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 distribution of individual life insurance products in Singapore

17 March 2016

Case number: CCS 500/003/13

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

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GLOSSARY

"AFA" refers to the Association of Financial Advisers (Singapore)

"Exempt financial adviser" refers to an entity that is exempted from holding a licence to provide financial advisory services, such as arranging contracts for life insurance policies, under the Financial Advisers Act

"FA" refers to a financial adviser licensed under the Financial Advisers Act

"FA licence" refers to a licence granted under section 13 of the Financial Advisers Act in respect of a financial adviser

"FA representative" refers to an individual who provides financial advisory services on behalf of an FA, such as arranging contracts for life insurance policies

"Financial Advisers Act" refers to the Financial Advisers Act (Cap. 110)

"iFAST" refers to iFAST Corporation Ltd. and/or its related entities, including iFAST Financial Pte. Ltd.

"Insurers" refers to Manulife (Singapore) Pte. Ltd., NTUC Income Insurance Co-operative Limited and Tokio Marine Life Insurance Singapore Ltd. collectively

"Manulife" refers to Manulife (Singapore) Pte. Ltd.

"MAS" refers to the Monetary Authority of Singapore

"NTUC Income" refers to NTUC Income Insurance Co-operative Limited

"Tied agent" refers to an individual who provides financial advisory services on behalf of an insurer, such as arranging contracts for life insurance policies

"TM Life" refers to Tokio Marine Life Insurance Singapore Ltd.

EXECUTIVE SUMMARY

1. The Competition Commission of Singapore ("CCS") is issuing an Infringement Decision ("ID") against 10 undertakings for being parties to an agreement and/or concerted practice to pressurise iFAST into withdrawing its marketing of the Insurers' relevant individual life insurance products[1] with an offer of 50% commission rebate to policyholders on the Fundsupermart.com website ("Fundsupermart Offer") (the "Conduct"), in contravention of section 34 of the Competition Act (Cap. 50B) ("Act").

2. The 10 undertakings (each a "Party", and together, the "Parties") are:

   (i) Avallis Financial Pte. Ltd., formerly First Principal Financial Pte Ltd ("Avallis");

   (ii) Cornerstone Planners Pte Ltd ("Cornerstone");

   (iii) Financial Alliance Pte. Ltd. ("Financial Alliance");

   (iv) Frontier Wealth Management Pte. Ltd. ("Frontier");

   (v) IPP Financial Advisers Pte. Ltd. ("IPP");

   (vi) JPARA Solutions Pte. Ltd. ("JPARA");

   (vii) Professional Investment Advisory Services Pte Ltd ("PIAS");

   (viii) Promiseland Independent Pte. Ltd. ("Promiseland");

   (ix) RAY Alliance Financial Advisers Pte. Ltd. ("RAY"); and

   (x) WYNNES Financial Advisers Pte. Ltd. ("WYNNES").

3. Evidence gathered by CCS reveals that on 2 May 2013, Avallis, Cornerstone, Financial Alliance, Frontier, JPARA, Promiseland, RAY and WYNNES met for an AFA Management Committee meeting. During this meeting, the Fundsupermart Offer was discussed and Vincent Ee Soon Teck ("Vincent Ee") of Financial Alliance was appointed to contact iFAST and the Insurers to withdraw the Fundsupermart Offer. From 2 May 2013 to 3 May 2013, Vincent Ee communicated with iFAST and the Insurers via email to get them to withdraw the Fundsupermart Offer. During this time, IPP and PIAS, which were copied in the communications, provided support to Vincent Ee and contributed to the effort to have iFAST remove the Fundsupermart Offer. On 3 May 2013, iFAST withdrew the Fundsupermart Offer.

[1] See Chapter 2, Section G on The Relevant Market.

4. CCS finds that the Parties participated in an agreement and/or concerted practice. The content and object of this agreement and/or concerted practice was to pressurise iFAST into withdrawing the Fundsupermart Offer, thus preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products. Instead of deciding independently how to respond to the competitive challenge posed by the Fundsupermart Offer, the Parties cooperated to collectively pressurise iFAST into withdrawing the Fundsupermart Offer. This prevented the market from shifting to a more competitive state. CCS therefore considers that the agreement and/or concerted practice was one which, by its very nature, was injurious to the proper functioning of normal competition and which prevented, restricted or distorted competition by object, in contravention of section 34 of the Act.

5. CCS is imposing on each of the Parties penalties of between S$5,000 and S$405,114, amounting to a total combined penalty of S$909,302, for infringing section 34 of the Act. In determining the penalty amount, CCS has taken into consideration the seriousness of the infringement concerned as well as the relevant aggravating and mitigating factors.

CHAPTER 1: THE FACTS

A. The Parties

(i) Avallis Financial Pte. Ltd., formerly First Principal Financial Pte Ltd

6. Avallis is a limited exempt private company registered in Singapore (since 1997) that has its registered office address at 24 Raffles Place, #14-02, Clifford Centre, Singapore (048621). It provides financial advisory services and sells the insurance products of various insurers.[2] It is a holder of an FA licence.[3] Avallis' turnover for the financial year ended 31 December 2014 was S$[✂].[4] Mohamed Salim Bin Mohd Amin ("Mohamed Salim"), who is the Chief Executive Officer ("CEO") and a shareholder of Avallis, is referred to in this ID. Avallis is a member of AFA and Mohamed Salim was an Executive Committee ("EXCO") member of AFA at the time of the Fundsupermart Offer.[5]

(ii) Cornerstone Planners Pte Ltd

7. Cornerstone is a limited exempt private company registered in Singapore (since 1997) that has its registered office address at 105 Cecil Street, #03-03 The Octagon, Singapore (069534). It advises on and arranges/markets life insurance and collective investment schemes.[6] It is a holder of an FA licence.[7] Cornerstone's turnover for the financial year ended 31 December 2014 was S$[✂].[8] Lee Kwong Choy Michael ("Michael Lee"), who is the CEO, Managing Director and a shareholder of Cornerstone, is referred to in this ID. Cornerstone is a member of AFA and Michael Lee was the Assistant Secretary of AFA at the time of the Fundsupermart Offer.[9]

(iii) Financial Alliance Pte. Ltd.

8. Financial Alliance is a limited private company registered in Singapore (since 1993) that has its registered office address at 2 Bukit Merah Central, #10-00,

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[2] Extracted from ACRA record *Business Profile of Avallis Financial Pte. Ltd.* (dated 07/03/2016); Information provided by Avallis dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraphs 2.1 and 2.2.

[3] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[4] Information provided by Avallis dated 26 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

[5] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

[6] Extracted from ACRA record *Business Profile of Cornerstone Planners Pte Ltd* (dated 07/03/2016); Information provided by Cornerstone dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraph 3.1.

[7] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[8] Information provided by Cornerstone dated 25 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

[9] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

Singapore (159835). It provides financial advisory services and wealth management solutions.[10] It is a holder of an FA licence.[11] Financial Alliance's turnover for the financial year ended 31 December 2014 was S$[✂].[12] Vincent Ee, who is the Managing Director and an indirect shareholder of Financial Alliance, is referred to in this ID. Financial Alliance is a member of AFA and Vincent Ee is the President of AFA.[13] Vincent Ee was the Vice President of AFA at the time of the Fundsupermart Offer.[14]

(iv) Frontier Wealth Management Pte. Ltd.

9. Frontier is a limited exempt private company registered in Singapore (since 1999) that has its registered office address at 51 Goldhill Plaza, #18-08, Singapore (308900). It provides services as a licensed financial adviser for life insurance and collective investment schemes, and as an exempt general insurance broker.[15] It is a holder of an FA licence.[16] Frontier's turnover for the financial year ended 31 December 2014 was S$[✂].[17] Lee Kian Boon Augustine ("Augustine Lee"), who is the CEO and a shareholder of Frontier, is referred to in this ID. Frontier is a member of AFA and Augustine Lee was the President of AFA at the time of the Fundsupermart Offer.[18]

(v) IPP Financial Advisers Pte. Ltd.

10. IPP is a limited private company registered in Singapore (since 1983) that has its registered office address at 78 Shenton Way, #30-01, Singapore (079120). It provides financial planning services and distributes investment and insurance products.[19] It is a holder of an FA licence.[20] IPP's turnover for the financial year ended 31 December 2014 was S$[✂].[21] Chellappah Shelton Amarajothi

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[10] Extracted from ACRA record *Business Profile of Financial Alliance Pte. Ltd.* (dated 07/03/2016); Information provided by Financial Alliance dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraph 2.1.

[11] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[12] Information provided by Financial Alliance dated 29 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

[13] http://www.afas.org.sg/directory.html and http://www.afas.org.sg/about_01 html.

[14] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

[15] Extracted from ACRA record *Business Profile of Frontier Wealth Management Pte. Ltd.* (dated 07/03/2016); Information provided by Frontier dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraph 2.1.

[16] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[17] Information provided by Frontier dated 18 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

[18] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

[19] Extracted from ACRA record *Business Profile of IPP Financial Advisers Pte. Ltd.* (dated 07/03/2016); Information provided by IPP dated 31 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, response to question 3.

[20] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[21] Information provided by IPP dated 26 February 2016 pursuant to the section 63 Notice issued by CCS dated10 February 2016.

("Shelton Chellappah"), who was the CEO of IPP at the time of the Fundsupermart Offer and is an ex-director of IPP, is referred to in this ID. Albert Lam Choong Fei ("Albert Lam") and Tan Lye Poh, who are both directors of IPP, are also referred to in this ID. IPP is a member of AFA.[22]

(vi) JPARA Solutions Pte. Ltd.

11. JPARA is a limited exempt private company registered in Singapore (since 2006) that has its registered office address at 50 Serangoon North Avenue 4, #07-07 First Centre, Singapore (555856). It provides financial advisory services and risk management solutions.[23] It is a holder of an FA licence.[24] JPARA's turnover for the financial year ended 31 December 2014 was S$[✂].[25] Jeyaraman Parasuraman, who is the CEO and sole shareholder of JPARA, is referred to in this ID. JPARA is a member of AFA and Jeyaraman Parasuraman was the Honorary Treasurer of AFA at the time of the Fundsupermart Offer.[26]

(vii) Professional Investment Advisory Services Pte Ltd

12. PIAS is a limited private company registered in Singapore (since 2001) that has its registered office address at 6 Shenton Way, #09-08, OUE Downtown, Singapore (068809). It provides financial advisory services.[27] It is a holder of an FA licence.[28] PIAS's turnover for the financial year ended 30 June 2015 was S$[✂].[29] David Bellingham, who was the CEO of PIAS at the time of the Fundsupermart Offer, is referred to in this ID. PIAS is a member of AFA.[30]

(viii) Promiseland Independent Pte. Ltd.

13. Promiseland is a limited private company registered in Singapore (since 1979) that has its registered office address at 7500A Beach Road, #02-312 The Plaza, Singapore (199591). It provides financial planning and financial advisory

[22] http://www.afas.org.sg/directory.html.
[23] Extracted from ACRA record *Business Profile of JPARA Solutions Pte. Ltd.* (dated 07/03/2016); Information provided by JPARA dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraph 3.1.
[24] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.
[25] Information provided by JPARA dated 23 February 2016 pursuant to the section 63 Notice issued by CCS dated10 February 2016.
[26] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.
[27] Extracted from ACRA record *Business Profile of Professional Investment Advisory Services Pte Ltd* (dated 07/03/2016); Information provided by PIAS dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, response to question 3.
[28] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.
[29] Information provided by PIAS dated 25 February 2016 pursuant to the section 63 Notice issued by CCS dated 29 January 2016.
[30] http://www.afas.org.sg/directory.html.

services.[31] It is a holder of an FA licence.[32] Promiseland's turnover for the financial year ended 31 March 2015 was S$[✂].[33] Choo Khoon Meng David ("David Choo"), who is the Managing Director and a shareholder of Promiseland, is referred to in this ID. Promiseland is a member of AFA and David Choo is the Vice President of AFA.[34] David Choo was an EXCO member of AFA at the time of the Fundsupermart Offer.[35]

(ix) RAY Alliance Financial Advisers Pte. Ltd.

14. RAY is a limited private company registered in Singapore (since 1999) that has its registered office address at 70 Anson Road, #14-02, Hub Synergy Point, Singapore (079905). It provides financial planning and investment advisory services.[36] It is a holder of an FA licence.[37] RAY's turnover for the financial year ended 31 December 2014 was S$[✂].[38] Ng Leong Poh Raymond ("Raymond Ng"), who is the Managing Director and a shareholder of RAY, is referred to in this ID. RAY is a member of AFA and Raymond Ng is an EXCO member of AFA.[39] Raymond Ng was also an EXCO member of AFA at the time of the Fundsupermart Offer.[40]

(x) WYNNES Financial Advisers Pte. Ltd.

15. WYNNES is a limited exempt private company registered in Singapore (since 1998) that has its registered office address at 190 Macpherson Road, #06-05, Singapore (348548). It advises on and arranges/markets life insurance and collective investment schemes, and provides services as an exempt insurance broker.[41] It is a holder of an FA licence.[42] WYNNES's turnover for the financial year ended 31 March 2015 was S$[✂].[43] Seah Ah Kiat Carol ("Carol

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[31] Extracted from ACRA record *Business Profile of Promiseland Independent Pte. Ltd.* (dated 07/03/2016); Information provided by Promiseland dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraph 3.1, and Appendix 3.

[32] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[33] Information provided by Promiseland dated 12 February 2016 pursuant to the section 63 Notice issued by CCS dated 29 January 2016.

[34] http://www.afas.org.sg/directory.html and http://www.afas.org.sg/about_01 html.

[35] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

[36] Extracted from ACRA record *Business Profile of RAY Alliance Financial Advisers Pte. Ltd.* (dated 07/03/2016).

[37] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[38] Information provided by RAY dated 25 February 2016 pursuant to the section 63 Notice issued by CCS dated10 February 2016.

[39] http://www.afas.org.sg/directory.html and http://www.afas.org.sg/about_01 html.

[40] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

[41] Extracted from ACRA record *Business Profile of WYNNES Financial Advisers Pte. Ltd.* (dated 07/03/2016); Information provided by WYNNES dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, response to question 3.

[42] As listed in the Financial Institution Directory on MAS's website at https://masnetsvc mas.gov.sg/FID.html.

[43] Information provided by WYNNES dated 18 February 2016 pursuant to the section 63 Notice issued by CCS dated 29 January 2016.

Seah"), who is the CEO and a shareholder of WYNNES, is referred to in this ID. WYNNES is a member of AFA and Carol Seah is the Honorary Secretary of AFA.[44] Carol Seah was the Honorary Secretary of AFA at the time of the Fundsupermart Offer.[45]

B. Background of Related Industries

Unit trust and insurance industries

16. Insurance companies provide insurance products, including individual life insurance products, to policyholders in return for premium payments. Individual life insurance products are distributed through tied agents (which sell the life insurance products of a single insurer exclusively), exempt financial advisers (e.g. banks) and FAs (which can sell life insurance products of multiple insurance companies).[46] All distributors are required to have a reasonable basis for their recommendation to any policyholder, having considered the investment objectives, financial situation and particular needs of the policyholder.[47] They receive commissions from insurance companies for successfully selling the products and can also choose whether to concurrently charge policyholders advisory fees or to give rebates.

17. Entities that provide financial advisory services, such as arranging contracts for life insurance policies, need to be licensed or exempted under the Financial Advisers Act. Individuals who provide financial advisory services on behalf of licensed or exempt financial advisers as their representatives must be registered with MAS.

18. iFAST is both a securities dealer (holder of a Capital Market Services Licence for dealing in securities, including unit trusts) and an FA, but was not a member of AFA at the time of the Fundsupermart Offer.[48]

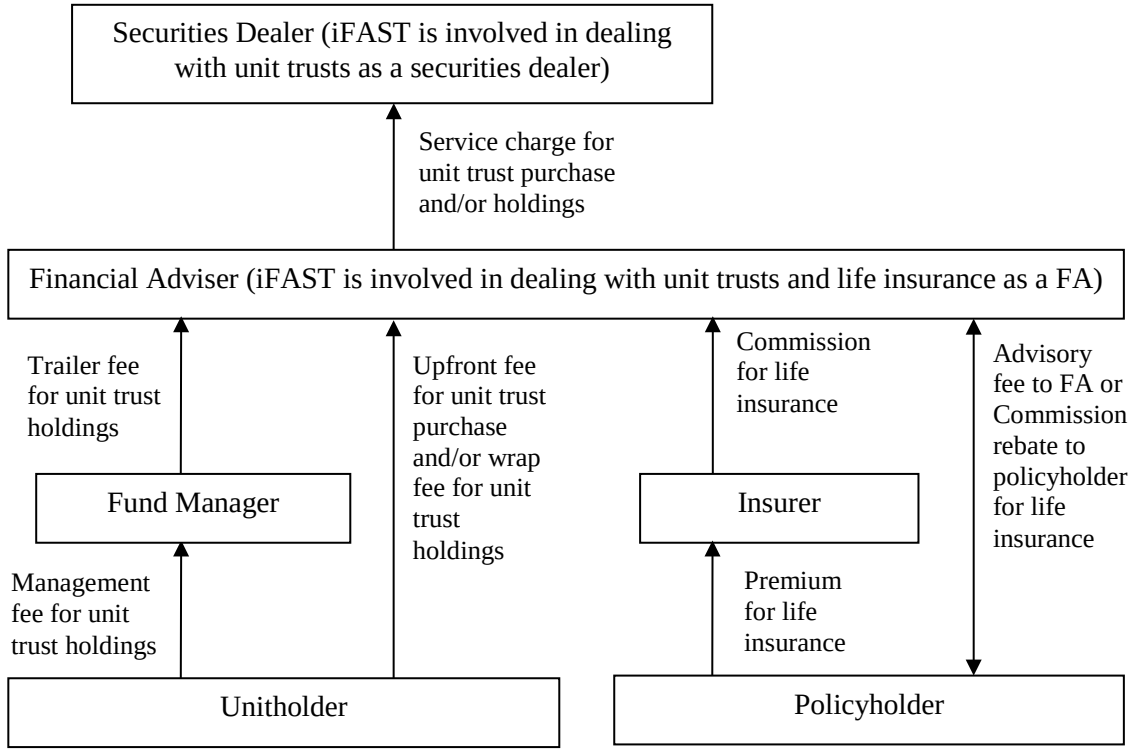
19. iFAST distributes individual life insurance products, unit trusts and Singapore Government Securities. In relation to individual life insurance products, iFAST marketed individual life insurance products on its online B2C platform, Fundsupermart.com ("Fundsupermart")[49] with the Fundsupermart Offer but

[44] http://www.afas.org.sg/directory.html and http://www.afas.org.sg/about_01 html.
[45] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.
[46] "Your guide to Life Insurance 2007" downloaded from the Life Insurance Association Singapore's website at http://www.lia.org.sg/files/document_holder/Consumer_Guides/YGTLI_Eng(Oct07).pdf; Information provided by TM Life dated 23 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraphs 5.1 and 5.2; Information provided by Cornerstone dated 6 August 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, Annex A, paragraphs 6.1 and 6.2; Information provided by IPP dated 31 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, response to question 6.
[47] Sections 23(4) and 27 of the Financial Advisers Act.
[48] iFAST was a member of AFA in the past.
[49] Fundsupermart is the retail distribution arm of iFAST for its unit trust products and provides an online public portal for the purchase of unit trust products.

policyholders would need to approach iFAST employees to buy the life insurance products.

20. In relation to unit trusts, iFAST distributes units both directly to investors through Fundsupermart and through other FAs. Fundsupermart is used by iFAST to distribute mainly unit trusts and Singapore Government Securities to retail investors, and has a customer base of over 50,000.[50] In addition to Fundsupermart, iFAST relies on FAs to distribute unit trusts to retail investors. By working with iFAST, fund managers avoid the need to have distribution agreements with each FA. In addition, iFAST acts as an outsourced provider of certain IT and operational support for the FAs as this is more cost effective for the FAs.[51] **Figure 1** below shows the key vertical relationships of the industry players.

Figure 1: Key vertical relationships for unit trusts and life insurance



21. The Parties are FAs providing financial advisory services, including the distribution of life insurance products and unit trusts. They are all members of AFA and also use iFAST to handle unit trust transactions for their clients.

Life insurance products

[50] Answer to question 8 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[51] iFAST effectively acts as an investment brokerage, which executes the purchases and sales orders of unit trusts on behalf of retail investors and provides related investment account administration services to retail investors.

22. Generally, life insurance products include the following:[52]

(i) Whole Life Insurance – policy with lifelong protection that pays out the sum insured and any bonuses built up upon death, or sometimes upon total and permanent disability;

(ii) Term Insurance – policy providing protection for a set period of time that pays out the sum insured upon death, or sometimes upon total and permanent disability, only during the set period;

(iii) Endowment – policy pays out the sum insured and any bonuses built up at the end of the set period if no claim for death or total and permanent disability was made during the set period;

(iv) Health Insurance – policy is designed to pay out for medical expenses, critical illnesses and disabilities;

(v) Annuity – policy that provides a regular income, usually with the policyholder paying a lump sum in return for monthly payouts;

(vi) Investment-Linked Product ("ILP") – policy with both protection and investments in managed funds/unit trusts. Payout depends on the price of units in funds at the time it is cashed out or when insured dies; and

(vii) Universal Life Insurance – policy that is a form of 'interest-sensitive' whole life insurance providing a death benefit and providing an opportunity to build cash values that can be borrowed or withdrawn. Cash values earn interest at a declared rate, which may change over time.

Financial Advisory Industry Review

23. On 26 March 2012, MAS announced the Financial Advisory Industry Review ("FAIR"), which was aimed at raising the standards of practice in the financial advisory industry. A panel, chaired by MAS and comprising representatives from industry associations, consumer and investor bodies, academia, media, and other stakeholders ("FAIR Panel"), was formed on 2 April 2012 to conduct the review. The recommendations made by the FAIR Panel and MAS were published for consultation on 5 March 2013. The recommendations that came up during the review included, *inter alia*, (i) the development of a web aggregator as an informational tool for comparison of certain insurance products and (ii) direct sales of certain basic insurance products by insurance

[52] "Your guide to Life Insurance 2007" downloaded from the Life Insurance Association Singapore's website at http://www.lia.org.sg/files/document_holder/Consumer_Guides/YGTLI_Eng(Oct07).pdf.

companies without the policyholder paying the full total distribution cost[53] as no financial advice would be provided.[54]

Life insurance commission rebates

24. In the 1990s, MAS introduced a prohibition on commission rebates for life insurance policies to prevent life insurance agents or brokers from rebating, or offering to rebate, any part of their commissions as an inducement to clients to purchase life insurance policies, without assessing whether the policies were appropriate for the policyholders.[55]

25. In 2002, MAS lifted the prohibition on commission rebates after considering that the life insurance companies had effectively implemented the best practice recommendations of the Committee on Efficient Distribution of Life Insurance ("CEDLI")[56], including a needs-based sales process, enhanced disclosure of life insurance products as well as a comprehensive training and competency regime for its advisers. Whilst MAS lifted the prohibition on commission rebates, it emphasised that financial advisers and their representatives were expected to make reasonable and appropriate recommendations, having considered the investment objectives, financial situation and financial needs of the clients; and that unprofessional conduct would not be viewed any less seriously by it under the Financial Advisers Act.[57]

The Fundsupermart Offer

26. On 30 April 2013, iFAST launched the Fundsupermart Offer. In distributing the life insurance products sold by the Insurers, iFAST would have received a commission; and the commission rebate of 50% provided by iFAST to policyholders would have been its rebate to policyholders from the commission it received.

27. The Fundsupermart website did not enable the direct online purchase of life insurance products. Instead, it provided the relevant contact details for persons interested in the Fundsupermart Offer to schedule an appointment with

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[53] Total distribution cost refers to payments in the form of commissions as well as the costs of benefits and services made to the distribution channel.

[54] Consultation on Recommendations of the Financial Advisory Industry Review, March 2013, http://www.mas.gov.sg/news-and-publications/consultation-paper/2013/consultation-paper-on-recommendations-of-the-financial-advisory-industry-review.aspx.

[55] Reply to PQ on Insurance Rebates, For Parliamentary Sitting on 27 August 2002, http://www.mas.gov.sg/news-and-publications/parliamentary-replies/2002/reply-to-pq-on-insurance-rebates--27-august-2002.aspx.

[56] CEDLI was a private sector committee appointed by MAS to examine ways to enhance efficiency in the sales of life insurance. It provided its recommendations to MAS in 2000.

