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

Notice of Infringement Decision issued by CCCS

Infringement of the section 34 prohibition in relation to the exchange of confidential corporate customer information in the provision of hotel room accommodation in Singapore

30 January 2019

Case number: CCCS 700/002/14

Redacted 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**")[1] is issuing an Infringement Decision ("**ID**") against the following undertakings in relation to their participation in anti-competitive agreements and/or concerted practices that infringe section 34 of the Competition Act (Cap. 50B) ("**the Act**"):

   (i) Ascendas Frasers Pte. Ltd. ("**AFPL**"), owner of the hotel known as Capri by Fraser Changi City Singapore ("**Capri**") (up to 30 March 2015), and its appointed agent, Frasers Hospitality Pte. Ltd. ("**FHPL**");

   (ii) Frasers Hospitality Trustee Pte. Ltd. ("**FH Trustee**"), owner of Capri (from 31 March 2015), and its appointed agent, FHPL;

   (iii) Far East Organization Centre Pte. Ltd. ("**FEOC**"), owner of the hotel known as Village Hotel Changi ("**VHC**"), Orchard Mall Pte. Ltd. ("**OM**"), owner of hotel known as Village Hotel Katong ("**VHK**") (VHC and VHK collectively referred to as "**Village Hotels**"), and the appointed agent of FEOC and OM, Far East Hospitality Management (S) Pte. Ltd. ("**FEHMS**"); and

   (iv) OUE Airport Hotel Pte. Ltd. ("**OUE Airport Hotel**"), owner/master lessee of the hotel known as Crowne Plaza Changi Airport Hotel ("**Crowne Plaza**"), and its appointed agent, Inter-Continental Hotels (Singapore) Pte. Ltd. ("**IHG Singapore**")

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

2. CCCS's investigation into suspected anti-competitive agreements and/or concerted practices involving the exchange of future room rate information; future occupancy information and surcharge information between market players in the provision of hotel room accommodation revealed that sales representatives of Capri and Village Hotels were engaged in an agreement and/or concerted practice to discuss and exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers from 3 July 2014 to 30 June 2015 (the "**Capri-Village Conduct**").

3. CCCS's investigation also revealed that sales representatives of Capri and Crowne Plaza were separately engaged in a similar agreement and/or concerted practice to discuss and exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers from 14 January 2014 to 30 June 2015 (the "**Capri-Crowne Plaza Conduct**").

[1] Prior to 1 April 2018, CCCS was known as the Competition Commission of Singapore ("**CCS**").

4. CCCS finds that the Capri-Village Conduct and the Capri-Crowne Plaza Conduct each had as its object the prevention, restriction or distortion of competition infringing section 34 of the Act.

5. CCCS finds that:

   (i) AFPL and its appointed agent, FHPL, as a single economic entity ("**SEE**"), and FEOC, OM and their appointed agent, FEHMS, as an SEE, have engaged in the Capri-Village Conduct in the period between 3 July 2014 and 30 March 2015.

   (ii) FH Trustee and its appointed agent, FHPL, as an SEE, and FEOC, OM and their appointed agent, FEHMS, as an SEE, have engaged in the Capri-Village Conduct in the period between 31 March 2015 and 30 June 2015.

   (iii) AFPL and its appointed agent, FHPL, as an SEE, and OUE Airport Hotel and its appointed agent, IHG Singapore, as an SEE, have engaged in the Capri-Crowne Plaza Conduct in the period between 14 January 2014 and 30 March 2015.

   (iv) FH Trustee and its appointed agent, FHPL, as an SEE, and OUE Airport Hotel and its appointed agent, IHG Singapore, as an SEE, have engaged in the Capri-Crowne Plaza Conduct in the period between 31 March 2015 and 30 June 2015.

