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

Notice of Infringement Decision issued by CCCS

Infringement of the section 34 prohibition in relation to bid rigging of building, construction and maintenance tenders

4 June 2020

Case number: CCCS 500/7003/16

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

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EXECUTIVE SUMMARY

1. The Competition and Consumer Commission of Singapore ("**CCCS**") is issuing an Infringement Decision ("**ID**") against the following undertakings for their participation in anti-competitive agreements to rig the bids for building, construction and maintenance invitations to quote and invitations to tender ("**ITQs**") called by Wildlife Reserves Singapore ("**WRS**"), in contravention of section 34 of the Competition Act (Cap. 50B) ("**the Act**"):

    a. Shin Yong Construction Pte Ltd;
    b. Geoscapes Pte Ltd; and
    c. Hong Power Engineering Pte Ltd.

    (each a "**Party**" and together "**the Parties**")

2. CCCS investigations revealed that the Parties had, from at least 1 July 2015 to 6 October 2016, exchanged bid information and coordinated cover bids in respect of ITQs called by WRS. The bid rigging arrangements were, by its very nature, injurious to the functioning of normal competition. The Parties created the false impression that the bids were the result of a fair and competitive process when it was not.

3. CCCS finds that the Parties have infringed the section 34 prohibition and imposes on each of the Parties penalties of between S$5,211 and S$19,739, amounting to a combined total penalty of S$32,098. In determining the penalty amount, CCCS has taken into consideration the seriousness of the infringement as well as the relevant aggravating and mitigating factors, where applicable.

CHAPTER 1: THE FACTS

A. The Parties

(i) Shin Yong Construction Pte Ltd

1. Shin Yong Construction Pte Ltd ("**Shin Yong**") is a limited exempt private company incorporated on 21 March 1991. Its principal activities are building and construction, and construction of other civil engineering projects. Shin Yong has an issued and paid-up share capital of S$1,000,000 and is 100% owned by Mr. Toh Say Yong as its sole director and shareholder.[1] His son, Mr. Toh Yong Soon ("**Chris Toh**") is a project manager employed by Shin Yong. However, Chris Toh played a key role in the management of Shin Yong, being the one who made the decisions relating to the projects to bid for and the prices.[2] Shin Yong was a contractor registered with the Building and Construction Authority ("**BCA**") between 1 January 2014 and 2 January 2017; and a BCA-licensed builder between 1 January 2014 and 16 June 2018.[3]

(ii) Geoscapes Pte Ltd

2. Geoscapes Pte Ltd ("**Geoscapes**") is a limited exempt private company incorporated on 15 July 2009 and is a general construction works company which also offers landscaping and maintenance services. [4] Geoscapes has an issued and paid-up share capital of S$100,000 and is 100% owned by Mr. Koh Kian Hee (Xu Jianxi) ("**Joe Koh**"), who has been a director of Geoscapes since 1 July 2014. Geoscapes is a BCA-registered contractor as well as a BCA-licensed builder.[5]

(iii) Hong Power Engineering Pte Ltd

3. Hong Power Engineering Pte Ltd ("**Hong Power**") is a limited exempt private company incorporated on 1 August 2007, with electrical works and building

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[1] ACRA Business Profile of Shin Yong (31 October 2018).
[2] Answer to Q9, Notes Of Information ("**NOI**") of Chris Toh dated 6 October 2016. Answer to Q2, NOI of Chris Toh dated 4 May 2017.
[3] Email from BCA dated 20 December 2019.
[4] ACRA Business Profile of Geoscapes (31 October 2018).
[5] BCA Directory of Registered Contractors and Licensed Builders.
https://www.bca.gov.sg/BCADirectory/Company/Details/200912835K (correct as at 13 November 2019)

construction as its principal activities.[6] Hong Power has an issued and paid-up share capital of S$60,000 and is 100% owned by Mr. Tan Chuan Hong (Chen Quanfeng). Hong Power is a BCA-registered contractor as well as a BCA-licensed builder.[7]

B. Background of the Relevant Industry

4. Wildlife Reserves Singapore is the operating arm of Mandai Park Holdings and is responsible for the management of Jurong Bird Park, Night Safari, Singapore Zoo and River Safari (collectively, the "**Parks**").

5. As part of the management of the Parks, WRS periodically publishes Invitations to Tender and/or Invitations to Quote.[8] The ITQs that are material to the present case relate to building and maintenance works for its attractions. These include both civil and electrical works, such as construction work for the renewal of the facilities at the Parks; painting, hacking, replacement of items that have corroded or worn out; replacement of pipes; installation of new wiring; renewal of light bulbs; focusing of lights for various animal enclosures and upgrading of toilets.[9]

6. These ITQs were generally requested by WRS' Maintenance Department, although depending on which area of the respective Park needed work, the ITQ might be called by another department. For example, where the work is in an animal enclosure, the ITQ will generally be requested by the Zoology Department.

(i) Types of procurement

7. WRS has different modes of procurement depending on the value of the project. Projects costing up to [✂] do not require any quotation or tender process. The procurement process for projects costing between [✂] while projects between [✂].

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[6] ACRA Business Profile of Hong Power (31 October 2018).
[7] BCA Directory of Registered Contractors and Licensed Builders. https://www.bca.gov.sg/BCADirectory/Company/Details/200714076C (correct as at 13 November 2019)
[8] For the purposes of this decision, "ITQs" will be used to refer to both invitations to quote and invitations to tender, as there is no material difference whether a project was called as a tender or a quotation for the purposes of this decision.
[9] Answer to Q6 and Q7, NOI of [✂] dated 19 February 2018.

8. Procurement for projects costing between [✂] are centralised under the Procurement Department [✂]. A closed tender must be called [✂] for projects costing between [✂] in value. Procurement for projects above [✂] in value must be done via open tenders.[10] In the event the number of bidders fall below the minimum required number of quotations, the ITQ will be called again.[11]

(ii) Procurement Process

9. Sourcing of vendors is conducted by the requesting end-user within WRS and the Procurement Department. [✂] The exception is when there is an open tender being called, where an advertisement is placed in the media (e.g. a newspaper to invite vendors to tender for a project or for the supply of goods or services).[12]

10. A site show round is conducted to familiarise the invited vendors with the actual site conditions before the submission of their proposals and quotations. The show round gives the vendors an idea what each piece of work requires, and for the vendors to take measurements at the site.[13] The requesting end-user, staff from the Procurement Department, and all invited vendors will be involved in the same site show round session.[14] Attendance at the site show round is compulsory for the vendors who wish to bid for the ITQ.[15] Separate site show rounds may be conducted for vendors who are unable to attend the first site show round.[16]

11. Once the quotations have been submitted by the vendors, [✂] will undertake the evaluation of the submitted bids. They will recommend which vendor to award the ITQ. The approval of the award of the ITQ will be issued by [✂] in accordance with WRS's Financial Policy. A Purchase Order ("**PO**") will subsequently be issued by the Procurement Department.[17] [✂].[18]

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[10] WRS's response to question 1 of CCCS's section 63 notice dated 12 September 2018. Para 5.2.1 of Tender Procedures, WRS Financial Policy.
[11] Answer to Q9, NOI of [✂] dated 26 March 2018. Answer to Q24, NOI of [✂] dated 19 February 2018.
[12] WRS's response to question 1 of CCCS's section 63 notice dated 12 September 2018. Expenditure, WRS Financial Policy.
[13] Answer to Q26, NOI of [✂] dated 19 February 2018.
[14] WRS's response to question 1 of CCCS's section 63 notice dated 12 September 2018.
[15] Answers to Q21 and Q22, NOI of [✂] dated 26 March 2018. Answer to Q27, NOI of [✂] dated 19 February 2018.
[16] Answer to Q21, NOI of [✂] dated 26 March 2018.
[17] WRS's response to question 1 of CCCS's section 63 notice dated 12 September 2018.
[18] [✂].

12. From 2016, changes to the procurement process were made. A Tender Evaluation Committee ("**TEC**") would have to be set up to evaluate the bids for projects above [✂] in value and make a recommendation of which vendor to award the ITQ.[19] The TEC usually comprises [✂]. The evaluation is carried out based on a point system. The TEC would usually comprise [✂].[20]

13. In addition, WRS also launched an online system named "Sesami" in July 2016 which allowed tender documents to be submitted online. Previously, tenders were either submitted physically via WRS's tender box, or sent via email to the requesting end-user or Procurement Department. In April 2018, Sesami was extended to quotations as well.[21]

C. Investigations and Proceedings

14. On 28 August 2015, WRS submitted a complaint to CCCS after receiving emails from an anonymous complainant on 17 and 27 August 2015 alleging that there were bid rigging of renovation, maintenance and construction projects at WRS.

15. On 6 April 2016, CCCS commenced investigations against Shin Yong, Geoscapes and Hong Power under section 62 of the Act for potential bid rigging conduct in relation to building and construction tenders and quotations for WRS.

16. On 6 October 2016, CCCS conducted simultaneous inspections without notice at the premises of several WRS's vendors, including Shin Yong, Geoscapes, and Hong Power pursuant to section 64 of the Act. Simultaneous interviews were also conducted onsite with Chris Toh (Shin Yong), Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) pursuant to notices under section 63 of the Act.

17. In the course of the investigation, CCCS also issued section 63 notices to Shin Yong, Geoscapes and Hong Power, and conducted further interviews with staff of WRS, Chris Toh (Shin Yong), Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) pursuant to section 63 of the Act.

18. Two of WRS's former employees, [✂] and [✂] were interviewed. [✂].[22]

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[19] WRS's response to question 1 of CCCS's section 63 notice dated 12 September 2018.
[20] Answer to Q9, NOI of [✂] dated 19 February 2018.
[21] WRS's response to question 1 of CCCS's section 63 notice dated 12 September 2018.
[22] WRS's response to question 9 of CCCS's section 63 notice dated 12 September 2018.

19. The interviews that were conducted by CCCS during the course of the investigation are set out in **Annex A.**

20. On 21 January 2020, CCCS issued a Proposed Infringement Decision ("**PID**") to Shin Yong, Geoscapes and Hong Power and informed the Parties that they may make written representations to CCCS relating to the matters set out in the PID within the next five weeks (i.e. on or before 25 February 2020). None of the Parties submitted written representations to CCCS.

21. CCCS therefore finds that the Parties have infringed section 34 of the Act.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

A. The Section 34 Prohibition and Application to Undertakings

22. Section 34 of the Act prohibits any agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. In *Pang's Motor Trading v CCS*,[23] 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])*".

23. Section 2 of the Act defines "undertaking" to mean, "*any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services*." The concept of an "undertaking" in section 2 of the Act

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

covers any entity capable of carrying on commercial or economic activities, regardless of its legal status or the way in which it is financed. Each of the Parties therefore constitute an "undertaking" for the purposes of the Act as each of the Parties carries on commercial or economic activities relating to, amongst other things, the provision of building and construction services.