[57] Reply to PQ on Insurance Rebates, For Parliamentary Sitting on 27 August 2002, http://www.mas.gov.sg/news-and-publications/parliamentary-replies/2002/reply-to-pq-on-insurance-rebates--27-august-2002.aspx.

iFAST's employees. In relation to the Fundsupermart Offer, the Fundsupermart website stated that iFAST's emphasis was on making product recommendations that would fulfil the client's unique circumstances and needs, and that iFAST does not recommend that clients purchase life insurance solely for the rebates.[58]

28. By leveraging on marketing through its existing Fundsupermart platform, iFAST's model was to have potential life insurance clients approach iFAST rather than have its employees or representatives solicit sales leads. This model differed from those of other FAs, which generally relied on active soliciting of sales leads, e.g., through referrals or activities such as roadshows to reach out to the masses.[59] iFAST's competitive advantage stemmed from being able to reach over 50,000 existing clients of Fundsupermart[60] as well as other visitors to the Fundsupermart website, without incurring high costs to solicit life insurance sales leads. The traffic at Fundsupermart, including direct e-mailers and regular visitors, is estimated to reach up to over 100,000 over a few months.[61] The incremental costs of launching the Fundsupermart Offer was not very high as iFAST would be tapping on the capabilities of existing employees and would not need to hire additional employees. iFAST could also leverage on its Fundsupermart platform and reach out to its existing client base.[62] iFAST was therefore able to pass on cost savings to clients who purchase life insurance policies via iFAST by giving them rebates using part of the resulting commissions that iFAST would receive from the Insurers.

C. Investigation and Proceedings

29. In the early afternoon of 3 May 2013, iFAST limited the Fundsupermart Offer to a one-month offer. Later in the afternoon of 3 May 2013, iFAST withdrew the Fundsupermart Offer with immediate effect.

30. CCS noted media reports about the withdrawal of the Fundsupermart Offer, which suggested that iFAST withdrew the Fundsupermart Offer due to unhappiness in the industry.[63] CCS also received a complaint on this matter which highlighted the concern expressed by AFA to iFAST as reported in the media.

[58] Information provided by iFAST dated 13 January 2015 pursuant to the section 63 Notice issued by CCS dated 26 December 2014, document titled "Introduction".
[59] Information provided Manulife dated 23 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 7.8; Information provided NTUC Income dated 22 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 7.
[60] Answer to question 8 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[61] Answer to question 9 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[62] Answer to question 13 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[63] "Online insurance offer axed after gripes" by Magdalen Ng of Straits Times, 13 May 2013; "Response from iFAST CEO on recent Forum Letters published in the Straits Times" by Fundsupermart, 21 May 2013.

31. On 28 August 2013, CCS commenced an investigation under section 62 of the Act as there were reasonable grounds for suspecting that the section 34 prohibition of the Act had been infringed. CCS sent requests for information under section 63 of the Act in September and December 2013 to iFAST, and carried out interviews with representatives of iFAST in September and December 2013.

32. On 21 January 2014, CCS carried out simultaneous inspections under section 64 of the Act at the premises of, *inter alia*, AFA,[64] Avallis, Financial Alliance and Frontier, and conducted interviews with key personnel under section 63 of the Act at the same premises. CCS also conducted interviews with key personnel of the Parties under section 63 of the Act from March to May 2014, as detailed in **Annex A**.

33. CCS sent further section 63 notices to each Party and other parties in July 2014 and received responses in July and August 2014. In December 2014 and January 2015, CCS sent follow-up section 63 notices to each Party and other parties and received responses in January and February 2015. On 3 March 2015, CCS sent further section 63 notices to PIAS and iFAST and received responses on 10 March 2015.

34. On 28 May 2015, CCS sent each Party a notice of its Proposed Infringement Decision ("PID"). The documents in CCS's file were made available for the Parties to inspect from 12 June 2015. Written representations on the PID were received from eight of the Parties from 6 to 24 July 2015.[65] Oral representations on the PID were made by three of the Parties from 3 to 6 August 2015.[66]

35. On 15 October 2015, CCS sent further requests for information to Financial Alliance and Avallis to seek clarifications on their written representations. On 22 October 2015, CCS received the responses from Financial Alliance and Avallis.

36. On 22 January 2016, CCS sent section 63 notices to Avallis, Cornerstone, Financial Alliance, Frontier, IPP, JPARA and RAY and received responses in January 2016. On 29 January 2016 and 10 February 2016, CCS sent section 63 notices to each Party to request for the latest available financial figures and received responses in February and March 2016.

37. CCS has considered all the representations received from the Parties in making its decision.

[64] The registered address of AFA was at the premises of Avallis.
[65] Avallis, Financial Alliance, Frontier, IPP, JPARA, PIAS, Promiseland and WYNNES. Cornerstone and RAY did not submit representations.
[66] Financial Alliance, IPP and Promiseland.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

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

A. The Section 34 Prohibition

39. Section 34(1) of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore (the "section 34 prohibition").

B. Application to Undertakings

40. Section 2 of the Act defines "undertaking" to mean "*any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services*". Each of the Parties carries on commercial or economic activities related to the provision of financial advisory services, including the distribution of life insurance products, and therefore constitutes an undertaking for the purposes of the Act.

C. Agreements and/or Concerted Practices

Applicability of European Law

41. In *Pang's Motor Trading v CCS*,[67] the Competition Appeal Board ("CAB") accepted that decisions from the United Kingdom ("UK") and European Union ("EU") are highly persuasive in interpreting the section 34 prohibition due to the similarities between the relevant sections of their respective competition statutes. Specifically, the CAB stated that:

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

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

> *wording of their competition laws, insofar as their laws target similar types of anti-competitive conduct as ours (see e.g. s 1 of the US Sherman Act and s 4D of the Australian Competition and Consumer Act 2010, which are the equivalents of s 34 of our Act)*".[68]

Agreements

42. An agreement is formed when parties arrive at a consensus on the actions each party will, or will not, take. The section 34 prohibition applies to both legally enforceable and non-enforceable agreements, whether written or oral, and to so-called "gentlemen's agreements". An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means.[69] The form of the agreement is irrelevant. An agreement may be found where it is implicit from the participants' behaviour. For an agreement to exist, it "*is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way*".[70]

Concerted Practices

43. The section 34 prohibition also applies to concerted practices. A concerted practice exists, if parties, even if they do not enter into an agreement (either express or implied), "*knowingly substitutes, for the risks of competition, practical cooperation between them*".[71]

44. As CCS stated in the *Pest Control Case*,[72] and subsequently in the *Express Bus Operators Case*[73] and the *Electrical Works Case*:[74]

> "*the concept of a concerted practice must be understood in the light of the principle that each economic operator must determine independently the policy it intends to adopt on the market*".

45. This principle was set out in the decision of the European Court of Justice ("ECJ") in the case of *Cooperatiëve Vereniging Suiker Unie v Commission*[75]

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[68] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [33].
[69] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.10.
[70] Case T-7/89 *SA Hercules Chemicals v Commission* [1991] ECR II-1711, at [2].
[71] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [206 (iii)]; and Case 48/69 *ICI v Commission* [1972] ECR 619, at [64]. See also C*CS Guidelines on the Section 34 Prohibition*, paragraph 2.16.
[72] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [42].
[73] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [50].
[74] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [40].
[75] Joined Cases 40-48/73, 50/73, 54-56/73, 111/73, 113/73 and 114/73 *Cooperatiëve Vereniging Suiker Unie v Commission* [1975] ECR-1663, at [26] and [173] to [174]. See also Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85, C-125/85 to C-129/85, *Ahlstrom Osakeyhtio and Others v Commission* [1993] ECR I-1307, at [63].

("*Suiker Unie*"), where it was held that any direct or indirect contact between competitors, the object or effect whereof is either to influence the conduct on the market of an actual competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, is strictly precluded.

46. In *Commission v Anic Partecipazioni*[76] ("*Anic*"), the ECJ re-affirmed what it had held in *Suiker Unie*. The ECJ found that the European Commission ("EC") was correct in its decision that Anic had participated in a EU-wide cartel operating in the polypropylene production sector from 1977 to 1983. In *Anic*,[77] the ECJ also set out the presumption that applies to conduct that constitutes a concerted practice:

> "*118 It follows that, as is clear from the very terms of Article* [101(1)] *of the Treaty, a concerted practice implies, besides undertakings' concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.*
> …
>
> *121 ...subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market, particularly when they concert together on a regular basis over a long period…*".

47. In relation to the presumption set out in *Anic*, the ECJ found in *T-Mobile Netherlands v Raad van bestuur van de Nederlandse Mededingingsautoriteit*[78] ("*T-Mobile*") that a concertation can occur where the exchange is only between parties at a single meeting. In *T-Mobile*, the appellants argued that it was irrational to find that an undertaking should base its conduct on information exchanged in the course of just one meeting, particularly where the meeting had a legitimate purpose. In rejecting this argument, the ECJ held:

> "*59 …Depending on the structure of the market, the possibility cannot be ruled out that a meeting on a single occasion between competitors, such as that in question in the main proceedings, may, in principle, constitute a sufficient basis for the participating*

[76] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125.
[77] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [118] and [121]. See also Case C-199/92 P *Hüls AG v Commission* [1999] ECR I-4287, at [162].
[78] Case C-8/08 *T-Mobile Netherlands BV and Others v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529.

undertakings to concert their market conduct and thus successfully substitute practical cooperation between them for competition and the risk that that entails.

60 …If…the objective of the exercise is only to concert action on a selective basis in relation to a one-off alteration in market conduct with reference simply to one parameter of competition, a single meeting between competitors may constitute a sufficient basis on which to implement the anti-competitive object which the participating undertakings aim to achieve.

61 In those circumstances, what matters is not so much the number of meetings held between the participating undertakings as whether the meeting or meetings which took place afforded them the opportunity to take account of the information exchanged with their competitors in order to determine their conduct on the market in question and knowingly substitute practical cooperation between them for the risks of competition. Where it can be established that such undertakings successfully concerted with one another and remained active on the market, they may be justifiably called upon to adduce evidence that that concerted action did not have any effect on their conduct on the market in question".[79]

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

48. It is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice. It is established jurisprudence in the EU that the conduct of undertakings is capable of being both a concerted practice and an agreement.[80] In *SA Hercules Chemicals v Commission*,[81] the Court of First Instance ("CFI") found that Hercules took part, over a period of years, in an integrated set of schemes constituting a single infringement, which progressively manifested itself in both unlawful agreements and unlawful concerted practices. As such, the EC was entitled to characterise that single infringement as "an agreement and a concerted practice" since the infringement involved, at one and the same time, factual elements to be characterised as "agreements" and factual elements to be characterised as "concerted practices".

[79] Case C-8/08 *T-Mobile Netherlands BV and Others v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529, at [59] to [61].
[80] Case IV/37.614/F3 *The Community v Interbrew NV and Others (re the Belgian beer cartel)* [2004] 4 CMLR 2, at [223].
[81] Case T-7/89 *SA Hercules Chemicals v Commission* [1991] ECR II-1711, at [264].

49. This position was endorsed and followed by CCS in the *Pest Control Case*,[82] *Express Bus Operators Case*,[83] the *Electrical Works Case*[84] and the *Freight Forwarding Case*.[85]

50. Similarly, in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*,[86] the UK Competition Appeal Tribunal ("CAT") stated at [644]:

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

51. For the purposes of this ID, CCS has assessed whether the conduct of the Parties constitutes an agreement and/or concerted practice that has infringed the section 34 prohibition (see section relating to CCS's analysis of the evidence).

Party to an Agreement and/or Concerted Practice

Participation in a meeting with competitors

52. In *Aalborg Portland AS v Commission*[87] ("*Aalborg*"), the ECJ stated that:

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

[82] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [44] to [47].
[83] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [55] to [58].
[84] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [45] to [47].
[85] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore*, at [107] to [110].
[86] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17.
[87] 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 *Aalborg Portland AS v Commission* [2004] ECR I-0123, at [81].

53. The reason underlying that principle of law is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking has given the other participants to believe that it subscribed to what was decided there and would comply with it. The ECJ further stated in *Aalborg*:[88]

> "*84. In that regard, a party which tacitly approves of an unlawful initiative,* ***without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable in the context of a single agreement.***
>
> ***85. Nor is the fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose such as to relieve it of responsibility for the fact of its participation in a cartel, unless it has publicly distanced itself from what was agreed in the meeting*** *(see Case C-291/98 P Sarrio v Commission [2000] ECR I-9991, paragraph 50).*
>
> ***86. Neither is the fact that an undertaking has not taken part in all aspects of an anti-competitive scheme or that it played only a minor role in the aspects in which it did participate material to the establishment of the existence of an infringement on its part.*** *Those factors must be taken into consideration only when the gravity of the infringement is assessed and if and when it comes to determining the fine (see, to that effect, Commission v Anic, paragraph 90)*" [Emphases added].

54. Likewise, in *Sarrio SA v Commission*[89], the ECJ upheld the CFI's finding that participation by an undertaking in meetings that have an anti-competitive object has the effect *de facto* of creating or strengthening a cartel; and that the fact that an undertaking does not act on the outcome of those meetings is not such as to relieve it of responsibility for the fact of its participation in the cartel, unless it has publicly distanced itself from what was agreed in them. Where public distancing is concerned, in *Adriatica v Commission*,[90] the CFI held that:

> "*135 …the requirement that an undertaking publicly distance itself, is part of a legal principle according to which, where an*

[88] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123, at [84] to [86].
[89] C-291/98P *Sarrio SA v Commission* [2000] ECR I-9991, at [50].
[90] Case T-61/99 *Adriatica v Commission* [2003] ECR II-5349, at [135].

undertaking attends meetings involving illegality, it may be exonerated where the evidence shows that it formally distanced itself from the content of those meetings…".

55. As such, the mere participation by an undertaking in a meeting with an anti-competitive purpose, without expressing manifest opposition to or publicly distancing itself from the same, is tantamount to a tacit approval of that unlawful initiative.

56. Further, the mere fact that a party may have played only a limited part in setting up the agreement or concerted practice, or may not be fully committed to its implementation, or participated only under pressure from the other parties, does not mean that it was not party to the agreement or concerted practice.[91] Active steps should be taken by the recipient of the information to distance itself from the conduct.

57. In *Tréfileurope Sales SARL v Commission*,[92] Tréfileurope argued that it was offered a quota of 1,300 tonnes a month at a meeting on 20 October 1981 but did not accept it. In respect of the Benelux market, Tréfileurope admitted to participating in the meetings at which agreements were concluded on the prices of standard and catalogue mesh but maintained that it attended them only to familiarise itself with market conditions and that it played a purely passive role.

58. The CFI considered that the notes of the meeting on 20 October 1981 indicated that Tréfileurope's representative did not display opposition to the principle of market sharing and made express reference to the latest arrangements and its share. The Court concluded that Tréfileurope had participated in agreements whose object was to fix prices and quotas on the French market and was not exculpated by the fact that it did not respect the prices and quotas.[93] The Court also found that Tréfileurope took an active part in the meetings in respect of the Benelux market. It was always regarded as a habitual participant in the meetings and was perceived by its partners as an undertaking whose opinion should be ascertained in order to establish a common position. In addition, it had chaired some meetings. The Court concluded that Tréfileurope had participated in the agreements on prices concerning the Benelux market and was of the view that:

"*85 In any event, even if it is assumed that the applicant refrained, at least in part, from participating actively in the meetings, the Court considers that, having regard to the manifestly anti-competitive nature of the meetings, …, the applicant, by taking part without publicly distancing itself from what occurred at them,*

[91] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.11.
[92] Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791.
[93] Case T-141/89 *Tréfileurope Sales SARL v Commission* [1995] ECR II-791, at [60].

gave the impression to the other participants that it subscribed to the results of the meetings and would act in conformity with them…".

59. In the *Pest Control Case*,[94] one of the infringing parties, Aardwolf, claimed that it had never intended to abide by the agreement to submit cover bids in support of the designated winner. Aardwolf had claimed that it gave the other parties the impression that it was participating in the agreement so that it could use the information on the tender it received from the other pest control operators to gain a competitive advantage over the others. In rejecting Aardwolf's argument, CCS found:

> "*128 …that an agreement would still be caught under the section 34 prohibition even if it was not the intention of an undertaking so agreeing to implement or adhere to the terms of the agreement*".[95]

60. Further, CCS is of the view that the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice. As expressed in the *Ferry Operators Case*:[96]

> "*52 …contact between competitors which would erode the independence of individual undertakings, may take the form of discussions on such issues during meetings, in tele-conversations, and via e-mail communications. So long as information is clearly and unequivocally communicated, it is indistinguishable for the purposes of establishing liability how the communication took place. In line with case law, liability can be attributed even where a party is a mere recipient of the information, unless the party distances itself from the unlawful initiative*".

61. In *Cimenteries v Commission*,[97] the appellants had argued that mere receipt by a competitor of its intention could not have amounted to a concerted practice. In rejecting this argument, the CFI held that:

> "*1852 ...**In order to prove that there has been a concerted practice, it is not therefore necessary to show that the competitor in question has formally undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have colluded over their future conduct on the market. …It is sufficient that, by its statement of intention, the competitor***

[94] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1.
[95] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [128].
[96] *Re CCS Imposes Financial Penalties on Two Competing Ferry Operators for Engaging In Unlawful Sharing of Price Information* [2012] SGCCS 3, at [52].
[97] Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491.

should have eliminated, or at the very least, substantially reduced uncertainty as to the conduct *[on the market to be expected on his part]*" [Emphasis added].[98]

62. Likewise in *Tate & Lyle plc v Commission*,[99] a case which concerned a series of meetings between British Sugar and its competitors, Tate & Lyle and Napier Brown, the CFI held:

> "*54 Moreover, the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice*".[100]

63. The CFI further stated:

> "*58 In Case T-1/89 Rhône-Poulenc v Commission [1991] ECR II -867, in which the applicant had been accused of taking part in meetings at which information was exchanged amongst competitors concerning, inter alia, the prices which they intended to adopt on the market, the Court of First Instance held that an undertaking, by its participation in a meeting with an anti-competitive purpose, not only pursued the aim of eliminating in advance uncertainty about the future conduct of its competitors but could not fail to take into account, directly or indirectly, the information obtained in the course of those meetings in order to determine the policy which it intended to pursue on the market (Rhône-Poulenc, paragraphs 122 and 123).* ***This Court considers that that conclusion also applies where, as in this case, the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their market competitors***" [Emphasis added].[101]

64. In *Westfalen Gassen Nederland BV v Commission* the CFI clarified that the notion of public distancing as a means of excluding liability should be interpreted narrowly.[102] Otherwise, it would be impossible to prevent infringements of competition law committed by cartels if it were to be accepted that undertakings may attend such meetings with impunity.[103] To this end, the CFI held that silence at a meeting during which undertakings colluded

[98] Case T-25/95 *Cimenteries v Commission* [2000] ECR II-491, at [1852].
[99] Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035 (upheld by the ECJ in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission* [2004] ECR I-4933).
[100] Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035, at [54].
[101] Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035, at [58].
[102] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334, at [103].
[103] See the Opinion of Advocate General Mischo in Case C-291/98 P *Sarrio SA v Commission* [2000] ECR I-9991, at [45].

unlawfully on a precise question of pricing policy was not tantamount to an expression of firm and unambiguous disapproval.[104]

65. In summary, where an undertaking participates in meetings between competitors with an anti-competitive object and does not publicly distance itself from what had occurred and the agreement and/or concerted practice reached at the meeting, the undertaking may be found to be liable for the agreement and/or concerted practice.[105]

Participation in an overall plan

66. Besides participation in a meeting with competitors, CCS considers that an undertaking can be found to be a party to an agreement and/or concerted practice where the undertaking knew, or should have known, that it was participating in an overall plan agreed by the other undertakings, and knew, or should have known, the general scope and the essential characteristics of the overall plan.

67. Drawing upon settled case-law, the ECJ in *Aalborg*[106] expanded upon the principles quoted in paragraph 52 above:

> "*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)*" [Emphases added].

68. In confirming the liability for a party which did not attend the meeting at which the anti-competitive agreements were discussed, the ECJ in *Aalborg*[107] found that:

> "*332 …it is common ground that, as the Court of First Instance observed at paragraph 2768 of the judgment under appeal, Cementir did not take part in any of the meetings of the ETF. However, the*

[104] Case T-303/02 *Westfalen Gassen Nederland BV v Commission* [2007] 4 CMLR 334, at [124].
[105] Case T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc v Commission* [2001] ECR II-2035, at [58].
[106] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123, at [83].
[107] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123 at [332] to [333].

Court of First Instance accepted that the Cement Decision contained a number of indications showing that Cementir intended to contribute by its own conduct to the common objectives pursued by all the participants in the ETF…

333 …The fact that Cementir did not attend the meetings of the ETF is of minor significance when it is clear from the documents relating to those meetings that it contributed by its own conduct to the common objectives pursued by all the participants...".

69. Where an undertaking can be established to be a party to a single agreement and/or concerted practice, it may be found to be responsible also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. In rejecting the argument from Team Relocations that it was never aware of the price-fixing agreement concluded by the initial participants of the cartel in question, the ECJ in *Team Relocations v Commission*[108] stated:

"*50 An undertaking which has participated in such a single and complex infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anti-competitive object within the meaning of Article* [101(1)] *EC and was intended to help bring about the infringement as a whole, may thus be responsible also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement…*".

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

"Object" and "Effect" Requirements are Alternative and Not Cumulative Requirements

70. Section 34(1) of the Act prohibits "*agreements between undertakings … or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore*". In this regard, CCS considers "object" and "effect" to be alternative and not cumulative requirements.[109]

71. This has been affirmed by the CAB in *Pang's Motor Trading v CCS*:[110]

[108] Case C-444/11 P *Team Relocations v Commission* [2013] 5 CMLR 38, at [50].
[109] For example, *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [48]; *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [70].
[110] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [30].

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

72. Further, the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into the agreement, but rather on:

> "*49 …the objective meaning and purpose of the agreement considered in the economic context in which it is to be applied. Where an agreement has as its object the restriction of competition,* ***it is unnecessary to prove that the agreement would have an anti-competitive effect in order to find an infringement of section 34***" [Emphasis added].[111]

73. European jurisprudence has established that where the object being pursued is to prevent, restrict or distort competition, there can be an infringement even if an agreement does not have an effect on the market. In *Tréfilunion SA v Commission*,[112] the CFI said:

> "*79 …It must be stated that non-observance of the agreed prices does not change the fact that the object of those meetings was anti-competitive and that, therefore, the applicant participated in the agreements: at most, it might indicate that the applicant did not implement the agreements in question. There is no need to take account of the concrete effects of an agreement, for the purposes of applying Article* [101(1)] *of the Treaty, where it appears, as it does in the case of the agreements referred to in the Decision, that the object pursued is to prevent, restrict or distort competition within the Common Market…*".

74. Similarly, the ECJ has held that there can be a concerted practice even if there is no actual effect on the market. In *Hüls AG v Commission*,[113] the appellant had regularly participated in meetings where prices were fixed and sales volume targets were set. The ECJ held that the EC did not have to adduce evidence that the concerted practice had manifested itself in conduct on the market or that it had effects restrictive of competition. It followed from the actual text of Article 101(1) (then Article 81(1)) that concerted practices were prohibited, regardless of their effect, when they have an anti-competitive object.[114] In *The Community v Interbrew NV and Others (re the Belgian beer cartel)*,[115] the EC held, that provided it could be shown that the aim of the

[111] *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [49].
[112] Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].
[113] Case C-199/92 *P. Hüls AG v Commission* [1999] ECR I-4287.
[114] Case C-199/92 *P. Hüls AG v Commission* [1999] ECR I-4287, at [164] to [168].
[115] Case IV/37.614/F3 *The Community v Interbrew NV and Others (re the Belgian beer cartel)* [2004] 4 CMLR 2, at [254].

meetings between the infringing parties was clearly anti-competitive, there was no corresponding need to show that the consequences of the meetings were harmful to competition.

75. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*,[116] the UK CAT stated:

> "*357 However, the OFT does not in our judgment need to rely on the similarity of prices to prove its case if other evidence shows that relevant agreements or concerted practices came into existence. It is trite law that once it is shown that such agreements or practices had the object of preventing, restricting or distorting competition, there is no need for the OFT to show what the actual effect was: see Cases 56 and 58/64 Consten and Grundig v Commission [1996] ECR 299, 342 and many subsequent cases*".

The Object of Restricting, Preventing or Distorting Competition

76. In recent years, the definition of an infringement by object has been considered by the ECJ in a number of cases. In particular, the issue has been addressed in *Competition Authority v Beef Industry Development Society*[117] ("*Irish Beef*"), *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* ("*Allianz Hungária*") [118] and *Groupement des cartes bancaires v European Commission*.[119] These cases establish the following principles expanded below.