6. CCCS is imposing on each of the Parties penalties of the following amounts: AFPL and FHPL as an SEE S$793,925; FH Trustee and FHPL as an SEE S$216,526; FEOC, OM and FEHMS as an SEE S$286,610; and OUE Airport Hotel and IHG Singapore as an SEE S$225,293 for infringement(s) of the Act. This amounts to a total combined penalty of S$1,522,354 for the two infringements of section 34 of the Act set out at paragraph 4 and as detailed further in this ID. In determining the penalty amount, CCCS has taken into consideration the seriousness of the infringement as well as the relevant mitigating factors and leniency discounts, where applicable.

CHAPTER 1: THE FACTS

A. The Parties

I. OWNERS AND MANAGER OF CAPRI

(i) Ascendas Frasers Pte. Ltd. ("AFPL")

7. AFPL was the owner of the hotel known as Capri by Fraser Changi City Singapore ("**Capri**") from at least the commencement of operations of Capri until 30 March 2015.[2]

8. AFPL is a private company incorporated in Singapore on 11 December 2008, and its registered office address is 1 Fusionopolis Place, #10-10 Galaxis, Singapore 138522.[3] AFPL is a joint venture company held in equal shares by FCL Emerald (1) Pte. Ltd.[4] and Ascendas Development Pte. Ltd. AFPL developed and owned a mixed-use development on the plot of land known as Changi Business Park Plot 61, which includes the premises of Capri. Its turnover for the financial year ending 31 March 2018 was S$[✂].[5]

9. On 31 March 2015, AFPL transferred the ownership of Capri, the hotel, to Frasers Hospitality Trustee Pte. Ltd. ("**FH Trustee**") for due consideration.[6]

(ii) Frasers Hospitality Trustee Pte. Ltd.

10. FH Trustee is a private company incorporated in Singapore on 3 December 2014, and its registered office address is 438 Alexandra Road, #21-00 Alexandra Point, Singapore 119958.[7] FH Trustee is a wholly-owned subsidiary of Frasers Property Limited.[8]

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[2] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by the Competition and Consumer Commission of Singapore ("**CCCS**") dated 29 August 2017, response to question 1b.
[3] Extracted from the Accounting and Corporate Regulatory Authority ("**ACRA**") record Business Profile of Ascendas Frasers Pte. Ltd. (on 02/06/2017).
[4] FCL Emerald (1) Pte. Ltd. is the wholly-owned subsidiary of Frasers Property Limited. Prior to 31 January 2018, Frasers Property Limited was known as Frasers Centrepoint Limited.
[5] Information provided by AFPL dated 31 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, Annex – financial statements for the financial year ended 31 March 2018.
[6] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 18; and information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, Annexes 17B – Capri Instrument of Transfer and 17C – Sale and Purchase Agreement dated 27 February 2015.
[7] Extracted from ACRA record Business Profile of Frasers Hospitality Trustee Pte. Ltd. (on 05/05/2017).
[8] According to the information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 21, FH Trustee is a wholly-owned subsidiary of Frasers Centrepoint Limited. According to the ACRA record Business Profile of Frasers Property Limited (as accessed on 07/02/2018), prior to 31 January 2018, Frasers Property Limited was known as Frasers Centrepoint Limited.

11. FH Trustee, in its capacity as trustee-manager [✂][9], is the current legal owner of Capri. It acquired its ownership of Capri from 31 March 2015. All transactions entered into by FH Trustee in relation to Capri are in its capacity as trustee-manager [✂].[10] [✂].[11] The turnover of the business of the trust administered by FH Trustee in Singapore for the financial year ending 31 September 2017 was S$[✂].[12]

(iii) Frasers Hospitality Pte. Ltd. ("FHPL")

12. Pursuant to a Management Agreement for Capri dated 11 July 2013 between AFPL and FHPL ("**Capri MA 2013**"), AFPL engaged FHPL as the sole and exclusive provider of management and consultancy services at, and the sole and exclusive operator of Capri, in the period between 11 July 2013 and 30 March 2015.[13] FHPL was likewise engaged by FH Trustee pursuant to a Management Agreement for Capri dated 31 March 2015 between FH Trustee and FHPL ("**Capri MA 2015**") to be the sole and exclusive provider of management and consultancy services at, and the sole and exclusive operator of, Capri in the period from 31 March 2015 to date.[14]

