out in

document [✂]-**016** to confirm his attendance for the Japan Meeting scheduled on 8 September 2006. [✂]of NTN Japan replied to [✂]of Nachi Japan that he would not be present for the scheduled meeting, and NTN Japan would not be sending any representatives for the meeting.[449]

376. In addition, [✂] of NTN Japan informed [✂]and [✂] of NTN Singapore that he would not be attending the Japan Meetings anymore.[450] [✂] confirmed that in September 2006 he had received instructions from NTN's representative in the Japan Meetings to stop attending Singapore Meetings.[451]

377. Other participants of the Japan Meetings during that period also confirmed that NTN Japan had stopped attending the Japan Meetings. [✂]of Nachi mentioned that NTN Japan stopped attending Japan Meetings after 2006.[452] [✂] of NSK Japan mentioned that NTN Japan did not turn up for the Japan Meetings from 2007 onwards.[453] [✂] who represented JTEKT for the Japan Meetings from 2007 to 2008 mentioned that NTN Japan stopped attending Japan Meeting in 2005 or 2006, and the reason was because *"the top management of NTN decided and informed the personnel internally that they shouldn't attend these kind of meetings because the management doesn't like them as it's against the law."*[454]

378. In addition, [✂] of Nachi Singapore mentioned that in May 2008, Nachi Japan, JTEKT and NSK Japan had agreed to a price increase for sales of bearings to customers in the aftermarket in [✂], and they wanted to meet NTN on 23 May 2008 to check if NTN also had the intention to raise prices. NTN rejected the proposal to meet.[455]

379. Based on the evidence mentioned above, CCS is of the opinion that NTN Japan and NTN Singapore had properly publicly distanced itself from the cartel and terminated its involvement by 6 September 2006.

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[449] Answer to Question 15 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013 and document marked [✂]-016 provided by NTN Japan.
[450] Answer to Question 30 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.
[451] Answer to Question 45 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[452] Answer to Question 1 of Notes of Information/Explanation provided by [✂] (Nachi) dated 23 May 2013.
[453] Answer to Question 47of Notes of Information/Explanation provided by [✂] (NSK) dated 17 April 2013.
[454] Answer to Question 109 of Notes of Information/Explanation provided by [✂] (JTEKT/KSBP) dated 7 March 2012.
[455] Answers to Questions 68 and 69 of Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013.

(iii) End of infringement

380. The various agreements discussed in paragraph 103 above, namely the [✂]PL agreement, the [✂]PL bottom price agreement, the JPL Agreement, the JPL minimum price agreement, and the price increase agreements pursuant to increase in material costs from 2004 to 2008 and exchange of price information in 2009 and 2010, support CCS's finding that the Parties have engaged in a cartel in pursuit of the Market Share and Profit Protection Initiative. The Parties met regularly at meetings in Japan and meetings in Singapore where they exchanged information, discussed and agreed or attempted to agree on arrangements in relation to sales prices for Bearings sold to their respective Aftermarket Customers in Singapore.

381. The objectives of the Parties in meeting; exchanging information; reaching the price-fixing agreements and engaging in the concerted practices was to give effect to the Market Share and Profit Protection Initiative.

382. CCS finds no conclusive evidence that the Parties, save for NTN, had denounced the cartel, publicly distanced themselves from the cartel and had priced on the market independent of the agreements or concerted practice before making their respective leniency applications to CCS.

383. However both Nachi and NSK have made representations that the end date of the cartel should be a date earlier than the leniency application dates.

Nachi's Representations

384. Nachi points to the decisional practice of the European Commission ("**EC**") to support its representations as to appropriate end date for the cartel. Nachi submits[456] that the EC adopts one of the following as the end date for cartel conduct:

a. the date of the last agreement or meeting;[457]

b. the date of the undertakings' leniency application;[458]

[456] Paragraph 6.3.4 of its representations dated 29 February 2014
[457] The *Refrigeration Compressors* decision (Case COMP/39600, decision of 7 December 2011 at [34], the *LCD* decision at [227] and [368 to 371]), the *Power Transformers* decision (Case COMP/39.129, decision of 7 October 2009at [219] to [221]) and the *Bananas* decision (Case COMP/39188, decision of 15 October 2008 at [437] to [439]).
[458] The *Exotic Fruits* decision (Case COMP/39482, decision of 12 December 2011 at [302] to [306] and the *Animal Feed Phosphates* decision (Case COMP/38866, decision of 20 July 2010 at recital [174].

c. the date of the relevant dawn raids.[459]

385. Nachi submits that for the purposes of the present conduct, the potential end dates commensurate with the EC decisional practice are as follows:

a. the date of the last agreement on pricing made at a Japan Meeting was 12 May 2008 and the date of the last Japan Meeting was March 2011;

b. the date of Nachi's first leniency/immunity application to the JFTC was [✂]. This application obliged Nachi to cease all anti-competitive conduct relevant to the Bearings business, including the anti-competitive conduct in Japan; and

c. the date of the JFTC dawn raids (i.e. the dawn raids which brought an end to the anti-competitive conduct) was 26 July 2011.

386. Nachi also made representations on compliance matters.[460] Nachi stated that the cessation of any further anti-competitive behaviour on Nachi's part after the JFTC dawn raid was supported by immediate steps taken by Nachi to stop their anti-competitive behaviour including:

a. Nachi Japan's director in charge of legal affairs [✂]delivered a briefing to all Nachi employees on 27 July 2011 explaining the JFTC's dawn raids and instructing employees to, "*adopt respectful attitude, refrain from any suspicious behaviour, and continue to ensure full legal compliance*". Employees were also instructed that they "*must not exchange any information or collude with* [Nachi's] *competitors regarding determination of sales prices, quantities, territories or sales channels".*

b. Nachi Japan's president and representative director [✂]delivered a further briefing on 9 August 2011 to all Nachi employees, "*there should never be any collusion with other companies in the same trade*".

[459] The *Animal Feed Phosphates* decision (Case COMP/38866, decision of 20 July 2010 at recital [116]) and the *Calcium Carbide and Magnesium Reagents* decision (Case COMP/39.396, decision of 22 July 2009 at [276]).
[460] Paragraph 6.5.5 of Nachi's representations dated 29 February 2014

c. The board passed resolutions on 5 August 2011 to the following effect:

i. The agreement between NSK, NTN and Nachi in respect of their sales prices ceased to exist from 26 July 2011 onwards;

ii. Nachi will determine its sales prices for bearings at its discretion;

iii. Nachi will comply with all applicable laws.

NSK's Representations

387. NSK made representations that the appropriate end date should be the date of the JFTC dawn raid, which was 26 July 2011.

388. In the absence of any proof that NSK had continued to engage in the single continuous infringement after 26 July 2011, NSK submits that CCS should not be entitled to rely upon a presumption that NSK had continued the infringement because it had failed to publicly distance itself from the cartel. In this regard, NSK cited EC decisional practice[461] to support its proposition that the presumption should only apply when an end date has been established. In this case, since there is no objective evidence adduced to suggest that the infringing practice continued until 24 January 2012, NSK submits that CCS is not entitled to rely upon the presumption that the infringement continued until then because it had failed to publicly distance itself.

389. In the alternative, NSK submits that the presumption can be rebutted with evidence on the contrary.[462] In this case, NSK relied upon a number of facts to rebut the presumption. First, NSK submits that the clear and undisputed evidence of the JFTC Dawn raid on 26 July 2011 is sufficient to rebut the presumption. Further, NSK pointed to the steps taken to cease all infringing conduct after 26 July 2011. Those steps are as follows:

a. The President of the NSK had uploaded the following message on the company intranet[463]:

"[✂]."

[461] Siemens AG v EC [Case T-110/07], at [175]; IMI plc, IMI Kynoch and Yorkshire Cooper Tube v EC [Case T-18/05] at [86]

[462] Trelleborg Industrie SAS and Trelleborg AB v EC [Joint Case T-147/09 and T-148/09]

[463] Paragraph 4.14.2 of NSK's representations dated 29 February 2014

b. A second instruction was issued on 3 October 2011 by the President of NSK via the company intranet, stating as follows:

"[✂]."

c. Further, another message was issued on 13 January 2012 by the President of NSK via the company intranet urging all employees to "[✂]".

390. CCS does not accept Nachi's submission that the date of the last agreement, being 12 May 2008, is the relevant end date of the cartel. This is because there is evidence that the parties met in Japan after this date.[464]

391. CCS does not accept Nachi's submission that the last known meeting date, which was in March 2011, is the end date of the cartel. This is because, nothwithstanding a lack of evidence of meetings later in time, there is no evidence that this meeting marked the end of the cartel. There is no evidence that the Parties agreed at this meeting to stop holding meetings or engaging in conduct in pursuit of the Market Share and Profit Protection Initiative.