Injurious to the proper functioning of normal competition

77. It is well-established in European jurisprudence that the finding of an infringement by "object" is grounded in the principle that certain types of coordination between undertakings can be regarded, by their very nature as being injurious to the proper functioning of normal competition.[120] When considering the nature of infringements by object and infringements by effect in *Irish Beef*, the ECJ observed that:

> "*17 The distinction between "infringements by object" and "infringements by effect" arises from the fact that certain forms of collusion between undertakings can be regarded, by their very*

[116] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [357].
[117] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6.
[118] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25.
[119] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2.
[120] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [50]; Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25 at [35]; *Case* C-8/08 *T-Mobile Netherlands BV and Others v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529; at [29]; and Case C-226/11 *Expedia Inc v Autorite de la concurrence* [2013] 4 CMLR 14 at [36].

nature, as being injurious to the proper functioning of normal competition".[121]

The categories of restrictions by object are not closed

78. Also in *Irish Beef*, the ECJ rejected an argument that the types of agreements covered by (the then) Article 81(1) (a) to (e) constituted an exhaustive list of prohibited collusion.[122] The principle that the categories of restrictions by object are not closed has been similarly affirmed in *Groupement des cartes bancaires v European Commission.*[123]

Assessing whether there is a restriction of competition by "object"

79. Citing settled European case law, the ECJ in *Allianz Hungária*[124] stated the legal basis for conducting an assessment of an object restriction:

> "*36* ***In order to determine whether an agreement involves a restriction of competition 'by object', regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part*** *(see GlaxoSmithKline Services and Others v Commission and Others, paragraph 58; Football Association Premier League and Others, paragraph 136; and Pierre Fabre DermoCosmétique, paragraph 35).* ***When determining that context, it is also appropriate to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question*** *(see Expedia, paragraph 21 and the case-law cited).*
>
> *37 In addition,* ***although the parties' intention is not a necessary factor in determining whether an agreement is restrictive, there is nothing prohibiting the competition authorities, the national courts or the Courts of the European Union from taking that factor into account*** *(see, to that effect, GlaxoSmithKline Services and Others v Commission and Others, paragraph 58 and the case-law cited).*
>
> *38 The Court has, moreover, already held that, in order for the agreement to be regarded as having an anticompetitive object,* ***it is sufficient that it has the potential to have a negative impact on competition, that is to say, that it be capable in an individual case***

[121] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [17].
[122] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [22] to [23].
[123] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [58].
[124] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25.

> ***of resulting in the prevention, restriction or distortion of competition within the internal market.*** *Whether and to what extent, in fact, such an effect results can only be of relevance for determining the amount of any fine and assessing any claim for damages (see T-Mobile Netherlands and Others, paragraph 31)*" [Emphases added].[125]

80. Further, the Court in *Groupement des cartes bancaires v European Commission*[126] stated that:

> "*57 …the essential legal criterion for ascertaining whether coordination between undertakings involves such a restriction of competition 'by object' is the finding that such coordination reveals in itself a sufficient degree of harm to competition*".

Alternative Objective Not a Defence to an Infringement by Object

81. In *Irish Beef*, BIDS argued that the arrangements in question were not anti-competitive in purpose or injurious for consumers or competition, but rather were intended to rationalise the beef industry in order to make it more competitive by reducing production overcapacity.

82. Expressly rejecting this argument, the Court held that:

> "*21 In fact, to determine whether an agreement comes within the prohibition laid down in art.* [101(1)] *EC, close regard must be paid to the wording of its provisions and to the objectives which it is intended to attain.* ***In that regard, even supposing it to be established that the parties to an agreement acted without any subjective intention of restricting competition, but with the object of remedying the effects of a crisis in their sector, such considerations are irrelevant for the purposes of applying that provision. Indeed, an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives*** *(General Motors [2006] 5 C.M.L.R. 1 at [64] and the case law cited)*" [Emphasis added].[127]

83. Similarly in *Protimonopolny Urad Slovenskej Republiky v Slovenska Sporitel'na A.S.,*[128] three major Slovakian banks which entered into an agreement to terminate the current accounts held by a Czech company which

[125] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25, at [36] to [38].
[126] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [57].
[127] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21].
[128] Case C-68/12 *Protimonopolny Urad Slovenskej Republiky v Slovenska Sporitel'na A.S.* [2013] 4 CMLR 16.

was a competitor for providing foreign exchange transactions argued that the agreement did not have as its object the restriction of competition as the Czech company was operating illegally in Slovakia without the appropriate licence from the Slovak National Bank. Dismissing this argument, the ECJ observed that:

> "*18 Article 101 TFEU is intended to protect not only the interests of competitors or consumers but also the structure of the market and thus competition as such (GlaxoSmithKline Services Unlimited v Commission of the European Communities (C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P) [2009] E.C.R. I-9291; [2010] 4 C.M.L.R. 2 at [63]).*
>
> *19 In that regard, it is apparent that… the agreement entered into by the banks concerned specifically had as its object the restriction of competition and that none of the banks had challenged the legality of Akcenta's business before they were investigated in the case giving rise to the main proceedings. The alleged illegality of Akcenta's situation is therefore irrelevant for the purpose of determining whether the conditions for an infringement of the competition rules are met.*
>
> *20* ***Moreover, it is for public authorities and not private undertakings or associations of undertakings to ensure compliance with statutory requirements****. The Czech Government's description of Akcenta's situation is evidence enough of the fact that the application of statutory provisions may call for complex assessments which are not within the area of responsibility of those private undertakings or associations of undertakings.*
>
> *21 It follows from those considerations that the answer to the first and second questions is that art.101 TFEU must be interpreted as meaning that the fact that* ***an undertaking that is adversely affected by an agreement whose object is the restriction of competition was allegedly operating illegally on the relevant market at the time when the agreement was concluded is of no relevance to the question whether the agreement constitutes an infringement of that provision***" [Emphases added].[129]

E. Burden and Standard of Proof

84. CCS has the burden of proving that an infringement has been committed. The standard of proof to be applied is the civil standard, commonly known as the

[129] Case C-68/12 *Protimonopolny Urad Slovenskej Republiky v Slovenska Sporitel'na A.S.* [2013] 4 CMLR 16, at [18] to [21].

balance of probabilities. This follows from the structure of the Act, i.e. that decisions by CCS follow an administrative procedure, and that directions and financial penalties are enforceable by way of civil proceedings under section 85 of the Act by registering the directions in a District Court in accordance with the Rules of Court.

85. This was also the standard of proof that was applied by the CAB in deciding the merits of the appeal in the *Express Bus Operators Appeals Nos. 1 and 2*.[130] The CAB stated:

> "*85 There is no dispute that the burden of proof is on the CCS to establish, on a balance of probabilities, the existence and the duration of any alleged infringement. The question is whether on the evidence the CCS has discharged this burden of proof*".

86. In this regard, CCS notes that in *Knauf Gips v European Commission*,[131] the ECJ stated:

> "*49 As the Court has already held, since the prohibition on participating in anti-competitive practices and agreements and the penalties which infringers may incur are well known, it is normal that the activities which those practices and agreements involve take place in a clandestine fashion, for meetings to be held in secret, frequently in a non-member country, and for the associated documentation to be reduced to a minimum. Even if the Commission discovers evidence explicitly showing unlawful contact between traders, such as the minutes of a meeting, it will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules (see, to that effect, Aalborg Portland and Others v Commission, paragraphs 55 to 57)*".

F. Summary of Legal Principles for Finding an Infringement of the Section 34 Prohibition

87. In summary, for a finding of infringement of the section 34 prohibition, CCS has to establish that:

(i) The infringing undertakings have been parties to an agreement and/or concerted practice; and

[130] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [85].
[131] Case C-407/08 P *Knauf Gips v European Commission* [2010] ECR I-6375; [2010] 5 CMLR 12, at [49].

(ii) The agreement and/or concerted practice has as its object or effect the prevention, restriction or distortion of competition in Singapore.

88. First, in assessing whether an undertaking has been party to an agreement and/or concerted practice, CCS will have to show that the individual party either:

(i) Participated in a discussion in which the anti-competitive agreement and/or concerted practice was concluded and did not publicly distance itself from the anti-competitive content or report it to the administrative authority;[132] or

(ii) 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 it was prepared to take the risk.[133]

89. Second, in assessing the object of the agreement and/or concerted practice, CCS is guided by the following principles:

(i) Infringements by object are by their very nature injurious to the proper functioning of normal competition;[134]

(ii) The categories of restrictions by object are not closed;[135]

(iii) Regard must be had to the content of the provisions of an agreement, its objectives, and the economic and legal context of which it forms a part;[136]

(iv) For an agreement to be regarded as having an anti-competitive object, it is sufficient that it has the potential to have a negative impact on competition;[137] and

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[132] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123, at [84].
[133] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123, at [83].
[134] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [17]. See also Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [50]; Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25, at [35]; *Case* C-8/08 *T-Mobile Netherlands BV and Others v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529; at [29]; and Case C-226/11 *Expedia Inc v Autorite de la concurrence* [2013] 4 CMLR 14, at [36].
[135] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [22] to [23].
[136] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25, at [36].
[137] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25, at [38].

(v) The essential legal criterion is whether the agreement or concerted practice reveals in itself a sufficient degree of harm to competition.[138]

90. CCS further notes the following principles with regard to an infringement by object:

(i) The parties' subjective intention is not a necessary factor in the assessment but may be taken into consideration;[139]

(ii) Even if parties to an agreement acted without any subjective intention of restricting competition, but with the object of remedying the effects of a crisis in their sector, such considerations are irrelevant for the purposes of the assessment of infringement;[140]

(iii) An agreement may be regarded as having an anti-competitive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives;[141] and

(iv) It is for public authorities and not private undertakings or associations of undertakings to ensure compliance with statutory requirements.[142]

91. Finally, once CCS has established that an agreement and/or concerted practice has as its object the prevention, restriction or distortion of competition, it is unnecessary for CCS to prove that the agreement has an anti-competitive effect in order to find an infringement of the section 34 prohibition.[143]

92. CCS is of the view that infringements of the Act have occurred as set out in Chapter 3: Infringement Decision in this ID. The evidence that CCS relies on in support of its decision against the Parties is set out in Section H of Chapter 2 below.

G. The Relevant Market

[138] Case C-67/13 *Groupement des cartes bancaires v European Commission* [2014] 5 CMLR 2, at [57].
[139] Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25, at [37].
[140] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21].
[141] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21].
[142] Case C-68/12 *Protimonopolny Urad Slovenskej Republiky v Slovenska Sporitel'na A.S.* [2013] 4 CMLR 16, at [20].
[143] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [30]; *Re Pest Control Operators in Singapore* [2008] SGCCS 1, at [49]. See also Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].

93. 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 appreciably prevents, restricts or distorts competition. Second, where liability has been established, market definition can help to determine the turnover of the business of the undertaking in Singapore for the relevant markets that are affected by the infringement and therefore, the appropriate amount of penalty.[144]

94. The process of defining the relevant market begins with the focal product or the area in which the focal product is sold.[145] The context in this case was an agreement and/or concerted practice between a group of FAs to pressurise iFAST into withdrawing its marketing of the Insurers' individual life insurance products by way of the Fundsupermart Offer. Included in the Fundsupermart Offer are all types of the Insurers' individual life insurance products in Singapore except Investment-linked Products ("ILP"s) and Shield plans, Eldershield supplements, and any other policies purchased using Central Provident Fund Medisave ("CPF Medisave Products").[146] The withdrawal of the Fundsupermart Offer thus prevented iFAST from marketing on its Fundsupermart platform all types of the Insurers' individual life insurance products, other than ILPs and CPF Medisave Products. Hence, as a starting point for determining the relevant product and geographic market, CCS identifies the focal product as the distribution of the Insurers' individual life insurance products other than ILPs and CPF Medisave Products ("relevant individual life insurance products") by FAs, and the focal geographic area as Singapore.

Relevant Product Market

95. As noted above, FAs provide the Insurers with the service of distributing their life insurance products, while providing policyholders with the service of financial advice in relation to the purchase of these products. As the Insurers generally make available to all distribution channels (FA, banks, tied agents, and direct sales) all the life insurance products that they produce,[147] and the various channels generally target the same consumer group[148] (though banks

[144] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.1.
[145] In this context, the general observations of CCS set out in Chapter 1, "Industry Background" should be noted.
[146] Information provided by iFAST on 13 January 2015 pursuant to the section 63 Notice issued by CCS dated 26 December 2014, document titled "Introduction"; Information provided by iFAST on 10 March 2015 pursuant to the section 63 Notice issued by CCS dated 3 March 2015, response to question 2.
[147] Information provided by Insurers pursuant to the section 63 Notice issued by CCS dated 3 July 2014.
[148] Information provided by Manulife dated 23 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraphs 7.8 and 7.9; Information provided by NTUC Income dated 22 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 7; Information provided by TM Life dated 23 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 5.2.

may focus on a narrower group made up of their existing customers),[149] a significant number of policyholders would likely regard the Insurers' other distribution channels as substitutes to FAs in the distribution of the Insurers' relevant individual life insurance products.

96. Based on the above considerations, CCS is of the view that the relevant product market is the distribution of the Insurers' relevant individual life insurance products by FAs as well as the other distribution channels used by the Insurers for selling their relevant individual life insurance products.

Relevant Geographic Market

97. Given that the Financial Advisers Act requires anyone arranging any contract of insurance in respect of life policies (other than a contract of reinsurance) in Singapore to be an exempt financial adviser or to have been authorised by a financial adviser's licence,[150] distributors outside of Singapore are not alternatives for customers purchasing the Insurers' relevant individual life insurance products in Singapore. CCS is therefore of the view that the relevant geographic market is Singapore.

Relevant Market

98. Considering the above, CCS assesses that the relevant market is the distribution of the Insurers' relevant individual life insurance products in Singapore.

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

99. This section of the ID is organised as follows:

(i) Background;

(ii) Facts and evidence obtained by CCS in respect of the Parties' conduct; and

(iii) CCS's analysis and conclusion on the evidence.

(i) Background

100. On 30 April 2013, iFAST launched the Fundsupermart Offer. iFAST's competitive advantage stemmed from being able to reach over 50,000 existing

[149] Information provided by Manulife dated 23 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 7.9; Information provided by NTUC Income dated 22 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 7; Information provided by TM Life dated 23 July 2014 pursuant to the section 63 Notice issued by CCS dated 3 July 2014, paragraph 5.2.
[150] Section 6 read with the Second Schedule of the Financial Advisers Act.

clients of Fundsupermart[151] as well as other visitors to the Fundsupermart website, without incurring high costs to solicit life insurance sales leads. The traffic at Fundsupermart, including direct e-mailers and regular visitors, is estimated to reach up to over 100,000 over a few months.[152] The incremental costs of launching the Fundsupermart Offer was not very high[153] and iFAST was therefore able to pass on cost savings to clients who purchase life insurance policies via iFAST by rebating to them part of the resulting commissions that iFAST would receive from the Insurers.

101. Shortly after the launch of the Fundsupermart Offer, in the early afternoon of 3 May 2013, iFAST limited the Fundsupermart Offer to a period of one month. Later in the afternoon of 3 May 2013, iFAST completely withdrew the Fundsupermart Offer.

(ii) Conduct of the Parties

FAs discussed the Fundsupermart Offer at an AFA meeting

102. On 2 May 2013, two days after the Fundsupermart Offer was launched, representatives from eight FAs (collectively referred to as "EXCO FAs"), namely:

(i) Michael Lee of Cornerstone;
(ii) Vincent Ee of Financial Alliance;
(iii) Mohamed Salim of Avallis;
(iv) Augustine Lee of Frontier;
(v) Jeyaraman Parasuraman of JPARA;
(vi) David Choo of Promiseland;
(vii) Raymond Ng of RAY; and
(viii) Carol Seah of WYNNES,

were present at an AFA management committee meeting (the "AFA EXCO meeting") during which the Fundsupermart Offer was discussed.[154]

103. The minutes of the AFA EXCO meeting ("Minutes") revealed that the EXCO FAs reached an agreement to contact iFAST and the Insurers to voice their unhappiness over the Fundsupermart Offer, and to have iFAST withdraw the Fundsupermart Offer. Vincent Ee (Managing Director of Financial Alliance and then Vice President of AFA) was designated to write to iFAST and the Insurers on this matter. The relevant portion of the Minutes is extracted below:

[151] Answer to question 8 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[152] Answer to question 9 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[153] Answer to question 13 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[154] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013.

"*9.6 David Choo highlighted that FundSupermart is marketing Life Insurance product online at a discount. We should contact ifast Financial to voice* our *unhappiness regarding this issue. This is a form of inducement and is unfair.*

9.7 Vincent Ee suggested we feedback to iFast Financial, NTUC Income, Manual [sic] *Life & Tokio Marine Life Insurance to remove the products from the FundSupermart website.*

9.8 Michael Lee highlighted that the write-up in the FundSupermart website has undermine the practice of the industry and is not ethical. We should tell iFast to withdraw the content from their website. Vincent Ee will write to ifast CEO, carbon copy to the insurance companies involved and forward to IFPAS and FSMA".[155]

104. The EXCO FAs were against the Fundsupermart Offer and reached a consensus at the AFA EXCO meeting and this is corroborated by the evidence from several of the EXCO FAs.

(i) Evidence from Financial Alliance

105. In his interview with CCS on 21 January 2014, Vincent Ee of Financial Alliance, who was then the Vice-President of AFA,[156] stated that:

"*When we said we gave feedback to iFAST, I refer to a few companies, especially those belonging to AFA, like in the minutes of meeting, we discussed this issue and decided that we have to do something about this before the situation became uncontrollable*".[157]

(ii) Evidence from Cornerstone

106. Michael Lee of Cornerstone had sent a contemporaneous email on 3 May 2013 at 1.41 p.m., a day after the AFA EXCO meeting, to Cornerstone's FA representatives and informed them that:

[155] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013, items 9.6 to 9.8. This was one of the regular AFA management committee meetings.
[156] Vincent Ee is the current President of AFA.
[157] Answer to question 19 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.

"*The issue of Fundsupermart selling life insurance and offering 50% rebate of total distribution costs*[158] *has been brought up at the AFA Exco. AFA has appointed Vincent Ee, Vice President, to address this with the 3 insurers and also Ifast*".[159]

(iii) <u>*Evidence from Frontier*</u>

107. When asked about the discussion at the AFA EXCO meeting, in his interview with CCS on 21 January 2014, Augustine Lee of Frontier, who was then the President of AFA, stated that:

"*…At the April meeting, the committee asked Vincent Ee to speak to iFast. With the mandate given at the April meeting, he continued to deal with iFast on behalf of AFA*".[160]

108. In response to a question of whether AFA FAs had a collective objection to iFAST's life insurance offer with commission rebates, Augustine Lee of Frontier indicated that:

"*Yes, on the promotion, due to the reasons stated earlier regarding iFast entering the industry, the short-term gains offered to consumers and possible detetriment* [sic] *to the consumers*".[161]

(iv) <u>*Evidence from RAY*</u>

109. When referred to the Minutes, Raymond Ng of RAY stated during his interview with CCS on 13 March 2014 that:

"*…Probably Vincent Ee meant to feedback to iFAST and the insurers to remove this 50% rebate promotion and article, and not the products*".[162]

110. In response to a question of whether the withdrawal of iFAST's offer of life insurance products was the desired outcome of AFA, Raymond Ng stated that:

[158] Total distribution costs refers to the cost to insurers from distributing the insurance products to policyholders, and can include more than just commissions paid to FAs. iFAST's rebate offer, however, was only in relation to commissions it receives from insurers.
[159] Information provided by Cornerstone on 19 May 2014 pursuant to the section 63 Notice issued by CCS dated 6 May 2014, Part A.
[160] Answer to question 12 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.
[161] Answer to question 13 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.
[162] Answer to question 23 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.

"*Yes. The outcome was good enough for us. As such, on the association level, we had no further discussion on this matter*".[163]

Reasons from the EXCO FAs to get iFAST to withdraw the Fundsupermart Offer

111. Given the general practice of FAs not offering commission rebates to policyholders, [164] the evidence from the Parties revealed that the EXCO FAs had an interest in opposing the Fundsupermart Offer as they faced competitive pressure from the Fundsupermart Offer with its 50% commission rebate.

112. In response to a question of the impact on Financial Alliance arising from the marketing of life insurance products on Fundsupermart, Vincent Ee indicated that:

"*If the offer was there on a long term basis, there may be a small percentage of customers who would seek advice from us but then decide to purchase insurance online. We are not so concerned about savvy users who buy online because the market is big enough. We are however concerned that some customers who seek advice from us may then ultimately end up buying insurance from the online channel*".[165]

113. In response to a question of whether there would have been an impact on Financial Alliance arising from the marketing of life insurance products on Fundsupermart if it was without commission rebates, Vincent Ee indicated that:

"*If they had just offered the product but not the commission rebates then we would not have an issue with it. In fact, they have already been doing that in the past. Our main objection is the commission rebate and our concern that they capitalize on the FAIR and commission rebates to attract customers*".[166]

114. In his email to TM Life on 3 May 2013, Michael Lee of Cornerstone expressed his concern about the business impact of the Fundsupermart Offer:

[163] Answer to question 34 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[164] Answer to question 10 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014; Answer to question 26 of Notes of Information/Explanation provided by David Choo (Promiseland) on 15 May 2014; Answer to question 23 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[165] Answer to question 12 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.
[166] Answer to question 13 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.

"*I am sure that you are aware of this Fundsupermart thingy. Just to let you know it is causing lots of disruption and business loss to us.*"[167]

115. Michael Lee of Cornerstone also stated in his interview with CCS on 20 May 2014 that:

"*Generally, the FAs at the AFA meeting on 2 May 2013 were concerned about a partner starting to sell life insurance at a rebate of 50% TDC*".[168]

116. In his interview with CCS on 21 January 2014, Augustine Lee of Frontier, who was then the President of AFA, stated that:

"*The reason for contacting iFast was that iFast had entered the life insurance market and the FAs were concerned that iFast was coming into the same market Because we had clients on the iFast platform and they may find out about iFast's offering and iFast will have indirect access to our clients*".[169]

117. In response to a question on the impact on Frontier arising from iFAST marketing life insurance products on Fundsupermart, Augustine Lee of Frontier indicated that:

"*There may also be an impact if Fundsupermart targets our clients already on the platform, but I do not know about that. Allegations by iFast of FAs' lack of professionalism may affect us professionally*".[170]

118. David Choo of Promiseland, in his interview with CCS on 15 May 2014, indicated that the Fundsupermart Offer was unfair to other FAs, stating that:

"*…I think that it is still the unwritten rule that if you sell the insurance product, you keep the commission. If you give away the commission, it affects the whole industry.*

I also said it was unfair. When we do business, we talk to the client, do a fact find, do an analysis then recommend a product. So it is a

[167] Information provided by Cornerstone on 19 May 2014 pursuant to the section 63 Notice issued by CCS dated 6 May 2014, Part A.
[168] Answer to question 35 of Notes of Information/Explanation provided by Michael Lee (Cornerstone) on 20 May 2014.
[169] Answer to question 7 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.
[170] Answer to question 18 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2015.

very involved process. It involves time and effort. If by offering a 50% commission rebate, you get people coming to you, it can be quite unfair…".[171]

119. In his oral representations on the PID, David Choo explained that there would be a domino effect if the commission rebate was introduced:

"*Mr. Choo replied that if one company offered commission rebates, insurance clients would ask other FA representatives or agents for the same rebate.*"[172]

120. Raymond Ng of RAY stated during his interview with CCS on 13 March 2014 that:

"*…Commissions are basically the only income of FAs and FA representatives. When someone like Fundsupermart gives a 50% rebate to undermine the FAs' practices and way of distributing life insurance products, it affects the industry's livelihood. We don't care if Fundsupermart market life insurance products, but giving a 50% rebate will affect the FAs' livelihood. Although the customer segment for Fundsupermart is different from FAs' customer segment, but with a 50% rebate, customers can get advice from FAs and then go to purchase life insurance products from Fundsupermart for the 50% rebate. FAs then receive nothing for providing advice. As an association for the FA industry, AFA has to react to such an activity that undermines the livelihood of the FA industry*".[173]

121. In explaining the impact on RAY arising from the Fundsupermart Offer, Raymond Ng of RAY stated in his interview with CCS on 13 March 2014 that:

"*The impact of this to my firm is not a lot. …The marketing of life insurance products on Fundsupermart only lasted 2 or 3 days …But, if Fundsupermart's conduct continued, I do not know whether there would have been an impact. There could potentially be a great impact*".[174]

[171] Answer to question 26 of Notes of Information/Explanation provided by David Choo (Promiseland) on 15 May 2014.
[172] Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 41.
[173] Answer to question 23 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[174] Answer to question 12 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.