13. FHPL is a private company incorporated in Singapore on 25 May 2000, and its registered office address is 438 Alexandra Road, #21-00 Alexandra Point, Singapore 119958.[15] Its turnover for the financial year ending 30 September 2017 was S$[✂].[16]

[9] Information provided by FH Trustee dated 19 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 1b, 11, 17a, 19, 20 and 22.
[10] Information provided by FH Trustee dated 19 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 1b, 11, 17a, 19, 20 and 22.
[11] Information provided by FH Trustee dated 19 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 3e, 18a, 19, 20 and 22.
[12] Information provided by FH Trustee dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.
[13] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 5 and Annex 5A – Management Agreement.
[14] Information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 3b; information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; and information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 4 and Annex 4A – Management Agreement.
[15] Extracted from ACRA record Business Profile of Frasers Hospitality Pte. Ltd. (on 05/05/2017).
[16] Information provided by FHPL dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.

II. OWNERS AND MANAGER OF VILLAGE HOTELS

(iv) Far East Organization Centre Pte. Ltd. ("FEOC")

14. FEOC is the owner[17] of the hotel known as Village Hotel Changi ("**VHC**").

15. FEOC is a private company incorporated in Singapore since 1970 that has its registered office address at 14 Scotts Road, #06-01 Far East Plaza, Singapore 228213.[18] Its turnover for the financial year ending 31 December 2017 was S$[✂].[19]

(v) Orchard Mall Pte. Ltd. ("OM")

16. OM is the current owner of the hotel known as Village Hotel Katong ("**VHK**").[20]

17. OM is a private company incorporated in Singapore since 2006 that has its registered office address at 14 Scotts Road, #06-01 Far East Plaza, Singapore 228213.[21] Its turnover for the financial year ending 31 December 2017 was S$[✂].[22]

(vi) Far East Hospitality Management (S) Pte. Ltd. ("FEHMS")

18. Pursuant to the Hotel Management Agreement for VHC dated 3 August 2012 between FEOC and FEHMS, read with the Novation Agreement dated 1 November 2013 ("**HMA for VHC**"), FEHMS acts on behalf of and as exclusive agent of FEOC in the operation and management of VHC.[23]

19. Pursuant to the Hotel Management Agreement for VHK dated 3 August 2012 between OM and FEHMS, read with the Novation Agreement dated 1 November

[17] CCCS understands that Far East H-REIT has, pursuant to a "Master Lease", leased the hotel building known as VHC, to FEOC on a twenty-year long-term lease. The Master Lease refers to FEOC as the "owner" of the hotel building known as VHC, for the duration of the lease. Further, the Hotel Management Agreement for the management of VHC dated 3 August 2012, refers to FEOC as the "owner" of the hotel building known as VHC. As such, for the purposes of the present ID, CCCS will refer to FEOC as the owner of VHC. See also information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1(ii).

[18] Extracted from ACRA record Business Profile of Far East Organization Centre Pte. Ltd. (on 09/05/2017).

[19] Information provided by FEOC dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.

[20] Information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1(ii).

[21] Extracted from ACRA record Business Profile of Orchard Mall Pte. Ltd. (on 09/05/2017).

[22] Information provided by OM dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.

[23] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 4 - Hotel Management Agreement for VHC, read with Annex 6 - novation agreement dated 27 August 2012 between FEOC, Far East Hospitality Services Pte Ltd and Jelco Properties Pte Ltd and Annex 10 - novation agreement dated 1 November 2013 between FEOC, Jelco Properties Pte Ltd and FEHMS; and corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, Annex 2.