B. Agreements and/or Concerted Practices

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

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

25. The section 34 prohibition also applies to concerted practices. The Section 34 Guidelines state that the key difference between a concerted practice and an agreement is that a concerted practice may exist where there is informal cooperation, without any formal agreement or decision. A concerted practice would be found to exist if parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with cooperation between them.[24]

26. In *Suiker Unie and others v Commission,*[25] the parties contacted each other with the aim of removing, in advance, any uncertainties as to the future conduct of their competitors. The European Court of Justice ("**ECJ**") found that it was not necessary to prove there was an actual plan and held that:

> "*174 Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does, however* ***strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential***

[24] *CCCS Guidelines on the Section 34 Prohibition 2016*, paragraph 2.18.
[25] Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1975] ECR 1663, [1976] 1 CMLR 295.

competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market." (Emphasis in bold added)

27. In *Hüls AG v. Commission,*[26] the ECJ said that the concept of a concerted practice implies, besides the parties' concertation, a subsequent conduct on the market and a relationship of cause and effect between the parties. The ECJ held that:

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

28. As CCCS stated in the *Pest Control Case,*[27] and which was subsequently cited in the *Express Bus Operators*[28] as well as the *Ball Bearings Case*:[29]

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

29. It is also established law that it is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice. In *SA Hercules Chemicals v Commission,*[30] the Court of First Instance ("**CFI**") (now the European General Court ("**GC**")) found that Hercules had taken part in an integrated set of schemes constituting a single infringement,

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[26] Case C-199/92 P [1999] ECR I-4287.
[27] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1 ("***Pest Control***"), at [42].
[28] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2 ("***Express Bus Operators***"), at [50].
[29] *Re CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5 ("***Ball Bearings***"), at [35].
[30] Case T-7/89 [1991] ECR II-1711 at [262] to [265]; See also Case C-238/05 *Asnef-Equifax v Commission* [2006] ECR I-11125, at [32].

which progressively manifested itself in both unlawful agreements and unlawful concerted practices. As such, the European Commission ("**EC**") was entitled to characterise that single infringement as "*an agreement and a concerted practice*" since the infringement involved, at one and the same time, factual elements to be characterised as "*agreements*" and factual elements to be characterised as "*concerted practices*".

30. Similarly, in *JJB Sports plc and Allsports Limited v Office of Fair Trading*[31] *("**JJB**")*, the Competition Appeal Tribunal ("**CAT**") in the UK held that:

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

C. Party to an Agreement or a Concerted Practice

31. The fact that a party may have played only a limited role 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 is not party to the agreement or concerted practice (although these factors may be taken into account in deciding on the level of any financial penalty).[32]

32. This is also established in EU jurisprudence.[33] In *Sarrio v Commission*[34], the ECJ held that:

> "*50 It must be accepted, as the Court of First Instance accepted, 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***

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[31] [2004] CAT 17 at [644], referring to Cases T-305/94 etc. *NV Limburgse Vinyl Maatschappij v Commission* [1999] ECR II-931, at [696] to [698] and Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [131] to [133]; confirmed by the UK Court of Appeal in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2006] EWCA Civ 1318 at [21].
[32] *CCCS Guidelines on the Section 34 Prohibition 2016*, paragraph 2.11.
[33] Case C-291/98 P *Sarrio v Commission* [2000] ECR I-9991, at [50]; Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [90].
[34] Case C-291/98 P *Sarrio v Commission* [2000] ECR I-9991, at [50].

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…*" (Emphasis in bold added)

33. In *Commission v Anic Partecipazioni* [35], the ECJ held that:

> "*90 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 must be taken into consideration when gravity of infringement is assessed and if and when it comes to determining the fine.*"

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

(i) "Object" and "Effect" Requirements are alternative and not cumulative

34. Section 34(1) of the Act prohibits "*...agreements between undertakings… or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore*". In accordance with the plain reading of the section, "object" and "effect" are alternative and not cumulative requirements. This has been affirmed by the CAB in *Pang's Motor Trading*[36]:

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

35. Thus, for the purposes of applying section 34 of the Act, it is sufficient for CCCS to show that the object of an agreement or concerted practice is to prevent, restrict or distort competition within Singapore, without having to prove the effects of that agreement or concerted practice. This is explained at paragraph 2.22 of the Section 34 Guidelines which states that:

> "*Once it has been established that an agreement has as its object the appreciable restriction of competition, CCCS need not go further to demonstrate anti-competitive effects. On the other hand, if an agreement is not restrictive of competition by object, CCCS will*

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[35] Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [90].
[36] *Pang's Motor Trading*, at [30].

examine whether it has appreciable adverse effects on competition."

36. 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*[37], 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…*"

37. Similarly, the ECJ has held in *Hüls AG v Commission*[38] that there can be a concerted practice even if there is no actual effect on the market:

> "*163 Secondly, contrary to Hüls's argument, a concerted practice as defined above is caught by Article 81(1) EC,* ***even in the absence of anti-competitive effects on the market.***
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> *164 First, if follows from the actual text of that provision that, as in the case of agreements between undertakings and decisions by associations of undertakings,* ***concerted practices are prohibited, regardless of their effect, when they have an anti-competitive object.***
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> *165 Next, although the very concept of a concerted practice presupposes conduct by the participating undertakings on the market, it does not necessarily mean that that conduct should produce the specific effect of restricting, preventing or distorting competition.*" (Emphasis in bold added)

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[37] Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].
[38] Case C-199/92 *Hüls AG v Commission* [1999] ECR I-4287, at [163] to [165].

38. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*[39] ("***Argos***"), 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*". (Emphasis in bold added)

(ii) Object of restricting, preventing or distorting competition

39. 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.[40] This is also reflected at paragraphs 2.23 and 2.24 of the Section 34 Guidelines – whilst an examination of the facts underlying the agreement and the specific circumstances in which it operates may be required before it can be concluded whether a particular restriction constitutes a restriction of competition by object, agreements involving restrictions of competition by object, for example an agreement involving price fixing, bid rigging, market sharing or output limitations, will always have an appreciable adverse effect on competition. Thus, once it is established that an agreement and/or concerted practice constitutes a restriction of competition by object, CCCS need not proceed further to make a specific appreciability analysis and/or demonstrate anti-competitive effects. This is because such types of coordination between undertakings are regarded by their very nature, as being harmful to the proper functioning of normal competition.

40. The ECJ in *Cartes Bancaires* examined the concept of an "object" infringement. The case concerned a fee structure established by the nine main members of a payment card system. The ECJ annulled the GC's finding that the fee structure

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[39] *Argos* [2004] CAT 24, at [357].
[40] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2 ("***Cartes Bancaires***"), at [50].

restricted competition by object (i.e. preventing the entry of new banks into the sector) on the basis that it had erred in law on the meaning of "object". The ECJ held[41]:

> "*50 That case-law arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition (see, to that effect, in particular, judgment in Allianz Hungária Biztosító and Others (EU:C:2013:160) paragraph 35 and the case-law cited).*
>
> *51 Consequently, it is established that certain collusive behaviour, such as that leading to horizontal price-fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 81(1) EC, to prove that they have actual effects on the market (see, to that effect, in particular, judgment in Clair, 123/83, EU:C:1985:33, paragraph 22). Experience shows that such behaviour leads to falls in production and price increases, resulting in poor allocation of resources to the detriment, in particular, of consumers.*"

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

> "*such coordination reveals in itself a sufficient degree of harm to competition.*"[42]

42. It is not necessary to prove that the parties have the subjective intention of restricting competition when entering into the agreement or practice, even though the ECJ found that the Commission is not precluded from finding that the parties' subjective intention is a relevant factor in assessing whether the object of an agreement is anti-competitive.[43]

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[41] *Cartes Bancaires*, at [50] to [58].
[42] *Cartes Bancaires*, at [57].
[43] *Cartes Bancaires*, at [54].

43. Furthermore, an agreement may be regarded as having a restrictive object even if the restriction of competition is not its sole aim. In *Competition Authority v Beef Industry Development Society Ltd* ("***Irish Beef***")[44], the Beef Industry Development Society 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. The Court rejected the argument and 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)"* [45] (Emphasis in bold added)

44. The proposition that an agreement may still be restrictive by object even if it purports to pursue other legitimate aims was endorsed by the GC in *Lundbeck v Commission,*[46] where the argument that restrictions in the agreements at issue were necessary to protect the parties' intellectual property rights was rejected – notwithstanding that such restrictions may have been the most cost-effective or least risky option from a commercial perspective, the GC did not agree that this precludes the application of Article 101 of the Treaty of the Functioning of the European Union ("**TFEU**"), which prohibits cartels.

E. Collusive Tendering or Bid Rigging Arrangements/Agreements

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[44] Case C-209/07 [2008] ECR I-8637; [2009] 4 CMLR 6.
[45] *Irish Beef,* at [21]. See also Case 96/82 *IAZ International Belgium v Commission* [1983] ECR 3369, at [22] to [25].
[46] Case T-472/13, at [459]

45. The Section 34 Guidelines and case law make it clear that a collusive tendering or bid rigging agreement will always have an appreciable adverse effect on competition.[47] Tendering procedures are designed to provide competition in areas where it might otherwise be absent. An essential feature of the tendering process system is that each interested vendor prepares and submits bids independently. Any tenders submitted as a result of collusion or cooperation between the vendors competing for the award of the tender will, by their very nature, be regarded as restricting competition appreciably.[48]

46. The requirement for independent bids in the tendering process is illustrated in the cases of *Apex Asphalt and Paving Co Limited v Office of Fair Trading*[49] *("**Apex**")* (cited in *Pest Control*[50]) and *Makers UK Limited v Office of Fair Trading ("**Makers**")*[51], which applied the principles set out in *Apex*. These were accepted and applied by CCCS in the *Formula 1 Tenders Case*[52].

47. In *Apex*, the eponymous building contractor had sent another building contractor, Briggs, a fax containing figures for Briggs in respect of two projects with Birmingham City Council for maintenance and improvement services for flat roofs. Briggs declined to submit a bid. Five contractors submitted bids and Apex was eventually awarded the contract. In finding a concerted practice between Apex and Briggs, the UK CAT highlighted the anti-competitive harm of cover bids[53]:
    a. it reduces the number of competitive bids submitted in respect of that particular tender;
    b. it deprives the tenderee of the opportunity of seeking a replacement (competitive) bid;
    c. it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so; and
    d. it gives the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.

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[47] *CCCS Guidelines on the Section 34 Prohibition 2016*, paragraph 2.24. See also *Pang's Motor Trading*, at [30].
[48] *CCCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.8.
[49] [2005] CAT 4.
[50] *Pest Control*, at [59].
[51] [2007] CAT 11.
[52] Infringement of the section 34 prohibition in relation to bid-rigging of tenders in Singapore [2017] SGCCCS 1 ("***F1 Tenders***")
[53] *Apex*, at [251].

48. The importance of independent bid preparation in the tendering process was set out by the UK CAT, as follows[54]:

> "*208. The essential feature of a tendering process conducted by a local authority is the expectation on the part of the authority that it will receive, as a response to its tender, a number of independently articulated bids formulated by contractors wholly independent of each other. A tendering process is designed to produce competition in a very structured way.*
>
> *209. The importance of the independent preparation of bids is sometimes recognised in tender documentation by imposing a requirement on the tenderers to certify that they have not had any contact with each other in the preparation of their bids. This is important from the standpoint of the customer, since the tendering process is designed to identify the contractor that is prepared to make the most cost-effective bid.* ***The competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market****."* (Emphasis in bold added)

49. Collusive tendering is also a practice that has been condemned by the EC under Article 101(1) TFEU. In *Car Glass*[55], the EC imposed fines on four car glass manufacturers for an infringement of Article 81 of the European Community Treaty ("**ECT**"). The agreement consisted in the sharing of deliveries of car glass between the cartel participants in order to maintain their market shares.