"*Without rebates, Fundsupermart would just be another competitor.*"[175]

"*We have no issue if simple products are sold online. However, if life insurance is sold with a discount and the discount comes from FAs' salary it becomes an issue since it disrupts our livelihood. By giving a total discount Fundsupermart is dominating the market.*"[176]

Conduct of the Parties leading up to the withdrawal of the Fundsupermart Offer

122. Following the AFA EXCO meeting, Vincent Ee of Financial Alliance exchanged a series of email correspondences with iFAST from 2 May 2013 to 3 May 2013 as the designated representative of AFA.

123. Vincent Ee had understood that he was representing the industry and AFA in writing to iFAST. In CCS's interview with Vincent Ee on 21 January 2014, Vincent Ee stated that:

"*…On the same page below, in the email from David Bellingham from PIAS where he said "good effort on behalf of industry", he saw me as speaking on behalf of the industry. I was speaking for the industry and not just for my company. My company is just a small player in the industry*".[177]

"*In paragraph 9.6 of the minutes of meeting where David Choo highlighted the Fundsupermart offer, he was suggesting that as an association AFA should do it rather than as an individual or an indivudal* [sic] *company.*

In paragraph 9.8 the committee decided that I would write to Chung Chun and copy the insurance companies. They also asked me to also copy IFPAS and FSMA in my email but I did not because they are associations more catered for tied agents."[178]

[175] Answer to question 14 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[176] Answer to question 31 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[177] Answer to question 21 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.
[178] Answer to question 23 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.

124. Vincent Ee's role as a representative of AFA in these email correspondence was confirmed by other FAs present at the AFA EXCO meeting:[179]

(i) Augustine Lee of Frontier, who was the AFA President at the time, stated in his interview with CCS on 21 January 2014 that, "…*we, AFA, had appointed Vincent Ee to communicate with iFast on behalf of AFA*".[180]

(ii) Jeyaraman Parasuraman of JPARA stated in his interview with CCS on 23 May 2014 that, "*It was agreed that Vincent Ee would represent AFA in communicating with iFast*".[181]

(iii) Raymond Ng of RAY stated in his interview with CCS on 13 March 2014 that, "*During the AFA discussion, Vincent Ee was selected to communicate with iFAST… Yes, he was authorized to communicate for AFA*".[182]

(i) <u>Vincent Ee's 1st Email to iFAST</u>

125. Vincent Ee of Financial Alliance wrote an email to Lim Chung Chun, CEO of iFAST, on 2 May 2013 at 8.22 p.m. titled "*Fundsupermart sell Life insurance at 50% TDC discount!!!*" to voice unhappiness about the Fundsupermart Offer and copied all the EXCO FAs and other FAs that were not present at the AFA EXCO meeting ("Additional FAs") ("1st Email"):

> "*As a long time business partner of iFAST, i am very disturbed and disappointed by what ifast had done through Fundsupermart. Not only did ifast quietly entered into direct competition with FA industry on life insurance, the latest move totally disregard the feeling of people from the FA industry who have been key contributors to ifast's business all these years.*
>
> *While FAIR changes are underway, we found our closest business partner giving 50% discount on life insurance, what message is ifast trying to send to the regulator and FA industry?*

[179] Answers to questions 5, 19 and 24 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014; Answer to question 49 of Notes of Information/Explanation provided by Jeyaraman Parasuraman (JPARA) on 23 May 2014; Answers to questions 18, 20, 21 and 30 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014; Answer to question 23 of Notes of Information/Explanation provided by Michael Lee (Cornerstone) on 20 May 2014; Answer to question 30 of Notes of Information/Explanation provided by David Choo (Promiseland) on 15 May 2014.

[180] Answer to question 19 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.

[181] Answer to question 49 of Notes of Information/Explanation provided by Jeyaraman Parasuraman (JPARA) on 23 May 2014.

[182] Answers to questions 18 and 20 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.

We need to hear ifast's stand on this matter as soon as possible. And please do something before it it [sic] *too late*".[183]

126. This 1st Email above emphasised a concern with iFAST entering into direct competition with the FAs and giving a 50% commission rebate in relation to life insurance products of the Insurers.

127. Vincent Ee informed Financial Alliance's FA representatives on 2 May 2013 at 9.06 p.m. about his actions, to whom he forwarded his 1st Email, and stated that he was getting the financial advisory industry to stop the Fundsupermart Offer:

"*Please see below email which is self-explanatory. I have taken action to get the whole industry to respond to ifast on this matter. In case you are not aware, please take a look at Fundsupermart website. At your level you should also exert influence through their account managers. But keep this within our industry, prevent the news catching attention from public and press. We will do everything we could to get them stop the project immediately*".[184]

(ii) <u>*Emails to the Insurers*</u>

128. Various parties, including Vincent Ee of Financial Alliance, contacted the Insurers to express their objections to the Fundsupermart Offer. Several minutes after Vincent Ee had sent the 1st Email to iFAST, he forwarded the 1st Email to each Insurer separately, and expressed his "shock" that the Insurer had allowed the Fundsupermart Offer.[185]

129. In his email to Manulife, Vincent Ee had expressed his hope that the Fundsupermart Offer would be stopped immediately:

"*I am also very surprised to know that ML allow ifast to do such thing while all of us are struggling with FAIR on commission issue. I hope this be stopped immediately before the public and press take notice*".[186]

[183] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 1.
[184] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 4 to 5.
[185] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 1 to 4.
[186] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 3.

130. In a follow-up email reply on 3 May 2013 at 12 a.m. to [✂] of TM Life, Vincent Ee indicated that the Insurers needed to take immediate action to stop the Fundsupermart Offer:

> "*But there are also many who point fingers at the 3 insurers. So the damage is widespread, and it is crucial that the 3 insurers take immediate action to stop them to show that it wasn't the insurers who condo their practice*".[187]

131. Michael Lee (Cornerstone) was also amongst the parties who contacted the Insurers. He sent an email to TM Life on 3 May 2013 at 11.10 a.m. ("Cornerstone Email"):

> "*Hope TMLS as our* [✂] *partner will relook into your partnership with Fundsupermart's 50% rebate of total distribution costs. It is causing lots of unhappiness in the FA industry and may have repercussions on the strong support that TMLS has from the FA industry*".[188]

132. When referred to the Cornerstone Email and asked to explain what he meant during his interview with CCS on 20 May 2014, Michael Lee replied:

> "*This is asking TMLS, which is Tokio Marine Life Insurance, to relook into the partnership with Fundsupermart with regards to the 50% rebate of total distribution costs in particular, and not the whole partnership with Fundsupermart*".[189]

(iii) <u>*Vincent Ee's subsequent emails to iFAST*</u>

133. Lim Chung Chun, CEO of iFAST, replied to Vincent Ee copying the EXCO FAs and Additional FAs the following day on 3 May 2013 at 12.09 p.m. In his reply, Lim Chung Chun acknowledged that FAs have been iFAST's "*key supporters all these years*" and made a concession to limit the Fundsupermart Offer to a one-month period, until the end of May 2013.[190]

134. Vincent Ee replied to Lim Chung Chun's email on 3 May 2013 at 12.26 p.m., copying the EXCO FAs and Additional FAs but also adding the Insurers. In

[187] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 10.
[188] Notes of Information/Explanation provided by Michael Lee (Cornerstone) on 20 May 2014, ML-001.
[189] Answer to question 48 of Notes of Information/Explanation provided by Michael Lee (Cornerstone) on 20 May 2014.
[190] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 12 and 13.

this email, Vincent Ee replied that he had "*no comment on your "one month promotion" as a solution*".[191]

135. Vincent Ee had then updated the EXCO FAs and Additional FAs by email on 3 May 2013 at 2.34 p.m. that he would request that iFAST remove the Fundsupermart Offer immediately instead of waiting for a month. He urged them to stress to iFAST that it cannot take its relationship with FAs for granted:

> "*I have written and spoken to the 3 insurers yesterday. They met ifast this morning. Chung Chun also replied me that they are sorry that this caused concern, and they will position this as a one month promotion and take down by end of the month. I am not happy with that. Damage is done and yet he wants to keep this on the market for a month. The FS website still show the same. My next email to him soon will be to request that ifast take this out immediately. I hope you will support by doing the same. We need to prevent further damages, and tell ifast don't take our relationship for granted. Appreciate your help*".[192]

136. In another email sent out shortly after on 3 May 2013 at 3.08 p.m., Vincent Ee reiterated that:

> "*…we will get ifast to pull out the offer very soon*".[193]

137. Vincent Ee then proceeded to send an email to Lim Chung Chun on 3 May 2013 at 3.36 p.m. to request an immediate withdrawal of the Fundsupermart Offer, again copying the EXCO FAs, Additional FAs and the Insurers:

> "*With due respect, your decision to hold this offer for a month is totally unacceptable to us. Though damage is already done, but by pulling the offer out immediately could minimize impact. The consequence for leaving it open for a month is unimaginable. I appeal to you to take the offer together with all its accompanying material out from FS website immediately. We do not have the authority to make this a demand, we are simply appealing as a capacity of a close business partner. Please take our request seriously. Thank you*".[194]

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[191] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 13 and 14.
[192] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 17 and 18.
[193] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 20 and 21.
[194] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 21 and 22.

138. Vincent Ee's email exchanges with iFAST, the Insurers and other FAs illustrate Vincent Ee's leading and critical role in implementing the Conduct and in coordinating and encouraging the collective pressure that was exerted onto iFAST. He copied other FAs who were not present at the AFA EXCO in his correspondences with iFAST, including IPP and PIAS who also participated in the Conduct.

(iv) <u>IPP's participation in the agreement and/or concerted practice</u>

139. Shelton Chellappah, CEO of IPP, wrote to Vincent Ee (Financial Alliance) on 3 May 2013 at 2.15 p.m. to show his support of Vincent Ee's first two emails to iFAST (including the 1st Email), saying:

> "*Thanks Vincent.*
> *Yes, I agree with you.*
> *In fact we just received word from our colleagues that IFAST Fundsupermart is offering some of the providers life insurance products at 50% rebate discount.*
> *This is serious and we are seeking urgent clarifications from the providers concerned. They seem to be in a hurry to implement their version/ interpretation of the FAIR proposals*".[195]

140. Further, after Vincent Ee sent an email on 3 May 2013 at 2.24 p.m. to Shelton Chellappah asking for his support to request that iFAST withdraw the Fundsupermart Offer immediately[196], Shelton emailed iFAST on 3 May 2013 at 2.45 p.m. to voice his disagreement with the one-month time limit for the Fundsupermart Offer:

> "*We are extremely upset and disturbed by this posting in the Fundsupermart.*
>
> *We have always seen IFAST as our business partner and not as a business competitor.*
>
> *We disagree, even if you do it as a promotion for one month and then take it down. The damage for the whole advisory business and its integrity will be very severe*".[197]

141. Shelton Chellappah then forwarded his email to Vincent Ee to update Vincent Ee of his supporting action:

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[195] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 24 March 2014, SC-014, page 1.
[196] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 16 and 17. This email is similar to the mass email that Vincent Ee sent to other FAs on 3 May 2013 at 2:34 p m.
[197] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-012, page 2.

"*I have just sent this to Chang Chun.*

I am in contact with TM, NTUC Income and Manulife registering my protest and they have agreed to get back to me urgently.

You have our full support".[198]

142. In Shelton Chellappah's interview with CCS on 24 March 2014, he had further explained that giving his full support meant:

"*a broad expression of support as a member of AFA to the Vice President of AFA for the initiatives and actions takn* [sic] *by the AFA. I was telling AFA to carry on*".[199]

143. As he indicated in his emails to Vincent Ee, Shelton Chellappah sent emails to the Insurers regarding the Fundsupermart Offer on the morning of 3 May 2013 to express that he was disturbed by the Fundsupermart Offer.[200] In his emails to the Insurers, Shelton Chellappah emphasised his concerns with the Fundsupermart Offer. He told [✂] at NTUC Income that:

"*We have received disturbing news from our partners that the Fundsupermart is* offering *your products at a discount.*

…***We really need to talk about this***".[201]

144. When [✂] (NTUC Income) emailed Shelton Chellappah on 4 May 2013 to ascertain that Shelton was already aware of the withdrawal of the Fundsupermart Offer by then, Shelton replied:

"*Yes.*
We exerted considerable pressure to get this outcome".[202]

145. Shelton Chellappah also wrote to [✂] (TM Life) stating:

"*This is getting very unsettling especially if they are offering significant commission discounts.*

[198] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-012, page 1.
[199] Answer to question 25 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 24 March 2014.
[200] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014, SC-026, SC-027, SC-028.
[201] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014, SC-028, page 2.
[202] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014, SC-029, page 2.

…We really need to sit down and talk *to you on this matter*".[203]

146. In addition, Shelton Chellappah wrote to [✂] (Manulife) stating:

> "We are deeply disturbed by this, especially when discounts are offered.
>
> …[✂] **– *we really need to discuss this urgently***".[204]

147. Shelton Chellappah was not the only person from IPP to voice unhappiness to iFAST. Albert Lam and Tan Lye Poh, directors of IPP, had asked iFAST to remove the Fundsupermart Offer at around 12 p.m. on 3 May 2013. Later in the afternoon on 3 May 2013 (estimated 4 p.m.), Albert Lam and Tan Lye Poh spoke to iFAST again to ask iFAST to consider whether the life insurance business was worth so much unhappiness from iFAST's business partners.[205]

148. In explaining that IPP was unhappy about the Fundsupermart Offer, Shelton Chellappah stated that:

> "*Essentially, there are two main reasons for IPP's unhappiness: (1) iFAST is now marketing life insurance products; and (2) iFast is offering commission rebates (which is an inducement). To us, the former is more objectionable than the latter; especially since iFAST marketed their life insurance products to IPP's clients via e-mail. Of course, we are also unhappy about the tone and language of the blog. This is before their offer to limit the offer to one month.*
>
> *Because they are now offering life insurance products, iFAST moved from being a business partner to a competitor of IPP. Suddenly, we feel as though we cannot trust them anymore*".[206]
>
> "*…iFAST being a competitor in the life insurance market is hitting a large segment of our business.*"[207]
>
> "*I was deeply disturbed by this whole episode. I emphasized that it was especially because of the commission discounts that were*

[203] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014, SC-026, page 2.
[204] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014, SC-027, page 2.
[205] Answers to questions 13, 23 and 24 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014.
[206] Answer to question 11 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 24 March 2014.
[207] Answer to question 18 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 24 March 2014.

offered. But again, it was a combination of iFAST's entry into the life insurance business and the offering of commission discounts."[208]

149. Despite IPP not being present at the AFA EXCO meeting, the evidence as set out in paragraphs 139 to 148 shows that IPP participated in the agreement and/or concerted practice to pressurise iFAST into withdrawing the Fundsupermart Offer.

(v) PIAS's participation in the agreement and/or concerted practice

150. David Bellingham, then CEO of PIAS, responded to Vincent Ee's 1st Email on 2 May 2013 at 10.05 p.m. to show his support saying:

"*Good email on behalf of industry. Thanks*".[209]

151. In his interview with CCS on 10 March 2014, David Bellingham explained his understanding of the 1st Email:

"*Vincent Ee was expressing his concerns about what happened and it sounded like he was talking on behalf of the industry rather than just himself. And I think that he was talking on behalf of industry because he has a role in the Association of Financial Advisers (Singapore) ("AFA") but I can't recall his exact role at that time of the email.*

My understanding of the phrases used by Vincent Ee are below:
"Direct competition" - iFAST may be entering into direct competition with him or the FA industry on life insurance. I can't say for sure what Vincent Ee meant, but own interpretation would be that iFAST was competing against the FA industry".[210]

152. Vincent Ee replied to David Bellingham that night by way of email on 2 May 2013 at 10.13 p.m., and said:

"*Thanks. I think you should also voice your unhappiness to them. We are all strong supporters to ifast and we shouldn't let them take this for granted*".[211]

[208] Answer to question 32 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014.
[209] Notes of Information/Explanation provided by David Bellingham (PIAS) on 10 March 2014, DB-004.
[210] Answer to question 32 of Notes of Information/Explanation provided by David Bellingham (PIAS) on 10 March 2014.
[211] Notes of Information/Explanation provided by David Bellingham (PIAS) on 10 March 2014, DB-004.

153. Subsequently, David Bellingham did act on Vincent Ee's request on 2 May 2013 and followed up to email Lim Chung Chun, CEO of iFAST, on 3 May 2013 at 8.26 a.m., stating:

> "*PIAS is surprised and disappointed at the decision of IFAST to launch direct insurance products on the Fundsupermart platform. This re-positions your company from strong ally and business partner with the FA industry, to direct competitor.*
>
> *Further, it sends a message to the Singapore consumer that these products can be commoditised, a message contrary to the industry, which is advocating professionalism of advice (consistent with the recommendations of FAIR).*
>
> *I hope you will see the potential damage this move is causing- both to relationships and the market perception of the industry*".[212]

154. David Bellingham further forwarded to Vincent Ee the above email on the same day at 8:41 a.m. and indicated that he "*will also be speaking with the insurance providers*".[213]

155. Despite PIAS not being present at the AFA EXCO meeting, the evidence as set out in paragraphs 150 to 154 above shows that PIAS participated in the agreement and/or concerted practice to pressurise iFAST into withdrawing the Fundsupermart Offer.

(vi) <u>iFAST's withdrawal of the Fundsupermart Offer</u>

156. iFAST eventually decided to withdraw its Fundsupermart Offer on the same day of 3 May 2013, and informed the EXCO FAs, Additional FAs and Insurers via email that day at 4.45 p.m.[214]

157. In response to this announcement, Augustine Lee of Frontier sent an email to Lim Chung Chun, CEO of iFAST, which was copied to the EXCO FAs, Additional FAs and Insurers on 3 May 2013 at 4.54 p.m. as follows:

> "*Dear Chung Chun*
>
> *Thank you for your understanding and being magnanimous in making this difficult decision.*

[212] Notes of Information/Explanation provided by David Bellingham (PIAS) on 10 March 2014, DB-001, page 3.
[213] Information provided by PIAS on 19 August 2014, document 1, page 1.
[214] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 23 and 24.

regards".[215]

158. When referred to this email of 3 May 2013 at 4.54 p.m., Augustine Lee of Frontier indicated that:

> "*I thanked him for his decision to withdraw the offer as requested by the AFA*".[216]

159. In iFAST's B2B Business, iFAST provides the services of transacting the purchase and sale of unit trust products and investment administration for investors. If the FAs do not utilise iFAST to administer and transact the FA's clients' unit trust investments, iFAST's B2B unit trust business would be negatively impacted. The Parties' commercial relationships with iFAST in unit trusts contributed significantly ([✂]%) to iFAST's gross revenues from business in Singapore.[217]

160. In Vincent Ee's 1st Email, he emphasised that he was "*a long time business partner of iFAST*" and that "*the FA industry who have been key contributors to ifast's business all these years*"[218] to highlight iFAST's dependence on FAs in respect of its B2B unit trust business. In that context, Vincent Ee also said to iFAST in the 1st Email, "…*please do something before it it* [sic] *too late*". [219]

161. In Vincent Ee's follow up email to Financial Alliance's FA representatives on 2 May 2013 at 9.06 p.m. he urged them to "*also exert influence through their account managers*".[220]

162. In Vincent Ee' update to the EXCO FAs and Additional FAs by email on 3 May 2013 at 2.34 p.m., he urged them to stress to iFAST that it cannot take its relationship with FAs for granted, stating:

> "*We need to prevent further damages, and tell ifast don't take our relationship for granted. Appreciate your help*". [221]

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[215] Information provided by Frontier on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, AL-008, pages 1 and 2.
[216] Answer to question 29 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.
[217] Calculations derived from data obtained by CCS – Information provided by iFAST on 13 January 2015 pursuant to the section 63 Notice issued by CCS dated 26 December 2014, response to question 2; iFAST Corporation Ltd. Initial Public Offering Prospectus dated 4 December 2014.
[218] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 1.
[219] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 1.
[220] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 4 to 5.
[221] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 17.

163. When Vincent Ee sent the email on 3 May 2013 at 3.36 p.m. to Lim Chung Chun, CEO of iFAST, to request for an immediate withdrawal of the Fundsupermart Offer, he again stressed on iFAST's business ties to the FAs, stating:

> "*We do not have the authority to make this a demand, we are simply appealing as a capacity of a close business partner. Please take our request seriously*".[222]

164. In his email to iFAST, David Bellingham of PIAS also emphasised iFAST's commercial relationships with the FAs and the impact of the Fundsupermart Offer on these relationships:

> "*This repositions your company from strong ally and business partner with the FA industry, to direct competitor…"*
>
> *"I hope you will see the potential damage this move is causing- both to relationships and the market perception of the industry*".[223]

165. As evidence of iFAST's concern that its B2B business could be negatively impacted, [✂] of iFAST explained iFAST's reason for withdrawing the Fundsupermart Offer:

> "*We wanted to pacify the FAs as they are significant contributors to iFAST's revenues*".[224]
>
> "*…iFAST was concerned about the potential loss of existing business and loss of potential new business for its B2B business. The reaction of the FAs was a more critical consideration when deciding whether to withdraw the selling of life insurance products from Fundsupermart*".[225]

166. In this respect, [✂] of iFAST explained the reasons behind [✂] decision to withdraw the Fundsupermart Offer and iFAST's vulnerability to a collective negative reaction from FAs:

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[222] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, pages 21 and 22.
[223] Notes of Information/Explanation provided by David Bellingham (PIAS) on 10 March 2014, DB-001, page 3.
[224] Answer to question 48 of Notes of Information/Explanation provided by [✂] (iFAST) on 11 December 2013.
[225] Answer to question 56 of Notes of Information/Explanation provided by [✂] (iFAST) on 11 December 2013.

"*We expected backlash from people who use the unit trust platform under the B2B business, the FAs. They are essentially clients of iFAST.*
As FAs decide which platform they use, the main backlash would come from them. This might affect the amount of business on B2B side as FAs might not want to give us business or decide to pull out some existing business".[226]

"*…If we had continued with the 50% rebate even after a very negative reaction from a very large part of the industry, it is likely that the negative emotion would translate into significant negative impact on our business for the B2B.*"[227]

167. [✂] of iFAST indicated that iFAST withdrew the Fundsupermart Offer due to the negative feedback from the industry including the feedback provided by Vincent Ee.[228] [✂] thought that iFAST would have suffered an adverse impact on its B2B segment of its unit trust business if it did not withdraw the Fundsupermart Offer:

"*Q107.* *When did iFAST decide to withdraw from arranging or distributing life insurance products?*
A: *We decided by 3 May 2013 because of all the complaints that were coming through from the industry.*
…
Q129. *To what extend* [sic] *this email from Vincent Ee affected* [✂] *decision to stop commission rebates and stop selling life insurance products?*
A: *It is one of the considerations. It is something that* [✂] *take into account of in making a decision.*
…
Q172. *You earlier said that there were multiple considerations before coming to the decision to top* [sic] *the rebate promotion? What were* [✂] *main considerations that influence* [✂] *decision?*
A: *Yes. The main consideration is that there is an industry wide negative sentiment out there. Most of the users of our B2B platform are not happy about it and if we don't stop I*

[226] Answer to question 23 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[227] Answer to question 130 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[228] Answers to questions 129 to 131 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.

think it would be very difficult to prevent a negative impact on our B2B business".[229]

168. The concerns expressed by iFAST about the impact on its unit trust business with the FAs are consistent with the views of Mohamed Salim of Avallis on why the Fundsupermart Offer was withdrawn:

> "*iFAST knew that the financial advisor industry was unhappy about it and I think iFAST wanted to preserve its relationship with financial advisors to continue doing business with them*".[230]

(vii) <u>Subsequent discussions after the withdrawal of the Fundsupermart Offer</u>

169. There were subsequent correspondence via emails on the withdrawal of the Fundsupermart Offer ("Subsequent Correspondence") amongst the following EXCO FAs:

(i) Augustine Lee of Frontier;

(ii) Vincent Ee of Financial Alliance;

(iii) Raymond Ng of RAY; and

(iv) Mohamed Salim of Avallis.