2013 ("**HMA for VHK**"), FEHMS acts on behalf of and as exclusive agent of OM in the operation and management of VHK.[24]

20. FEHMS is a private company incorporated in Singapore since 2013 that has its registered office address at 1 Tanglin Road, #05-01 Orchard Parade Hotel, Singapore 247905.[25] Its turnover for the financial year ending 31 December 2017 was S$[✂].[26]

III. OWNER/MASTER LESSEE AND MANAGER OF CROWNE PLAZA

(vii) OUE Airport Hotel Pte. Ltd. ("OUE Airport Hotel")

21. OUE Airport Hotel was the owner of the hotel known as Crowne Plaza Changi Airport Hotel ("**Crowne Plaza**") prior to 28 November 2014. On 28 November 2014, OUE Airport Hotel, under a sale and leaseback arrangement, sold Crowne Plaza to RBC Investor Services Trust Singapore Limited (in its capacity as Trustee of OUE Hospitality Real Estate Investment Trust). On 30 January 2015, upon completion of the sale and purchase of Crowne Plaza, OUE Airport Hotel entered into a master lease agreement with RBC Investor Services Trust Singapore Limited and became the master lessee of Crowne Plaza.[27]

22. OUE Airport Hotel is a private company incorporated in Singapore since 2006 that has its registered office address at 50 Collyer Quay #18-01/02 OUE Bayfront Singapore 049321.[28] OUE Airport Hotel is a wholly-owned subsidiary of Imperial Development Holdings Pte. Ltd., which in turn is wholly owned by OUE Limited.[29] Its turnover for the financial year ending 31 December 2017 was S$[✂].[30]

(viii) Inter-Continental Hotels (Singapore) Pte. Ltd. ("IHG Singapore")

23. Pursuant to the Management Agreement for Crowne Plaza dated 6 October 2006 between IHG Singapore and LC Airport Hotel Pte. Ltd. (now known as OUE

[24] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 5 - Hotel Management Agreement for VHK, read with Annex 7 - novation agreement dated 27 August 2012 between OM, Far East Hospitality Services Pte Ltd and Jelco Properties Pte Ltd and Annex 11 - novation agreement dated 1 November 2013 between OM, Jelco Properties Pte Ltd and FEHMS; and corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, Annex 2.
[25] Extracted from ACRA record Business Profile of Far East Hospitality Management (S) Pte. Ltd. (on 09/05/2017).
[26] Information provided by FEHMS dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.
[27] Information provided by OUE Airport Hotel dated 2 July 2018 pursuant to the section 63 Notice issued by CCCS dated 27 June 2018, response to question 1.
[28] Extracted from ACRA record Business Profile of OUE Airport Hotel Pte. Ltd. (on 29/02/2016).
[29] Extracted from ACRA record Business Profile of Imperial Development Holdings Pte. Ltd. (on 19/12/17).
[30] Information provided by OUE Airport Hotel dated 3 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.

Airport Hotel)[31] ("**CPMA**"), IHG Singapore acts as the agent of OUE Airport Hotel in the operation and management of Crowne Plaza.[32]

24. IHG Singapore is a private company incorporated in Singapore since 1992 that has its registered office address at 230 Victoria Street #13-00 Bugis Junction Singapore 188024.[33] Its turnover for the financial year ending 31 December 2017 was S$[✂].[34]

B. Background of Relevant Industry

(i) Hotels in Singapore

25. The Hotels Act (Cap. 127) defines a "hotel" as including a "*boarding-house, lodging–house, guest-house and any building or premises not being a public institution and containing not less than 4 rooms or cubicles in which persons are harboured or lodged for hire or reward of any kind and where any domestic service is provided by the owner, lessee, tenant, occupier or manager for the person so harboured or lodged*".[35]

26. There are approximately 420 hotels licensed by the Hotels Licensing Board.[36] Hotels in Singapore include both independent hotels and hotel groups.[37] Hotels in Singapore are located all across the city, and are a source of temporary accommodation. They vary in price, amenities offered, and branding. Any premises renting out four rooms or more to guests staying for a period of less than seven days requires a valid hotel licence issued by the Hotels Licensing Board to operate such a business. This differs from other sources of temporary accommodation in Singapore such as serviced apartments, which are residential developments in "residential" zones or mixed-used sites with a residential component that can only be rented out for lodging purposes for a minimum period