50. The EC found, *inter alia*, that there was an infringement by the cartel participants' practice of "*covering each other*"[56] i.e. by "preselecting" the winner of a bid by either not quoting at all to car manufacturers that requested for quotes from the participants, or by quoting higher prices than the agreed

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[54] *Apex*, at [208] to [209].
[55] Case COMP/39125 – Carglass Commission Decision of 12 November 2008 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement.
[56] *Car Glass*, at [103].

winner.[57] This gave the pretence of competition. The parties' actions, along with other actions, constituted a "complex of infringements" which "*presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 81 of the European Community Treaty (now Article 101 of the Treaty).*"[58]

51. In another case, *International Removal Services*[59], the EC found that certain undertakings had participated in a cartel in the international removal services sector in Belgium to fix prices, share customers and manipulate the submissions of tenders. In particular, the EC found that the undertakings had cooperated in submitting cover quotes. The requesting firm (the firm which wanted the contract) indicated to its competitors the price and the rate of storage costs that they were to quote.

52. The EC stated that the submission of cover quotes constituted a concerted practice within Article 81 of the ECT, as the undertakings had "*entered into concertation on the prices of the services to be provided, on the hidden price elements (the commissions), and on the submission of bids as part of the procedure for selecting the service provider.*"[60] In this way, the undertakings had "*replaced the risks of competition with practical cooperation*" among themselves.[61] This direct and indirect fixing of prices was, by its very nature, a restriction of competition within the meaning of Article 81 of the ECT.

53. The EC held that the submission of cover quotes (amongst other things) gave the customer a false choice and the prices quoted in all the bids which he received were deliberately higher than the price of the company which was the "*lowest bidder*", and at all times, higher than they would be in a competitive environment. This therefore restricted competition.[62]

54. On appeal in *Gosselin*[63], one of the arguments advanced was that there was a

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[57] *Car Glass*, at [103].
[58] *Car Glass*, at [496].
[59] Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement. ("***International Removal Services***").
[60] *International Removal Services*, at [299].
[61] Case COMP/38.543 – International Removal Services, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement, at [299].
[62] *International Removal Services*, at [359] to [370].
[63] Joined Cases T-208/08 *Gosselin Group and Stichting Administratiekantoor Portielje v Commission* and T-

lack of evidence of anti-competitive effects, or of any restriction of competition. The GC rejected this argument and noted that "[i]*n order to prepare cover quotes, the removal undertakings concerned exchanged information, such as the exact date and details of the removal to be carried out, and the prices of that service, so that the undertaking which submitted a cover quote deliberately waived any real competition with the undertaking which had requested that cover quote. The result was a sophisticated system resulting in an artificial price rise.*" The GC stated that as a result of the cover quotes, the institution which pays for the service could not benefit from competition, although that was precisely the reason why it would have asked for quotes in the first place.[64]

55. In another related appeal arising from the EC decision in *International Removal Services*, the GC held that "[a]*s regards the quotes, the price indicated in a 'false' quote was determined by the requesting company and accepted by the company drawing up the cover quote, which enabled the former to set its price at a higher level than would have resulted from the free play of competition, close to the 'false' price agreed in common accord.*"[65]

F. Burden and Standard of Proof

56. CCCS bears the legal burden of proving the infringements in question. The standard of proof to be applied in deciding whether an infringement of the section 34 prohibition has been established is the civil standard, commonly known as proof on the balance of probabilities. The civil standard of burden of proof was applied by the CAB in *Express Bus Appeals*[66]. The CAB stated:

209/08 *Stichting Administratiekantoor Portielje v Commission* [2011] ECR II-3639. ("***Gosseslin***").

[64] *Gosselin*, at [67]. Whilst the General Court upheld in essence the decision of the Commission, the General Court reduced the amount of fine imposed on Gosselin, and annulled the Commission's decision that the parent foundation Stichting Administratiekantoor Portielkie constituted an undertaking for the purposes of competition law, and annulled the Commission's decision to impose a fine on the parent foundation. On 11 July 2013, the companies' appeal against the General Court's decision was dismissed by the European Court of Justice: see Cases C-429/11 P, C-439/11 P, C-440/11 P, C- 444/11 P *Gosselin Group v Commission, Ziegler v Commission, Commission v Stichting Administratiekantoor Portielje, Team Relocations and Others v Commission*. The Court of Justice also set aside the General Court's decision that Portielje did not constitute an undertaking with Gosselin: see paragraph 45 of C-440/11P *Commission v Stichting Administratiekantoor Portielje*.

[65] Case T-211/08 Putters International v Commission [2011] ECR II-3729, at [28].

[66] *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Konsortium Express and Tours Pte Ltd, Five Stars Tours Pte Ltd, GR Travel Pte Ltd and Gunung Travel Pte Ltd* [2011] SGCAB 1, at [85]. ("***Express Bus Appeals***").

"*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*".

57. Given the nature of the evidence of anti-competitive conduct in a case concerning cartel or collusive conduct such as that found in this Infringement Decision ("**ID**"), it is sufficient if the body of evidence, viewed as a whole, proves that an infringement of the section 34 prohibition has occurred on a balance of probabilities. Such evidence would consist of direct evidence, circumstantial evidence, and inferences from the established facts.

58. In *JJB*[67], the UK CAT was of the view that given the hidden and secret nature of cartels where little or nothing may be committed in writing, even a single item of evidence, or wholly circumstantial evidence, depending on the particular context and the particular circumstances may be sufficient to meet the required standard. Similarly, in *Napp v OFT*, the UK CAT held that in discharging the burden of proof, the OFT "can rely on inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts".[68]

59. The courts in the EU have also recognised the difficulties in obtaining evidence where anti-competitive conduct takes place secretly. In *JFE Engineering v Commission*[69], the CFI observed that:

"*179 As the Japanese applicants correctly observe, the Commission must produce sufficiently precise and consistent evidence to support the firm conviction that the alleged infringement took place...*

180 However, it is important to emphasise that it is ***not necessary for every item of evidence produced by the Commission to satisfy those criteria in relation to every aspect of the infringement. It is sufficient if the body of evidence relied on by the institution, viewed as a whole, meets that requirement****...*" (Emphasis in bold added)

60. In *Aalborg Portland AS v Commission*, the ECJ stated:

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[67] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [206].
[68] *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [110].
[69] [2004] ECR II 2501 ("***JFE Engineering***").

> "*55 Since the prohibition on participating in anticompetitive agreements and the penalties which offenders may incur are well known, it is normal for the activities which those practices and those agreements entail to take place in a clandestine fashion, for meetings to be held in secret, most frequently in a non-member country, and for the associated documentation to be reduced to a minimum.*
>
> *56 Even if the Commission discovers evidence explicitly showing unlawful conduct 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.***
>
> *57* ***In most cases, the existence of an anticompetitive 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.***"[70] (Emphasis in bold added).

G. Principles of Evidence Assessment

61. As regards the probative value of evidence, CCCS notes that the only relevant criterion for the purposes of evaluating the evidence produced is its reliability.[71]

62. In this regard, it is trite law that statements which run counter to the interests of the declarant are in principle regarded as particularly reliable evidence.[72] This principle was reiterated by the GC in *Toshiba Corp v European Commission*:

> "*48 Where a person admits that he committed an infringement and thus admits the existence of facts going beyond those whose existence could be directly inferred from the documentary evidence, that implies, a priori, in the absence of special circumstances indicating otherwise, that that person had resolved to tell the truth. Thus,*

[70] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P *Aalborg Portland A/S and Others v Commission,* at [55] to [57].
[71] *Dalmine v Commission of the European Communities* (T-50/00) [2004] E.C.R. II-2395, at [72].
[72] *JFE Engineering,* at [211]; *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8, at [48].

statements which run counter to the interests of the declarant are in principle regarded as particularly reliable evidence."[73]

63. The same principle has also been affirmed by the ECJ. In *Siemens AG v European Commission (Re Insulated Switchgear Products Cartel)* ("***Siemens AG***")[74], the ECJ dismissed as inadmissible a complaint that the GC should not have relied on the statement of a leniency applicant because of "*established knowledge relating to the functioning of the memory and the psychology of witnesses*",[75] and the possibility that an individual may have had an interest in maximising the unlawful conduct of competitors and minimising their own liability.[76] The ECJ upheld the GC's conclusion that the leniency applicant's evidence was credible – more credible than the other cartelists which had sought to deny the existence of the common understanding.[77]

> "*138 However, the General Court rightly stated, in [107] of the judgment in Mitsubishi Electric v Commission, that, although it is possible that the representative of an undertaking which has applied for leniency may submit as much incriminating evidence as possible, the fact remains, as is correctly stated in [88] and [89] of that judgment, that such a representative will also be aware of the potential negative consequences of submitting inaccurate information, which could, inter alia, lead to a loss of immunity after it has been granted. Moreover, the General Court was also correct to point out that the risk of the inaccurate nature of those statements being detected and leading to those consequences is increased by the fact that such statements must be corroborated by other evidence.*
>
> …
>
> *140 More generally, the Court has already had the opportunity to point out that a statement made by a person acting in the capacity of a representative of a company and admitting the existence of an infringement by that company entails considerable legal and economic risks (Sumitomo Metal Industries at [103]).*
>
> *141 Among those risks is that of actions for damages being brought before the national courts, in the context of which the*

[73] *Toshiba Corp v European Commission* (T-519/09) [2014] 5 C.M.L.R. 8, at [48].
[74] *Joined Cases C 239/11P, C-489/11P and C-498/11P* [2014] C.M.L.R.18.
[75] *Siemens AG*, at [33].
[76] *Ibid*. at [34].
[77] *Ibid*. at [138] to [141].

Commission's establishment of a company's infringement may be invoked."

64. Similarly, when examining the probative value of evidence, it is relevant to consider the consequences if the declarant was found to have provided false or misleading information. In *JFE Engineering*[78] concerning a market sharing agreement between eight seamless steel tubes manufacturers consisting of European and Japanese producers, the CFI stated that statements given to a public prosecutor in connection with an inquiry have more probative value than a mere statement, due to the compulsory requirement to answer questions and in view of the adverse consequences of perjury.[79] In this regard, it is relevant to note that the consequences of providing false or misleading information to CCCS are severe; attracting a fine of up to S$10,000 and/or imprisonment of up to one year upon conviction.[80]

65. Notably, the criteria for assessing reliability of statements as set out by the CFI in *JFE Engineering* was subsequently adopted by a differently constituted CFI in *Toshiba Corp*:[81]

> "*47 On the contrary,* ***particularly high probative value may be attached to statements which*** *(i) are reliable, (ii) are made on behalf of an undertaking, (iii) are made by a person under a professional obligation to act in the interests of that undertaking, (iv)* ***go against the interests of the person making the statement****, (v)* ***are made by a direct witness of the circumstances to which they relate****, and (vi) were provided in writing deliberately and after mature reflection.*" (Emphasis in bold added)

66. In addition, the CFI in *JFE Engineering* also clarified that assessing alternative, plausible explanations are only required where the Commission "*relies solely on the conduct of the undertakings in question on the market in finding that an infringement has been committed*".[82] Specifically, the CFI held that an alternative, plausible explanation offered by the Japanese undertakings was

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[78] *JFE Engineering*, at [211].
[79] *JFE Engineering*, at [312].
[80] Sections 75 to 83 of the Act.
[81] *Toshiba Corp*, at [47].
[82] *JFE Engineering*, at [186].

irrelevant as the Commission in that case had relied on documentary evidence in support of its finding of the existence of an anti-competitive agreement.[83]

67. Further, the CFI in *JFE Engineering* also held that there was no prohibition against the Commission relying on statements made by other incriminated undertakings:[84]

> "*192 In that connection, no provision or any general principle of Community law prohibits the Commission from relying, as against an undertaking, on statements made by other incriminated undertakings (PVC II, cited in paragraph 61 above, paragraphs 109 and 512).* **If that were not the case, the *burden of proving conduct contrary to Article 81 EC and Article 82 EC, which is borne by the Commission, would be unsustainable and incompatible with the task of supervising the proper application of those provisions which is entrusted it by the EC Treaty*** *(PVC II, cited in paragraph 61 above, paragraph 512).*" (Emphasis in bold added)

68. On the requirement of corroboration, the CFI in *JFE Engineering* also noted that whilst the statement of a witness had to be corroborated by other evidence to establish the existence of an infringement, the degree of corroboration required is "*lesser, in terms both of precision and of depth, in view of the reliability of Mr. Verluca's statements*".[85]

69. More significantly, the ECJ in *Siemens AG* upheld the conclusion that evidence corroborating the contents of a leniency statement does **not** have to be contemporaneous documentation but can comprise other statements made with a view to obtaining leniency:

> "*191 It follows that, contrary to what Toshiba maintains, it cannot be submitted that, in principle, statements made with a view to benefiting under the Leniency Notice, cannot be corroborated by other statements of that nature, but solely by other evidence contemporaneous*

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[83] *Ibid*.
[84] *Ibid*. at [192].
[85] *Ibid*. at [220].

with the facts at issue, namely evidence dating from the time of the infringement."