392. In view of the representations from Nachi and NSK and the circumstances of the case, including that the last known meeting was held in March 2011, CCS determines that the date of the JFTC dawn raids (26 July 2011) is the end date of the cartel for the following reasons:

a. The JFTC dawn raids conducted on 26 July 2011 were in fact raids of the same four Japan Parent Companies that form the subject of the present ID;

b. The JFTC dawn raids conducted on 26 July 2011 concerned the same physical product as is the subject of this ID, that is, ball and roller bearings (although CCS notes that the product market and geographic market of the JFTC investigation was different);

c. By the time of the JFTC dawn raids, the meetings concerning the Market Share and Profit Protection Initiative were being undertaken by the Japan Parent Companies. Therefore, notwithstanding that the JFTC's raid concerned the Anti-Monopoly Act of Japan and conduct relating to a different geographic market, the Japan Parent Companies which were the subject of the JFTC dawn raids were the companies engaging in the cartel the subject of the ID; and

[464] See paragraph 314 above.

d. Following the JFTC dawn raids, Nachi, NSK and JTEKT took immediate steps to ensure that their officers and employees ceased anti-competitive activities with their competitors.[465]

393. The section 34 prohibition came into force on 1 January 2006. CCS's analysis of the evidence above shows that the agreement continued in operation after 1 July 2006, in other words, after the expiry of the transitional period provided for under the Competition (Transitional Provisions for Section 34 Prohibition) Regulations.[466] Therefore, CCS takes the view that the said Regulations apply to the Parties upon whom CCS intends to impose a financial penalty.

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

Infringing Parties	**Period of Infringement**
KSBP	1 January 2006 to 26 July 2011
NSK	1 January 2006 to 26 July 2011
Nachi	1 January 2006 to 26 July 2011
NTN	1 January 2006 to 6 September 2006

B. Financial Penalties - General Points

395. Under section 69(2)(d) of the Act, where CCS has made a decision that an agreement has infringed the section 34 prohibition, CCS may impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

396. Before exercising the power to impose a financial penalty, CCS must be satisfied that the infringement has been committed intentionally or negligently.[467] This is similar to the position in the EU and the United Kingdom. The EC and the OFT will meet this threshold so long as they are satisfied that the infringement was either intentional *or* negligent.[468]

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[465] [✂] See JTEKT's Response to Request for Announcement and Post JFTC Raid Compliance Measures dated 12 March 2014.

[466] Regulation 3(2) of the Competition (Transitional Provisions for Section 34 Prohibition) Regulations

[467] See section 69(3) of the Act and the *CCS Guidelines on Enforcement* at [4.3] to [4.11].

[468] *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and Others v Commission of the European Communities* (Case C-137/95P) [1996] ECR I-1611 and *Napp*

397. As established in the *Pest Control Case*,[469] the *Express Bus Operators Case*,[470] and the *Electrical Works Case*,[471] the circumstances in which CCS might find that an infringement has been committed intentionally include the following:

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

b. where the undertaking in question is aware that its action will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or

c. where the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

398. Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. CCS is likely to find that an infringement of the section 34 prohibition has been committed negligently where an undertaking ought to have known that its agreement or conduct would result in a restriction or distortion of competition.[472]

399. CCS finds that the Parties have engaged in a series of actions in pursuit of the Market Share and Profit Protection Initiative.

400. CCS finds that the single continuous infringement, which has as its object the restriction of competition, and is likely to have been, by its very nature, committed intentionally. CCS finds that Parties must have been aware that the agreements and/or concerted practices in which they participated had the object of preventing, restricting or distorting competition. For example, CCS finds that the statements, *"[the] Competition Act took effect in Singapore as of January 2006…*"[473] and "*if a meeting will be needed separately, the meeting shall be held only by Japanese employees*" [474] contained in the note

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Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading See [2002] CAT 1, [2002] Comp AR 13 at [452] to [458].

[469] [2008] SGCCS 1 at [355].

[470] [2009] SGCCS 2 at [445].

[471] [2010] SGCCS 4 at [282].

[472] *CCS Guidelines on Enforcement* at[4.7] to [4.10].

[473] Document marked [✂]-028, Notes of Information/Explanation provided by [✂] (NSK) dated 18 April 2013.

[474] Document marked [✂]-027, Notes of Information/Explanation provided by [✂] (NTN) dated 10 June 2013,

of the 14 March 2006 meeting provided by NTN,[475] shows that the Parties were aware of the implications and the illegality of the conduct. Further, CCS notes that the parties used code names for each of the companies in documents recording discussions at meetings which demonstrates that the authors of those documents (being participants in the Japan and Singapore Meetings) were aware that their discussions were unlawful.

401. CCS is, therefore, satisfied that each Party had intentionally infringed the section 34 prohibition.

402. CCS, therefore, is imposing penalties on the Parties as set out in the following section.

C. Calculation of Penalties

403. The *CCS Guidelines on the Appropriate Amount of Penalty* describes the twin objectives of imposing any financial penalty; they are: (1) to reflect the seriousness of the infringement, and (2) to deter undertakings from engaging in anti-competitive practices.[476] In calculating the amount of penalty to be imposed, CCS will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement (“**the relevant turnover**”) in the undertaking’s last business year, the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors. CCS adopted this approach in the *Express Bus Operators Case*[477] and similarly adopts this approach for the present case.[478]

404. CCS notes that the EC 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) Step 1: Seriousness of the Infringements and Relevant Turnover

405. The seriousness of the infringement and the relevant turnover of each Party is taken into account when setting the percentage starting point for calculating

[475] Document marked [✂]-020B, Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013.
[476] *CCS Guidelines on the Appropriate Amount of Penalty* at [1.6].
[477] [2009] SGCCS 2 at [452] to [455].
[478] [2011] SGCAB 1 at [144].

the base penalty which is applied to each Party's relevant turnover. The Singapore Subsidiary Companies of the Parties import Bearings from their Japan Parent Companies and/or other related subsidiaries and sell them to Aftermarket Customers in Singapore.[479] Therefore, the relevant turnover in this case is the turnover of the Singapore Subsidiary Companies for the sale of Bearings to Aftermarket Customers in Singapore.

406. In assessing the seriousness of the infringement, CCS considers a number of factors, including the nature of the product, the structure of the market, the market shares of the undertakings 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.[480]

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

408. Nature of the product - The conduct referred to in this ID involved the supply of Bearings to Aftermarket Customers in Singapore. The relevant geographic market is Singapore.

409. Structure of the market and market share of the Parties – There are at least seven major Bearings suppliers in Singapore.[481] The market players consist of multinational companies with sales presence in Singapore. In the present case, CCS notes that the Parties have an estimated aggregate market share of up to [✂]% of the relevant market in 2012.[482]

410. Effect on customers, competitors and third parties - It is difficult to quantify the amount of any loss caused to Aftermarket Customers as a result of the single continuous infringement. This is due to the lack of "counterfactual" information, i.e. the price at which bearings would have been sold to Aftermarket Customers and end customers during the infringement period had the Parties not engaged in the Market Share and Profit Protection Initiative. That said, CCS is of the view that absent the infringing conduct,

[479] See paragraph 15 of this above.
[480] See *CCS Guidelines on the Appropriate Amount of Penalty* at [2.3].
[481] Information provided by KSBP dated 30 August 2013 pursuant to the section 63 Notices issued by CCS dated 5 August 2013.
[482] CCS's calculation is based on the responses provided by NSK dated 23 August 2013 pursuant to CCS's request for financial information dated 5 August 2013.CCS summed up the relevant turnover of the four Parties and divided the total relevant turnover by the estimated market size provided by NSK.

there would have been more competition and potentially lower prices as CCS notes that one of Parties stated that the overall objective of the Singapore Meetings was to avoid sales war by cheaper prices and to protect each member company's healthy profit and sales.[483]

411. Given the homogeneous nature of the Bearings product, price is an important source of competitive force under normal market conditions. By entering into the single continuous infringement in which the Parties had, among other things, exchanged price information and agreed on minimum price level and price increases, the Parties substituted the risks of price competition in favour of practical cooperation. The Parties did not make their pricing strategies independently. Competition between the Parties was inevitably lessened as a result. This view is supported by [✂] of NSK who admitted, *"competition would be more intense if I do not know my competitors' pricing strategy."*[484]

412. The homogeneous nature of the Bearings product also renders the agreements on minimum price level and price increases easier to negotiate and facilitates the monitoring of compliance to the agreements. Since the products are homogeneous, any deviation from the agreed pricing policies by a cartel member will result in prominent market share disturbances which will be readily detected by the cartel. Further, a high combined market share of the Parties will also indicate a more stable and sustainable agreement and/or concerted practice as there will be fewer third parties to exert competitive forces upon the agreed pricing policies of the Parties.