[31] Extracted from ACRA record Business Profile of OUE Airport Hotel Pte. Ltd. (on 29/02/2016).
[32] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, response to question 2bi and clause 3.1 of Annex B2(1) - Management Agreement.
[33] Extracted from ACRA record Business Profile of Inter-Continental Hotel (Singapore) Pte. Ltd. (on 25/09/2017).
[34] Information provided by IHG Singapore dated 15 November 2018, pursuant to the section 63 Notice issued by CCCS dated 8 November 2018, response to question 2.
[35] Section 2 of the Hotels Act (Cap. 127, 1999 Rev. Ed.).
[36] Hotel Licensing Board online portal containing a list of licensed hotels with active licences. URL: https://licence1.business.gov.sg/web/frontier/hotel-listingsearch?p_p_id=hotellisting_WAR_HotelListingEnquiryportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1. Certain hotels are also gazetted pursuant to the Singapore Tourism (Cess Collection) Act (Cap. 305C), for the purposes of collection of cess by the Singapore Tourism Board.
[37] Some examples of the hotel groups active in Singapore are Accor Group, Inter-Continental Hotel Group and Millennium Hotels.

of seven days.[38] This ID focuses on the provision of hotel room accommodation only.

(ii) Hotel Ownership and Management

27. In Singapore, the owner or master lessee of hotel premises can be a different corporate entity from the corporate entity managing and operating the hotel.[39] A hotel owner/master lessee may choose to engage a hotel manager to manage and/or operate its hotel on its behalf through a hotel management agreement (which describes the parties' respective rights and responsibilities and methods of remuneration).[40]

28. A hotel manager is usually a professional service provider who has the expertise and experience in operating and managing hotels including determining marketing and advertising strategy, putting in place reservation systems, determining interior design and fittings, training and supervising staff etc. for the hotel.[41] A hotel manager may also provide established, functional methods and procedures that constitute a complete system capable of handling the complex job of operating a hotel. Given the experience and expertise of hotel managers, hotel owners may choose to engage hotel managers to operate and manage the hotels, instead of operating the hotels themselves.[42]

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[38] Revised Location Criteria for Serviced Apartments, Circular URA/PB/2015/06-DCG published on 5 October 2015 by the Urban Redevelopment Authority. URL: https://www.ura.gov.sg/Corporate/Guidelines/Circulars/dc15-06.

[39] Law Relating to Specific Contracts in Singapore, Second Edition, Chapter 15: Hotel Management Contracts, paras 15.1.9 – 15.1.11; Response to question 77 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017; information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a); and information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a); information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to questions 1c and 3; information provided by FH Trustee dated 19 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to questions 1c, 4, and 5; and information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to questions 1, 3 and 6.

[40]Law Relating to Specific Contracts in Singapore, Second Edition, Chapter 15: Hotel Management Contracts, paras 15.1.12, 15.2.1, 15.3.9, 15.3.11 and 15.3.12; information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, Annex B2(1) – Management Agreement and Annex B2(2) – Variation Agreement; Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, Annex 4 - Hotel Management Agreement for VHC and Annex 5 - Hotel Management Agreement for VHK; and information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 4A – Management Agreement (31 March 2015) and Annex 5A –Management Agreement (11 July 2013).

[41]Law Relating to Specific Contracts in Singapore, Second Edition, Chapter 15: Hotel Management Contracts, paras 15.2.4 – 15.2.5, 15.3.13 and 15.3.16; information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a); and information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a).

[42]Law Relating to Specific Contracts in Singapore, Second Edition, Chapter 15: Hotel Management Contracts, paras 15.1.9 and 15.2.3; information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a); information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question

29. Remuneration for the operating and managing services provided by a hotel manager is usually in the form of a basic fee which is a percentage of the revenue of the hotel and an "incentive fee" based on a percentage of profit of the hotel.[43]

30. While the hotel owner/master lessee may not be involved in operating decisions, it typically takes full responsibility for all working capital, operating expenses, and debt services. As such, the annual budget of the hotel is typically subject to the approval of the hotel owner/master lessee.[44]

31. In respect of the Parties to whom this ID is addressed, **Table A** sets out their respective roles as either the owner/master lessee or the manager for each of Capri, Village Hotels and Crowne Plaza.