170. This exchange of emails was triggered by an email on 6 May 2013 at 8.22 p.m. from AFA's PR consultant, Reputation Management Associates ("RMA"), who informed Augustine Lee of Frontier and Vincent Ee of Financial Alliance about a query from a Straits Times reporter to the Insurers. The reporter was writing on the withdrawal of the Fundsupermart Offer and RMA asked if AFA should respond to that reporter's queries. An extract of this query by the reporter to the Insurers is as set out below:

> "*I am writing about Fundsupermart, which up till last Fri was selling some protection insurance products, including your company's, and returning 50 per cent of the lifetime commission to consumers.*
>
> *Could I check if there is anything in your agreements with IFAs that does not allow them to do so, or are they entitled to not get commission if they so wished? Also, any comments on whether*

[229] Answers to questions 107, 129 and 172 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[230] Answer to question 7 of Notes of Information/Explanation provided by Mohamed Salim (Avallis) on 21 January 2014.

commissions are too high given that Fundsupermart was able to sell insurance policies at such a deep discount?".[231]

171. Augustine Lee, who was the President of AFA at that time, sent via email his proposed draft response:

"*Hi Everyone*

My response is:

When the said advertisement was published on FSM website, the Association of Financial Advisers (Singapore) has expressed our members concern with them.

We are glad that they have taken our views into consideration and have decided to withdraw the advertisement.

[✂], *if it is not appropriate, then just mention to ST that there is no response from us*".[232]

172. RMA replied with proposed amendments to Augustine Lee's draft:

"*Hi Augustine:*

Thanks for your good draft. I have amended it slightly to deal with the issue of anti-competition:

"When the said advertisement was published on FSM website, the Association of Financial Advisers (Singapore) has expressed our members concern with them, noting that the tone and language used in their postings could be detrimental to the reputation and professionalism of other FAs in Singapore.

We are glad that they have taken our views into consideration and have decided to withdraw the advertisement. All FAs are free to offer their competitive deals to their customers. AFAS believes that in such an environment, consumers will ultimately benefit in terms of both quality of advice and pricing." ".[233]

[231] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-001, page 1.
[232] Information provided by Frontier on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, AL-016, page 3.
[233] Information provided by Frontier on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, AL-016, pages 2 and 3.

173. After Augustine Lee and Raymond Ng responded to RMA's amended draft, Vincent Ee replied:

> "*Hi* [✂]
>
> *I have concern with your last two sentences in the response. Does it sounds contradict* [sic] *to what we believe? By saying that we echo that what FSM did was fundamentally correct, just that the advert was erroneously written. Can we rephrase a bit?*".[234]

174. The "last two sentences" of RMA's amended draft that Vincent Ee had concerns about being contradictory to what the FAs in the email believed were: "*All FAs are free to offer their competitive deals to their customers. AFAS believes that in such an environment, consumers will ultimately benefit in terms of both quality of advice and pricing*".

175. Vincent Ee followed up with another email after speaking with RMA:

> "*Hi all*
>
> *As spoken to* [✂], *here is my addition* [sic] *view which we should give from practice angle.*
>
> *"We are not in a position to comment on the move by FSM to market life insurance through their online portal with discount of commission. While we fully support free market competition for the benefit of consumer, the AFA discourage the use of outright discount as an inducement for consumer to purchase life insurance. Life insurance must be bought base* [sic] *on need and affordability. Commission discount act as an inducement to purchase and yet it doesn't make life insurance more affordable*".[235]

176. RMA followed up shortly with an email to say:

> "*Hi Vincent - as spoken, we have to be careful on what we object to. As a trade association, we are open to review by the Competition Commission of Singapore - CCS- if we are seen to coerce or influence any FA firm - from its commercial and business decisions, unless there is strong legal grounds to do so (for example, if IFAST*

[234] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-001, page 4.
[235] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-001, page 4.

or FSM has contractually agreed to certain things). That shd [sic] *be MAS' purview*".[236]

177. Vincent Ee then responded:

"*Hi* [✂]

Agreed. You may adopt some of my point if deem fit, and retain the original tone as per your suggested response in order not to seen [sic] *as anti competition*".[237]

178. Mohamed Salim of Avallis then provided his inputs:

"*Agree not to object outright Ifast's decision to give discount.*

But can we mention that from our past experience we r [sic] *aware of the backlash of using incentives to encourage investors to decide on the insurance prodts* [sic] *to buy. AFAS' aim is to instil advisers to focus on advising clients on their needs and not on incentives offered. We hav* [sic] *seen in the past how incentives have landed investors with financial products that were not suitable to them in the long run. We certainly don't want advisers to revert to the past practice*".[238]

179. It can be seen from the above correspondences that these FAs were aware that what they had done may be anti-competitive behaviour and they had carefully chosen their media response to the queries from the Straits Times' reporter in order to avoid attracting the attention of CCS.

(iii) CCS's analysis and conclusions

180. A chronology of key events leading up to the withdrawal of the Fundsupermart Offer is set out in **Annex B**.

Prevention, restriction or distortion of competition by object

181. CCS considers that the evidence indicated in paragraphs 102 to 178 above show that the Parties participated in an agreement and/or concerted practice to pressurise iFAST into withdrawing the Fundsupermart Offer. The Conduct had, as its object, the prevention, restriction or distortion of competition in the

[236] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-001, page 5.
[237] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-001, page 5.
[238] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-001, page 6.

distribution of the Insurers' relevant individual life insurance products in Singapore.

(i) Content, objectives, and context of the Conduct

182. The Minutes show that the EXCO FAs had agreed to oppose the Fundsupermart Offer and get iFAST to withdraw the Fundsupermart Offer:

> "*9.6 …We should contact ifast Financial to voice our unhappiness regarding this issue…*
>
> *9.7 Vincent Ee suggested we feedback to iFast Financial, NTUC Income, Manual* [sic] *Life & Tokio Marine Life Insurance to remove the products from the FundSupermart website.*
>
> *9.8 …We should tell iFast to withdraw the content from their website…*".[239]

183. The objective of the Conduct to get the Fundsupermart Offer withdrawn is also clear in Vincent Ee's emails. For instance, Vincent Ee had sent out an email to other FAs on 3 May 2013 at 3.08 p.m., stating:

> "*…we will get ifast to pull out the offer very soon*".[240]

184. Vincent Ee had also directly asked iFAST to withdraw the Fundsupermart Offer in furtherance of the Conduct, stating in an email on 3 May 2013 at 3.36 p.m.:

> "*…I appeal to you to take the offer together with all its accompanying material out from FS website immediately*".[241]

185. Avallis, Financial Alliance and Promiseland, in their representations, submitted that the Parties did not reach an anti-competitive agreement to pressurise iFAST into withdrawing its Fundsupermart Offer.[242] Avallis, in its representations, submitted that the agreement, if any at all, was to convey a message to iFAST that the language used in the marketing campaign by iFAST – and not the insurance products – had to be taken out of the website.[243]

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[239] Information provided by RAY on 12 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, AFA Management Committee 8th Monthly Meeting Minutes, 2 May 2013, items 9.6 to 9.8.
[240] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008 at pages 20 and 21.
[241] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008 at pages 21 and 22.
[242] Written Representations of Avallis dated 10 July 2015, paragraph 3.2.5; Written Representations of Promiseland dated 7 July 2015, page 6; Agreed Record of IPP's Oral Representations on 6 August 2015, paragraph 5.
[243] Written Representations of Avallis dated 10 July 2015, paragraph 3.1.19.

186. Promiseland, in its representations, submitted that, if they were acting in concert, they would have spent more time and effort in communicating with iFAST and each other.[244] Promiseland further represented that the only decision at the AFA EXCO meeting was to feedback to / query iFAST as regards the following: (i) the use of commission rebates as an inducement, (ii) whether the Insurers knew of the Fundsupermart Offer, (iii) whether clients would know that the Fundsupermart Offer was only for the first year and they would have to pay normal premium subsequently, (iv) whether iFAST would be carrying out the normal sales and advisory process, (v) not to make disparaging statements about the practice of FAs, and (vi) not the right time for iFAST to jump the gun and send a signal that existing commissions were high and the industry could afford to lower commissions by 50%.[245]

187. Financial Alliance represented that the only consensus concluded at the AFA EXCO meeting was for Vincent Ee to communicate the EXCO FAs' unhappiness about the Fundsupermart Offer to iFAST and the Insurers.[246]

188. It should be reiterated that the evidence above shows that an agreement and/or concerted practice to pressurise iFAST into withdrawing its Fundsupermart Offer was concluded. Avallis, Financial Alliance and Promiseland did not provide any evidence to show that the Parties did not participate in an agreement and/or concerted practice to pressurise iFAST into withdrawing its Fundsupermart Offer. Instead, as can be seen from paragraphs 102 to 110 above, the EXCO FAs agreed to oppose the Fundsupermart Offer and get iFAST to withdraw the Fundsupermart Offer at the AFA EXCO meeting, and appointed Vincent Ee as their representative to communicate to iFAST. As noted in paragraph 184, Vincent Ee had, in fact, asked iFAST to "*take the offer together with all its accompanying material out from FS website immediately*".[247]

189. Avallis and Promiseland did not provide any evidence to show that they had raised any concerns at the relevant time that Vincent Ee was not authorised to represent the Parties or that he had exceeded his mandate in his communications to iFAST and the Insurers. On the contrary, as noted in paragraphs 123 and 124 above, there is evidence to show that Vincent Ee had implemented the Conduct on behalf of the EXCO FAs. When asked to explain his email correspondences with iFAST, Vincent Ee described the emails as:

> "*our feedback to iFAST*",

[244] Written Representations of Promiseland dated 7 July 2015, page 2 of cover letter; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 25.
[245] Writen Representations of Promiseland dated 7 July 2015, pages 2 and 3.
[246] Written Representations of Financial Alliance dated 24 July 2015, paragraph 19a.
[247] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008 at pages 21 and 22.

and went on to explain that:

> "*The financial advisor copmanies* [sic] *were copied because this matter was discussed in the AFA meeting. At that time I was vice president about to become president so I thought I have the responsibility to let them know that I was taking action about this matter*".[248]

190. Frontier, in its representations, submitted that the AFA EXCO meeting was a normal monthly executive committee meeting and the iFAST discussion came under "any other business".[249] Promiseland, in its representations, submitted that the Fundsupermart Offer was not on the agenda of the AFA EXCO meeting and was only raised as an "any other business" item.[250] WYNNES, in its representations, submitted that the AFA EXCO meeting was a regular monthly meeting with no intention for members to participate in an agreement and/or concerted practice.[251] However, these submissions do not absolve them from liability. For the purposes of establishing an infringement, it is irrelevant whether the anti-competitive agreement was premeditated or only concluded spontaneously during the AFA EXCO meeting itself. The forum where the agreement was reached is not relevant as to whether or not there is an anti-competitive agreement and/or concerted practice. The infringement occurred the moment the EXCO FAs agreed to enter into the Conduct. All that is required is that parties arrive at a consensus on the actions each party will, or will not, take.[252]

191. Financial Alliance, in its representations, submitted that each of the emails from Vincent Ee (Financial Alliance) to Lim Chung Chun (iFAST) and the Insurers on 2 May 2013 and 3 May 2013 had no restrictive object or content and did not prevent or restrict iFAST from making its own commercial decisions.[253] However, CCS did not rely on any single email or evidence in isolation to establish its findings on the Conduct; CCS had considered all available evidence, including minutes of meetings, email correspondence, Notes of Interviews and other documentary evidence before reaching its conclusions. As reiterated in paragraphs 188 to 189 above, the evidence demonstrates that the Parties agreed to pressurise iFAST into withdrawing its Fundsupermart Offer.

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[248] Answer to question 19 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.
[249] Written Representations of Frontier dated 10 July 2015, paragraph 1.
[250] Written Representations of Promiseland dated 7 July 2015, page 2; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 5.
[251] Written Representations of WYNNES dated 10 July 2015, paragraph 1.
[252] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.10.
[253] Written Representations of Financial Alliance dated 24 July 2015, paragraphs 35 and 36.

192. As summarised in paragraph 89 above, infringements by object are by their very nature injurious to the proper functioning of normal competition. Regard must be had to the content of the provisions of an agreement, and the economic and legal context of which it forms a part. The categories of restrictions by object are also not closed, and the essential legal criterion is whether the agreement or concerted practice reveals in itself a sufficient degree of harm to competition.

193. In this case, CCS notes that the content and objective of the Conduct was to pressurise a competitor, i.e. iFAST, into removing a competing offer. Instead of deciding independently how to respond to the competitive challenge posed by the Fundsupermart Offer, the Parties cooperated to collectively pressurise iFAST into withdrawing the offer. This prevented the market from shifting to a more competitive state. The Parties were successful in their efforts as iFAST did in fact withdraw its offer.

194. The Conduct was "*a mechanism intended to encourage the withdrawal of competitors*"; [254] it was aimed to pressurise iFAST into withdrawing the Fundsupermart Offer when iFAST competed in the market for the distribution of the Insurers' relevant individual life insurance products[255] by offering a 50% commission rebate which reduced the consumers' costs of purchasing such products.

195. The relevant context is that iFAST had sought to distribute the relevant individual life insurance products innovatively and efficiently by marketing through its established online platform for unit trusts with a wide reach, i.e. Fundsupermart, and had sought to pass on cost savings to clients through a significant commission rebate when the general practice of FAs was not to provide commission rebates. As some of the Parties (Financial Alliance, RAY, Promiseland) themselves acknowledged, they were concerned about their own customers switching to iFAST or seeking from them rebates similar to those offered by iFAST. Furthermore, the Parties' commercial relationship with iFAST in its unit trust business contributed significantly to iFAST's gross revenues and placed them in a position to exert pressure on iFAST. The significant media and public interest surrounding the Fundsupermart Offer following its withdrawal is also indicative of its impact on the market. CCS is therefore of the view that the Conduct was injurious to the proper functioning of normal competition.

196. Avallis, in its representations, submitted that the Conduct did not amount to a restriction of competition by object and cited *Groupement des cartes bancaires v European Commission*[256] as the legal authority for this proposition.[257] Avallis

[254] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2 at [84].
[255] See Chapter 2, Section G on The Relevant Market.
[256] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2.

submitted that the correct legal test was whether "*such coordination reveals in itself a sufficient degree of harm to competition*" and that whilst CCS did acknowledge that legal test, CCS did not apply it to this case.

197. CCS reiterates that in assessing the object of the agreement and/or concerted practice, regard must be had to the content of the provisions of an agreement, its objectives, and the economic and legal context of which it forms a part. Given CCS's considerations of the content and objectives of the Conduct and the context of which it forms a part, as summarised in paragraphs 193 to 195 above, CCS is satisfied that the Conduct has revealed in itself a sufficient degree of harm to competition.

(ii) Intentions of the Parties

198. As noted in paragraph 90 above, the Parties' subjective intention is not a necessary factor in assessing whether Conduct had the object of preventing, restricting or distorting competition but may be taken into consideration. Further, even if parties to an agreement and/or concerted practice acted without any subjective intention of restricting competition, such considerations are irrelevant for the purposes of the assessment of infringement. In this case, though, the evidence shows the Parties did have an objective of restricting competition in opposing the Fundsupermart Offer as there were concerns about the competitive impact of the Fundsupermart Offer on their businesses. For example, Vincent Ee in his interview with CCS on 21 January 2014 stated:

> "*We are however concerned that some customers who seek advice from us may then ultimately end up buying insurance from the online channel*".[258]

> "*Our main objection is the commission rebate and our concern that they capitalize on the FAIR and commission rebates to attract customers*."[259]

199. In his interview with CCS on 21 January 2014, Augustine Lee of Frontier stated that:

> "*The reason for contacting iFast was that iFast had entered the life insurance market and the FAs were concerned that iFast was coming into the same market…*".[260]

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[257] Written Representations of Avallis dated 10 July 2015, paragraph 5.1.
[258] Answer to question 12 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.
[259] Answer to question 13 of Notes of Information/Explanation provided by Vincent Ee (Financial Alliance) on 21 January 2014.
[260] Answer to question 7 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.

200. David Choo of Promiseland, in his interview with CCS on 15 May 2014, said:

> "*I think that it is still the unwritten rule that if you sell the insurance product, you keep the commission. If you give away the commission, it affects the whole industry.*
>
> *…If by offering a 50% commission rebate, you get people coming to you, it can be quite unfair…*".[261]

201. Raymond Ng of RAY stated during his interview with CCS on 13 March 2014 that:

> "*…with a 50% rebate, customers can get advice from FAs and then go to purchase life insurance products from Fundsupermart for the 50% rebate. …As an association for the FA industry, AFA has to react to such an activity that undermines the livelihood of the FA industry*". [262]
>
> "*The impact of this to my firm is not a lot. …The marketing of life insurance products on Fundsupermart only lasted 2 or 3 days …But, if Fundsupermart's conduct continued, I do not know whether there would have been an impact. There could potentially be a great impact.*"[263]
>
> "*… By giving a total discount Fundsupermart is dominating the market.*"[264]

202. In his interview with CCS on 24 March 2014, Shelton Chellappah of IPP stated that:

> "*…Because they are now offering life insurance products, iFAST moved from being a business partner to a competitor of IPP. Suddenly, we feel as though we cannot trust them anymore*".[265]
>
> "*…iFAST being a competitor in the life insurance market is hitting a large segment of our business.*"[266]

[261] Answer to question 26 of Notes of Information/Explanation provided by David Choo (Promiseland) on 15 May 2014.
[262] Answer to question 23 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[263] Answer to question 12 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[264] Answer to question 31 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[265] Answer to question 11 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 24 March 2014.

203. The contemporaneous emails of the Parties in relation to the Fundsupermart Offer also showed objections because of the competitive impact of the Fundsupermart Offer on the Parties. Vincent's 1st Email, for example, states:

> "*…ifast quietly entered into direct competition with FA industry on life insurance…*".[267]

204. Shelton Challepah's email to iFAST pointed out unhappiness with iFAST competing with the Fundsupermart Offer:

> "*…We have always seen IFAST as our business partner and not as a business competitor…*".[268]

205. David Bellingham also stated in his email to iFAST expressing disappointment with iFAST becoming a direct competitor, saying:

> "*PIAS is surprised and disappointed at the decision of IFAST to launch direct insurance products on the Fundsupermart platform. This re-positions your company from strong ally and business partner with the FA industry, to direct competitor*".[269]

206. The evidence (set out above) shows that the Parties intended to restrict competition in opposing the Fundsupermart Offer, which goes further to support that the Conduct had as its object the prevention, restriction or distortion of competition in Singapore.

207. In its representations, Financial Alliance submitted that it had no reason to be anti-competitive as the Fundsupermart Offer posed no threat to Financial Alliance.[270] CCS reiterates that subjective intention is not a necessary factor in assessing whether the Conduct had the object of preventing, restricting or distorting competition. However, as noted in paragraph 125 above, Vincent Ee highlighted in the 1st Email to Lim Chung Chun (iFAST) that "*ifast quietly entered into direct competition with FA industry on life insurance*".[271] CCS

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[266] Answer to question 18 of Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 24 March 2014.
[267] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 1.
[268] Information provided by IPP on 17 March 2014 pursuant to the section 63 Notice issued by CCS dated 28 February 2014, Appendix 1.
[269] Information provided by PIAS on 4 March 2014 pursuant to the section 63 Notice issued by CCS dated 27 February 2014, document 6, page 5.
[270] Written Representations of Financial Alliance dated 24 July 2015, paragraph 21a; Agreed Record of Financial Alliance's Oral Representations on 4 August 2015, paragraph 16.
[271] Information provided by Financial Alliance on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, VE-008, page 1.

also notes that, as highlighted in paragraph 198 above, Vincent Ee had concerns that iFAST would attract customers with its commission rebates.

208. The Parties have also alleged and reiterated in their representations, that the Conduct was motivated by other concerns. The Parties' concerns can generally be categorised under the following headings: protection of the financial advisory industry; unilateral enforcement of private rights and protection of consumer interest. Each of these will be set out in more detail below.

209. At the outset, CCS reiterates that, as per the established legal principles summarised in paragraph 90 above, an agreement and/or concerted practice may be regarded as having an anti-competitive object, even if it does not have the restriction of competition as its sole aim but also pursues other objectives. Hence, even if the Parties pursued other objectives with the Conduct, "*such considerations are irrelevant*"[272] in assessing whether the Conduct has as its object the prevention, restriction and distortion of competition in Singapore.

Protection of financial advisory industry

210. Financial Alliance, in its representations, submitted that the Fundsupermart Offer was insensitively timed given that when the FAIR was first announced in March 2012, MAS had sent very strong signals that it was seriously considering whether to replace the commission-based system with the fee-based system of remuneration for financial advisers. The entire financial advisory industry had argued against changing to the fee-based system and MAS did not include the adoption of the fee-based system in its FAIR consultation paper. Financial Alliance submitted that, therefore, there was a paramount concern that the Fundsupermart Offer would lead to further debate on the commission-based system and MAS might revert to replacing the commission-based system with the fee-based system.[273]

211. Promiseland, in its representations, submitted that a basic plank in the life insurance industry is the commission structure and that to give feedback whether individually or collectively for iFAST to review its offer is not to stifle competition but to respect the long established practice. Promiseland further submitted that the industry has a long understanding to compete on products and services and not by rebating, which not only can be seen as inducements but also distorts competition between professionals.[274]

[272] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21].
[273] Written Representations of Financial Alliance dated 24 July 2015, paragraph 20a; Agreed Record of Financial Alliance's Oral Representations on 4 August 2015, paragraphs 9 to 11.
[274] Written Representations of Promiseland dated 7 July 2015, page 1 of cover letter, and page 5; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 37.

212. CCS notes that while such apparent concerns (that the Fundsupermart Offer may lead to further debate on the commission-based system of remuneration for FAs and/or that the Fundsupermart Offer is not in line with established industry practice) were raised, these are not valid justifications for the Conduct. Instead, such concerns suggest that the Parties were unhappy about iFAST competing in a manner that was innovative and different from the established industry practice, and were motivated to prevent iFAST from proceeding with the Fundsupermart Offer.

Unilateral action / enforcement of private rights

213. IPP, in its representations, made several submissions regarding the nature of its involvement in the Conduct. First, IPP submitted that its involvement in the Conduct occurred in the context of its long-standing relationship with iFAST, one of trust and good faith. Second, as a result of this relationship and repeated assurances from iFAST that it would not enter into the life insurance market, IPP believed that it had legitimate and actionable contractual rights against iFAST for its entry into the life insurance market.[275] Consequently, IPP took unilateral action to provide feedback to iFAST regarding its displeasure at the Fundsupermart Offer even before IPP became aware of the Conduct. When IPP became aware of the Conduct, it was natural for IPP to align itself with the other Parties who were providing similar feedback to iFAST, even though IPP conceded that it should have distanced itself from the agreement once it became aware of it.[276] IPP submitted that, even in the absence of the Conduct, it would have continued to act unilaterally to provide feedback to iFAST.[277]

214. While IPP has asserted that it had a contractual or civil remedy against iFAST, it has not provided documentary evidence to substantiate the assertion of its legal rights or exercise of such rights. Instead, IPP entered into an anti-competitive agreement with the other Parties to achieve a common outcome. CCS notes that, as per established case-law, once an agreement and/or concerted practice has been established to have an anti-competitive object, considerations of other objectives of the Parties are irrelevant to whether an infringement is made out. Further, when IPP knowingly joined in the Conduct, it became equally liable for the actions of the collective. IPP's unilateral action to provide feedback to iFAST, prior to joining in the Conduct, does not diminish its liability for the infringement.

Protection of consumer interest

[275] Written Representations of IPP dated 10 July 2015, paragraph 25; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 8.
[276] Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 6.
[277] Written Representations of IPP dated 10 July 2015, paragraph 46; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 6.

215. Financial Alliance, in its representations, also submitted that consumers may be exploited and the Parties wanted to protect consumers' interests.[278] Further, Financial Alliance submitted that the agreement, if any, in this instance cannot be regarded, by its very nature, as being injurious to the proper functioning of normal competition as the nature of the agreement was transparent, consumer-interest-driven, well-meaning, and meant to prevent injury/distortion to the due decision-making process of the insurance purchasing consumer, as the 50% rebate could result in mis-selling.[279] Other Parties, including Avallis, Promiseland and WYNNES, also submitted in their representations that commission rebates were an unethical inducement.[280]

216. As noted in paragraph 209 above, once Financial Alliance and the other Parties entered into an anti-competitive agreement and/or concerted practice that has as its object the restriction of competition, considerations of other objectives of the Parties in doing so are irrelevant to CCS's finding of an infringement of section 34 of the Act.