413. Absent the agreements and/or concerted practices, CCS finds that the Parties, as competitors, would have had a higher level of uncertainty in terms of the pricing strategies of their competitors. CCS finds that a higher level of uncertainty would have resulted in a higher level of competitive restraint on the Parties' pricing decisions to Aftermarket Customers. If a Party attempts, on its own accord, to increase prices of Bearings sold to Aftermarket Customers, the Aftermarket customers may opt to obtain supply from other Bearings suppliers, given the homogeneity of the products in question. In the circumstances, where the Parties set minimum prices and agreed to increase the price of Bearings collectively, Aftermarket Customers' ability and incentive to switch would have been reduced.

414. Without the agreements and/or concerted practices between the Parties, individual Bearings suppliers would have to take independent decisions on

[483] Document marked [✂]-026, provided by [✂] (KSBP) and Answer to Questions 142 to 148 of Notes of Information/Explanation provided by [✂] (KSBP) dated 27 June 2013,

[484] Answer to Question 49 of Notes of Information/Explanation provided by [✂] (NSK) provided on 17 April 2013.

the extent to which they were able to increase the price of their Bearings due to increase in material cost, having regard to prevailing market conditions and according to their own competitive position. The Parties would have to compete for market shares via more competitive prices or non-pricing strategies.

415. Therefore, having regard to the nature of the product in question, the structure of the market, the Parties' combined market shares, the potential effect of the infringements on customers, competitors and third parties and that price fixing is one of the most serious infringements of the Act, CCS considers it to be appropriate, in the current case, to apply a starting point percentage of [✂]% of the relevant turnover for each of the Parties involved in the single continuous infringement. CCS would further highlight that this relatively higher starting point takes into account that the Market Share and Profit Protection Initiative was a secretive and sophisticated cartel where the participants engaged in covert conduct, including referring to each participant by code names[485], unlike previous CCS price-fixing cartels, such as the *Express Bus Operators Case*,[486] and the *Foreign Domestic Workers Case*.[487] Set out below are the representations CCS received in relation to the starting point together with CCS's position on and reasons for rejecting those representations.

Representations on Starting Point

416. In its representations, NSK[488] submitted that, in determining the seriousness of the infringement, CCS had not taken proper consideration of the changing nature of the infringement. In particular, since 8 July 2010, after a change in both management and the relevant NSK employee participating in the Japan Meetings, the nature of discussion at such meetings changed. During the period from 20 December 1999 to 14 July 2009, the primary nature of the infringement consisted of price-fixing discussions. However, during the period from 8 July 2010 to 31 March 2011, the Parties, in practice, no longer engaged in any price-fixing but instead only exchanged information on market trends and general industry information.

417. NSK submitted that CCS should have imposed a lower starting point percentage in respect of exchanges of information and that CCS should have taken this into account in its determination of the overall percentage to be

[485] Refer to paragraph 266 above.
[486] [2009] SGCCS 2
[487] [2011] SGCCS 4
[488] Paragraphs 5.19 to 5.24 of NSK's representations dated 29 January 2014

applied for seriousness in the calculation of the financial penalty to be imposed on NSK.

418. CCS notes that [✂] of NSK attended two Japan Meetings, one in July 2010 and the other in March 2011,[489] as a temporary substitute for [✂] who was unable to attend the meetings. [✂] of NSK Japan attended the Japan Meetings as the NSK representative in the period from 6 June 2006 to 14 July 2009 and he introduced [✂] as his successors to the competitors sometime around June 2010.[490] According to [✂], he believed that the general intention of the Japan Meetings was to coordinate price increases among the Japan Meetings participants.[491] This evidence demonstrates that a change in management did not change the nature of the Japan Meetings and therefore the nature of the infringement.

419. Therefore, CCS is of the opinion that a change in management alone does not alter the nature of the infringement which has been characterised as a "single continuous infringement" in which the Parties, had amongst other things, exchanged price information and agreed on minimum price level and price increase based on the evidence as set out in in Chapter 2, Section I of the ID. CCS recognises that, over time, the method by which the Parties implemented the Market Share and Profit Protection Initiative in Singapore evolved. It evolved from the creation of the [✂]PL, to the creation of the minimum price agreement, to the creation of the minimum price agreement based on the JPL and finally by way of agreements and exchanges of information as to price increases to be applied to Aftermarket Customers in Singapore. However, at all times, the common overall objective remained the same, with the various actions taken based on the prevailing market circumstances.

420. Nachi[492] also submitted that a lower starting percentage is justified as CCS was unable to demonstrate that Nachi's prices to [✂]would have been lower in the absence of the infringement. Nachi further submitted that even if there were price increases resulting from the infringement that were reflected in the price list provided by Nachi to [✂], the price of Bearings purchased by [✂] from Nachi were also negotiated in line with the relevant market conditions. Nachi added[493] that [✂] of [✂] has also confirmed that the prices on Nachi's price list were not strictly adhered to for all sales transactions

[489]Answer to Question 13 of Notes of Information/Explanation provided by [✂] (NSK) on 29 May 2013
[490] Answer to Question 23 of Notes of Information/Explanation provided by [✂] (NSK) on 18 April 2013
[491] Answer to Question 15 of Notes of Information/Explanation provided by [✂] (NSK) on 29 May 2013
[492] Para 4.4 to 4.4.5 of Nachi's representations dated 29 January 2014
[493] Nachi's representations dated 13 March 2014.

between Nachi and [✂] and the prices were subject to negotiations. Nachi also added that a lower starting percentage should be applied given that the duration during which the Parties entered into agreements on pricing was limited.[494]

421. An agreement or concerted practice which has the aim of fixing prices is an object infringement. European jurisprudence has established that there can be an infringement even if an agreement or concerted practice does not have an effect on the market.[495]

422. CCS regards agreements or concerted practices involving price-fixing as always having an appreciable adverse effect on competition.[496] CCS has also set out evidence which demonstrates that there was implementation of the price increase agreements in Singapore. It is not necessary for CCS to demonstrate that the price increase agreements had an effect on prices charged to customers when determining the starting percentage point. Nonetheless, CCS is of the view that as a result of the agreement and/or concerted practice, the decision making independence of the Bearings suppliers has been appreciably reduced by the substitution of practical cooperation for the normal risks inherent in competition. In coming to this view, CCS notes that the cartelised product in issue is a homogenous product, and that the Parties have a substantial share of the product market in Singapore. CCS reiterates that the Market Share and Profit Protection Initiative was a secretive and sophisticated cartel where the participants engaged in covert conduct, including referring to each participant by code names.

423. In its representations Nachi also submitted that CCS should have applied a lower starting percentage as all Parties save for NTN had come forward to CCS to apply for leniency. [497] In this regard, Nachi submitted that a high starting percentage of [✂]% should be reserved for more serious cartel cases e.g. cases where none or most of the parties have not sought leniency and cooperated in CCS's investigation. Therefore, Nachi submitted that the starting percentage of [✂]% is inappropriate.

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[494] Paragraphs 4.5.1 to 4.5.2 of Nachi's representation dated 29 January 2014

[495] Case T-148/89 *Tréfilunion v Commission,* [1995] ECR II-1063 at [79];] & Case C-199/92 *Hüls AG v. Commission,* [1999] ECR I-4287 at [164] to [168]; Cases 56 and 58/64 *Consten and Grundig v Commission* [1966] ECR 299, 342; *Argos Limited and Littlewoods Limited v OFT* [2004] CAT 24.].

[496] *CCS Guidelines on the Section 34 Prohibition* at [2.19] and [2.20].

[497] Paragraphs 4.6 to 4.6.2 of Nachi's representations dated 29 January 2014.

424. As part of CCS's leniency programme,[498] where parties seek leniency and have rendered substantial co-operation, CCS may grant an appropriate reduction in penalty after taking into consideration the stage at which the parties come forward, the quality of information provided and the evidence already in CCS's possession. In the present case, CCS has reduced the penalty of the leniency applicants as part of CCS's leniency programme. However, it bears noting that the fact of a leniency application is not a consideration when determining the starting percentage figure. As set out in paragraph 415 above, relevant factors that CCS considered in determining the starting point at [✂]% of the relevant turnover for each of the Parties include the nature of the product in question, the structure of the market, the Parties' combined market shares, the potential effect of the infringements on customers, competitors and third parties and that price fixing is one of the most serious infringements of the Act.

425. Furthermore CCS notes that while NTN has ended its participation in September 2006, the cartel activity continued among the other three Parties.