70. The European courts have also upheld the position that the economic benefits of submitting a leniency application would not necessarily undermine the credibility of a statement made by the leniency applicant. In *Dole Food Company v Commission*[86], the appellant Dole Food Company argued that the leniency application had been made in order to secure the completion of an acquisition by the leniency applicant of another company, as the banks that had been asked to finance the acquisition had expressed concerns about the leniency applicant's operations and only agreed to provide the financing once immunity had been granted. The GC rejected the argument that this undermined the leniency applicant's credibility and held that: [87]

> "*91 The Court observes that the applicants' argument does not correspond to the inherent logic of the procedure provided for in the Leniency Notice.* ***The fact of seeking to benefit from the application of the Leniency Notice in order to obtain a reduction in the fine does not necessarily create an incentive for the other participants in the offending cartel to submit distorted evidence.*** *Indeed, any attempt to mislead the Commission could call into question the sincerity and the completeness of cooperation of the person seeking to benefit, and thereby jeopardise his chances of benefiting fully under the Leniency Notice (Case T 120/04 Peróxidos Orgánicos v Commission [2006] ECR II 4441, paragraph 70).*
>
> *92 On the assumption that the applicants' claims as to the motives for the immunity application submitted by Chiquita are correct, they are not such as to remove all credibility from the statements of that undertaking.* ***The existence of a personal interest in reporting the existence of a concerted practice does not necessarily mean that the person doing so is unreliable.***
>
> *93 Moreover, and above all, the applicants' portrayal of the action taken by Chiquita on 8 April 2005 as being solely to Chiquita's advantage is misleading since it disregards a certain and potentially*

[86] *Case T-588/08* (General Court); Case C-286/13P; [2015] 4 C.M.L.R. 967 (ECJ).
[87] The ECJ in *Dole Food Company v Commission* Case C-286/13P; [2015] 4 C.M.L.R. 967 (ECJ) dismissed the appellant's case on other grounds.

> *negative consequence relating to Chiquita's recognition of its participation in a cartel. Although the application for immunity gave Chiquita grounds for hoping that it would escape any punishment by the Commission, its admission of its participation and the Commission's subsequent decision finding an infringement of Article 81 EC* ***exposes that undertaking to an action for damages by third parties in order to compensate the loss suffered on account of the anti-competitive conduct in issue, which may lead to serious financial consequences for Chiquita****.*" (Emphasis in bold added)

71. The evidence that CCCS relies on in support of the decision against the Parties are set out in Section I.

H. The Relevant Market

72. 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.[88]

73. In the present case, a distinct market definition is not necessary for the purpose of establishing an infringement of the section 34 prohibition as the present investigation involves agreements and/or concerted practices that amount to collusive tendering or bid rigging. Agreements and/or concerted practices that have as their object the prevention, restriction and distortion of competition by way of price fixing, collusive tendering or bid rigging, market sharing or output limitations, are, by their very nature, regarded as preventing, restricting or distorting competition to an appreciable extent.[89]

74. In this regard, CCCS in *Pest Control*[90], a case on agreements and/or concerted practices involving collusive tendering or bid rigging, adopted the position taken by the UK CAT in *Argos,* that market definition is not intrinsic to the determination of liability. The UK CAT held that:

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[88] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.1.
[89] *CCCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.2.
[90] *Pest Control*, at [67].

"*In our judgment, it follows that in Chapter I cases involving price-fixing it would be inappropriate for the OFT to be required to establish the relevant market with the same rigour as would be expected in a case involving the Chapter II prohibition. In a case such as the present, definition of the relevant product market is not intrinsic to the determination of liability, as it is in a Chapter II case. In our judgment, it would be disproportionate to require the OFT to devote resources to a detailed market analysis, where the only issue is the penalty.… In our view, it is sufficient for the OFT to show that it had a reasonable basis for identifying a certain product market for the purposes of Step 1 of its calculation*"[91].

75. However, once it is assessed that an undertaking has infringed the section 34 prohibition, and where CCCS exercises its discretion to impose a financial penalty pursuant to section 69(2)(d) of the Act, market definition is relevant for the second purpose of assessing the appropriate amount of penalties.

76. For the purposes of exercising its discretion to impose a financial penalty pursuant to section 69(2)(d) of the Act in this case, based on the scope of the bid rigging arrangements at issue, CCCS has determined that the relevant market is the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore.

I. Evidence Relating to the Bid Rigging Arrangement

(i) Leniency Applications by the Parties

77. Following the inspections under section 64 of the Act carried out by CCCS on the Parties on 6 October 2016, Shin Yong applied for leniency first on the same date, followed by Geoscapes. On 10 October 2016, Hong Power also applied for leniency.

78. Each Party admitted to having been a party to an anti-competitive agreement to rig bids in ITQs called by WRS.[92]

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[91] *Argos*, at [178] to [179]

[92] Answer to Q22, NOI of Tan Chuan Hong dated 23 March 2017. Answers to Q9, Q31, Q32 and Q33, NOI of Joe Koh dated 20 March 2017. Answer to Q30, NOI of Chris Toh dated 4 May 2017.

The Parties' Involvement in WRS ITQs

79. The Parties' involvement with ITQs began at various times. Shin Yong had the longest association with WRS, having participated in ITQs called by WRS since the early 2000s.[93] Chris Toh informed that Shin Yong was working on WRS projects when he joined the company in 2010[94].

80. In contrast, when Joe Koh joined Geoscapes in August 2014, the company's primary business was as a renovation contractor. Joe Koh (Geoscapes) alleged that, following months of Geoscapes doing poorly, Chris Toh (Shin Yong) managed to secure an invitation for Geoscapes to be invited to bid for ITQs called by WRS in April or May 2015[95], although Geoscapes only won its first bid in June 2015[96]. This was corroborated by Chris Toh (Shin Yong), who stated that Geoscapes started bidding for WRS ITQs in May or June 2015.[97]

81. Hong Power similarly was not involved in ITQs called by WRS until July 2015 when Hong Power became Shin Yong's subcontractor doing electrical works. Hong Power subsequently started bidding in ITQs called by WRS as the main contractor.[98] This was also corroborated by Chris Toh (Shin Yong).[99]

82. Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) implicated Chris Toh (Shin Yong) as the one who had organised and coordinated the bid rigging. Shin Yong does not dispute that Chris Toh (Shin Yong) was the one that had brought in both Geoscapes and Hong Power to bid for WRS' ITQs.[100]

83. However, Chris Toh (Shin Yong) alleged that the true mastermind behind the bid rigging was [✂].[101]

The alleged involvement of WRS Staff

84. Chris Toh (Shin Yong) informed that [✂] organised and planned the bid rigging arrangement:

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[93] Shin Yong's response to question 10 of CCCS's section 63 Notice dated 17 January 2018.
[94] Answers to Q10 and Q12, NOI of Chris Toh dated 4 May 2017.
[95] Answers to Q3 and Q8, NOI of Joe Koh dated 20 March 2017.
[96] Answer to Q8, NOI of Joe Koh dated 20 March 2017.
[97] Answer to Q59, NOI of Chris Toh dated 4 May 2017.
[98] Answer to Q7, NOI of Tan Chuan Hong dated 23 March 2017.
[99] Answers to Q73 and Q74, NOI of Chris Toh dated 4 May 2017.
[100] Answers to Q58 and Q74, NOI of Chris Toh dated 4 May 2017.
[101] Answer to Q29, NOI of Chris Toh dated 4 May 2017.

"[sometime in 2015] [✂] *approached me in the carpark of the zoo and asked me how is life. I asked him if he could* [✂]. [✂] *asked me if I know what to do.* [✂] *did not allow me to* [✂] *unless I gave in to his conditions, one of which was that I had to assemble a team of contractors for him. I did try and ask him if I could submit quotes without participating in any form of bid-rigging, but he said no, I had to abide by his conditions. The pertinent condition was that I had to assemble a group of contractors, and in turn, he would ensure that they are being called. He will determine the price of the work and* [✂]."[102]

85. At the same time, Chris Toh (Shin Yong) did not deny that he had instructed other vendors (i.e. tenderers) how to bid and even referenced the fact that the other Parties would implicate him as the coordinator:

"*Q30. Did you tell other tenderers how much to quote?*

A: Yes, because [✂] *had already selected the preferred tenderer to win the project at a preferred price, and I would tell the rest to quote higher. However, the other contractors in the group did not know who was going to win the project. Their impression was that I was the one providing the prices to them for the quotations, and they did not know that* [✂] *already had a preferred contractor in mind.*"[103]

86. [✂] completely denied any knowledge relating to any bid rigging or information exchange whatsoever, except that he "*heard rumours*". He chose to do nothing as he "*did not want to continue fanning the rumours*" and that he "*did not have concrete facts or know for sure what was happening*".[104]

87. Joe Koh (Geoscapes) confirmed that any bid rigging was done via Chris:

"*Q23. Do you know a* [✂] *by the name of* [✂]?
A: Yes.

Q24. Please explain your relationship with [✂].
A: [✂] *is a project manager and we are the contractor.*

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[102] Answer to Q29, NOI of Chris Toh dated 4 May 2017.
[103] Answer to Q30, NOI of Chris Toh dated 4 May 2017.
[104] Answers to Q79, Q80 and Q81, NOI of [✂] dated 18 February 2018.

Q25. Have you had any communications with [✂] *in the process of submitting bids for WRS projects?*
A: Yes, she would ask me to go down for show rounds, and also communicate with me for management of the projects. Her other communications would have been with Chris.

Q26. What do you mean when you said that her other communications would have been with Chris?
A: Because Chris was the main coordinator, I would assume that any other communications would have been with Chris. I am not sure if [✂] *had any other communications with Chris.*"[105]

88. Finally, Tan Chuan Hong (Hong Power) stated that WRS staff did not provide him with information about bidding or information from other bidders:

"*Q17. Did* [✂] *ever tell you how much to quote?*
A: No.

Q18. Did [✂] *provide you with any information about the other tenderers, or any other relevant information about other potential tenderers?*
A: No."[106]

89. CCCS concludes that the evidence in respect of [✂] alleged involvement in the bid rigging arrangements is inconclusive. Chris Toh (Shin Yong) admitted to instructing Geoscapes and Hong Power on the prices to quote but claimed that he was instructed by [✂]. However, there is no evidence to corroborate Chris Toh (Shin Yong)'s allegation against [✂]. Geoscapes and Hong Power did not implicate [✂] in the bid rigging arrangements, but firmly implicated Shin Yong as the initiator and coordinator.