Table A: Owner/Master Lessee and Manager for each Hotel

Hotel	**Owner/Master Lessee**	**Manager**
Capri	Up to 30 March 2015: AFPL From 31 March 2015: FH Trustee	FHPL
VHC	FEOC	FEHMS
VHK	OM	
Crowne Plaza	OUE Airport Hotel	IHG Singapore

4(a); response to question 77 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017; and information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Recital B of Annex 4A – Management Agreement (31 March 2015) and Recital B of Annex 5A –Management Agreement (11 July 2013).

[43]Law Relating to Specific Contracts in Singapore, Second Edition, Chapter 15: Hotel Management Contracts, paras 15.1.12, 15.3.12 and 15.7.40 – 15.7.46; [✂]; [✂]; [✂]; and [✂] and [✂].

[44]Law Relating to Specific Contracts in Singapore, Second Edition, Chapter 15: Hotel Management Contracts, paras 15.3.14 – 15.3.15, 15.7.54 – 15.7.69; information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a); information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a); information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 9; information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 5 of Annex B2(1) - Management Agreement; and response to question 54 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017.

(iii) Corporate Customers

32. Customers for hotel room accommodation can be divided into various groups, such as corporate customers, tour agencies and airlines, or leisure customers. These categories are not always mutually exclusive, and each hotel may categorise their customer group differently.[45] Categorising these broadly, customers can be seen as corporate customers and non-corporate customers.

33. The key difference between corporate customers and non-corporate customers is the manner in which room rates are determined. With respect to corporate customers, room rates and surcharge rates for blackout periods (if any) are negotiated annually, based on factors including, but not limited to, the following: the corporate customer's estimated production for the following year, historical corporate rates and the budget of the corporate customer.[46] Corporate customers of Capri, Village Hotels and Crowne Plaza generally enter into contracts with these hotels to secure corporate rates for hotel rooms for a fixed term (e.g., a year).[47]

34. On the other hand, non-corporate customers are offered public rates which are published online on a hotel's website and/or given to walk-in guests. These rates are adjusted throughout the day depending on factors such as the occupancy level of the hotel, demand forecasts, public pricing information available on competitor hotels' websites or third party aggregator sites (for example, Booking.com), etc.[48]

35. While a corporate customer is able to make hotel bookings using public rates, it usually establishes a list of preferred hotels which meet its business needs and negotiates contracts with hotels with preferential rates on a projected number of hotel rooms.[49] Once the corporate rates at a hotel are agreed upon, the corporate

[45]Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 3.2(iii); response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; and information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 6.

[46] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 3.2(iii)(a); response to question 14 and 16 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; and response to questions 14 of Notes of Information/Explanation provided by Stuart Giam (sales representative of Capri), 15 March 2016.

[47] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4; and response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

[48] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 3.2(iii)(c); Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.6.

[49] Information provided by Barclays dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by CISCO dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by Medtronic dated 28 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by UPS dated 24 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; and information provided

customer will be able to make a booking for hotel room accommodation with that hotel at the agreed corporate rates.[50] It follows from this that a hotel would first compete to be on a corporate customer's list of preferred hotels in signing a corporate contract. Once a corporate contract is secured, the hotel then competes with the corporate customer's other preferred hotels to secure actual room bookings by the corporate customer throughout the contract term.

36. In general, these corporate rates are negotiated through Requests for Proposals ("**RFP**")[51] or locally negotiated contracts.[52] Corporate rate negotiations are usually conducted in [✂] the year for the agreed negotiated rate to be used in room bookings for the coming year.[53] With respect to the hotels that are the subject of this ID, a rate grid for the upcoming year is prepared ahead of these negotiations. The rate grid sets out the guideline price (room rate) ranges for corporate customers given their room night production (number of rooms projected for the year) and other factors (e.g. standard of room, whether breakfast is included).[54] The rate grid sets out different tiers of room rate ranges which decreases as the number of projected room nights by the corporate customer

by Yokogawa dated 10 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.