426. Nachi also submitted that CCS should have applied a lower starting percentage for Nachi as any impact of Nachi's infringement on the relevant market in Singapore was relatively small as compared with that of the other parties. [499] Nachi submitted that the *CCS Guidelines on the Appropriate Amount of Penalty* state that, in assessing the seriousness of the infringement, CCS will consider, *inter alia*: (a) the market share of the undertaking involved in the infringement; and (b) the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year.

427. Nachi further submitted that Nachi's supply of Bearings to Aftermarket Customers in Singapore and in the region is effected through its [✂] distributor in Singapore, i.e. [✂]. The Bearings that [✂].

428. In light of the above, Nachi submitted that its share of the sales of Bearings to Aftermarket Customers in Singapore (excluding [✂]) only amounts to about [✂]%, which is [✂] NTN's market share of [✂]%, JTEKT's market share of [✂]% and [✂] NSK's market share of [✂]%. Therefore, Nachi submitted that the starting percentage applied by CCS should take into account the relative shares of the Parties in respect of their sales of Bearings to Aftermarket Customers in Singapore (excluding [✂]).

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[498] *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases*.

[499] Paragraphs 4.7.1 to 4.7.1.8 of written representation by Nachi dated 29 January 2014

429. In the *Modelling Services case*,[500] CCS established that the higher the combined market share of the infringing parties, the greater the potential to cause damage to the affected market(s). Further, a high market share figure generally indicates a more stable agreement/concerted practice as third parties find it more difficult to undercut and possibly undermine the incumbents. These factors affect the starting point of the penalty calculation.

430. In the present case, CCS has determined the relevant market to be the sale of Bearings to Aftermarket Customers in Singapore. Nachi has in its representations submitted that [✂] is Nachi's [✂] Aftermarket Customer in Singapore.[501] [✂] of [✂] confirmed that their relationship with Nachi is that of "a *supplier and customer relationship*".[502] Therefore, for the purposes of penalty calculation, the infringing conduct was intended to be applied on Nachi's [✂] Aftermarket Customer, [✂]. Nachi's relevant turnover should include the turnover of all relevant products that it sells to its Aftermarket Customer, [✂] regardless of whether these products are subsequently on-sold by [✂] to customers outside Singapore. In light of the above, CCS disagrees with Nachi's submission that its share of the sales of Bearings to Aftermarket Customers in Singapore is [✂]% relative to the other Parties as this had excluded [✂]'s subsequent [✂]. Based on the Parties' relevant turnover figures from sales of bearings to Aftermarket customers in Singapore, irrespective of [✂]'s subsequent sales, CCS finds that Nachi's market share relative to the other Parties is [✂] at [✂]%

431. The estimated market shares based on respective turnover figures for the Parties indicate that the Parties collectively have a market share of up to [✂]% in the market of the sale of Bearings to Aftermarket Customers in Singapore in FY 2012.

432. Nachi submitted that CCS should have applied a lower starting percentage for Nachi as the evidence suggests that Nachi was never the instigator of, and had not played an active role in leading or driving, the Singapore Meetings.[503] Nachi highlighted OFT's *Tobacco case*[504] where OFT held that "*as a general proposition, that it is appropriate to apply a higher starting point to Parties who played a comparatively active role in leading or driving*

[500] [2011] SGCCS 11 at [254].
[501] Paragraph 2.3.2 of Nachi's representations dated 29 January 2014.
[502] Answer to question 11 of the Notes of Information/Explanation provided by [✂] on 18 November 2013
[503] Paragraphs 4.7.2 to 4.7.2.4 of written representation by Nachi dated 29 January 2013
[504] Case CE/2596: Tobacco dated 15 April 2010

an infringement of the Chapter I Prohibition".[505]

433. The role of the undertaking as a leader in, or an instigator of, the infringement is a factor which should, in the appropriate case, be taken into consideration at Step 3 of the penalty calculation, when determining whether there are aggravating or mitigating factors which should be taken into account when determining the quantum of penalties.[506]

434. Having regard to all the circumstances and the representations made by the Parties, and based on the reasons set out above, CCS rejects the Parties' representations and does not consider that a reduction in the starting point percentage below [✂]% is appropriate.

Relevant Turnover

435. The relevant turnover in the last business year will be considered when CCS assesses the impact and effect of the infringement on the market.[507] 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.

436. NSK noted that CCS had defined the relevant product market as "the sale of Bearings to Aftermarket Customers in Singapore", where "Bearings" is defined as ball and roller bearings. [508] NSK submitted that CCS had defined the product market too broadly. The appropriate product market should be the sale of ordinary-sized ball and roller bearings to aftermarket customers in Singapore. Further, the relevant conduct by the Parties did not include small-sized ball and roller bearings.

437. [✂].

438. The evidence in the present case also shows that in the period between 2001 and 2003, the Singapore Subsidiary Companies reached an agreement on the gross sale price for each category of the bearings (including small-sized Bearings) sold to Aftermarket Customers in [✂] Singapore. The agreed gross sale prices listed in the [✂]PL and the four Singapore Subsidiary Companies published the [✂]PL included those for small-sized Bearings.[509]

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[505] Paragraph 8.67 of the decision
[506] *CCS Guidelines on the Appropriate Amount of Penalties* at [2.11].
[507] *CCS Guidelines on the Appropriate Amount of Penalty* at [2.4].
[508] Paragraph 2.17 to 2.18 of NSK's representation dated 29 January 2014.
[509] NSK's submission dated 23 August 2013 in response to CCS's request for information dated 5 August 2013

CCS also notes that there was no compelling evidence that small-sized and miniature-sized Bearings were deliberately left out during the price increase agreements or discussions. [✂] CCS accordingly rejected NSK's representations that the relevant product market should be limited to the sale of ordinary-sized Bearings to Aftermarket customers in Singapore.

439. NTN submitted that the turnover on which the financial penalty is calculated should exclude sales of bearings not listed in the [✂]PL. [510] NTN stated that the prices of Bearings not listed in the [✂]PL were set independently by NTN Singapore and were not the subject of any discussions between NTN and their competitors, and as such were not part of the alleged infringement in the ID. NTN submitted signed statements by NTN sales team employees to confirm the above statement.

440. Evidence makes it clear that Bearings sold to Aftermarket Customers, both listed and not listed in the [✂]PL, were affected by the Market Share and Profit Protection Initiative, especially for the price increase agreements discussed and agreed upon at the Japan Meetings. According to Nachi's submission to CCS, during the period from 2004 to 2008, agreements were reached between the competitors in relation to percentage price increases to be implemented across distributor customers. [511] This included Aftermarket Customers in Singapore. Further, [✂] of NTN said that in 2005, participants of the Singapore Meetings reviewed and agreed on price increase to their distributors, due to the second steel price increase.[512] There was no mention of such price increases being confined to bearings listed in the [✂]PL only.

441. Nachi submitted that CCS had erred in adopting the entire amount of Nachi Singapore's sales of bearings to [✂] as the relevant turnover for calculating the penalty to be imposed on Nachi. [513] Nachi submitted that the turnover in respect of "…*Bearings sales made by Nachi* [✂] *where such Bearings were exported by* [✂] *to Aftermarket End-Users*[514] *or Aftermarket Distributors*[515]

[510] NTN Submission dated 29 January to the Competition Commission of Singapore on the Proposed Infringement Decision Issued to NTN Bearing Corporation and NTN Bearing Singapore (Pte) Ltd Dated 16 December 2013 ("PID")
[511] Nachi's document "Project Circle – Company Statement in Support of Nachi-Fujikoshi Corp's ("Nachi Japan") Application for Leniency to the Competition Commission of Singapore" dated 18 March 2013. See paragraph 3.1.2 and 3.2.1 of Nachi's Submission at Tab A (A1).
[512] Answer to Question 4 of Notes of Information/Explanation provided by [✂] (NTN) dated 11 June 2013
[513] Paragraphs 5.1 to 5.7 of Nachi's representations dated 29 January 2014.
[514] Defined in paragraph 2.8.2(b) of written representations submitted on 29 January 2014 to mean, "customers who use Bearings for repair and maintenance purposes.
[515] Defined in paragraph 2.8.2(b) of written representations submitted on 29 January 2014 to mean, "distributors who in turn on sell Bearings to Aftermarket End-Users.

in countries outside of Singapore"[516] ("Sales for Re-export") should have been excluded for two reasons. First, its inclusion meant that Nachi's penalty would be increased on account of the effect and impact of its infringement in countries outside Singapore. Second, the inclusion of Sales for Re-export could result in Nachi facing the risk of being subject to fines in two different jurisdictions in respect of the Sales for Re-export.