<u>Evidence Demonstrating the Bid Rigging Arrangement</u>

90. Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) informed that it was Chris Toh (Shin Yong) who had brought them in to bid on WRS ITQs:

[105] Answers to Q24 to Q26, NOI of Joe Koh dated 20 March 2017.
[106] Answers to Q17 and Q18, NOI of Tan Chuan Hong dated 23 March 2017.

Joe Koh (Geoscapes)

"*In May 2015, I asked Chris how does Shin Yong survive, and asked him to share the tips with Geoscapes. That was when he brought me onto the zoo projects.*"[107]

Tan Chuan Hong (Hong Power)

"*I did not know about WRS until 2015 when I worked as an electrical subcontractor for Shin Yong for a WRS project in the same year. That was when I realised WRS has a lot of work opportunities. That was when I approached Chris from Shin Yong and asked him whether Hong Power has any chances of working in WRS doing electrical works. I asked Shin Yong whether he would be able to create opportunities for me for WRS projects, and Chris introduced me to the facilities manager.*"[108]

91. Whilst Chris Toh (Shin Yong) did not explicitly admit that Geoscapes and Hong Power were brought in by him as part of the "group of contractors" to offer competing bids for WRS ITQs, in describing how he coordinated the bid rigging, he clearly regarded Geoscapes and Hong Power as part of that group:

"[Question by CCCS]:

14. Please provide further information on how the Information Exchange and Bid Coordination was conducted, including the following:

a. Please explain:

i. Whether the parties exchanged information regarding their prospective bids and what information was exchanged (e.g. prices);

ii. Whether the parties agreed on who would win an ITQ tender;

iii. Whether the parties agreed on the price each party would submit;

iv. How the parties communicated and reached agreement on the matters at ii and iii, above; and

v. Whether any person/party initiated and/or coordinated the Information Exchange or Bid Coordination; If so, please state the name, company, and designation of the person(s).

[107] Answer to Q3, NOI of Joe Koh dated 20 March 2017.
[108] Answer to Q22, NOI of Tan Chuan Hong dated 23 March 2017.

…

[Answer by Shin Yong]*:*
For the period from May 2015 to July/August 2015
…
Information will be passed to Joe from Geoscapes that [✂] *wanted him to do the job and he will tell me how much he will put (price need to be within the budget range which* [✂] *provide and be approved by him) and we will just put higher for Shin Yong.*

He would do the same if [✂] *wanted Shin Yong to have the job.*

There is no exact agreement of the price as only the winning bid would be known (Approved by [✂]*) and for eg. Geoscapes is suppose to win at $1,100, Shin Yong would bid higher say at $1,250 and vice versa.*
…
When [✂] *wanted Hong Power to have the job, Chris will relay the price which Hong Power wanted to quote to* [✂] *who would decide to approve or lower his bid. Contractors like Shin Yong and Geoscapes would put higher.*

For the purpose of bid coordination, Shin Yong only has contact with Joe Koh Kian Hee from Geoscapes

Mr Tan Chuan Hong from Hong power was contacted"

[Question by CCCS]:
16. In relation to each of the entities listed in question 15 above, please elaborate on when and how each entity started participating in the Information Exchange and Bid-Coordination. Please state, as precisely as possible, when the entity stopped participating in the Information Exchange and Bid-Coordination.

[Answer by Shin Yong]*:*
…
Hong Power, Shin Yong and Geoscapes started at May 2015 and ended at July/August 2015

[Question by CCCS]:

17. Please list the employees/representatives from each of the entities listed in question 15 above with whom the Company has contact.

[Answer by Shin Yong]*:*
For the purpose of bid coordination, Shin Yong only has contact with Joe Koh Kian Hee from Geoscapes.

Mr Tan Chuan Hong from Hong power was contacted"[109]

"*Q74. Did you bring Hong Power into the bid-rigging arrangement?*
A: Initially yes. Before October 2015, he was with us. There was a CCS scare in the zoo around September/October 2015 when the zoo stopped all procurement processes involving my group of contractors and there were rumours that they were going to get CCS to check. After this break, Hong Power was not part of my group of contractors anymore.

Q75. Did you provide instructions to Hong Power on how much to quote?
A: Yes.

Q76. Did Hong Power usually follow your instructions on how much to quote?
A: Yes."[110]

92. Chris Toh (Shin Yong) readily admitted to having instructed Geoscapes and Hong Power on the prices to bid. This is corroborated by Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power):

Joe Koh (Geoscapes)
"*Q16. Did you exchange price information with any of the other tenderers?*
A: I would say no because all the prices were coordinated by Chris. I woud not call the rest to ask them how much is their cost.

Q17. Did you receive price information about their bids from other tenderers?
A: No, ***it was all coordinated by Chris****.*

[109] Shin Yong's responses to questions 14, 16 and 17 of CCCS's section 63 notice dated 17 January 2018.
[110] Answers to Q74 to Q76, NOI of Chris Toh dated 4 May 2017.

Q18. Did Chris tell you how much to quote or did he tell you how much he was quoting?
A: ***He told me how much to quote***.”[111] (Emphasis in bold added)

“*i. All information was given to* [Chris Toh] *and routed through him as he was the main point of contact for coordination.*
ii. We do not know the arrangement as to who will win an ITQ/tender as the parties involved never communicate directly with each other since all information was routed via [Chris Toh].
iii. Similar to above para b, the initial pricing calculated by the Company was communicated to [Chris Toh] *and he will advise later what price to input into the ITQ/Tender, sometimes higher and sometimes lower.*
iv. Per above explained, there was no direct communication between the parties except via [Chris Toh].
v. Yes, the initiation was by [Chris Toh].”[112]

Tan Chuan Hong (Hong Power)
“*Q24. Please describe what did you discuss with Chris and Joe?*
A: I discussed with both Chris and Joe about the pricing for the quotations.

Q25. Was there any understanding or agreement among yourself, Chris and Joe in relation to the WRS tenders?
A: There was an understanding between us. If I knew how to do the job very well, I would tell Chris or Joe about it. ***Chris was the key man and he did most of the coordination. I would tell Chris that I wanted to do a certain project and he would tell me the pricing I need to provide.*** *There was no agreement to rotate the jobs. There were instances where he would tell me that someone else wanted to take on that project, and provided me with a price that I was supposed to quote at. If I was unable to do the project at that price, I would tell him and he would provide me with a price to quote at and I would not get the job. Otherwise, I would quote accordingly and get the project, and I would pay the 30%*

[111] Answers to Q16 to Q18, NOI of Joe Koh dated 20 March 2017.
[112] Geoscapes’ response to question 14 of CCCS’s section 63 notice dated 17 January 2018.

to him."[113] (Emphasis in bold added)

93. The Parties differed somewhat on their explanation of how the winner of the ITQs was determined. Geoscapes claimed that they did not know who would win an ITQ, since the bid rigging was coordinated by Chris Toh (Shin Yong)[114]. Hong Power claimed that there was no agreement to rotate jobs.[115] Chris Toh (Shin Yong) claimed that "[✂] *will decide who will win the quote*" and that Shin Yong "*received the pricing info from* [✂]"[116].

94. There was also some discrepancy relating to which type of ITQs were part of the arrangement. Chris Toh (Shin Yong) claimed that only ITQs under the Maintenance Department were affected:

> "*For example, the repair of ostrich fencing will not be under* [✂] *job responsibilities, so I've excluded these POs. These would be under the zoology department.*
>
> [✂] *is in charge of maintenance of public areas. For those areas in the zoo that are not accessible to the public, these are not under his purview.*"[117]

95. However, Shin Yong was unable to name a single tender which was subject to the bid rigging arrangement:

> "[Question by CCCS]:
> *13. Please list in the format below <u>ALL</u> the tenders/ITQs which were affected, or which the Company believes/suspects were affected, by the Information Exchange and Bid Coordination and provide the following information:*
>
> [Answer by Shin Yong]*:*
> *All documents are with CPIB, we have no access to them. However, the period of the bid coordinate should be between May 2015 and*

[113] Answer to Q24 and Q25, NOI of Tan Chuan Hong dated 23 March 2017.
[114] Geoscapes' response to question 14(a)(ii)of CCCS's section 63 notice dated 17 January 2018.
[115] Answer to Q25, NOI of Tan Chuan Hong dated 23 March 2017.
[116] Shin Yong's responses to question 14(b)(ii) and (iii) of CCCS's section 63 notice dated 17 January 2018.
[117] Answer to Q6, NOI of Chris Toh dated 16 August 2019.

July/August 2015 and hence some of those ITQ which falls within this date range with all the affected contractors should be affected"[118]

96. When asked to identify projects which had been discussed with Shin Yong and hence subject to the bid rigging arrangements, Tan Chuan Hong (Hong Power) identified the project "*Booster pump system w shelter @Anoa dens*" with PO No. 4400002862 to have been rigged.[119] However, WRS subsequently confirmed that this specific ITQ was not under the Maintenance Department because it is not in a public area and only accessible to authorised personnel and staff.[120] Hong Power and WRS contradicts Shin Yong's claim that only ITQs under the Maintenance Department were affected. Shin Yong's claim that only ITQs for projects in public areas were rigged is unreliable and self-serving and suggests that Shin Yong is attempting to limit its involvement. In this regard, CCCS does not consider Chris Toh (Shin Yong)'s information on the type of projects subject to the bid rigging arrangements to be reliable, and instead accepts the evidence of Tan Chuan Hong (Hong Power).

97. Tan Chuan Hong (Hong Power) also suggested that the bid rigging arrangement covered both civil and electrical works:

"*Q43. Could you explain how did Chris coordinate the cover bidding arrangement?*
A: For civil work, Chris would just call me up and give me the price to quote. For purely electrical work, I would give him the prices and he would come back to me."[121]

98. In view of the evidence above, CCCS finds that there was an agreement, or at the very least, a concerted practice between Shin Yong, Geoscapes and Hong Power to rig the bids for ITQs called by WRS in relation to building, maintenance and construction works, including electrical works.

[118] Shin Yong's response to question 13 of CCCS's section 63 notice dated 17 January 2018.
[119] Answers to Q32 and Q33, NOI of Tan Chuan Hong dated 23 March 2017.
[120] WRS's response to question 1 of CCCS's section 63 notice dated 29 August 2019.
[121] Answer to Q43, NOI of Tan Chuan Hong dated 23 March 2017.

Exculpatory Statements made by Chris Toh (Shin Yong)

99. Chris Toh (Shin Yong) alleged that the entire bid rigging arrangement was conceptualised, organized and decided by [✂], and Shin Yong's role was to gather a group of contractors, namely Geoscapes and Hong Power, and pass on [✂] bidding instructions to them. Regardless of whether this was the case, the fact remains that Shin Yong, Geoscapes and Hong Power engaged in anti-competitive bid rigging conduct that amounts to an agreement and/or concerted practice that infringed section 34 of the Act.

100. By not only recruiting Geoscapes and Hong Power for the bid rigging arrangements, but actively organising and coordinating the bid rigging, Shin Yong remains liable for its participation in the bid rigging arrangements.

Initiator and coordinator of bid rigging arrangements

101. Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) pointed to Shin Yong as the coordinator of the bid rigging arrangements and identified Chris Toh (Shin Yong) as the person who brought them in to quote for WRS's ITQs.

102. To the extent that the agreement and/or concerted practice is between Shin Yong, Geoscapes and Hong Power, CCCS finds that Shin Yong is the initiator and coordinator of the bids that the Parties would submit in response to WRS's ITQs.