[50] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.7; information provided by IHG Singapore dated 15 February 2018, pursuant to CCCS's email dated 8 February 2018, response to question 1; and information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1(b).

[51] RFP negotiations are usually conducted through an online platform and it is the preferred method of negotiation of large multi-national corporations. Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.4; information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1(b); and response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

[52] Locally negotiated contracts are contracts which are manually negotiated by members of the sales team at the hotel and the corporate customer directly. Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.4; information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1(b); response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

[53] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.3; response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; and information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1(b).

[54] Response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; Information provided by OUE Airport Hotel dated 24 July 2015 pursuant to the section 63 Notice issued by CCCS dated 30 June 2015, Annexes I.50 – I.57 (Rate Grids); information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 3; information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annexes 3A – 3D.

increases.[55] The sales representatives of each hotel will refer to their hotel's finalised rate grids in their contract negotiations with corporate customers.[56]

C. Investigations and Proceedings

37. On 27 November 2013, CCCS commenced an investigation under section 62 of the Competition Act (Cap. 50B) ("**the Act**"), following enquiries into the hospitality sector conducted at its own initiative.

38. On 30 June 2015, CCCS conducted a round of unannounced inspections (the "**Inspection**") at hotel premises in Singapore.[57] Interviews were also conducted with key personnel at the premises on the day of the Inspection. On the same day, CCCS also sent notices pursuant to section 63 of the Act to four other hotels in Singapore.

39. Following the Inspection and notices sent on 30 June 2015, CCCS received a leniency application from OUE Airport Hotel, dated 21 July 2015, in relation to anti-competitive conduct including the exchange of commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers.

40. Subsequently, with effect from 18 April 2016, CCCS received a separate leniency application from FEHMS, OM and FEOC collectively, in relation to anti-competitive conduct including the exchange of commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers.

41. Between June 2015 and July 2018, CCCS sent further notices pursuant to section 63 of the Act to the Parties requesting documents and information relating to the anti-competitive conduct, as well as each Party's internal corporate rate setting procedures, employment structures, corporate structures and their turnover for past financial years. CCCS received responses from the Parties between July 2015 and July 2018.

42. Further, in March 2017, CCCS also contacted ten corporate customers, being customers of either Capri, Crowne Plaza and/or Village Hotels, requesting

[55] Information provided by OUE Airport Hotel dated 24 July 2015 pursuant to the section 63 Notice issued by CCCS dated 30 June 2015, Annexes I.50 – I.57(Rate Grids); information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 3; information provided by Capri by Fraser Changi City Singapore pursuant to the section 63 Notice issued by CCCS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annexes 3A – 3D; and response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

[56] Response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 8c(iii); and response to question 38 of Notes of Information/Explanation provided by Priscilla Chong (sales representative for Capri), 19 December 2017.

[57] [✂] Capri, [✂] and Village Hotel Changi.

information on their respective hotel procurement processes, choice of hotel facilities and corporate contracts awarded. CCCS received responses from these corporate customers between April 2017 and May 2017.

43. For the infringements under this ID, CCCS conducted fourteen interviews with, and obtained information and documents from, key personnel of the Parties pursuant to section 63 of the Act. The dates of the interviews conducted by CCCS with the relevant key personnel of the Parties are set out in **Annex A**.

44. On 2 August 2018, CCCS sent each Party a notice of its Proposed Infringement Decision ("**PID**"). The documents in CCCS's file were made available for the Parties to inspect from 14 August 2018. CCCS received written representations on the PID from all the Parties between 17 and 21 September 2018. Oral representations on the PID were made by six of the Parties between 3 and 9 October 2018.[58]

45. On 8 November 2018, CCCS sent notices pursuant to section 63 of the Act to IHG Singapore, FH Trustee and FHPL to request for the latest available financial information and received their responses on 15 November 2018.

46. After considering the evidence and representations received from the Parties, CCCS finds that section 34 of the Act has been infringed.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

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

A. The Section 34 Prohibition

48. Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore (the "**section 34 prohibition**"). Specifically, section 34(2)(a) of the Act states that *"... agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they directly or indirectly fix purchase or selling prices or any other trading conditions*".