442. In respect of the first reason, Nachi submitted that [✂] was the [✂] distributor for Nachi's bearings in Singapore, [✂] and that [✂] is Nachi's [✂] Aftermarket Customer in Singapore.[517] Nachi's total turnover from the sale of bearings to [✂] in its 2012 financial year was [✂].[518] In turn, [✂]'s 2012 sales amounted to [✂], out of which only [✂]% was attributed to bearing sales made to Aftermarket Customers in Singapore.[519] Nachi also highlighted that some of the shipments from Nachi to [✂] would be marked by Nachi separately for export, and these marked shipments amounted to [✂] of Nachi's turnover in the 2012 financial year.[520]

443. Nachi, in its supplementary representations, submitted that [✂] of [✂] confirmed that [✂] of the bearings purchased by [✂] from Nachi Singapore are exported by [✂] to [✂]'s subsidiaries and sub-distributors in other countries and that Nachi Singapore was well aware that these bearings were destined for locations outside of Singapore. [521]

444. Nachi submitted that to take into account Sales for Re-export in Nachi's relevant turnover was wrong as it would include turnover from sales of Bearings to Aftermarket Customers outside of Singapore, which falls outside of the definition of "Aftermarket Customers" as stated in the ID.[522] Nachi further submitted that the inclusion of Sales for Re-export meant that the impact and effect of the infringements on the markets outside Singapore have also been taken into account by CCS in determining the penalty to be imposed on Nachi.

445. Nachi pointed to EU guidelines and case law on the question of which sales should be taken into account when setting fines for cartel cases. The EC fining guidelines provide that "…*in determining the basic amount of the fine to be imposed, the Commission will take the value of the undertaking's sales*

[516] Paragraph 3.1 (C) of Nachi's representations dated 29 January 2014.
[517] Paragraph 5.3.2(a) of Nachi's representations dated 29 January 2014.
[518] Paragraph 5.3.2(b) of Nachi's representations dated on 29 January 2014.
[519] Paragraph 5.4.2 of Nachi's representations dated 29 January 2014.
[520] Paragraph 5.4.3 of Nachi's representations dated 29 January 2014.
[521] Paragraph 3.3 of Nachi's supplementary representations dated 13 March 2014.
[522] See paragraph 99 above.

of goods or services to which the infringement directly or indirectly relates in the relevant geographic area within the EEA. It will normally take the sales made by the undertaking during the last full business year of its participation in the infringement".[523] Nachi submitted that there is no universally accepted criterion for determining, in the EC context, whether sales are considered to be within the European Economic Area ("EEA"), for example, whether it should be determined having regard to place of invoicing or the place of delivery. Nachi submitted that the criterion relied on will depend on the circumstances of the case".[524]

446. Nachi cited the cases of *Marine Hoses*[525] (*"**Marine Hoses**")* and *Parker ITR Srl and Parker-Hannifin Corp v European Commission*[526] (*"**Parker**"*) for the proposition that the place of invoicing may be considered in identifying the sales made in the EEA, as it was the most reliable criterion to determine where competition affected by the cartel took place.[527]

447. The key criterion, Nachi further submitted, is to determine where "*competition affected by the cartel took place…[which] in turn, determines where the harm caused by the cartel occurred*".[528] Nachi also went on to cite the cases of *Liquid Crystal Displays*[529] (*"**LCD decision**"*) and *TV and Computer Monitor Tubes* [530] (*"**TV and Computer Monitor Tubes decision**"*), in which the place of delivery was employed as the criterion to determine where the harm caused by the cartel took place, to reinforce their submission that the criterion to determine relevant turnover was not a fixed criterion, but liable to change on a case-by-case basis.[531] Following this, Nachi submitted that the place of delivery was the appropriate criterion in the present case to determine where the harm caused by the cartel occurred.

448. Nachi submitted that the turnover of Bearings to one of its OEM customers, [✂], was inadvertently included in the table provided by Nachi at Annex 1 to its response to CCS's Section 63 notice of 5 August 2013. Nachi explained that given the close proximity of Batam to Singapore, the Bearings to [✂] were sold by Nachi to [✂], then in turn sold by [✂] to [✂]. As [✂]is an

[523] Guidelines on the Method of Setting Fines Imposed pursuant to article 23(2)(a) of Regulation No 1/2003 (the EU Fining Guidelines)
[524] Paragraph 5.5.8 of Nachi's representations dated 29 January 2014.
[525] COMP/39406
[526] Case T-146/09- The case of *Parker* arose from the same set of facts in *Marine Hoses*.
[527] Paragraph 5.5.8 of Nachi's representations dated 29 January 2014.
[528] Paragraph 5.5.8 of Nachi's representations dated 29 January 2014.
[529] Case COMP/30309
[530] Case COMP/39437
[531] Paragraph 5.5.9 of Nachi's representations dated 29 January 2014.

OEM customer and not an Aftermarket Customer, the turnover arising from Nachi's sales to [✂] should thus be excluded from the calculation of Nachi's relevant turnover.

449. CCS is of the view that there is no merit in Nachi's submission that the turnover related to Sales for Re-export by [✂] should be excluded from the calculation of the relevant turnover.

450. While there is no dispute that [✂] distributed Nachi Bearings in Singapore, [✂], CCS finds that the distribution was not done on behalf of Nachi as its agent or otherwise and there is no evidence to suggest that Nachi had any control over whom [✂] on-sold the Bearings to. Even though Nachi is involved in marking the shipments intended to be exported to [✂]'s subsidiary in [✂], it is only doing so because [✂] has informed them to do at the point when the order is placed and it is clear that Nachi does not have any control over [✂]'s [✂]. Further, [✂].[532] Nachi did not contact [✂]'s customers, either in Singapore or overseas,[533] nor was there any agency agreement between Nachi and [✂].[534] Further, [✂] "*bears all investory risk of the bearings acquired from Nachi*".[535] Thus Nachi was only concerned with its sales to [✂].

451. It bears noting that Nachi did not dispute the definition of "Aftermarket Customer" in its representations or the fact that [✂] was described as Nachi's "*Aftermarket Customer*". In paragraph 2.3.3 of the written representations submitted on 29 January 2014, Nachi admitted clearly that, "[✂] is NSPL's [✂] Aftermarket Customer in Singapore".[536]

452. CCS has also considered where the harm caused by Nachi's infringement took place. The EU cases establish that there are two ways to identify where the harm was caused, either based on the "place of invoicing" or on the "place of delivery". However, applying either approach would result in the same conclusion that Sales for Re-export should not be excluded from Nachi's relevant turnover as [✂] bore the full brunt of Nachi's anti-

[532] Answer to Question 18 of Notes of Information/Explanation provided by [✂] provided on 18 November 2013.
[533] Answer to Question 19 and 21 of Notes of Information/Explanation provided by [✂] provided on 18 November 2013.
Answer to Question 20 of Notes of Information/Explanation provided by [✂] provided on 18 November 2013.
[534] Answer to Question 16 of CCS' Further Request for Information / Documents on 15 April 2013 from Nachi.
[535] Answer to 12 of Notes of Information/Explanation provided by [✂] provided on 18 November 2013.
[536] Paragraph 2.3.2 of Nachi's representations dated 29 January 2014

competitive behaviour's impact in Singapore.

453. In *Marine Hoses* and *Parker*, the infringement related to marine hoses which were used to load crude oil and other petroleum products form offshore facilities onto vessels and to offload them from the vessels to offshore or onshore facilities. Evidence was uncovered that the cartel members (which existed at least since 1986) participated in an anticompetitive agreement that included allocating tenders, fixing prices, quotas and sales conditions, geographic market sharing and exchanging sensitive information on prices, sales volumes and procurement tenders. The EC noted that a considerable quantity of marine hoses were purchased by OEM manufacturers for integration into other products. While the integration process often took place in facilities located outside the EU, the OEM manufacturers located inside the EU were the parties with whom sales were negotiated. As the competition took place at the level of the OEM manufacturers, the "place of invoicing" was the more adequate criterion to assess where the harm of the anti-competitive behaviour took place.

454. In examining the relationship between Nachi and [✂], CCS notes that Nachi's involvement in [✂]'s business did not extend past its sale of Bearings to [✂]. And while the end-use location of the [✂] Bearings sold by Nachi to Singapore was outside of Singapore, [✂] bore the entire business cost and inventory risk of the Bearings bought from Nachi Singapore. According to [✂], the relationship between Nachi Singapore and [✂] is that of a supplier and customer.[537] In the same vein, there is no relationship between Nachi Singapore and [✂]'s customers. Nachi Singapore is not involved in the subsequent sale of the bearings by [✂] to its customers both in Singapore and overseas. As a regional distributor of Bearings, the competition takes place between [✂] and other Aftermarket Customers involved in the business of resale in Singapore. As such, CCS is of the view that the appropriate criterion to adopt in the present case is that of "place of invoicing", and consequently the Sales for Re-export should not be excluded in the calculation of Nachi's relevant turnover.