(ii) *ITQs tainted by the bid rigging*

103. Notwithstanding that the Parties admitted to having participated in bid rigging, the Parties were unable to specifically identify which ITQs they had rigged. Due to limitations of WRS's procurement system at the material time of the infringement, WRS was unable to provide records of bids by the Parties in its ITQs.

104. Tan Chuan Hong (Hong Power) was only able to identify a few ITQs Hong Power had participated in and for which the bids were rigged, claiming that he could not remember much relating to the civil work projects Hong Power had done for WRS.[122] Pertinently, Tan Chuan Hong (Hong Power) stated that for

[122] Answer to Q32, NOI of Tan Chuan Hong dated 23 March 2017.

the ITQs which he could remember and had identified, he had asked Chris Toh (Shin Yong) to give him the prices to bid[123], and Hong Power had bid according to Chris Toh's (Shin Yong) instructions[124]. The ITQs that Tan Chuan Hong (Hong Power) identified are listed in Table 1 below.

105. Likewise, when asked to identify ITQs that were subject to bid rigging, Joe Koh (Geoscapes) stated that he could only remember a few ITQs that he had discussed with Shin Yong.[125] These ITQs are listed in Table 1 below.

106. In contrast, Chris Toh (Shin Yong) claimed that he could not identify the ITQs which were affected by the bid rigging conduct as all of the ITQ documents had been seized by CPIB, and Shin Yong did not have access to these documents.[126]

107. Notwithstanding Chris Toh's (Shin Yong) inability to identify any ITQs, given that both Tan Chuan Hong (Hong Power) and Joe Koh (Geoscapes) had contacted Chris Toh (Shin Yong) to discuss the bids to be submitted, CCCS considers that Shin Yong would have also participated in the ITQs identified by Hong Power and Geoscapes to be affected by the bid rigging conduct.

108. Further, CCCS also compared the ITQs identified by Tan Chuan Hong (Hong Power) and Joe Koh (Geoscapes) to have been affected by the bid rigging conduct with the POs issued by WRS. Where the POs were issued to one of the Parties who had not identified that ITQ (i.e. Hong Power identified the ITQ but PO was issued to Geoscapes), it is logical to infer that the Party to whom the PO was issued to (e.g. Geoscapes) must have necessarily participated in the ITQ as well in order to be awarded the PO. As such, in such instances, CCCS also counts this Party as having participated in the ITQ.

109. Table 1 below sets out the ITQs that were identified by the Parties to have been affected by the bid rigging conduct, as well as the other Parties whom CCCS counts as having participated in the ITQ. Based on the table, Shin Yong had participated in eight ITQs, Geoscapes had participated in six ITQs, and Hong Power had participated in five ITQs that were affected by the bid rigging conduct.

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[123] Answer to Q33, NOI of Tan Chuan Hong dated 23 March 2017.
[124] Answer to Q34, NOI of Tan Chuan Hong dated 23 March 2017.
[125] Answer to Q46, NOI of Joe Koh dated 20 March 2017.
[126] Shin Yong's response to question 13 of CCCS's section 63 notice dated 17 January 2018.

Table 1: ITQs identified by the Parties that were affected by bid rigging

S/n	ITQ Description	Date of PO	PO Number	PO Amount	Identified by	Participated by *(based on identifier and PO award)*
1.	G/F lift shaft cladding at RS	24 July 2015	4300009579	[✂]	Hong Power	Shin Yong
2.	Booster pump system w shelter @ Anoa dens	14 August 2015	4400002862	[✂]	Hong Power	Shin Yong
3.	Supply and installation of Nest Boxes	7 August 2015	4400002853	[✂]	Hong Power	Shin Yong; Geoscapes
4.	Replacement of tree log column at Night Safari entrance glass roof and covered area	17 August 2015	4400002864	[✂]	Hong Power; Geoscapes	Shin Yong; Geoscapes
5.	6 nos. of gas torch at NS entrance	17 August 2015	4400002865	[✂]	Hong Power; Geoscapes	Shin Yong; Geoscapes
6.	Install solid surface @ Salamander Exh.	24 July 2015	4300009587	[✂]	Geoscapes	Shin Yong
7.	Gutter Extension at Mekong River Area	24 July 2015	4400002814	[✂]	Geoscapes	Shin Yong
8.	Install wash basin in RKFW near stables	6 August 2015	4300009744	[✂]	Geoscapes	Shin Yong

S/n	ITQ Description	Date of PO	PO Number	PO Amount	Identified by	Participated by *(based on identifier and PO award)*
	Total:			[✂]		

110. CCCS therefore considers that the Parties had, at a minimum, rigged the bids of eight WRS's ITQs for Shin Yong, six for Geoscapes and five for Hong Power.

CHAPTER 3: INFRINGEMENT DECISION

A. CCCS's Infringement Decision

111. Given the anti-competitive object of the agreements and/or concerted practices to rig ITQs issued by WRS, there is no need to prove that the bid rigging arrangements had effects which were restrictive of competition.

112. CCCS therefore finds that the Parties, namely Shin Yong, Geoscapes and Hong Power, have infringed the section 34 prohibition by entering into agreements, or at the very least, concerted practices with the object of restricting, preventing or distorting competition in the market for building, construction and maintenance ITQs called by WRS at the Parks in Singapore.

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

B. Duration of Infringements

114. The evidence establishes on a balance of probabilities that there were agreements and/or concerted practices to coordinate bid submissions and pricing through Chris Toh (Shin Yong) from at least 1 July 2015 up to 6 October 2016 for Shin Yong, Geoscapes and Hong Power (i.e. the period in which the infringements took place):

a. Joe Koh (Geoscapes) alleged that the bid rigging conduct began in April 2015 and ended in October 2016.[127]

b. Chris Toh (Shin Yong) prevaricated as to when the conduct started and ended; he initially stated the conduct ended in July/August 2015[128] but when CCCS confronted him with the conflicting evidence, Chris Toh (Shin Yong) took the final position that the conduct began in May 2015[129] and ended sometime in mid-2016[130].

c. Tan Chuan Hong (Hong Power) alleged that Hong Power started working on WRS projects as a subcontractor for Shin Yong from July 2015[131], and that the bid rigging conduct ended when CCCS conducted its inspection on 6 October 2016[132].

d. WRS was unable to assist CCCS in determining the duration of the conduct as it was unable to provide information on the participants of ITQs for the period in which the infringements took place. WRS could only provide CCCS with the POs issued to the successful bidders of ITQs.

115. CCCS is of the view that the evidence provided by Geoscapes and Hong Power is reliable. For instance, Joe Koh (Geoscapes) informed that he started bidding for ITQs around "*April or May 2015*" and getting his "*first job around June to July 2015*".[133] This is corroborated by WRS' list of POs, with the earliest PO issued to Geoscapes in April 2015.[134] Similarly, Tan Chuan Hong's evidence that he first started bidding for WRS ITQs in July 2015[135] is also corroborated by WRS' list of POs, with the earliest PO issued to Hong Power in July 2015.[136]

116. As regards the end date, the accounts of Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) also corroborated each other – that the conduct ended only when CCCS conducted unannounced inspections on 6 October 2016.

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[127] Geoscape's response to question 10 of CCCS's section 63 notice dated 17 January 2018.
[128] Shin Yong's response to questions 12 and 16 of CCCS's section 63 notice dated 17 January 2018.
[129] Shin Yong's response to questions 12 and 16 of CCCS's section 63 notice dated 17 January 2018.
[130] Email from Chris Toh dated 16 January 2019.
[131] Answer to Q7, NOI of Tan Chuan Hong dated 23 March 2017.
[132] Answer to Q50, NOI of Tan Chuan Hong dated 23 March 2017.
[133] Answer to Q8, NOI of Joe Koh dated 20 March 2017.
[134] WRS Transactions for Estate Management, Facilities and Warehouse from 1 January 2015 to 28 February 2017, WRS's response to question 2 of CCCS's section 63 notice dated 12 September 2018.
[135] Answer to Q7, NOI of Tan Chuan Hong dated 23 March 2017.
[136] WRS Transactions for Estate Management, Facilities and Warehouse from 1 January 2015 to 28 February 2017, WRS's response to question 2 of CCCS's section 63 notice dated 12 September 2018.

117. In contrast, Chris Toh's (Shin Yong) various accounts in relation to the start and end date of the bid rigging conduct were inconsistent, and potentially self-serving (i.e. by seeking a shorter period in which the infringements took place).

118. CCCS considers that the statements given by Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) were more reliable than Chris Toh's (Shin Yong). The start and end dates of the bid rigging arrangements provided by Joe Koh (Geoscapes) and Tan Chuan Hong (Hong Power) were corroborated by WRS's records. Chris Toh on the other hand, was changing his positions on the start and end dates of the bid rigging arrangements, and this undermined his credibility.

119. CCCS considers 6 October 2016 the end date of the bid rigging arrangements, being the date of the inspection under section 64 of the Act on the Parties. This is apposite in light of the candid admission by Geoscapes and Hong Power that 6 October 2016 was when the bid rigging arrangements ended, and the Parties being advised during the inspection to cease all alleged anti-competitive activities.

120. CCCS considers that the duration of infringement of this nature is at least from the date of initial contact between the Parties, with one party either requesting or providing the prices to quote at, to the date when the final bid was received for the ITQ. There is no evidence that the period between initial contact and the Parties' submission of ITQ bids, and correspondingly the duration of the infringement, was greater than one year. Having said that, CCCS is mindful that the effects of the infringements were not restricted to the actual, usually very short, period during which the bid rigging took place. Once an ITQ has been awarded following an anti-competitive bid, the anti-competitive effect is irreversible in relation to that ITQ.

121. The duration of an infringement is of importance in so far as it may have an impact on the penalty that may be imposed for that infringement.[137] For that purpose, CCCS considers that each of the ITQs that were subject to the bid rigging arrangements amounts to a separate infringement, and that none of the discrete incidents of bid rigging spanned more than a year.

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[137] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016,* paragraphs 2.1, 2.9 to 2.12.

CHAPTER 4: CCCS' ACTION

A. Financial Penalties – General Points

122. Under section 69(2)(d) of the Act, where CCCS has made a decision that an agreement has infringed the section 34 prohibition, CCCS may impose on a party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of that party in Singapore for each year of infringement, up to a maximum of 3 years.

123. CCCS may impose a financial penalty only if it is satisfied that the infringement has been committed intentionally or negligently.

124. As established in *Pest Control*[138], *Express Bus Operators*[139] and *Electrical Works*[140], the circumstances in which CCCS might find that an infringement has been committed intentionally include the following:

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

b. the undertaking in question is aware that its action will be, or is reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or

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

125. The CAB in *Express Bus Appeals*, has also established that the threshold conditions under section 69(3) of the Act would be satisfied if the undertaking must have been aware, or could not have been unaware, that the agreements had the object or would have the effect of restricting competition.[141]

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[138] *Pest Control*, at [355].
[139] *Express Bus Operators*, at [445].
[140] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SG CCS 4 ("***Electrical Works***"), at [282].
[141] *Express Bus Appeals*, at [143].

126. Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. CCCS 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.[142]

127. CCCS considers that collusive tendering or bid rigging arrangements, as in this case, are serious infringements of the section 34 prohibition, which have as their object the restriction of competition, and are likely to have been, by their very nature, committed intentionally.

128. Further, CCCS considers that the Parties would, in all likelihood, have submitted tender proposals or quotes for those projects specified at paragraph 109 of the ID and either would have, or ought to have known that the purpose of conducting tenders is to ensure competition in the award of projects.

129. CCCS considers that, by reason of the very nature of the agreements and/or concerted practices involving collusive tendering or bid rigging, each of the Parties must have been aware that the agreements and/or concerted practices in which they participated had the object of preventing, restricting or distorting competition.