217. Moreover, the decision of the ECJ in *Protimonopolný* clearly establishes that it is not for private entities to enter into anti-competitive agreements to enforce compliance with statutory requirements. Therefore, even if the Fundsupermart Offer was potentially an unethical inducement or injury/distortion to the due decision-making process of the insurance purchasing consumer, as alleged by Financial Alliance, it is for the regulator and not the Parties to enforce against any potential infringement of financial regulations.

218. Financial Alliance, in its representations, distinguished *Protimonopolný*[281] from the present case as commission rebates are not a statutory issue. Financial Alliance submitted that MAS expects the financial advisory industry to self-regulate on most matters, including on commission rebates.[282]

219. CCS notes that Financial Alliance has not provided evidence that MAS has empowered AFA to regulate the industry's or even its members' offer of commission rebates. In any event, as CCS has reiterated, once Financial Alliance and the other Parties entered into an anti-competitive agreement and/or concerted practice that has as its object the restriction of competition, considerations of other objectives of the Parties in doing so are irrelevant to CCS's finding of an infringement of section 34 of the Act.

(iii) <u>Conclusion on preventing, restricting and distorting competition</u>

[278] Written Representations of Financial Alliance dated 24 July 2015, paragraph 1.
[279] Written Representations of Financial Alliance dated 24 July 2015, paragraph 18a.
[280] Written Representations of Avallis dated 10 July 2015, paragraphs 3.1.9 and 3.1.10; Written Representations of Promiseland dated 7 July 2015, page 2; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 10; Written Representations of WYNNES dated 10 July 2015, paragraph 2.
[281] Case C-68/12 *Protimonopolny Urad Slovenskej Republiky v Slovenska Sporitel'na A.S.* [2013] 4 CMLR 16.
[282] Written Representations of Financial Alliance dated 24 July 2015, paragraphs 9 and 10.

220. Based on the foregoing, CCS is of the view that the Conduct was injurious to the proper functioning of normal competition and revealed in itself a sufficient degree of harm to competition. Further, the evidence shows that the Parties had an anti-competitive objective in opposing the Fundsupermart Offer. CCS therefore concludes that the Conduct has as its object the prevention, restriction and distortion of competition in the distribution of the Insurers' relevant individual life insurance products in Singapore.

Considerations of adverse effects on competition

221. First, CCS notes that establishing that an agreement and/or concerted practice has an appreciable adverse effect is not a legal requirement to prove a section 34 infringement.[283] Nonetheless, CCS has considered whether the Conduct appreciably prevented, restricted or distorted competition in Singapore.

222. An agreement between competing undertakings will *generally* have no appreciable adverse effect on competition if the aggregate market share of the parties does not exceed 20% on any of the relevant markets affected by the agreement, or where parties to such agreements are SMEs.[284]

223. This does not apply to agreements or concerted practices involving price-fixing, bid-rigging, market-sharing or output limitations, which CCS generally considers to have an appreciable adverse effect on competition, notwithstanding the fact that the aggregate market shares of the parties are below the 20% threshold level and even if the parties to such agreements are SMEs.[285]

224. Even where the aggregate market shares of the parties to an agreement exceed the threshold levels, it does not mean that the effect of that agreement on competition is appreciable. In the same vein, whilst an agreement with market share figures below the threshold will *generall*y not have an adverse effect on competition, this does not mean that such an agreement will never have an appreciable adverse effect on competition. Similarly, an agreement between SMEs may sometimes have an appreciable adverse effect on competition. Other factors such as the market power of the parties to the agreement, the content of the agreement, and the structure of the market(s) affected by the agreement would have to be examined.

[283] Section 34(1) of the Act reads as follows: "*Subject to section 35, 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 are prohibited unless they are exempt in accordance with the provisions of this Part*".
[284] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.19.
[285] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.20.

225. CCS has estimated that the aggregate market share of the Parties in 2013 was [✂20-30]%.[286] Please see paragraph 226 below for the calculation of CCS's market share estimates. This aggregate market share is not insignificant. In addition to the aggregate market share of the Parties, CCS has considered other factors in determining whether the Conduct has an appreciable adverse effect on competition.[287] CCS notes that the content and object of the Conduct was to pressurise a competitor, i.e. iFAST, into removing a competing offer. Moreover, CCS considers that the innovative nature of the Fundsupermart Offer, and the actual withdrawal of the Fundsupermart Offer, further establish that the Conduct appreciably prevented, restricted or distorted competition in Singapore. Please see paragraphs 229 to 241 below.

(i) *Aggregate market shares of the Parties*

226. The aggregate market shares of the Parties of [✂20-30]% in 2013 is calculated based on the Parties' aggregate share of turnover in the relevant market, i.e. the distribution of the Insurers' relevant individual life insurance products in Singapore. The aggregate market shares of the Parties is therefore derived by calculating the Parties' aggregate commissions from distributing the Insurers' relevant individual life insurance products in Singapore as a percentage share of total commissions paid by the Insurers in relation to the relevant individual life insurance products in Singapore, i.e:

$$\text{Aggregate market share of Parties} = \frac{\text{Aggregate of Parties' commissions (relevant products) from NTUC Income, Manulife, TM Life}}{\text{Total commissions (relevant products) paid by NTUC Income, Manulife, TM Life}}$$

227. Financial Alliance, in its representations, submitted that the "market size" ought not to be determined by the reach or the number of enquiries but by number of transactions and transaction value.[288] Avallis, Financial Alliance, Frontier, Promiseland, PIAS and WYNNES, in their representations, submitted that the aggregate market share of the Parties was less than the [✂20-30]% estimated by CCS and could not have been more than 20%.[289] Some of the Parties referred to estimates by the Life Insurance Association of Singapore ("LIA"). Avallis, Promiseland and WYNNES[290] also submitted that the Parties were largely, if not all, SMEs. Some of these Parties further submitted that

[286] CCS's calculations from financial information obtained pursuant to section 63 notices.
[287] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.21.
[288] Written Representations of Financial Alliance dated 24 July 2015, paragraph 67.
[289] Written Representations of Avallis dated 10 July 2015, paragraph 5.2.6; Written Representations of Financial Alliance dated 24 July 2015, paragraph 110; Agreed Record of Financial Alliance's Oral Representations on 4 August 2015, paragraph 22; Written Representations of Frontier dated 6 July 2015, paragraph 2; Written Representations of Promiseland dated 7 July 2015, page 6; Written Representations of PIAS dated 10 July 2015, paragraph 4; Written Representations of WYNNES dated 10 July 2015, paragraph 3.
[290] WYNNES also submitted that its annual turnover is less than [✂] of the FA distribution channel's turnover. However, the turnover of an individual undertaking is not relevant in the assessment of whether an agreement or concerted practice has as its object or effect the appreciable prevention, restriction or distortion of competition.

because of the Parties' aggregate market share of less than 20% and/or SME status, they could not have had an appreciable adverse effect on competition.

228. CCS's estimated aggregate market share of [✂20-30]% in 2013 is based on the Parties' aggregate share of turnover in the relevant market, as explained in paragraph 226 above. LIA's estimates, in contrast, is for the breakdown of premiums received by all life insurance companies in Singapore by channel and does not reflect the Parties' market shares in the relevant market.[291] In any event, as explained in paragraph 224 above, where the aggregate market share of the parties does not exceed 20%, or when the parties to such agreements are SMEs, the agreement between them will generally, though not always, have no appreciable adverse effect on competition. It does not follow that an agreement cannot have an appreciable adverse effect on competition if the aggregate market share of the parties does not exceed 20% or if parties are SMEs.

(ii) Innovative nature of the Fundsupermart Offer

229. The Fundsupermart Offer was an innovative one that allowed iFAST to reach out to a wide client base, save costs and pass on cost savings to clients. In this regard, CCS notes that iFAST had an existing client base of over 50,000 through Fundsupermart [292] and could also reach out to other visitors to Fundsupermart. The traffic at Fundsupermart, including direct e-mailers and regular visitors, is estimated to reach up to over 100,000 over a few months.[293] Further, the incremental cost of launching the Fundsupermart Offer was not very high[294] and the Fundsupermart Offer would have provided an efficient way for iFAST to market the relevant individual life insurance products.

230. CCS further considers that the commission rebate of 50% offered by iFAST was significant and would have allowed consumers to benefit significantly from the cost savings iFAST generated through the Fundsupermart Offer. The wide reach of Fundsupermart coupled with the significant amount of commission rebates would likely have allowed iFAST to compete for the business of other distributors of the Insurers' relevant individual life insurance products to an appreciable extent. The Fundsupermart Offer was especially attractive given the context that FAs generally do not provide commission rebates to policyholders for life insurance products. As some of the Parties (Financial Alliance, RAY, Promiseland) themselves acknowledged, they were

[291] LIA's estimates provide the percentage share of premiums generated by each channel of distribution, including the FA channel, for all insurance companies in Singapore, i.e. it provides an estimate on how much of the aggregate premiums that all insurance companies receive were generated by sales of life insurance products through, *inter alia*, FAs. In contrast, the aggregate market share of the Parties in the relevant market is their aggregate share of commissions paid by NTUC Income, Manulife and TM Life for distributing the relevant individual life insurance products.

[292] Answer to question 8 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.

[293] Answer to question 9 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.

[294] Answer to question 13 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.

concerned about their own customers switching to iFAST or seeking from them rebates similar to those offered by iFAST. The significant media and public interest surrounding the Fundsupermart Offer following its withdrawal is also indicative of its impact on the market. The impact on FAs arising from iFAST's marketing of the relevant individual life insurance products on Fundsupermart with the 50% commission rebate is described in paragraphs 112 to 121 above.

231. Financial Alliance and Promiseland, in their representations, submitted that the withdrawal of the Fundsupermart Offer could not have had a significant effect on the market because the Fundsupermart Offer was not innovative.[295] The reason given was that the three components, i.e. (i) the use of an existing client database; (ii) the offering of commission rebates; as well as (iii) the use of a website to sell insurance products; are not in themselves, innovative.[296] Financial Alliance and Promiseland also submitted that a wide reach need not translate to a significant impact and the Fundsupermart Offer was not expected to have a high take up rate.[297]

232. CCS notes the Parties' submissions that the individual components (i), (ii) and (iii) above are not in themselves new in the market. However, as set out in paragraphs 229 and 230 above, the Fundsupermart Offer was the only one of its kind at the time of its introduction; combining all three components listed above. It introduced a new business model which enabled businesses to sell life insurance products to a large number of potential customers efficiently, on one hand; and enabled customers to purchase life insurance products at lower prices, on the other. The significant media and public interest surrounding the Fundsupermart Offer following its withdrawal is also indicative of its impact on the market. Further, if the Fundsupermart Offer had remained in the market, it could have resulted in a change in mode of competition – other distributors of life insurance products may have responded by offering commission rebates. CCS has highlighted the client base and website traffic figures above to demonstrate the potential reach and impact of the Fundsupermart Offer. In the present case, the actual scale of iFAST's life insurance operations and reach of Fundsupermart in distributing life insurance products at the time the Fundsupermart Offer was withdrawn from the market are not indicative of the degree of the effect that the Conduct had on competition in Singapore.

233. Financial Alliance and Frontier compared the Fundsupermart Offer to the offer of Direct Purchase Insurance ("DPI") products by insurers; and submitted that the limited purchase of DPI products suggests that the Fundsupermart Offer would not have had a significant impact on the market. CCS is of the view that

[295] Written Representations of Financial Alliance dated 24 July 2015, paragraph 58; Written Representations of Promiseland dated 7 July 2015, page 8.
[296] Written Representations of Financial Alliance dated 24 July 2015, paragraph 59.
[297] Written Representations of Financial Alliance dated 24 July 2015, paragraph 60; Written Representations of Promiseland dated 7 July 2015, page 8.

the offer of DPI products is not comparable with the Fundsupermart Offer as DPI products are sold without FAs' advice and are offered on the respective insurer's website that would not have easily captured the attention of the FA's clients who use Fundsupermart for unit trust and other financial information. Further, the Fundsupermart Offer comprised the very same life insurance products that were being offered by the FAs, while DPI products are not offered by the FAs but are standardised and have a limited set of options in terms of features. Hence, the take up rate of DPI products is not indicative of the degree of the effect that the Conduct had on competition in Singapore.

234. Promiseland, in its representations, further submitted that iFAST had only four staff who were licensed to advise and distribute life insurance in May 2013; the term insurance commissions are the smallest of all life insurance products; iFAST only distributes for three insurers; and estimated that iFAST would not have been able to handle a high volume of business as it was distributing life insurance with advice.[298]

235. However, these representations are premised on iFAST not scaling up its operations to support the Fundsupermart Offer. The facts revealed that iFAST wanted to be the "first-mover" which means that it is not unforeseeable that iFAST would have invested more resources if the Fundsupermart Offer had been successful. In his interview with CCS on 25 September 2013, [✂] of iFAST explained:

> "*We chose the timing of entry, and attempted to enter at a time when entry would be most acceptable. We stayed away from entering this space for 12 years to avoid such a backlash. We felt the landscape was changing with the MAS FAIR Review. .. Eventually someone will enter with this model if not us. …*"[299]

236. In any event, as mentioned above, the scale of iFAST's life insurance operations at the time the Fundsupermart Offer was withdrawn from the market is not indicative of the degree of the effect that the Conduct had on competition in Singapore.

(iii) <u>Actual withdrawal of the Fundsupermart Offer</u>

237. The most direct impact of the Conduct is that iFAST actually withdrew the Fundsupermart Offer, i.e. the Conduct had the actual effect of removing a competing offer in the market. The withdrawal of the Fundsupermart Offer prevented the market from shifting to a more competitive state. CCS also notes that iFAST did not reintroduce its offer for more than a year after withdrawing

[298] Written Representations of Promiseland dated 7 July 2015, page 8.
[299] Answer to question 26 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.

it. Subsequent to CCS issuing its PID on 28 May 2015, iFAST made a new offer in relation to individual life insurance products on Fundsupermart in August 2015. In the context that the Fundsupermart Offer was an innovative offer with a wide reach, the Conduct, in bringing about the withdrawal of the Fundsupermart Offer, likely had an appreciable effect on competition in the distribution of the Insurers' relevant individual life insurance products.

238. Financial Alliance, Promiseland and PIAS also submitted in their representations that iFAST did not withdraw because of the Conduct, and that there were other considerations for iFAST's withdrawal of the Fundsupermart Offer.[300] Financial Alliance and IPP further submitted in their representations that they had no power to influence iFAST's decisions.[301] The evidence before CCS shows that the Conduct was, at the very least, a material factor for iFAST's withdrawal of the Fundsupermart Offer – see paragraphs 156 to 168 above. For example, [✂] of iFAST explained iFAST's reason for withdrawing the Fundsupermart Offer:

> "*We wanted to pacify the FAs as they are significant contributors to iFAST's revenues*".[302]

> "*…iFAST was concerned about the potential loss of existing business and loss of potential new business for its B2B business. The reaction of the FAs was a more critical consideration when deciding whether to withdraw the selling of life insurance products from Fundsupermart*".[303]

239. [✂] of iFAST also explained the reasons behind iFAST's decision to withdraw the Fundsupermart Offer and iFAST's vulnerability to a collective negative reaction from FAs:

> "*We expected backlash from people who use the unit trust platform under the B2B business, the FAs. They are essentially clients of iFAST.*
> *As FAs decide which platform they use, the main backlash would come from them. This might affect the amount of business on B2B*

[300] Written Representations of Financial Alliance dated 24 July 2015, paragraphs 76 to 95; Agreed Record of Financial Alliance's Oral Representations on 4 August 2015, paragraphs 17 to 20; Written Representations of Promiseland dated 7 July 2015, page 2 of cover letter; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 24; Written Representations of PIAS dated 10 July 2015, paragraph 3.
[301] Written Representations of Financial Alliance dated 24 July 2015, paragraphs 96 to 100; Agreed Record of Financial Alliance's Oral Representations on 4 August 2015, paragraph 31; Written Representations of IPP dated 10 July 2015, paragraphs 63 to 67; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraphs 10 and 14.
[302] Answer to question 48 of Notes of Information/Explanation provided by [✂] (iFAST) on 11 December 2013.
[303] Answer to question 56 of Notes of Information/Explanation provided by [✂] (iFAST) on 11 December 2013.

side as FAs might not want to give us business or decide to pull out some existing business".[304]

"*…If we had continued with the 50% rebate even after a very negative reaction from a very large part of the industry, it is likely that the negative emotion would translate into significant negative impact on our business for the B2B.*"[305]

"*Q129.* *To what extend* [sic] *this email from Vincent Ee affected* [✂] *decision to stop commission rebates and stop selling life insurance products?*

A: *It is one of the considerations. It is something that* [✂] *take into account of in making a decision.*

…

Q172. *You earlier said that there were multiple considerations before coming to the decision to top* [sic] *the rebate promotion? What were* [✂] *main considerations that influence* [✂] *decision?*

A: *Yes. The main consideration is that there is an industry wide negative sentiment out there. Most of the users of our B2B platform are not happy about it and if we don't stop I think it would be very difficult to prevent a negative impact on our B2B business*".[306]

240. Not only did iFAST attribute the withdrawal to pressure from the FAs, the Parties themselves in contemporaneous email exchanges recognised their material role in bringing about the withdrawal of the Fundsupermart Offer.

241. Shelton Chellappah of IPP, for example, when asked by [✂] of NTUC Income if he was aware of the withdrawal of the Fundsupermart Offer, responded "*Yes. We exerted considerable pressure to get this outcome*".[307] In preparing its response to the query from the Straits Times, AFA stated that: "*We are glad that it has taken our views into consideration and has decided to withdraw the advertisement*".[308] Augustine Lee of Frontier, who was also AFA's president at the time, sent an email to Lim Chung Chun (iFAST) to thank him "*for his decision to withdraw the offer as requested by the AFA*".[309]

[304] Answer to question 23 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[305] Answer to question 130 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[306] Answers to questions 107, 129 and 172 of Notes of Information/Explanation provided by [✂] (iFAST) on 25 September 2013.
[307] Notes of Information/Explanation provided by Shelton Chellappah (IPP) on 26 March 2014, SC-029, page 2.
[308] Information provided by Frontier on 21 January 2014 pursuant to the section 64 Notice issued by CCS dated 21 January 2014, AL-016, pages 2 and 3.
[309] Answer to question 29 of Notes of Information/Explanation provided by Augustine Lee (Frontier) on 21 January 2014.

(iv) Conclusion on adverse effects on competition

242. To summarise, CCS is not legally required to find an appreciable adverse effect in order to make a finding that an agreement or concerted practice falls within the scope of the section 34 prohibition. Nonetheless, CCS has considered whether the Conduct appreciably prevented, restricted or distorted competition in Singapore. In its considerations, CCS has found that the aggregate market share of the Parties in 2013 was [✂20-30]%. In addition to the aggregate market share of the Parties, CCS considered other factors which further establish that the Conduct appreciably prevented, restricted or distorted of competition in Singapore; in particular, the innovative nature of the Fundsupermart Offer; and the actual withdrawal of the Fundsupermart Offer.

243. Based on all the above considerations, CCS concludes that the Conduct was likely to appreciably prevent, restrict or distort competition in the distribution of the Insurers' relevant individual life insurance products.

Burden of proof

244. Avallis, in its representations, submitted that, relying on the authority of *Coats Holdings and Coats v Commission*,[310] CCS must find that there can be no infringement by Avallis each time the facts provide plausible alternative explanations, or simply where there are no facts at all to justify a case.[311] As such, Avallis submits that CCS has failed to discharge the burden of proof for the infringement.

245. In considering whether CCS has met the legal burden of proof, CCS reiterates that the legal standard required is that of the balance of probabilities.[312] The relevant question therefore is whether on a global assessment of all the evidence gathered by CCS, the evidence is sufficient to demonstrate that the existence of an anti-competitive agreement is more likely than not. As demonstrated in paragraphs 102 to 178 above, CCS has relied upon a global assessment of all the evidence including documentary evidence of contemporaneous minutes of meetings and emails, as well as interviews conducted pursuant to its statutory powers to establish the infringement against the Parties. On a balance of probabilities, CCS finds that the evidence is sufficient to demonstrate the existence of an anti-competitive agreement.

246. Further, Avallis, in its representations, submitted that CCS's use of *Aalborg Portland* as legal authority on burden of proof for its decision was erroneous as

[310] Case T-36/05 *Coats Holdings Ltd and J & P Coats Ltd v Commission* [2007] ECR II-110.
[311] Written Representations of Avallis dated 10 July 2015, paragraph 2.2.
[312] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [85].

the facts of the present case are not at all clandestine, with nothing done surreptitiously or with the intent to hide.[313]

247. CCS considers that the principles established in *Aalborg* and the case-law cited above applies to all anti-competitive agreements, not only clandestine cartels as submitted. In any event, the fact the Parties kept a record of the communications does not in itself mean that "the facts of the case at hand are not at all clandestine". As demonstrated in paragraphs 102 to 178 above, the evidence shows that communications were made only between the Parties and persons whom they considered might lend support to their cause. Vincent Ee and the other Parties specifically instructed their FA reps not to speak of the issue to the media and at no time was the content of the AFA meeting, email correspondence or exact events made available to the public.

Participants in the Conduct

248. CCS notes that the EXCO FAs reached an agreement during the AFA EXCO meeting to contact iFAST and the Insurers to voice their unhappiness over the Fundsupermart Offer, and to have iFAST remove the Fundsupermart Offer. Vincent Ee of Financial Alliance was designated by the EXCO FAs to write to iFAST and the Insurers on this matter and the EXCO FAs were copied on Vincent Ee's emails with iFAST. Vincent Ee also updated the EXCO FAs on his contact with the Insurers.

249. The evidence further shows that IPP and PIAS received Vincent Ee's email exchanges with iFAST, voiced support for Vincent Ee's actions on behalf of FAs, contacted iFAST to voice unhappiness with the Fundsupermart Offer, and informed Vincent Ee about their communications with iFAST. IPP and PIAS therefore contributed by their own conduct to the common objectives of the Parties.

250. CCS also notes that none of the Parties had publicly distanced itself from the Conduct. As stated by the ECJ in *Aalborg*, "*a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, effectively encourages the continuation of the infringement and compromises its discovery. That complicity constitutes a passive mode of participation in the infringement which is therefore capable of rendering the undertaking liable in the context of a single agreement*".[314]

251. WYNNES, in its representations, submitted that Carol Seah attended the AFA EXCO meeting in her personal capacity as the Honorary Secretary of AFA and

[313] Written Representations of Avallis dated 10 July 2015, paragraph 2.5.
[314] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland A/S and Others v Commission* [2004] ECR I-0123, at [84].

not as a representative of WYNNES.[315] This representation is untenable as Carol Seah was the CEO of WYNNES and was able to attend the AFA EXCO meeting by virtue of WYNNES being a member of AFA. WYNNES was the AFA member, not Carol Seah, and Carol Seah was the representative of WYNNES in AFA.

252. Avallis and Promiseland, in their representations, submitted that they were not participants to the Conduct as they were not involved in furthering the Conduct. Avallis, in its representations, submitted that the alleged agreement and/or concerted practice is not a restriction of competition by object and the mere attendance of Avallis at the AFA EXCO meeting is insufficient to show that Avallis had participated in the agreement and/or concerted practice.[316] Promiseland, in its representations, submitted that David Choo did not even read Vincent Ee's emails until Monday, 5 May 2013, after the Fundsupermart Offer was already withdrawn.[317] Promiseland further represented that there were differences in the Parties' concerns and motives and David Choo's concern was only about the Fundsupermart Offer being an inducement and therefore unfair.[318]

253. CCS finds that the evidence, as summarised in paragraphs 102 to 178 above, shows that the Conduct was an agreement and/or concerted practice to prevent, restrict or distort competition by object. Avallis did not provide any evidence to show that its CEO, Mohamed Salim, had publicly distanced himself from the Conduct. In his interview with CCS on 21 January 2014, Mohamed Salim said "*I neither supported or objected to what Vincent Ee proposed in document MS-009*".[319]

254. Promiseland also did not produce any evidence to show that David Choo of Promiseland had publicly distanced himself from the Conduct when he was at the AFA EXCO meeting. On the contrary, the evidence shows that David Choo of Promiseland highlighted the Fundsupermart Offer at the AFA EXCO meeting and that it was unfair; he has stated in his interview with CCS on 15 May 2014 that the Fundsupermart Offer was unfair to other FAs as the commission rebate will affect the whole industry.[320]

255. Irrespective of whether Avallis and Promiseland played only a limited part in or were fully committed to the implementation of the anti-competitive agreement,

[315] Written Representations of WYNNES dated 10 July 2015, paragraph 1.
[316] Written Representations of Avallis dated 10 July 2015, paragraphs 4.7 and 4.18.
[317] Written Representations of Promiseland dated 7 July 2015, page 6; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraph 45.
[318] Written Representations of Promiseland dated 7 July 2015, page 2 of cover letter; Agreed Record of Promiseland's Oral Representations on 6 August 2015, paragraphs 5, 6 and 18.
[319] Answer to question 17 of Notes of Information/Explanation provided by Mohamed Salim (Avallis) on 21 January 2014.
[320] Answer to question 26 of Notes of Information/Explanation provided by David Choo (Promiseland) on 15 May 2014.

it does not exonerate them from being a party to that anti-competitive agreement. [321] Vincent Ee was appointed to represent the Parties in implementing the Conduct and no further action was required on the part of Avallis or Promiseland.