455. In light of the applicable case law and the relationship between Nachi and [✂], combined with the fact that [✂] falls squarely within the definition of an "Aftermarket Customer", CCS rejects Nachi's representations that Sales for Re-export should be excluded when determining Nachi's relevant turnover for the purpose of penalty calculation.

[537] Answer to Question 11 of Notes of Information/Explanation provided by [✂] provided on 18 November 2013.

456. As regard the potential double penalty faced by Nachi in other jurisdictions to which [✂] exported the Bearings, CCS is of the view that this submission has no bearing on its analysis of whether Sales for Re-export should be excluded in calculating Nachi's relevant turnover. CCS's concern is the impact of Nachi's anti-competitive behaviour in the relevant market, i.e. Singapore, and the said impact was borne by [✂] in its purchase of Bearings, both for re-sale to local and foreign buyers, in Singapore.

457. Finally, in light of [✂]'s evidence that there is no relationship of agency between Nachi and [✂],[538] CCS is of the view that the evidence strongly suggests that [✂] is a customer of [✂] and not of Nachi. As such, there is no compelling reason to exclude the sale of Bearings by [✂] to [✂] from the general category of [✂].

458. Therefore CCS rejects Nachi's representations to exclude the turnover from sales of Bearings to [✂] in CCS's calculation of Nachi's relevant turnover.

459. Having regard to all the circumstances and the representations made by the Parties, CCS rejects the Parties' representations and considers it to be appropriate, in the current case to define the relevant turnover as the turnover of the Singapore Subsidiary Companies for the sale of Bearings to Aftermarket Customers in Singapore.

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

460. After calculating the base penalty sum, CCS considers 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 is determined by having regard to the date when each became party to the single continuous infringement, and the date when their participation ceased.[539]

461. CCS considers it appropriate for penalties for infringements which last for more than one year to be multiplied by the number of years of the infringement. Therefore, the base penalty sum will be multiplied for as many years as the infringement remains in place. This ensures that there is sufficient deterrence against cartels operating undetected for a protracted length of time.

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[538] Answer to Question 20 of Notes of Information/Explanation provided by [✂] provided on 18 November 2013.

[539] *CCS Guideline on the Appropriate Amount of Penalty* at [2.8].

462. Although an infringement over a part of a year may be treated as a full year for the purposes of calculating the duration of the infringement,[540] in such instances, CCS has exercised its discretion to round down the period to the nearest month. Therefore, where the infringement period is less than one year, CCS will round down the duration to the nearest month, subject to a minimum of one month. Similarly, for infringements over one year, the duration used will be the actual length of the infringement rounded down to the nearest month. This will provide an incentive to undertakings to terminate their infringing conduct as soon as possible.

463. CCS will deal with the adjustment for duration applicable to each Party in the calculation of penalties for each Party set out in paragraphs 470 to 529 below.

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

464. At this next stage, CCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[541] 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.

465. CCS has found that there are no aggravating factors in this case and as such will not make any adjustment for aggravating factors. The reduction for mitigating factors, where applicable, are described below.

(iv) Step 4: <u>Other Relevant Factors</u>

466. CCS may adjust the penalty, as appropriate, to achieve its policy objectives. These include, the deterrence of the Parties and other undertakings from engaging in anti-competitive practices including price fixing. CCS considers that price fixing is one of the most serious infringements of the Act and as such, penalties imposed should be sufficient to deter undertakings from engaging in price fixing.

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

(v) Step 5: Check Against Section 69(4) Maximum Penalty

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[540] *CCS Guideline on the Appropriate Amount of Penalty* at [2.8].
[541] *CCS Guidelines on the Appropriate Amount of Penalty* at [2.10].

468. Section 69(4) of the Act states that the maximum penalty that CCS can impose is 10% of the turnover of a business up to a maximum of three years. The Competition (Financial Penalties) Order 2007 states that applicable turnover shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities in Singapore after deduction of sales rebates, goods and services tax and other taxes directly related to turnover.[542]

469. Therefore, CCS will determine a business' applicable turnover for the year preceding the decision and will multiply this figure by 10% and by the duration of the infringement (up to a maximum of three years).[543] If the penalty calculated after Steps 1 to 4 exceeds the statutory maximum penalty, then the penalty will be adjusted downwards to ensure that the penalty is within the statutory maximum penalty.

D. Penalty for Koyo

470. Starting point: Koyo was involved in the single continuous infringement with the object of preventing, restricting and distorting competition in the market for sale of Bearings sold to Aftermarket Customers in Singapore.

471. KSBP's financial year commences on 1 April and ends on 31 March.[544] KSBP's relevant turnover figures for the sale of Bearings to Aftermarket Customers in Singapore for the financial year ending 31 March 2013 was S$[✂].[545]

472. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 405 to 434 above and fixed the starting point for KSBP at [✂]% of relevant turnover. The starting amount for Koyo is therefore S$[✂].

473. Adjustment for duration: Koyo was a Party to the single continuous infringement from 1 January 2006 until 26 July 2011. As stated at paragraph 462, CCS will adopt a duration multiplier of 5.50 for Koyo after rounding down the duration to five years and six months. Therefore, the penalty after adjustment for duration is S$[✂].

474. Adjustment for aggravating and mitigating factors: CCS considers that Koyo co-operated with CCS during the course of the investigations. However, this

[542] Paragraph 2, Competition (Financial Penalties) Order 2007. See also [2011] CAT 8, para 42.
[543] The duration will be the **actual** duration of the infringement rounded down to the nearest month.
[544] KSBP's accounting period prior to 2011 was from 1 January to 31 December.
[545] Information provided by JTEKT dated 23 August 2013, 30 August 2013 and 9 September 2013, pursuant to the section 63 Notice issued by CCS dated 5 August 2013.

was a condition of its being granted leniency and so no extra mitigation was given for the same.

475. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

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

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

478. Adjustment for leniency: Koyo was granted total immunity from financial penalties as part of CCS's leniency programme. Koyo's financial penalty is therefore reduced to nil.

E. Penalty for Nachi

479. Starting point: Nachi was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale of Bearings sold to Aftermarket Customers in Singapore.

480. Nachi Singapore's financial year commences on 1 October and ends on 30 September. Nachi's relevant turnover figures for the sale of Bearings to Aftermarket Customers in Singapore for the financial year ending 30 September 2012 was S$[✂].[546]

481. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 405 to 434 above and fixed the starting point for Nachi at [✂]% of relevant turnover. The starting amount for Nachi is therefore S$[✂].

482. Adjustment for duration: Nachi was a party to the single continuous infringement from 1 January 2006 until 26 July 2011. As stated at paragraph 462, CCS will adopt a duration multiplier of 5.50 for Nachi after rounding

[546] Information provided by Nachi dated 15 August 2013 and 30 August 2013, pursuant to the section 63 Notice issued by CCS dated 5 August 2013.

down the duration to five years and six months. Therefore, the penalty after adjustment for duration is S$[✂].

483. Adjustment for aggravating and mitigating factors: CCS considers that Nachi co-operated with CCS during the course of the investigations. However, this was a condition of its being granted leniency and so no additional percentage reduction is given.

484. Nachi, submitted that Nachi should be granted a further reduction in penalty in consideration of the following mitigating factors:

    a. the immediate steps taken by Nachi to prevent any recurrence of anti-competitive conduct following the JFTC Dawn Raids;

    b. Nachi's efforts to ensure compliance with the section 34 prohibition and to prevent future recurrences of anti-competitive conduct; and

    c. Nachi's co-operation with CCS in the course of CCS's investigation

485. CCS notes that Nachi's compliance programme was implemented after the investigation by JFTC and does not considers such step as a mitigating factor. Accordingly, CCS does not consider any further reduction appropriate.

486. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂] .

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

488. Nachi submitted that CCS did not grant any reduction to Nachi's penalty on account of any other relevant factors. [547] Nachi submitted that CCS has erred in overlooking the fact that the quantum of the penalty imposed on Nachi was largely a result of Nachi's [✂] and that CCS should have considered this factor and reduced Nachi's penalty on the basis that such penalty was excessive and disproportionate. Nachi submitted that the necessary implication of the principle applied by the CAB in the *Modelling Agencies Appeals* and by the CAT in the *UK Construction Appeals* is that CCS must consider the characteristics of each individual undertaking and ensure that

[547] Paragraphs 7.1 to 7.4.4 of Nachi's representation dated 29 January 2014.

the quantum of the penalty imposed is not excessive or disproportionate having taken such characteristics into account. Nachi added that the difference in the distribution arrangements of the Parties falls squarely within the type of characteristics that CCS has to consider when determining the final penalty, so as to be able to ensure that such penalty is not excessive or disproportionate. As such, CCS should not have ignored the nature of Nachi's distribution arrangements and that the [✂] of Nachi's relevant turnover was attributable to [✂], in its determination of the penalty to be imposed on Nachi.