130. On the evidence, it is clear that the Parties themselves deliberately elected to engage in bid rigging of WRS's ITQs for profit. Shin Yong, even on its own case, essentially said that it entered into the bid rigging arrangements in order not to be excluded [✂] from bidding for WRS's ITQs.[143] Joe Koh (Geoscapes) informed that as Geoscapes' business was poor, he asked Chris Toh (Shin Yong) to bring him in to bid for WRS's ITQs and hence, joined the bid rigging arrangement for profit reasons.[144] Tan Chuan Hong (Hong Power) also joined the bid rigging arrangement for profit, when he "*realised WRS* [had] *a lot of work opportunities*" and approached Chris Toh (Shin Yong) to join the bid rigging arrangement.[145]

131. CCCS is therefore satisfied that each of the Parties intentionally or negligently infringed the section 34 prohibition. CCCS will impose a penalty on the Parties

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[142] See *CCCS Guidelines on Enforcement of Competition Cases 2016*, paragraphs 4.7 to 4.10.
[143] Answer to Q29, NOI of Chris Toh dated 4 May 2017.
[144] Answer to Q3, NOI of Joe Koh dated 20 March 2017.
[145] Answer to Q22, NOI of Tan Chuan Hong dated 23 March 2017.

in relation to the infringements considered above in respect of which each Party is found to have participated in collusive tendering arrangements.

B. Calculation of Penalties

132. The C*CCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016* ("**Penalty Guidelines**") provide that the objectives of imposing financial penalties are to reflect the seriousness of the infringement, and to deter the infringing undertakings and other undertakings from engaging in anti-competitive conduct.[146]

133. The Penalty Guidelines provide that the financial penalty to be imposed by CCCS under section 69 of the Act will be calculated following a six-step approach[147]:

a. Step 1: calculation of the base penalty having regard to the seriousness of the infringement (expressed as a percentage rate) and the party's turnover of the business in Singapore for the relevant product and relevant geographic markets affected by the infringement ("**the Relevant Turnover**") in the party's financial year preceding the date when the infringement ended[148];

b. Step 2: the duration of the infringement;

c. Step 3: any aggravating and mitigating factors;

d. Step 4: other relevant factors such as deterrent value;

e. Step 5: statutory maximum penalty as provided for under section 69(4) of the Act; and

f. Step 6: immunity, leniency reductions and/or fast-track procedure discounts.

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[146] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 1.7.
[147] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.1.
[148] *Competition (Financial Penalties) Order 2007*, paragraph 3 and *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.5.

134. Similar approaches were adopted in *Pest Control*[149], *Express Bus Operators*[150], *Electrical Works*[151] and the *Freight Forwarding Case*.[152]

135. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

(i) Seriousness of the infringements and relevant turnover

136. 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

137. Based on the market definition, the relevant turnover for each undertaking is the turnover derived from the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore.

138. Where an undertaking is unable or unwilling to provide information to determine its relevant turnover, or is suspected of providing CCCS with incomplete or very low relevant turnover, CCCS may attribute a relevant turnover to that undertaking with a view to 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.[153] This will similarly apply where an undertaking's relevant turnover is zero.

139. An undertaking's relevant turnover is the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets

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[149] *Pest Control*, at [360].
[150] *Express Bus Operators*, at [452].
[151] *Electrical Works*, at [296].
[152] CCCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore, at [648].
[153] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraphs 1.7 and 2.7.

affected by the infringement in the undertaking's last business year.[154] The "last business year" is the financial year preceding the date when the infringement ended.[155]

Seriousness

140. As set out in paragraph 2.3 of the Penalty Guidelines, CCCS will consider the seriousness of the infringement and set a percentage starting point for calculating the base penalty. The more serious and widespread the infringement, the higher the starting percentage point is likely to be. In assessing the seriousness of the infringement, CCCS will consider a number of factors, including the nature of the product, the structure and condition of the market, the market share(s) of the undertaking(s) involved in the infringement, entry conditions 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. The assessment will be made on a case-by-case basis for all types of infringements, taking into account all of the circumstances of the case.[156] 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.

141. Nature of the products – The relevant market in this case is the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore.

142. Structure of the markets and market shares of the Parties – There are numerous players in the market for the provision of building and maintenance services. For example, based on the BCA Directory of Registered Contractors, there are more than 1,800 registered contractors with the work-head "General Building"[157] and more than 1,200 licensed builders with the work-head "General Builder Class

[154] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.5.
[155] *Competition (Financial Penalties) Order 2007*, paragraph 3 and *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.5.
[156] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.4.
[157] BCA Directory of Registered Contractors and Licensed Builder. https://www.bca.gov.sg/BCADirectory/Search/Result?page=-1&pCLSSelected=,83|ALL&pGrading=All&d=1 (correct as at 15 November 2019)

1".[158]

143. Effect on customers, competitors and third parties – It is difficult to quantify the exact amount of any loss caused by the agreements in infringements due to the unavailability of information on the actual prices that would be paid by WRS under the "counterfactual scenario".[159] CCCS considers that the infringements created the false impression that the winning bids were actually the result of a fair and competitive tender process when it was not. As a result, it was not possible for WRS to ascertain whether the tenders received were based on competitive prices or other factors. It also meant that WRS was deprived of the possibility of replacing those companies with other service providers that might have been keen to submit a genuinely competitive bid.

144. Nature of infringement - CCCS considers that the agreements and/or concerted practices regarding the bid rigging conduct in the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore had as their object the prevention, restriction and distortion of competition and are by their very nature, serious infringements of the Act. As stated in the *Express Bus Operators*[160] and the *Motor Vehicles Case*[161], CCCS considers that cartel cases involving price fixing, bid rigging, market sharing and limiting or controlling production or investment are especially serious infringements and should normally attract a starting percentage of the relevant turnover that is on the higher end. This is notwithstanding that the aggregate market share of the parties falls below the 20% threshold and even if the parties to such agreements are SMEs.[162]

145. Having regard to the nature of the product, the structure of the market, the likely market shares of the Parties, the potential effect of the infringements on customers, competitors and third parties and that bid rigging is one of the more serious infringements of the Act, CCCS considers it appropriate to fix the starting point at [✂] of relevant turnover for each of the Parties.

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[158] BCA Directory of Registered Contractors and Licensed Builder. https://www.bca.gov.sg/BCADirectory/Search/Result?page=-1&pCLSSelected=,140|ALL&pGrading=All&d=1 (correct as at 15 November 2019)

[159] The counterfactual scenario is one where the infringing conduct did not occur, i.e., a scenario in which the Parties did not have an agreement and/or a concerted practice regarding the bid rigging of WRS's building and maintenance projects.

[160] *Express Bus Operators*, at [457].

[161] *Re CCS Imposes Penalties on 12 Motor Vehicle Traders for Engaging in Bid-Rigging Activities at Public Auctions* [2013] SGCCS 6, at [252].

[162] *CCCS Guidelines on the Section 34 Prohibition 2016*, paragraph 2.25.

(ii) Duration of the infringements

146. After calculating the base penalty sum, CCCS will next consider whether this sum should be adjusted to take into account the duration of the infringements. Even though each of the actual collusive tendering or bid rigging arrangements lasted for less than a year, CCCS considers that the effects of bid rigging are generally irreversible, cannot be easily rectified, and continue to be felt long after the duration where the bid rigging conduct occurred. As such, CCCS will generally not set a duration of infringement that is less than one year in cases of bid rigging.[163].

147. Hence, the duration multiplier for the purposes of calculating financial penalties in this case will be **one year**.

(iii) Aggravating and mitigating factors

148. At this stage, CCCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[164] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

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

(iv) Other relevant factors

150. CCCS 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.

151. 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, CCCS will adjust the penalty to meet the objectives of deterrence.

152. In determining whether to impose an uplift, CCCS may take into account other

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[163] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.12.
[164] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.13.

considerations, including, but not limited to, an objective estimate of any economic or financial benefit derived or likely to be derived from the infringement by the infringing undertaking and any other special features of the case, including the size and financial position of the undertaking in question.[165] Bid rigging is one of the most serious infringements of the Act and as such, penalties imposed should be sufficient to deter undertakings from engaging in this conduct.[166]

153. This practice is in line with the position in other competition regimes. For instance, in the UK, the CMA refers to "*The CMA's Guidance as to the Appropriate Amount of Penalty*" which adopts a similar approach.[167]

(v) Maximum statutory penalty

154. Section 69(4) of the Act provides that the maximum financial penalty shall not exceed 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years. The total turnover of the business of the undertaking in Singapore for the purposes of section 69(4) of the Act is defined in the *Competition (Financial Penalties) Order 2007* as the applicable turnover for the business year preceding the date on which the decision of the Commission is taken, or if figures are not available for that business year, the previous business year. The financial penalty will be adjusted if necessary, to ensure that the statutory maximum is not exceeded.

155. Based on copies of the financial records of the Parties from 2011 to 2016 and the POs issued by WRS to the Parties, it appears that WRS's contracts constituted the bulk of the Parties' total revenue for the period in which the infringements took place. As the Parties were excluded from bidding for WRS's ITQs following CCCS' inspections in October 2016, this accounted for the low applicable turnover of the Parties for the business year preceding the issuance of this ID. The financial penalty for each of the Parties therefore exceeded the statutory maximum and will be adjusted downward (before any applicable leniency discount).

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[165] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.18.
[166] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.3. See also *Pest Control*, at [378].
[167] CMA 73, *CMA's Guidance as to the Appropriate Amount of Penalty*, 18 April 2018, paragraph 2.22.

(vi) Adjustments for leniency reductions

156. An undertaking participating in cartel activity may benefit from total immunity from, or a significant reduction in the amount of financial penalty to be imposed if it satisfies the requirements for immunity or lenient treatment set out in the *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016* ("**Leniency Guidelines**"). CCCS will make the necessary adjustments to the financial penalty calculated after Step 5 to take into account immunity or any leniency reductions conferred on an undertaking.[168]

157. In the present case, all three Parties are leniency applicants. The adjustment for each Party taking into account leniency reductions will be dealt with below.

C. Penalty for Shin Yong

158. Shin Yong was involved in bid rigging for WRS's ITQs, with the object of preventing, restricting or distorting competition in the market for the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore.

159. Starting point: Shin Yong's financial year commences on 1 July and ends on 30 June.[169] As the infringement ended on 6 October 2016, the business year for the purpose of determining relevant turnover is financial year 2016, i.e. 1 July 2015 to 30 June 2016.

160. With respect to Shin Yong's relevant turnover for the financial year 2016, Shin Yong alleged that it does not have the relevant documents to provide CCCS with the relevant turnover figures for financial year 2016. Shin Yong alleged that it does not have the documents because all the documents had been seized by CPIB.[170] Shin Yong provided the acknowledgement letter from CPIB showing the list of documents (e.g. financial statements) which were seized by CPIB on 23 February 2017. Shin Yong also provided screenshots of their request to WRS for a list of POs issued by WRS to Shin Yong, to which WRS replied that they were not able to assist with the request.

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[168] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.21.
[169] Answer to Q2, NOI of Chris Toh dated 16 August 2019.
[170] Shin Yong's response to CCCS's section 63 notice dated 19 February 2019.