256. Furthermore, CCS notes that the mere participation by an undertaking in a meeting with an anti-competitive purpose, without expressing manifest opposition to or publicly distancing itself from, the same is tantamount to a tacit approval of that unlawful initiative. In order to avoid liability by publicly distancing itself, an undertaking must inform the other companies represented with sufficient clarity, that, despite appearances, it disagrees with the unlawful steps which they have taken. The rationale behind a narrow interpretation of the concept of public distancing is to ensure that the law is not too easily evaded.[322] By not publicly distancing itself from its content or reporting it to the administrative authorities, the undertaking 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. The fact that an undertaking does not act on the outcome of a meeting having an anti-competitive purpose does not relieve it of responsibility for the fact of its participation.

257. Moreover, there is corroborating evidence to show that Promiseland's conduct after the withdrawal of the Fundsupermart Offer was consistent with that of a participant in the Conduct. David Choo of Promiseland sent an email to Lim Chung Chun of iFAST on 6 May 2013 at 6.01pm stating the following:

> "*I had very adverse reaction too from my Reps. Thanks for correcting the problem quickly*".[323]

258. IPP, in its representations, submitted that IPP had acted independently throughout and was not present at or notified of the AFA EXCO meeting.[324] Whilst CCS accepts that IPP did not attend the AFA EXCO meeting, CCS notes that, as highlighted in paragraphs 139 to 148 above, Shelton Chellappah replied Vincent Ee (Financial Alliance) by email on 3 May 2013 at 2.15 p.m. to show his support of Vincent Ee's actions even though he was not obliged to do so. The contents of the 1st Email were sufficient notice to Shelton Chellappah of IPP of the Conduct. Shelton replied Vincent Ee to agree with actions taken to implement the Conduct and thereafter actively undertook other follow up

[321] See *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.11.
[322] *Re Price fixing of monthly salaries of new Indonesian Foreign Domestic Workers by Employment Agencies* [2011] SGCCS 4, at [52], [54] and [56].
[323] Information provided by Promiseland on 15 May 2014 pursuant to the section 63 Notice issued by CCS dated 6 May 2014, DC-004 at page 1.
[324] Written Representations of IPP dated 10 July 2015, paragraph 8; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 4.

actions to further the Conduct. As noted in paragraph 142, Shelton Chellappah explained that he was showing support "*for the initiatives and actions takn* [sic] *by the AFA"* and was "*telling AFA to carry on*". It is therefore clear that Shelton Chellappah of IPP participated in the Conduct.

259. CCS therefore concludes that all the Parties were participants in the Conduct.

CHAPTER 3: INFRINGEMENT DECISION

260. CCS is satisfied that there is sufficient evidence in paragraphs 102 to 178 to find that the Parties infringed the section 34 prohibition by entering into an agreement and/or concerted practice with the object of restricting, preventing or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

261. CCS therefore makes a decision that the Parties have infringed the section 34 prohibition and imposes on the Parties the penalties listed at paragraph 415 below in respect of participation in the Conduct.

CHAPTER 4: CCS'S ACTION

A. Financial Penalties – General Points

262. Under section 69(2)(d) of the Act, CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

263. Before exercising the power to impose a financial penalty, CCS must be satisfied, as a threshold condition, that the infringement has been committed intentionally or negligently.[325] This is similar to the position in the EU and the UK. In this respect, CCS notes that in determining whether this threshold condition is met, both the EC and the Competition and Markets Authority ("CMA") are not required to decide whether the infringement was committed intentionally or negligently, so long as they are satisfied that the infringement was *either* intentional *or* negligent.[326]

[325] Section 69(3) of the Act and *CCS Guidelines on Enforcement*, paragraphs 4.3 to 4.11.
[326] Case C-137/95P *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and Others v Commission of the European Communities* [1996] ECR I-1611; and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [452] to [458].

264. As established in the *Pest Control Case*,[327] the *Express Bus Operators Case*,[328] the *Electrical Works Case*,[329] the *Freight Forwarding Case*,[330] and the *Express Bus Operators Appeals Nos. 1 and 2*,[331] circumstances in which CCS might find that an infringement has been committed intentionally include the following:

(i) the agreement has as its object the restriction of competition;

(ii) the undertaking in question is aware that its actions will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or

(iii) the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

265. 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.[332]

266. CCS finds that the Parties have engaged in an agreement and/or concerted practice that had as its object of preventing, restricting or distorting competition, which by its very nature would have been committed intentionally. As noted by Vincent Ee in the 1st Email, iFAST was considered to have "*quietly entered into direct competition with FA industry on life insurance*". There is also evidence that the Parties were aware that iFAST was competing with them for individual life insurance business using the Fundsupermart Offer. For instance, Raymond Ng of RAY stated in his interview with CCS that:

> "*When someone like Fundsupermart gives a 50% rebate to undermine the FAs' practices and way of distributing life insurance products, it affects the industry's livelihood. …with a 50% rebate, customers can get advice from FAs and then go to purchase life insurance products from Fundsupermart for the 50% rebate. …As an*

[327] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[328] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[329] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[330] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore*, at [635] to [636].
[331] *Konsortium Express & Others v CCS, Appeals Nos. 1 and 2 of 2009* [2011] SGCAB 1, at [141] to [143].
[332] *CCS Guidelines on Enforcement*, paragraph 4.10.

association for the FA industry, AFA has to react to such an activity that undermines the livelihood of the FA industry".[333]

267. David Choo of Promiseland, in his interview with CCS indicated that the Fundsupermart Offer was unfair to other FAs, stating that:

> "*…I also said it was unfair. When we do business, we talk to the client, do a fact find, do an analysis then recommend a product. So it is a very involved process. It involves time and effort. If by offering a 50% commission rebate, you get people coming to you, it can be quite unfair…*".[334]

268. Avallis, in its representations, submitted that it had no intention to act anti-competitively and further, did not act negligently. Avallis submitted that no internal documents were generated by Avallis to show any participation or even any knowledge by Avallis in any agreements, or any deliberate concealment of any agreement or practice by Avallis.[335]

269. As noted in paragraph 264 above, the circumstances in which CCS might find that an infringement has been committed intentionally include the following:

(i) the agreement has as its object the restriction of competition;

(ii) the undertaking in question is aware that its actions will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or

(iii) the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

270. Further, 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.[336]

271. As summarised in paragraphs 266 and 267 above, CCS has found that the Conduct has as its object the prevention, restriction or distortion of competition and that the Parties were aware that iFAST was competing with them for individual life insurance business using the Fundsupermart Offer.

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[333] Answer to question 23 of Notes of Information/Explanation provided by Raymond Ng (RAY) on 13 March 2014.
[334] Answer to question 26 of Notes of Information/Explanation provided by David Choo (Promiseland) on 15 May 2014.
[335] Written Representations of Avallis dated 10 July 2015, paragraph 6.
[336] *CCS Guidelines on Enforcement*, paragraph 4.10.

272. CCS further notes that all the Parties distribute the relevant individual life insurance products and the Fundsupermart Offer is a competing offer in the distribution of the relevant individual life insurance products. CCS considers that the evidence therefore shows that the Parties could not have been unaware that pressurising iFAST into withdrawing the Fundsupermart Offer would be restricting competition and likely had infringed the section 34 prohibition intentionally. At the very least, the Parties ought to have known that pressurising iFAST into withdrawing the Fundsupermart Offer would result in a restriction or distortion of competition. CCS is therefore satisfied that each Party intentionally or negligently infringed the section 34 prohibition.

273. CCS therefore imposes a penalty on the Parties as set out in the following section.

B. Calculation of Penalties

274. The *CCS Guidelines on the Appropriate Amount of Penalty* provides that the two objectives in imposing any financial penalty are to reflect the seriousness of the infringement, and to deter undertakings from engaging in anti-competitive practices.[337] In calculating the amount of penalty to be imposed, CCS will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement (the "relevant turnover") in the undertaking's last business year, the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors. CCS adopted this approach in the *Pest Control Case*,[338], the *Express Bus Operators Case*,[339] the *Electrical Works Case* [340] and the *Freight Forwarding Case*, [341] and similarly adopts this approach for the present case.

275. CCS notes that the EC and the CMA[342] 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.

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[337] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 1.6.
[338] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[339] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[340] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[341] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore*, at [648].
[342] The CMA acquired its powers on 1 April 2014 when it took over many of the functions of the Competition Commission and the Office of Fair Trading ("OFT"), see https://www.gov.uk/government/organisations/competition-and-markets-authority/about.

(i) Seriousness of the Infringements and Relevant Turnover

276. CCS considers that the seriousness of the infringement and the relevant turnover of each Party would be taken into account by setting the starting point for calculating the base penalty amount as a percentage rate of each Party's relevant turnover in each infringement.

Relevant turnover

277. In this case, the relevant turnover for each infringement would be the turnover from the relevant market, i.e. the distribution of the Insurers' relevant individual life insurance products in Singapore.[343]

278. Where a party is unable or unwilling to provide information to determine its relevant turnover, CCS will impose a penalty that will reflect the seriousness of the infringement and with a view to deterring the undertaking as well as other undertakings from engaging in similar practices.[344]

279. The relevant turnover in the last business year will be considered when CCS assesses the impact and effect of the infringement on the market.[345] 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.[346] In this regard, the "last business year" is the business year preceding the date of CCS's infringement decision. The financial penalty to be imposed on each party has been calculated accordingly.

280. In their representations, Avallis, Financial Alliance, IPP, Promiseland and PIAS submitted that the relevant turnover should not include turnover derived from policies in force, i.e. turnover from policies existing before the business year used for calculating penalties.[347] Avallis submitted that any alleged agreement to make iFAST withdraw the Fundsupermart Offer would not have affected policies that had already been sold to consumers. IPP submitted that turnover from prior existing business would not be impacted by entry of the Fundsupermart Offer. Promiseland submitted that the impact is only on new business. PIAS submitted that new business was the commercial area iFast was focusing on. PIAS also submitted that the gross turnover used to calculate PIAS's penalty includes products sold in alternative channels to online

[343] For each Party, the relevant turnover would be all the turnover received by the Party for distributing the Insurers' relevant individual life insurance products.
[344] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 1.6.
[345] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.4.
[346] Competition (Financial Penalties) Order 2007, paragraph 3 and *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.5.
[347] Written Representations of Avallis dated 10 July 2015, paragraph 7.2.2; Written Representations of Financial Alliance dated 24 July 2015, paragraph 125; Written Representations of IPP dated 10 July, paragraph 93; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 17; Written Representations of Promiseland dated 7 July 2015, page 9; Written Representations of PIAS dated 10 July 2015, paragraph 2.

products. PIAS submitted that, therefore, the penalty for PIAS is calculated in a way that can reasonably be regarded as discriminating against PIAS compared to other parties.[348]

281. As highlighted in paragraph 277 above, relevant turnover used in the calculation of penalties is each Party's entire turnover derived from the relevant market, i.e. the distribution of the Insurers' relevant individual life insurance products in Singapore. Relevant turnover is not necessarily equivalent to turnover that is obtained directly as a result of the infringing conduct. CCS notes that the audited financial statements of the Parties also include turnover from both new business and policies in force as revenue. In taking each Party's entire turnover derived from the relevant market in the business year used for calculating penalties, CCS is not taking into account future turnover derived from policies sold in the business year used for calculating penalties, i.e. new policies sold can generate future turnover beyond the business year used for calculating penalties but CCS has not included this future turnover derived from policies sold in the business year used for calculating penalties. CCS has applied the same basis for calculating relevant turnover to all the Parties.

282. Financial Alliance, in its representations, submitted that the relevant turnover should not include turnover from distributing endowment products as [✂] (iFAST) had said in his interview with CCS on 25 September 2013 that iFAST did not plan to promote or recommend endowment policies.[349] Promiseland, in its representations, submitted that CCS should only include turnover from distributing term insurance products, as to include all turnover except for investment-linked products and medical products is not equitable in the assessment of market impact.[350]

283. CCS notes that information provided by iFAST on 10 March 2015 pursuant to CCS's section 63 notice confirmed that the Fundsupermart Offer included all types of the Insurers' individual life insurance products in Singapore except ILPs and CPF Medisave Products. The description of the Fundsupermart Offer on Fundsupermart when it was launched had excluded only CPF Medisave Products. [351] CCS considers that the distribution of all types of the Insurers' individual life insurance products in Singapore (except ILPs and CPF Medisave Products) have been affected by the Conduct, and therefore should be included in the relevant market and consequently the relevant turnover.

Seriousness

[348] Written Representations of PIAS dated 10 July 2015, paragraph 2.
[349] Written Representations of Financial Alliance dated 24 July 2015, paragraph 125.
[350] Written Representations of Promiseland dated 7 July 2015, page 8.
[351] Information provided by iFAST on 13 January 2015 pursuant to the section 63 Notice issued by CCS dated 26 December 2014, document titled "Introduction"; Information provided by iFAST on 10 March 2015 pursuant to the section 63 Notice issued by CCS dated 3 March 2015, response to question 2.

284. As set out in the *CCS Guidelines on the Appropriate Amount of Penalty*, the amount of the financial penalty will depend in particular upon the nature of the infringement and how serious and widespread it is.[352] In assessing the seriousness of the infringement, CCS will consider a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement and the effect on competitors and third parties. The impact and effect of the infringement on the market, direct or indirect, will also be an important consideration.[353]

285. The seriousness of the infringement may also depend on the nature of the infringement and this has been taken into consideration when fixing the starting point of the relevant turnover of the Parties in the calculation of financial penalties.

286. Avallis, in its representations, submitted that the lack of seriousness of the alleged infringement does not warrant a starting point of [✂]% of relevant turnover as the infringement, if any, does not constitute price-fixing, market sharing, bid-rigging (collusive tendering) and limiting or controlling production.[354] Promiseland, in its representations, submitted that the use of [✂]% as a starting point is not equitable.[355] CCS reiterates that the nature of the infringement has been taken into consideration when fixing the relatively low starting point in the calculation of financial penalties.

287. Nature of the product – The relevant market referred to in this decision is the distribution of the Insurers' relevant individual life insurance products in Singapore.

288. Structure of the market and market shares of the Parties – CCS notes that there are regulatory entry barriers to the relevant market as a distributor of life insurance products in Singapore needs to meet the requirements in the Financial Advisers Act in order to be allowed to arrange life insurance contracts. Notwithstanding the regulatory entry barriers, there are various channels available for the distribution of the Insurers' relevant individual life insurance products in Singapore, including the tied agents of each insurer, FAs and banks. The Parties' estimated combined market share in the relevant market was [✂20-30]% in 2013.

289. Effect on customers, competitors and third parties – It is difficult to quantify the amount of any loss caused by the agreement and/or concerted practice to customers in the relevant market. This is due to the unavailability of information on the quantity of customers impacted and the prices customers

[352] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.2.
[353] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.3.
[354] Written Representations of Avallis dated 10 July 2015, paragraph 7.4.2.
[355] Written Representations of Promiseland dated 7 July 2015, page 9.

would have paid under the "counterfactual" scenario,[356] and the short timespan in which the Fundsupermart Offer was allowed to run.

290. That said, iFAST could reach out to an existing client base of over 50,000 and other visitors to the Fundsupermart website. CCS also notes that the Fundsupermart Offer was particularly attractive because the general practice of FAs was not to provide commission rebates to policyholders. The Conduct prevented the market from shifting to a more competitive state. Since the Fundsupermart Offer was withdrawn on 3 May 2013 following the Conduct of the Parties, iFAST did not reintroduce an offer on individual life insurance products on Fundsupermart until August 2015.

291. PIAS, in its representations, submitted that the aggregate market share of the Parties at [✂20-30]% estimated by CCS is significantly above the aggregate market share recognised by LIA, and hence an assumption used in assessing the seriousness of the infringement is contradicted, and the starting point should be reduced.[357] As highlighted in paragraph 226 above, the aggregate market share of the Parties is based on the Parties' aggregate share of turnover (which is calculated based on the quantum of commissions) in the relevant market, i.e. the distribution of the Insurers' relevant individual life insurance products in Singapore. LIA's estimates, in contrast, is for the breakdown of premiums received by all life insurance companies in Singapore by channel and does not reflect the Parties' market shares in the relevant market.

292. Genuine uncertainty – Avallis, in its representations, submitted that there was genuine uncertainty on Avallis' part as to whether the Conduct constituted an infringement.[358] Promiseland submitted that it was not in David Choo's mind that his involvement in the AFA EXCO meeting itself rendered Promiseland liable for an infringement of competition law.[359] IPP, in its representations, submitted there was genuine uncertainty on the part of IPP as to whether there was any section 34 infringement in the first place as the matters and conduct in question developed over a very short and compressed time frame. IPP submitted that there was no real time for planning, reflection or active collusion on IPP's part; IPP's actions were reactive as opposed to pro-active; IPP was not part the AFA EXCO members that discussed the potential competition constraints at the time; there is no precedent like this in the local case-law; and IPP had legitimate concerns over the Fundsupermart Offer in principle as the 50% commission rebate, if implemented without proper safeguards, could turn into an inducement to consumers.[360]

[356] The counterfactual scenario is one where the infringing conduct did not occur, i.e., a scenario in which the Parties did not engage in the Conduct.
[357] Written Representations of PIAS dated 10 July 2015, paragraph 4.
[358] Written Representations of Avallis dated 10 July 2015, paragraph 7.7.4.
[359] Written Representations of Promiseland dated 7 July 2015, page 3 of cover letter.
[360] Written Representations of IPP dated 10 July 2015, paragraphs 72 to 74, and 77 to 78.

293. CCS is of the view that the object of the Parties' Conduct to prevent a competitor from providing a lower cost offer to consumers was clear. In any event, as highlighted in paragraphs 285 to 290 above, in setting the relatively low starting point, CCS has already taken into account the nature of the infringement, nature of the product, the structure of the market, the market shares of the Parties, and the potential effect of the infringement on customers, competitors and third parties.

294. In conclusion, having regard to the nature of the infringement, the nature of the product, the structure of the market, the market shares of the Parties, as well as the potential effect of the infringement on customers, competitors and third parties, CCS considers it appropriate to fix the starting point at [✂]% of relevant turnover for each of the Parties.

(ii) Duration of the Infringements

295. After calculating the base penalty sum, CCS will next consider whether this sum should be adjusted to take into account the duration of the infringements. The duration for which the Parties infringed the section 34 prohibition will depend on when they became party to the agreement(s), and when they ceased to be party to the same. CCS considers that an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement.[361]

296. CCS notes that the agreement and/or concerted practice lasted for two days, i.e. from 2 May 2013 to 3 May 2013. Notwithstanding the short duration of the agreement and/or concerted practice, CCS is of the view that the effects of the infringement were not restricted to the actual period during which the agreement and/or concerted practice took place. iFAST did not reintroduce its offer for more than a year after the withdrawal of the Fundsupermart Offer. iFAST only launched a new offer in relation to individual life insurance products on Fundsupermart in August 2015. The infringement therefore led to the withdrawal of an innovative offer, the effects of which continued significantly beyond the time of the withdrawal.

297. CCS further notes that the duration of an infringement in a section 34 case is of importance insofar as it may have an impact on the penalty that may be imposed for that infringement.[362] Given the consideration that the infringement had a longer-lasting impact, notwithstanding its short duration, CCS is of the view that this is not an appropriate case where the duration should be rounded downwards.

[361] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.8.
[362] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraphs 2.1, 2.7 and 2.8.

298. In their representations, Financial Alliance, Avallis, IPP and Promiseland submitted that the duration should not be a year. Financial Alliance submitted that the duration of the infringement is two days since the agreement or concerted practice only lasted two days, and the fact that iFAST did not re-enter the market with a new offer cannot be attributed to the Conduct.[363] Avallis submitted that Avallis would not gain any long-lasting advantage, such as incumbency, through the withdrawal of the Fundsupermart offer and that any anti-competitive effects from the alleged Conduct were clearly not irreversible – iFAST was and remains free to re-enter the market at any time, and can do so cost-effectively and quickly through its online platform.[364] Avallis submitted that CCS should adopt its approach in a previous case involving Indonesian Foreign Domestic Workers and round off the duration to the nearest month, subject to a minimum of one month; alternatively, the duration should be a maximum of four months, based on the period of time between 2 May 2013 and 17 September 2013 (the date of CCS's first request for information to iFAST, which would have been when iFAST first became aware of CCS's investigation).[365] IPP submitted that it would be unreasonable to maintain a one-year period for the calculation of the financial penalty given that the actual conduct which IPP had participated in was so fleeting.[366] Promiseland submitted that the Fundsupermart Offer would have been withdrawn even without AFA's feedback and that the period or duration of effect should, at the most, be one month.[367]

299. As highlighted in paragraph 238 above, the evidence before CCS shows that the Conduct was, at the very least, a material factor for iFAST's withdrawal of the Fundsupermart Offer. CCS has already noted that an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement. In this particular case, although the Conduct lasted for two days, the effects of the infringement were not restricted to those two days. CCS reiterates that iFAST did not reintroduce its offer for more than a year after the withdrawal of the Fundsupermart Offer. iFAST only launched a new offer in relation to individual life insurance products on Fundsupermart in August 2015. This was after CCS issued its PID on 28 May 2015. CCS is therefore of the view that, as a basis for calculating penalties, a duration of one year is more commensurate with the impact of the Conduct.

300. As such, the duration for the purpose of calculating penalties in this case should be a full year.

(iii) Aggravating and Mitigating Factors

[363] Written representations of Financial Alliance dated 24 July 2015, paragraph 116.
[364] Written Representations of Avallis dated 10 July 2015, paragraph 7.5.6.
[365] Written Representations of Avallis dated 10 July 2015, paragraphs 7.5.3 and 7.5.8.
[366] Written Representations of IPP dated 10 July 2015, paragraph 79; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 20.
[367] Written Representations of Promiseland dated 7 July 2015, page 9.

301. At this next stage, CCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[368] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

302. IPP submitted that financial penalties should be reduced as it operates in a high turnover, low margin industry.[369] PIAS submitted that the financial penalties does not take into account the lower margins that PIAS has on its products as a result of netting off the spread paid to PIAS's advisers.[370] CCS has already taken into account the nature of the product and industry in fixing the starting point for penalty calculations.

303. The adjustments for mitigating and aggravating factors, if any, will be dealt with below for each Party.

(iv) Other Relevant Factors

304. CCS considers that the penalty may be adjusted as appropriate to achieve policy objectives, particularly the deterrence of the Parties and other undertakings from engaging in anti-competitive practices.

305. CCS considers that if the financial penalty imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of deterrence, CCS will adjust the penalty to meet the objectives of deterrence. In the *Express Bus Operators Appeal No. 3*,[371] the CAB revised upwards the financial penalty against Regent Star to S$10,000 to achieve the objective of deterrence.

306. CCS notes that this practice is in line with the position in other competition regimes. For instance, in the UK, the CMA refers to "*The OFT's Guidance as to the Appropriate Amount of Penalty*" which adopts a similar approach.[372]

(v) Maximum Statutory Penalty

307. As stated above, under section 69(2)(d) of the Act, CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years. Pursuant to

[368] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.10.
[369] Written Representations of IPP dated 10 July 2015, paragraph 95; Agreed Record of IPP's Oral Representations on 3 August 2015, paragraph 18.
[370] Written Representations of PIAS dated 10 July 2015, paragraph 2.
[371] *Transtar Travel & Anor v CCS, Appeal No. 3 of 2009* [2011] SGCAB 2, at [106].
[372] OFT 423, *OFT's Guidance as to the Appropriate Amount of Penalty*, September 2012, paragraph 2.11. This guidance, originally published by the OFT, has been adopted by the CMA when it acquired its powers on 1 April 2014. The original text has been retained unamended.

paragraph 3(1) of the Competition (Financial Penalties) Order 2007, the turnover of the undertaking for the purposes of calculating the maximum statutory penalty under section 69(4) of the Act is the applicable turnover for the year preceding the date on which the decision of the Commission is taken or, if figures are not available for that business year, the business year immediately preceding it. In this regard, the "last business year" is the business year preceding the date of CCS's infringement decision. The maximum statutory penalty to be imposed on each party has been calculated accordingly.