489. Nachi also submitted that CCS should have, in consideration of the relative market shares of Nachi and the other Parties, reduced Nachi's penalty to a level proportionate to its market share in respect of Singapore (i.e. excluding all [✂]).

490. Further Nachi submitted that the imposition of a penalty on Nachi that is substantially higher than the other Parties [✂].

491. CCS is of the view that Nachi's distribution arrangement is not a sufficient reason to justify a reduction in financial penalties. Unlike the facts and circumstances in the *Modelling Agencies* case, Nachi's distribution arrangement is driven by [✂][548] and it is not an inherent characteristic of the industry as a whole. CCS notes that there are no consistent or uniform distribution arrangements among the Parties. The type of distribution arrangement adopted by the companies is driven by the company's own business model. As set out in paragraphs 451 and 454, CCS is mindful that [✂] falls squarely within the definition of an Aftermarket Customer of Nachi and it is not a distribution agent of Nachi. [✂] has also submitted that "[✂]".[549] In light of the above, CCS disagrees with Nachi's submission that its share of the sales of Bearings to Aftermarket Customers in Singapore is [✂]% relative to the other Parties as this had excluded [✂]'s subsequent [✂]. Based on the Parties' relevant turnovers from sales of bearings to Aftermarket customers in Singapore irrespective of [✂]'s subsequent sales, CCS considers that Nachi's market share relative to the other Parties is [✂] at [✂]% and, therefore, Nachi's penalty is [✂]. Accordingly, CCS rejects Nachi's representations and does not consider any further reduction appropriate.

492. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS

[548] Paragraph 7.4.3 of Nachi's representations dated 29 January 2014.
[549] Answer to question 10 of the Note of Information/Explanation provided by [✂] on 18 November 2013.

can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$[✂].

493. Adjustment for leniency: Nachi came forward with its leniency application on 7 February 2013, one day after CCS's inspection at the premises of Nachi Singapore. CCS considers that Nachi has provided quality information and evidence.

494. Having taking into consideration all the facts and circumstances of this case, including the stage at which the undertaking comes forward, the evidence already in CCS's possession and the quality of the information provided by Nachi, CCS reduces the penalty by [✂]% as part of CCS's leniency programme. Nachi's financial penalty is therefore reduced to S$ $7,564,950.

F. Penalty for NSK

495. Starting point: NSK was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale of Bearings sold to Aftermarket Customers in Singapore.

496. NSK Singapore's financial year commences on 1 April and ends on 31 March. NSK Singapore's relevant turnover figures for the sale of Bearings to Aftermarket Customers in Singapore for the financial year ending 31 March 2013 was S$[✂].[550]

497. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 405 to 434 above and fixed the starting point for NSK at [✂]% of relevant turnover. The starting amount for NSK is therefore S$[✂].

498. Adjustment for duration: NSK was a Party to the single continuous infringement from 1 January 2006 until 26 July 2011. As stated at paragraph 462, CCS will adopt a duration multiplier of 5.50 for NSK after rounding down the duration to five years and six months. Therefore, the penalty after adjustment for duration is S$[✂].

499. NSK[551] submitted that CCS has erred in applying a duration multiplier in excess of three years in calculating the financial penalty to be imposed on NSK. NSK submits that Section 69(4) of the Act provides that "*no financial penalty fixed by the Commission under this section may exceed 10% or such*

[550] Information provided by NSK on 16 August 2013 and 23 August 2013 pursuant to the section 63 Notices issued by CCS dated 5 August 2013.
[551] Para 5.19 to 5.24 NSK's representations dated 29 January 2014.

other percentage of such turnover of the business of the undertaking in Singapore for each year of infringement for such period, up to a maximum of 3 years, as the Minister may, by order published in the Gazette, prescribe".

500. NSK further submitted that based on a plain reading of the provision, CCS is required by statue to limit the duration element in calculating the penalty (and therefore the duration multiplier) to a maximum period of three years. In addition, NSK submitted that CCS has observed the three years statutory maximum in its own decisions. In Para 10.3.19 and 10.3.20 of CCS 600/008/07 – Abuse of a Dominant Position by SISTIC.com Pte Ltd ("SISTIC"), CCS stated that "*CCS notes that SISTIC's conduct was already in existence before the Act come into force on 01 January 2006 and continued since then. However, in view of the statutory maximum penalty of 10% of the turnover of the infringing undertaking over a period of 3 years pursuant to section 69(2)(d) of the Act. CCS determines the infringement period should be the statutory maximum of 3 years*."

501. NSK also submitted that the CAB considered in detail CCS's calculation of the penalties in SISTIC and accepted CCS's approach to the application of the duration multiplier, and expressly accepted the "statutory maximum period of 3 years".

502. However, NSK noted that in the *Modelling Services Case*, CCS stated at Paragraph 278 that "*CCS considers it appropriate for penalties for infringement which last for more than one year to be multiplied by the number of years of the infringement. This therefore means that the base penalty sum will be multiplied for as many years as the infringement remains in place. This ensures that there is sufficient deterrence against cartels operating undetected for a protracted length of time*". In the *Modelling Services Case*, CCS has applied duration multipliers of more than three years for such parties i.e. 3.5.[552] Therefore, NSK submitted that the correct duration multiplier to be applied in the calculation of the financial penalty to be imposed on NSK is the statutory maximum of 3.0 (and not 6.0).

503. CCS is of the view that NSK has erred in its plain reading of the section 69(4) provision. Section 69(4) of the Act should be read as the maximum penalty that CCS can impose is 10% of the turnover of a business up to a maximum of three years. CCS notes that the position adopted by CCS in the determination of the duration in *Modelling Services Case* is the correct position. The duration multiplier of more than three years had been applied

[552] [2011] SGCCS 11 at [298].

because section 69(4) of the Act only applies to the calculation of the statutory maximum penalty and is not a statutory limit on the duration of the infringement.

504. With reference to *Section C: Calculation of Penalties* of the ID, CCS considers it appropriate for penalties for infringements which last for more than one year to be multiplied by the number of years of the infringement. Therefore, the base penalty sum will be multiplied for as many years as the infringement remains in place. This ensures that there is sufficient deterrence against cartels operating undetected for a protracted length of time.

505. Section 69(4) of the Act is applied only during Step 5 of the penalty calculation; if the penalty calculated after Steps 1 to 4 exceeds the statutory maximum penalty, then the penalty will be adjusted downwards to ensure that the penalty is within the statutory maximum penalty.

506. CCS notes that the UK now applies a statutory maximum penalty of 10% of the worldwide turnover of the undertaking in its last business year.[553] However, in respect of infringements of the Chapter I or II prohibition that had ended prior to 1 May 2004, the UK will apply a similar statutory maximum for any penalties imposed. Such penalties will be adjusted to ensure that they do not exceed 10 per cent of turnover in the UK of the undertaking in the financial year preceding the date when the infringement ended (multiplied pro rata by the length of the infringement where the length of the infringement was in excess of one year, up to a maximum of three years).[554]

507. The three year statutory maximum for penalty calculations for infringements that end prior 1 May 2004 in the UK clearly does not constrain the OFT's finding on the length of the infringement by an undertaking, i.e. the duration of the infringement may exceed three years. This can be seen in the OFT's decision in CA98/08/2004 (*Agreement between UOP Limited, UKae Limited, Thermoseal Supplies Ltd, Double Quick Supplyline Ltd and Double Glazing Supplies Ltd to fix and/or maintain prices for desiccant*).[555] Similar to CCS's application of a multiplier for duration, the OFT will apply a duration multiplier to penalties for infringements that last for more than one year by not more than the number of years of the infringement.

508. In this case, the infringement in the case of UOP, Thermoseal, DQS and

[553] Para. 2.21 of the OFT's guidance as to the appropriate amount of penalty – September 2012
[554] Para. 2.22 of the OFT's guidance as to the appropriate amount of penalty – September 2012
[555] Case CE/2464-03 (8 November 2004)

DGC, lasted from 1 March 2000 and continued until at least 12 March 2003, which is a total of three years and 11 days. The OFT decided to round up the duration to the nearest quarter rather than the nearest year, making it three years and a quarter. The duration multiplier was therefore 3.25.[556] As the present infringement ended before 1 May 2004 (and the OFT's Decision was issued on 8 November 2004), the OFT conducted a dual check, i.e. that the penalty did not exceed 10% of the worldwide turnover preceding the Decision[557] *and* that it also did not exceed the statutory maximum which could have been imposed prior to 1 May 2004. Both the statutory maximum on penalty did not constrain the calculation of the length of infringement in any way.