161. On 16 August 2019, CCCS provided Shin Yong with access to copies of the financial documents which CCCS obtained during the inspection without notice pursuant to section 64 of the Act on 6 October 2016 for the purpose of assisting Shin Yong to provide the relevant turnover. However, CCCS is of the view that the relevant turnover that Shin Yong alleged for financial year 2016 – [✂], was unreliable.[171] In this regard, Chris Toh (Shin Yong) claimed he excluded POs which were not under the Maintenance Department (i.e. [✂] which related to areas in the zoo which are accessible to the public).[172] As set out above at paragraph 96, Tan Chuan Hong (Hong Power) had positively identified ITQs which were part of the bid rigging arrangement. These included an ITQ which was not under the Maintenance Department (i.e. the works done were not in a publicly accessible location but instead within an area restricted to staff and authorised personnel).

162. As Shin Yong was unable to provide reliable information on its relevant turnover for the financial year 2016, CCCS estimated Shin Yong's likely relevant turnover using the tax invoices issued by Shin Yong to WRS, for building and maintenance projects of WRS, which were obtained by CCCS during the inspection of 6 October 2016. In this regard, CCCS estimates that the relevant turnover for Shin Yong for financial year 2016 is at least [✂].

163. As the tax invoices obtained by CCCS during the inspection may not be the complete set of tax invoices issued by Shin Yong to WRS in Shin Yong's financial year 2016, CCCS's estimation is likely to be an underestimation. Nonetheless, the financial penalty after taking into consideration aggregating and mitigating factors is likely to exceed the statutory maximum penalty. The financial penalty will be adjusted downward to ensure that the statutory maximum is not exceeded, which means that a precise estimation of the relevant turnover by CCCS is rendered unnecessary.

164. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 140 to 145 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Shin Yong is therefore [✂].

165. Adjustment for duration: In accordance with paragraphs 146 to 147 above, the duration multiplier is **one year**.

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[171] Answer to Q6, NOI of Chris Toh dated 16 August 2019.
[172] Answer to Q6, NOI of Chris Toh dated 16 August 2019.

166. Adjustment for aggravating or mitigating factors and other relevant factors: As cooperation is a condition of it being granted leniency, no extra mitigation is given for the same.

167. However, there have been multiple infringements by Shin Yong,[173] which CCCS considers an aggravating factor. In view of Shin Yong's involvement in at least eight bid rigging infringements (see paragraph 110), CCCS considers it appropriate to increase the penalties by **35%**. This approach of increasing the penalties by multiples of 5% for each additional instance of infringement after the first was endorsed by CAB in *Pang's Motor Trading*.[174]

168. The financial penalty is accordingly increased by 35% to [✂].

169. Adjustment to prevent maximum penalty being exceeded: The applicable turnover for Shin Yong for the business year preceding the date of this ID (i.e. the financial year 2019, for the period 1 July 2018 to 30 June 2019) is estimated at [✂]. This is derived by summing up all outstanding invoices issued to Shin Yong in the financial year 2019.[175] As such, the statutory maximum penalty for Shin Yong is [✂].

170. Following CCCS's inspections in October 2016, WRS barred Shin Yong from all ITQs and cancelled all existing POs with it. As WRS's contracts constitute the bulk of Shin Yong's total revenue for the period in which the infringements took place, this drastically reduced Shin Yong's total turnover for the following financial years. Shin Yong's applicable turnover for its financial year 2019 is low and this consequently accounts for the low statutory maximum penalty.

171. The financial penalty of [✂] exceeds the maximum financial penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. [✂]. Hence, the financial penalty will be adjusted downwards to [✂].

172. Adjustment for leniency: Shin Yong applied for leniency on 6 October 2016 during CCCS's section 64 inspection. As such, this is after CCCS commenced its investigation.

173. As Shin Yong was the first leniency applicant and the initiator and coordinator

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[173] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.14.
[174] *Pang's Motor Trading*, at [58] and [59].
[175] Shin Yong's response dated 3 October 2019 to CCCS's request for information dated 28 September 2019.

of the bid rigging arrangements, Shin Yong is entitled to a leniency discount of up to 50% on the financial penalty. However, CCCS considers that Shin Yong did not fully cooperate with CCCS's investigation and did not provide very useful information in relation to the investigation despite being a leniency applicant:

a. Chris Toh (Shin Yong) changed his position regarding the start and end dates of the bid rigging. It was only after CCCS confronted him with the evidence from Geoscapes and Hong Power that he indicated that the start and end dates of the bid rigging was May 2015 to "*mid-2016*" – dates closer to what Geoscapes and Hong Power indicated.[176]

b. Chris Toh (Shin Yong) consistently failed to provide information requested for by CCCS under section 63 notices at first instance, and CCCS had to constantly remind him of Shin Yong's obligation (as a leniency applicant) to cooperate in the investigation.

c. The quality of the information provided by Chris Toh (Shin Yong) was suspect. For example, he claimed that he was unable to provide Shin Yong's financial information for financial years 2017 and 2018 as the documents had been seized by CPIB. However, CPIB informed that it had only seized Shin Yong's documents up to 2016. It was only after multiple reminders did Shin Yong eventually provide invoices from 2018 and 2019.

174. On consideration of the above and in particular the totality of cooperation rendered, CCCS will grant a leniency discount of [✂] to Shin Yong.

175. Accordingly, CCCS concludes that a financial penalty of **S$7,148** is to be imposed on Shin Yong for its involvement in bid rigging in WRS's building and maintenance projects.

D. Penalty for Geoscapes

176. Geoscapes was involved in bid rigging for WRS's tenders, with the object of preventing, restricting or distorting competition in the markets for the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore.

[176] See paragraph 114 above.

177. Starting point: Geoscapes' financial year commences on 1 January and ends on 31 December.[177] As the infringement ended on 6 October 2016, the business year for the purpose of determining relevant turnover is financial year 2015, i.e. 1 January 2015 to 31 December 2015. Geoscapes submitted that its relevant turnover for the financial year 2015 was [✂].[178]

178. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 140 to 145 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Geoscapes is therefore [✂].

179. Adjustment for duration: In accordance with paragraphs 146 to 147 above, the duration multiplier is **one year**.

180. Adjustment for aggravating or mitigating factors and other relevant factors: As cooperation is a condition of it being granted leniency, no extra mitigation is given for the same.

181. However, as seen in this ID, there have been multiple infringements by Geoscapes,[179] which CCCS considers as an aggravating factor. In view of Geoscapes' involvement in at least six bid rigging infringements (see paragraph 110), CCCS considers it appropriate to increase the penalties by **25%**. This approach of increasing the penalties by multiples of 5% for each additional instance of infringement after the first was endorsed by CAB in *Pang's Motor Trading*.[180]

182. The financial penalty is accordingly increased by 25% to [✂].

183. Adjustment to prevent maximum penalty being exceeded: The business year preceding the date of this ID for Geoscapes is financial year 2019, for the period 1 January 2019 to 31 December 2019. Geoscapes submitted that its applicable turnover for its financial year 2019 was [✂].[181] As such, the statutory maximum penalty for Geoscapes is [✂].

184. The financial penalty of [✂] exceeds the maximum penalty that CCCS can

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[177] Geoscapes' response to question 1 of CCCS's section 63 notice dated 19 February 2019.
[178] Geoscapes' response to question 3 of CCCS's section 63 notice dated 19 February 2019.
[179] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.14.
[180] *Pang's Motor Trading*, at [58] and [59].
[181] Information provided by Geoscapes dated 29 April 2020.

impose in accordance with section 69(4) of the Act, i.e. [✂]. As such the financial penalty will be adjusted downwards to [✂].

185. Adjustment for leniency: Geoscapes applied for leniency on 6 October 2016 during CCCS's section 64 inspection, which is after CCCS commenced its investigation. Nonetheless, CCCS considers it appropriate to grant [✂] to Geoscapes in view of the useful information and cooperation rendered, in accordance with the Leniency Guidelines.[182]

186. Accordingly, CCCS concludes that a financial penalty of **S$19,739** is to be imposed on Geoscapes for its involvement in bid rigging in WRS's building and maintenance projects.

E. Penalty for Hong Power

187. Hong Power was involved in bid rigging for WRS's tenders, with the object of preventing, restricting or distorting competition in the markets for the provision of building and maintenance services, including civil, construction and electrical works for ITQs called by WRS at the Parks in Singapore.

188. Starting point: Hong Power's financial year commences on 1 August and ends on 31 July.[183] As the infringement ended on 6 October 2016, the business year for the purpose of determining relevant turnover is financial year 2016, i.e. 1 August 2015 to 31 July 2016. Hong Power submitted that its relevant turnover for the financial year 2016 was [✂].[184]

189. CCCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 140 to 145 above and fixed the starting point at [✂] of relevant turnover. The starting amount for Hong Power is therefore [✂].

190. Adjustment for duration: In accordance with paragraphs 146 to 147 above, the duration multiplier is **one year**.

191. Adjustment for aggravating or mitigating factors and other relevant factors: As

[182] *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraphs 4.1 and 4.2.
[183] Hong Power's response to question 1 of CCCS's section 63 notice dated 19 February 2019.
[184] Hong Power's response to question 3 of CCCS's section 63 notice dated 19 February 2019.

cooperation is a condition of it being granted leniency, no extra mitigation is given for the same.

192. However, as seen in this ID, there have been multiple infringements[185] by Hong Power, which CCCS considers an aggravating factor. In view of Hong Power's involvement in at least five bid rigging infringements (see paragraph 110), CCCS considers it appropriate to increase the penalties by **20%**. This approach of increasing the penalties by multiples of 5% for each additional instance of infringement after the first was endorsed by CAB in *Pang's Motor Trading*.[186]

193. The financial penalty is accordingly increased by 20% to [✂].

194. Adjustment to prevent maximum penalty being exceeded: The business year preceding the date of this ID for Hong Power is financial year 2019, for the period 1 August 2018 to 31 July 2019. Hong Power submitted that its applicable turnover for its financial year 2019 was [✂].[187] As such, the statutory maximum penalty for Hong Power is [✂].

195. The financial penalty of [✂] exceeds the maximum penalty that CCCS can impose in accordance with section 69(4) of the Act, i.e. [✂]. As such the financial penalty will be adjusted downwards to [✂].

196. Adjustment for leniency: Hong Power applied for leniency on 10 October 2016, which is after CCCS commenced its investigation. Nonetheless, CCCS considers it appropriate to grant [✂] to Hong Power in view of the useful information and cooperation rendered, in accordance with the Leniency Guidelines.[188]

197. Accordingly, CCCS concludes that a financial penalty of **S$5,211** is to be imposed on Hong Power for its involvement in bid rigging in WRS's building and maintenance projects.

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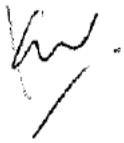
[185] *CCCS Guidelines on the Appropriate Amount of Penalty in Competition Cases 2016*, paragraph 2.14.
[186] *Pang's Motor Trading*, at [58] and [59].
[187] Information provided by Hong Power dated 25 February 2020.
[188] *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraphs 4.1 and 4.2.

F. Conclusion on penalties

198. In conclusion, pursuant to section 69(2)(d) of the Act, CCCS imposes the following financial penalties on the Parties for their involvement in bid rigging activities:

Party	Financial Penalty
Shin Yong	S$7,148
Geoscapes	S$19,739
Hong Power	S$5,211
Total	**S$32,098**



Sia Aik Kor
Chief Executive
Competition and Consumer Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCCS

Company	Key Personnel Interviewed	Dates of Interview	Designation
Shin Yong	Chris Toh	6 October 2016, 4 May 2017, 16 August 2019	Project Manager
Geoscapes	Joe Koh	6 October 2016, 20 March 2017	General Manager
Hong Power	Tan Chuan Hong	6 October 2016, 23 March 2017	Director
Wildlife Reserves Singapore Pte Ltd	[✂]	26 March 2018	[✂]
	[✂]	19 February 2018	[✂]