C. Penalty for Avallis

308. Starting point: Avallis was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

309. Avallis' financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Avallis for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Avallis' financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on Avallis in this ID. Avallis' relevant turnover figure for the financial year 2014 was S$[✂].[373]

310. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for Avallis the starting point at [✂]% of relevant turnover. The starting amount for Avallis is therefore S$[✂].

311. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

312. Adjustment for aggravating and mitigating factors: Having taken into consideration the degree of cooperation rendered by Avallis, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

313. 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 S$[✂].

[373] Information provided by Avallis dated 26 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

314. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Avallis and to other undertakings and will not be making adjustments to the penalty at this stage.

315. Adjustment to prevent maximum penalty being exceeded:[374] As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Avallis for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Avallis' financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. Avallis' turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$54,788.

316. Representations by Avallis in respect of penalties: Avallis submitted that CCS should have used Avallis' financial figures for the financial year ended 31 December 2014 in its calculation of penalties as this was the last business year before the issuance of the PID on 28 May 2015.[375]

317. As noted in paragraph 309 above, the financial statements of Avallis for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Avallis' financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on Avallis in this ID.

318. Accordingly, CCS concludes that a financial penalty of S$54,788 is to be imposed on Avallis.

D. Penalty for Cornerstone

319. Starting point: Cornerstone was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

320. Cornerstone's financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the

[374] Under section 69(2)(d) of the Act, CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.
[375] Written Representations of Avallis dated 10 July 2015, paragraph 7.3.3.

business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Cornerstone for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Cornerstone's financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on Cornerstone in this ID. Cornerstone's relevant turnover figure for the financial year 2014 was S$[✂].[376]

321. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for Cornerstone the starting point at [✂]% of relevant turnover. The starting amount for Cornerstone is therefore S$[✂].

322. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

323. Adjustment for aggravating and mitigating factors: Having taken into consideration the degree of cooperation rendered by Cornerstone, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

324. 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 S$[✂].

325. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Cornerstone and to other undertakings and will not be making adjustments to the penalty at this stage.

326. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Cornerstone for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Cornerstone's financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. Cornerstone's turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$13,781.

[376] Information provided by Cornerstone dated 25 February 2016, 26 February 2016, 29 February 2016 and 14 March 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

327. Accordingly, CCS concludes that a financial penalty of S$13,781 is to be imposed on Cornerstone.

E. Penalty for Financial Alliance

328. Starting point: Financial Alliance was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance in Singapore.

329. Financial Alliance's financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Financial Alliance for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Financial Alliance's financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on Financial Alliance in this ID. Financial Alliance's relevant turnover figure for the financial year 2014 was S$[✂].[377]

330. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for Financial Alliance the starting point at [✂]% of relevant turnover. The starting amount for Financial Alliance is therefore S$[✂].

331. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

332. Adjustment for aggravating and mitigating factors: CCS notes that the role of an undertaking as a leader in, or an instigator of, an infringement may be an aggravating factor.[378] CCS considers that Financial Alliance acted as a leader in the infringements, by taking the lead in contacting iFAST, the Insurers and other FAs to implement the Conduct. Vincent Ee of Financial Alliance copied the Insurers and other FAs who did not attend the AFA EXCO meeting in his emails to iFAST. Vincent Ee further urged other FAs, including IPP and PIAS, which did not attend the AFA EXCO meeting to voice unhappiness to iFAST about the Fundsupermart Offer. CCS therefore increases the penalty by [✂].

[377] Information provided by Financial Alliance dated 29 February 2016, 1 March 2016 and 3 March 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.
[378] *CCS Guidelines on the Appropriate Amount of Penalty*, paragraph 2.11.

333. Having taken into consideration the degree of cooperation rendered by Financial Alliance, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

334. 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 S$[✂].

335. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Financial Alliance and to other undertakings and will not be making adjustments to the penalty at this stage.

336. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Financial Alliance for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Financial Alliance's financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. Financial Alliance's turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$137,524.

337. Representations by Financial Alliance in respect of penalties: Financial Alliance submitted that it was not a leader or an instigator in the Conduct and Vincent Ee was merely discharging his role in communicating the AFA's position to iFAST.[379]

338. As highlighted in paragraphs 125, 134 and 137 above, Vincent Ee sent emails to Lim Chung Chun, CEO of iFAST, copying FAs, including IPP and PIAS, and the Insurers who were not present at the AFA EXCO meeting. Further, as noted in paragraph 135 above, Vincent included FAs not present at the AFA EXCO meeting in his emails to tell them that he would request that iFAST remove the Fundsupermart Offer immediately and urged all the FAs in the email to stress to iFAST that it cannot take its relationship with FAs for granted. As can be seen from paragraphs 140 and 152 above, Vincent Ee also asked IPP and PIAS, both of which were not at the AFA EXCO meeting, for support in furtherance of the Conduct. CCS therefore concludes that Financial Alliance was a leader in the infringement.

[379] Written Representations of Financial Alliance dated 24 July 2015, paragraphs 118 to 124.

339. Accordingly, CCS concludes that a financial penalty of S$137,524 is to be imposed on Financial Alliance.

F. Penalty for Frontier

340. Starting point: Frontier was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

341. Frontier's financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Frontier for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Frontier's financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on Frontier in this ID. Frontier's relevant turnover figure for the financial year 2014 was S$[✂].[380]

342. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for Frontier the starting point at [✂]% of relevant turnover. The starting amount for Frontier is therefore S$[✂].

343. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

344. Adjustment for aggravating and mitigating factors: Having taken into consideration the degree of cooperation rendered by Frontier, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

345. 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 S$[✂].

346. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to Frontier to act as an effective deterrent to Frontier and to other undertakings which may consider engaging in anti-competitive conduct. As stated above at paragraph 305, CCS will adjust the penalty at this stage to S$[✂].

[380] Information provided by Frontier dated 18 February 2016 and 4 March 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

347. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of Frontier for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used Frontier's financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. Frontier's turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

348. Accordingly, CCS concludes that a financial penalty of S$5,000 is to be imposed on Frontier.

G. Penalty for IPP

349. Starting point: IPP was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

350. IPP's financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of IPP for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used IPP's financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on IPP in this ID. IPP's relevant turnover figure for the financial year 2014 was S$[✂].[381]

351. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for IPP the starting point at [✂]% of relevant turnover. The starting amount for IPP is therefore S$[✂].

352. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

[381] Information provided by IPP dated 26 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

353. Adjustment for aggravating and mitigating factors: Having taken into consideration the degree of cooperation rendered by IPP, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

354. 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 S$[✂].

355. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to IPP and to other undertakings and will not be making adjustments to the penalty at this stage.

356. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of IPP for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used IPP's financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. IPP's turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$239,851.

357. Representations by IPP in respect of penalties: IPP submitted that IPP's involvement in the Conduct was at best unintentional, circumstantial, and/or accidental and (1) it would have pursued the same course of action independently and in any event; (2) IPP was not the ringleader; (3) IPP did not communicate with the rest of AFA; and (4) its conduct in any event only effectively contributed to the withdrawal of a short one-month Fundsupermart Offer (which should be viewed differently and more leniently than having contributed to the withdrawal of an indefinite Fundsupermart Offer). IPP submitted that the financial penalty proposed is disproportionate with the extent and the nature of its involvement.[382]

358. As noted in paragraph 214 above, it is irrelevant whether IPP would have pursued the same course of action independently when IPP became a party to the Conduct, when the evidence shows that IPP participated in the Conduct. As noted in paragraphs 139 and 141 above, Shelton Chellappah (IPP) had actively voiced support for the Conduct and acted on Vincent Ee's request. It is also irrelevant that IPP did not communicate directly with the rest of AFA when IPP did not need to do so to participate in the Conduct. As noted in paragraphs 141

[382] Written Representations of IPP dated 10 July 2015, paragraphs 44 to 60.

and 142 above, Shelton Chellappah had already supported the Conduct by expressing "*support as a member of AFA to the Vice President of AFA for the initiatives and actions takn* [sic] *by the AFA.*" and by "*telling AFA to carry on*".

359. In determining financial penalties, CCS considers whether an undertaking played the role as a leader in, or an instigator of, the infringement. If so, this is an aggravating factor in the calculation of financial penalties. In calculating IPP's financial penalties, this aggravating factor is not applicable because IPP is not a leader or instigator of the Conduct and accordingly has not increased IPP's penalties in this regard. However, the absence of an aggravating factor does not equate to there being a mitigating factor.

360. IPP further submitted that its cooperation and assistance of CCS's investigation should be accorded a greater percentage discount. CCS has already fully considered the degree of IPP's cooperation when considering mitigating factors. CCS therefore considers that there should be no further reduction in penalties imposed on IPP.

361. Accordingly, CCS concludes that a financial penalty of S$239,851 is to be imposed on IPP.

H. Penalty for JPARA

362. Starting point: JPARA was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

363. JPARA's financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of JPARA for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used JPARA's financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on JPARA in this ID. JPARA's relevant turnover figure for the financial year 2014 was S$[✂].[383]

364. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for JPARA the starting point at [✂]% of relevant turnover. The starting amount for JPARA is therefore S$[✂].

[383] Information provided by JPARA dated 23 February 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

365. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

366. Adjustment for aggravating and mitigating factors: CCS considers that JPARA has not provided information beyond what was required of them by CCS. CCS therefore reduces the penalty by [✂].

367. 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 S$[✂].

368. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to JPARA to act as an effective deterrent to JPARA and to other undertakings which may consider engaging in anti-competitive conduct. As stated above at paragraph 305, CCS will adjust the penalty at this stage to S$[✂].

369. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of JPARA for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used JPARA's financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. JPARA's turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

370. Representations by JPARA in respect of penalties: JPARA submitted that its penalty should not be adjusted upward for minimum deterrence effect because JPARA did not have the intention to restrict or pressurise iFAST and had wanted to maintain the professionalism of the industry.[384] Subjective intentions are not necessary to find that the Conduct had the object of restricting competition and considerations of other objectives is irrelevant to finding that the Conduct infringed section 34 of the Act. JPARA participated in the Conduct and CCS considers that the financial penalty imposed against JPARA without an uplift to S$[✂] is insufficient to meet the objectives of deterrence.

[384] Written Representations of JPARA dated 10 July 2015, paragraph 3.

371. Accordingly, CCS concludes that a financial penalty of S$5,000 is to be imposed on JPARA.

I. Penalty for PIAS

372. Starting point: PIAS was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

373. PIAS's financial year commences on 1 July and ends on 30 June. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision. Hence, CCS has used PIAS's financial figures for the financial year ended 30 June 2015 in the calculation of the financial penalty to be imposed on PIAS in this ID. PIAS's relevant turnover figure for the financial year 2015 was S$[✂].[385]

374. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for PIAS the starting point at [✂]% of relevant turnover. The starting amount for PIAS is therefore S$[✂].

375. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

376. Adjustment for aggravating and mitigating factors: CCS considers that PIAS has not provided information beyond what was required of them by CCS. CCS therefore reduces the penalty by [✂].

377. 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 S$[✂].

378. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to PIAS and to other undertakings and will not be making adjustments to the penalty at this stage.

379. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision. Hence, CCS has used PIAS's financial figures for the financial year ended 30 June 2015 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. PIAS's turnover figure for the financial year 2015 for the purpose of

[385] Information provided by PIAS dated 25 February 2016, 26 February 2016, 2 March 2016 and 4 March 2016 pursuant to the section 63 Notice issued by CCS dated 29 January 2016.

calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$405,114.

380. Representations by PIAS in respect of penalties: PIAS submitted that it assumes that penalties for a number of the other Parties were reduced in consideration of the mitigating factor that these other Parties wrote letters to iFAST, following commencement of CCS's investigation, to state that they did not object to iFAST's business model. In contrast to the standard form letters sent by these other Parties to iFAST, PIAS submitted that it had taken concrete steps to indicate its support of iFAST and its business model and that failure by CCS to take these into account in mitigation of the penalty amounts to material discrimination against PIAS.[386] PIAS's assumption is erroneous and the letters that other Parties wrote were not taken into account as a mitigating factor in the calculation of penalties.[387] Mitigating reductions in penalties for each Party, if any, were applied based on the Party's cooperation with CCS. The letters sent by the other Parties to iFAST and the steps taken by PIAS indicating its support for iFAST and its business model, following commencement of CCS's investigation, do not constitute cooperation with CCS.

381. Accordingly, CCS concludes that a financial penalty of S$405,114 is to be imposed on PIAS.

J. Penalty for Promiseland

382. Starting point: Promiseland was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

383. Promiseland's financial year commences on 1 April and ends on 31 March. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision. Hence, CCS has used Promiseland's financial figures for the financial year ended 31 March 2015 in the calculation of the financial penalty to be imposed on Promiseland in this ID. Promiseland's relevant turnover figure for the calendar year 2015 was S$[✂].[388]

[386] Written Representations of PIAS dated 10 July 2015, paragraph 1.
[387] CCS further notes that the letters to iFAST and PIAS's actions were not effective in mitigating the effects of the infringement, as iFAST did not reintroduce an offer in relation to individual life insurance products on Fundsupermart until after the issuance of CCS's PID.
[388] Information provided by Promiseland dated 12 February 2016 pursuant to the section 63 Notice issued by CCS dated 29 January 2016.

384. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for Promiseland the starting point at [✂]% of relevant turnover. The starting amount for Promiseland is therefore S$[✂].

385. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

386. Adjustment for aggravating and mitigating factors: Having taken into consideration the degree of cooperation rendered by Promiseland, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

387. 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 S$[✂].

388. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Promiseland and to other undertakings and will not be making adjustments to the penalty at this stage.

389. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision. Hence, CCS has used Promiseland's financial figures for the financial year ended 31 March 2015 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. Promiseland's turnover figure for the financial year 2015 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$31,305.

390. Representations by Promiseland in respect of penalties: Promiseland submitted that even if there is an infringement, the small effect and Promiseland's minimal role are considerable mitigating factors. Promiseland submitted that the impact of the Fundsupermart Offer on FA's businesses and on Promiseland's business would be negligible and should not warrant the proposed penalty.[389]

391. As highlighted in paragraph 293 above, CCS has already considered the potential effect of the infringement on customers, competitors and third parties in fixing the starting point for penalty calculations.

[389] Written Representations of Promiseland dated 7 July 2015, page 3 of cover letter, and pages 9 and 10.

392. In determining financial penalties, CCS considers whether an undertaking played the role as a leader in, or an instigator of, the infringement. If so, this is an aggravating factor in the calculation of financial penalties. In calculating Promiseland's financial penalties, this aggravating factor is not applicable because Promiseland is not a leader or instigator of the Conduct. However, the absence of an aggravating factor does not equate to there being a mitigating factor. Further, CCS notes that Promiseland cannot be said to have played only a minimal role in the Conduct. Promiseland was present at the AFA EXCO meeting where the anti-competitive agreement and/or concerted practice was concluded and was a party to the agreement and/or concerted practice. David Choo (Promiseland) was also the one who highlighted the Fundsupermart Offer at the AFA EXCO meeting and said that it was unfair. Further, Promiseland did not need to take further steps to implement the Conduct as Vincent Ee had been appointed as a representative to communicate with iFAST and the Insurers.

393. Promiseland further submitted that the reputational damage of being found to be in breach is already a heavy price to pay and given the circumstances, a warning or a minimum amount of S$[✂] would be fairer on Promiseland.[390]

394. CCS notes that the penalty for Promiseland is calculated on the same basis as the other Parties and takes into account Promiseland's relevant turnover. CCS sees no compelling reason to not impose a penalty on Promiseland or to reduce its penalty to S$[✂].

395. Accordingly, CCS concludes that a financial penalty of S$31,305 is to be imposed on Promiseland.

K. Penalty for RAY

396. Starting point: RAY was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

397. RAY's financial year commences on 1 January and ends on 31 December. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of RAY for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used RAY's financial figures for the financial year ended 31 December 2014 in the calculation of the financial penalty to be imposed on RAY in this ID. RAY's relevant turnover figure for the financial year 2014 was S$[✂].[391]

[390] Written Representations of Promiseland dated 7 July 2015, page 10.
[391] Information provided by RAY dated 25 February 2016, 26 February 2016 and 14 March 2016 pursuant to the section 63 Notice issued by CCS dated 10 February 2016.

398. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for RAY the starting point at [✂]% of relevant turnover. The starting amount for RAY is therefore S$[✂].

399. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

400. Adjustment for aggravating and mitigating factors: Having taken into consideration the degree of cooperation rendered by RAY, CCS reduces the penalty by [✂] in mitigation of the infringing conduct.

401. 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 S$[✂].

402. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to RAY and to other undertakings and will not be making adjustments to the penalty at this stage.

403. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision, or if figures are not available for that business year, the one immediately preceding it. CCS notes that the financial statements of RAY for the financial year ended 31 December 2015 are not available at the time of this decision. Hence, CCS has used RAY's financial figures for the financial year ended 31 December 2014 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. RAY's turnover figure for the financial year 2014 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$11,939.

404. Accordingly, CCS concludes that a financial penalty of S$11,939 is to be imposed on RAY.

L. Penalty for WYNNES

405. Starting point: WYNNES was involved in the Conduct with the object of preventing, restricting or distorting competition in the market for the distribution of the Insurers' relevant individual life insurance products in Singapore.

406. WYNNES's financial year commences on 1 April and ends on 31 March. As noted in paragraph 279 above, the last business year is the business year preceding the date of CCS's infringement decision. Hence, CCS has used WYNNES's financial figures for the financial year ended 31 March 2015 in the calculation of the financial penalty to be imposed on WYNNES in this ID. WYNNES's relevant turnover figure for the financial year 2015 was S$[✂].[392]

407. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 284 to 294 above and fixed for WYNNES the starting point at [✂]% of relevant turnover. The starting amount for WYNNES is therefore S$[✂].

408. Adjustment for duration: In accordance with paragraph 300 above, CCS uses a duration multiplier of one. Therefore, the penalty after adjustment for duration is S$[✂].

409. Adjustment for aggravating and mitigating factors: CCS considers that WYNNES has not provided information beyond what was required of them by CCS. CCS therefore reduces the penalty by [✂].

410. 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 S$[✂].

411. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to WYNNES to act as an effective deterrent to WYNNES and to other undertakings which may consider engaging in anti-competitive conduct. As stated above at paragraph 305, CCS will adjust the penalty at this stage to S$[✂].

412. Adjustment to prevent maximum penalty being exceeded: As noted in paragraph 307 above, the last business year is the business year preceding the date of CCS's infringement decision. Hence, CCS has used WYNNES's financial figures for the financial year ended 31 March 2015 in the calculation of the applicable turnover for the purpose of calculating the maximum financial penalty. WYNNES's turnover figure for the financial year 2015 for the purpose of calculation of the maximum financial penalty is S$[✂]. The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂]. The financial penalty at the end of this stage is S$5,000.

[392] Information provided by WYNNES dated 18 February 2016 and 29 February 2016 pursuant to the section 63 Notice issued by CCS dated 29 January 2016.

413. Representations by WYNNES in respect of penalties: WYNNES submitted that the emotional, mental and financial burden experienced by WYNNES is a sufficient deterrent for WYNNES not to engage in any anti-competitive practices in future and the penalty should be dropped.[393] CCS notes that the penalty for WYNNES is calculated on the same basis as the other Parties and sees no compelling reason why a penalty should not be imposed on WYNNES.

414. Accordingly, CCS concludes that a financial penalty of S$5,000 is to be imposed on WYNNES.

[393] Written Representations of WYNNES dated 10 July 2015, paragraph 4.

M. Conclusion on Penalties

415. In conclusion, CCS, pursuant to section 69(2)(d) of the Act, imposes the following financial penalties on the Parties:

Party	**Financial Penalty**
Avallis	S$54,788
Cornerstone	S$13,781
Financial Alliance	S$137,524
Frontier	S$5,000
IPP	S$239,851
JPARA	S$5,000
PIAS	S$405,114
Promiseland	S$31,305
RAY	S$11,939
WYNNES	S$5,000
Total	**S$909,302**

Toh Han Li
Chief Executive
Competition Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCS

[✂]

ANNEX B: TIMELINE SUMMARY OF KEY EVENTS

Time	Event
30 April 2013	iFAST launches the Fundsupermart Offer.
2 May 2013 10:30 a.m. to 1 p.m.	Eight FAs meet for an AFA Management Committee meeting. They discuss the Fundsupermart Offer and assign Vincent Ee to ask iFAST and the Insurers to remove the Fundsupermart Offer.
2 May 2013 5:43 p.m.	NTUC Income confirms a joint meeting with iFAST, Manulife and TM Life.
2 May 2013 8:22 p.m.	Vincent Ee, Managing Director of Financial Alliance and AFA Vice-President at that time, sends an email to Lim Chung Chun, CEO of iFAST, to voice unhappiness about the Fundsupermart Offer on behalf of AFA. He copies the other FAs, including FAs that did not attend the AFA Management Committee meeting on 2 May 2013.
2 May 2013 8:26 p.m. to 8:31 p.m.	Vincent Ee emails each of the Insurers to express shock that the Insurer had allowed the Fundsupermart Offer.
2 May 2013 9:06 p.m.	Vincent Ee emails the FA representatives of Financial Alliance to state that he had gotten the whole industry to respond to the Fundsupermart Offer and to ask that FA representatives of Financial Alliance also exert pressure on iFAST.
2 May 2013 10:05 p.m.	David Bellingham, then CEO of PIAS, emails Vincent Ee to show support for Vincent Ee's first email to iFAST.
3 May 2013 8:26 a.m.	David Bellingham (PIAS) emails Lim Chung Chun (iFAST) to state PIAS's disappointment with iFAST launching insurance products on Fundsupermart and also the implied message that insurance products can be commoditised. He forwards his email to Vincent Ee to show his support.
3 May 2013 10 a.m.	iFAST has a meeting with NTUC Income, Manulife and TM Life. iFAST informs the Insurers that it will reduce the Fundsupermart Offer to a one-month promotion.
3 May 2013 between 10 a.m. to 11 a.m.	Shelton Chellappah, CEO of IPP, emails the Insurers to highlight that he was disturbed by the Fundsupermart Offer.
3 May 2013 about 12 p.m.	Albert Lam and Tan Lye Poh, directors of IPP, ask iFAST to remove the Fundsupermart Offer.
3 May 2013 12:09 p.m.	Lim Chung Chun replies Vincent Ee and the FAs that he will reduce the Fundsupermart Offer to a one-month promotion.
3 May 2013 12:27 p.m.	Vincent Ee replies Lim Chung Chun to disagree with a blog written by Sui Jau of iFAST, and to state that discounts on total distribution cost can only act as an inducement for clients. The Insurers are added to Vincent

	Ee's email list.
3 May 2013 2:15 p.m.	Shelton Chellappah (IPP), emails Vincent Ee to show his support of Vincent Ee's first two emails to iFAST.
3 May 2013 2:34 p.m.	Vincent Ee emails other FAs to state he would request that iFAST remove the Fundsupermart Offer immediately, and emphasise that FAs need to tell iFAST it cannot take its relationship with FAs for granted.
3 May 2013 2:45 p.m.	Shelton Chellappah (IPP) emails Lim Chung Chun (iFAST) to voice disagreement with the one-month period for Fundsupermart Offer, and forwards this email to Vincent Ee as a show of support.
3 May 2013 3:08 p.m.	After learning that the Straits Times was publishing a story on the Fundsupermart Offer, Vincent Ee emails FAs to ask them to assure FA representatives that the FAs would force out the Fundsupermart Offer quickly.
3 May 2013 3:36 p.m.	Vincent Ee emails Lim Chung Chun to ask iFAST to remove the Fundsupermart Offer immediately.
3 May 2013 afternoon (estimated 4 p.m.)	Albert Lam and Tan Lye Poh (IPP) ask Lim Chung Chun (iFAST) to consider whether the life insurance business was worth so much unhappiness from iFAST's business partners.
3 May 2013 4:45 p.m.	Lim Chung Chun emails Vincent Ee, the FAs and the Insurers to inform that iFAST will immediately remove the marketing of life insurance on Fundsupermart entirely.
3 May 2013 5:03 p.m.	iFAST separately informs the Insurers that iFAST will immediately remove the marketing of life insurance on Fundsupermart entirely.