509. In light of the above, CCS rejects NSK's representations and does not consider any further reduction appropriate.

510. Adjustment for aggravating and mitigating factors: CCS considers that NSK co-operated with CCS during the course of the investigations. However, this was a condition of its being granted leniency and so no additional percentage reduction is given.

511. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty remains at S$[✂].

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

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

514. Adjustment for leniency: NSK came forward with its leniency application on 25 January 2012 before CCS commenced its investigation and shortly after the immunity applicant. CCS considers that NSK has provided crucial and quality information and evidence to CCS.

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[556] Case CE/2464-03 (8 November 2004) at [324].

[557] Calculated in accordance with The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309) (as amended by The Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259))

515. Having taking into consideration all the facts and circumstances of this case, including the stage at which the undertaking comes forward, the evidence already in CCS's possession and the quality of the information provided by NSK, CCS reduces the penalty by [✂]% as part of CCS's leniency programme.

516. [✂].[558]

517. [✂].

518. [✂]

519. [✂]Accordingly, NSK's penalty is reduced to S$1,286,375.

G. Penalty for NTN

520. Starting point: NTN was involved in the single continuous infringement with the object of preventing, distorting and restricting competition in the market for the sale Bearings sold to Aftermarket Customers in Singapore.

521. NTN Singapore's financial year commences on 1 April and ends on 31 March. NTN Singapore's relevant turnover figures for the sale of Bearings to Aftermarket Customers in Singapore for the financial year ending 31 March 2013 was S$[✂].[559]

522. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 405 to 434 above and fixed the starting point for NTN at [✂]% of relevant turnover. The starting amount for NTN Japan and NTN Singapore is therefore S$[✂].

523. Adjustment for duration: NTN was a Party to the single continuous infringement from 1 January 2006 until 6 September 2006. As stated at paragraph 462, CCS will adopt a duration multiplier of 0.67 for NTN after rounding down the duration to eight months. Therefore, the penalty after adjustment for duration is S$[✂].

524. Adjustment for aggravating and mitigating factors: CCS considers that NTN co-operated with CCS during the course of the investigations and has facilitated interviews by CCS with the employees from NTN Japan which

[558] [✂]

[559] Information provided by NTN on 21August 2013 pursuant to the section 63 Notices issued by CCS dated 5 August 2013.

allowed CCS to conclude its investigation more effectively. Accordingly, CCS reduces the penalty by [✂]% for cooperation.

525. NTN submitted that its decision to stop attending both the Japan Meetings and the Singapore Meetings were for the purpose of compliance with the relevant competition laws including the Competition Act in Singapore. Further, NTN highlighted that it was the first and only participant in 2006 to take active steps to stop all and any involvements in both the Japan Meetings and Singapore Meeting, thus showing the strong commitment by the management of NTN to comply with relevant competition laws including the Act. CCS notes that the termination of NTN's participation in both the Japan Meetings and Singapore Meetings has been taken into consideration when determining the duration of the single continuous infringement. Accordingly, CCS does not consider any further reduction appropriate.

526. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is reduced to S$[✂].

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

528. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$455,652.

H. Conclusion on Penalties

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

Party	**Financial Penalty**
Koyo	Nil
Nachi	$7,564,950
NSK	$1,286,375
NTN	S$455,652
Total	**S$9,306,977**

530. All Parties must pay their respective penalties to the Commission by no later than 5 p.m. on 29 July 2014. If any of the Parties fail to pay the penalty within the deadline specified above, and no appeal within the meaning of the Act against the imposition or the amount, of a financial penalty, has been brought or such appeal has been unsuccessful, the Commission may apply to register the direction to pay the penalty in a District Court. Upon registration, the direction shall have the same force and effect as an order originally obtained in a District Court and can be executed and enforced accordingly.

Toh Han Li
Chief Executive
Competition Commission of Singapore

Annex A

Date	Description of contact with competitors
12-Jul-00	Singapore Meeting
14-Jul-00	Singapore Meeting
28-Jul-00	Singapore Meeting
11-Sep-00	Singapore Meeting
23-Oct-00	Singapore Meeting
22-Dec-00	Singapore Meeting
9-Feb-01	Singapore Meeting
27-Apr-01	Singapore Meeting
24-May-01	Singapore Meeting
14-Jun-01	Singapore Meeting
8-Aug-01	Singapore Meeting
14-Sep-01 Or 27-Sep-01	Singapore Meeting
27-Sep-01	Singapore Meeting
26-Oct-01	Singapore Meeting
7-Dec-01	Singapore Meeting
9-Jan-02	Singapore Meeting
21-Feb-02	Singapore Meeting
6-Mar-02	Singapore Meeting
27-Mar-02	Singapore Meeting
21-May-02	Singapore Meeting
8-Jul-02	Singapore Meeting
4-Aug-02	Singapore Meeting (Golf)
5-Aug-02	Singapore Meeting
5-Sep-02	Singapore Meeting
1-Oct-02	Singapore Meeting
1-Nov-02	Singapore Meeting
26-Nov-02	Singapore Meeting
8-Dec-02 Or 10-Dec-02	Singapore Meeting
29-Jan-03	Singapore Meeting
17-Feb-03	Singapore Meeting
28-Mar-03	Singapore Meeting
28-Apr-03	Singapore Meeting
3-May-03 Or 5-May-03	Singapore Meeting

Date	Description of contact with competitors
19-May-03	Singapore Meeting
3-Jun-03	Singapore Meeting
28-Jul-03	Singapore Meeting
18-Aug-03	Singapore Meeting
7-Oct-03	Singapore Meeting
16-Oct-03	Singapore Meeting
14-Nov-03	Singapore Meeting
5-Dec-03	Singapore Meeting
27-Jan-04	Singapore Meeting
6-Feb-04	Singapore Meeting
25-Mar-04	Singapore Meeting
24-May-04	Singapore Meeting
5-Jul-04	Singapore Meeting
3-Aug-04 to 5-Aug-04	Singapore Meeting
26-Aug-04	Singapore Meeting
21-Oct-04	Singapore Meeting
29-Nov-04	Singapore Meeting
28-Jan-05	Singapore Meeting
4-Mar-05	Singapore Meeting
28-Apr-05	Singapore Meeting
30-May-05	Singapore Meeting
28-Jun-05	Singapore Meeting
18-Jul-05	Singapore Meeting
27-Jul-05	Singapore Meeting (farewell for [✂])
22-Aug-05	Singapore Meeting
5-Sep-05	Singapore Meeting
4-Oct-05	Singapore Meeting
25-Nov-05 Or 29-Nov-05	Singapore Meeting
	Singapore Meeting
13-Jan-06	Singapore Meeting
14-Mar-06	Singapore Meeting

Annex B

Date	Description of contact with competitors
20-Dec-99	Japan Meeting
18-Feb-00	Japan Meeting
27-Mar-00	Japan Meeting
12-May-00	Japan Meeting
23-Jun-00	Japan Meeting
24-Jul-00	Japan Meeting
13-Oct-00	Japan Meeting
23-May-01	Japan Meeting
4-Jun-01	Japan Meeting
26-Nov-01	Japan Meeting
17-Dec-01	Japan Meeting
8-Feb-02	Japan Meeting
21-Feb-02	Japan Meeting
20-Mar-02	Japan Meeting
27-Mar-02	Japan Meeting
10-May-02	Japan Meeting
28-Jun-02	Japan Meeting
23-Jul-02	Japan Meeting
28-Nov-02	Japan Meeting
17-Jan-03	Japan Meeting
3-Feb-03	Japan Meeting
3-May-03	Japan Meeting
17-Mar-03	Japan Meeting
6-May-03	Japan Meeting
27-Jun-03	Japan Meeting
7-Aug-03	Japan Meeting
20-Nov-03	Japan Meeting
15-Jan-04	Japan Meeting
23-Jan-04	Japan Meeting
24-Mar-04	Japan Meeting
11-May-04	Japan Meeting
25-Jun-04	Japan Meeting
26-Jul-04	Japan Meeting
26-Aug-04	Japan Meeting
8-Oct-04	Japan Meeting
14-Jan-05	Japan Meeting
25-Feb-05	Japan Meeting

Date	**Description of contact with competitors**
13-May-05	Japan Meeting
24-Jun-05	Japan Meeting
4-Aug-05	Japan Meeting
28-Sep-05	Japan Meeting
17-Nov-05	Japan Meeting
3-Mar-06	Japan Meeting
6-Jun-06	Japan Meeting
8-Sep-06	Japan Meeting
15-Jan-08	Japan Meeting
12-May-08	Japan Meeting
14-Jul-09	Japan Meeting
8-Jul-10	Japan Meeting
29-Mar-11 to 31-Mar-11	Japan Meeting