(i) Applicability of European Law

[58] FH Trustee, FHPL, FEOC, OM, FEHMS and OUE Airport Hotel.

49. In *Pang's Motor Trading v CCS*,[59] 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])".

B. Application to Undertakings

50. Section 2 of the Act defines "undertaking" to mean "*...any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services*." Each of the Parties carries on commercial or economic activities as set out at paragraphs 7 to 24 above, and therefore constitutes an undertaking for the purposes of the Act.

(i) When Two or More Entities Form Part of the Same Undertaking/Economic Unit

51. The section 34 prohibition applies to agreements *between* undertakings. Consequently, agreements between entities which form a single economic unit, i.e. a single undertaking, will not be caught within the scope of the section 34 prohibition.

52. In this connection, where there are several individual legal bodies within a corporate group involved in an infringement of the section 34 prohibition, to identify the entity whose conduct is to be examined, an assessment will be required as to whether two or more entities constitute a single economic entity ("**SEE**"). Likewise, where two separate entities are in a principal-agent relationship, they may be an SEE.

53. Should an SEE exist, agreements between the entities within the SEE fall outside the purview of section 34 of the Act. The existence of an SEE can also render one entity liable for the anti-competitive conduct of another entity within the SEE.

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

This section sets out in brief the legal framework for the application of the doctrine of SEE followed by how liability can be attributed in the context of an SEE.

54. The law on SEE applicable in Singapore has been neatly summarised in the CAB decision, *Express Bus Operators Appeal No.3*:

> "67 It is generally accepted that a single economic entity is a single undertaking between entities which form a single economic unit. In particular, an agreement between a parent and its subsidiary company, or between two companies which are under the control of a third company…if the subsidiary has no real freedom to determine its course of action in the market and although having a separate legal personality, enjoys no economic independence. Ultimately, whether or not the entities form a single economic unit will depend on the facts and circumstances of the case ([2.7]-[2.8] of the CCS Guidelines on the section 34 prohibition; see also *Akzo Nobel v Commission of the European Communities*, 11 December 2003, at [54]-[66])".[60]

55. The *CCCS Guidelines on the Section 34 Prohibition 2016* ("***Section 34 Guidelines***") states that two entities – a parent and its subsidiary company or two companies which are under the control of a third company, form an SEE if the subsidiary has no real freedom to determine its course of action in the market and, although having a separate legal personality, enjoys no economic independence.[61]

56. The courts of the EU have recognised that while companies belonging to the same group may have distinct and separate natural or legal personalities, the term "undertaking" must be understood as designating an economic unit for the purpose of the subject-matter of the agreement in question even if in law, that economic unit consists of several persons, natural or legal.[62]

57. Under EU competition law, when a parent company has a 100% shareholding in a subsidiary, whether held directly or indirectly, the parent and subsidiary are an SEE unless proved otherwise.[63] The European Court of Justice ("**ECJ**") in *Akzo Nobel NV v Commission*[64] ("***Akzo Nobel***") stated that "*it follows from that case-law… that it is for the parent company to put before the Court any evidence relating to the economic and legal organisational links between its subsidiary and*

[60] *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2, at [67].
[61] *Section 34 Guidelines*, paragraph 2.7.
[62] Case 170/83 *Hydrotherm Gerätebau GmbH v Compact del Dott. Ing. Mario Andreoli & C.Sas* [1984] ECR 2999, at [11]; and Case C- 217/05 *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* [2006] ECR I- 11987 at [40].
[63] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [60]. See also Case C-90/09P *General Quimica SA and Others v Commission* [2011] ECR I-1, at [39] to [42].
[64] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [65].

itself which in its view are apt to demonstrate that they do not constitute a single economic entity".

58. An SEE can also exist where the parent company does not have 100% shareholding in a subsidiary. For example, in *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* ("***Commercial Solvents***")[65], the parent company owned 51% of its subsidiary with a 50% representation on its decision-making board and committee, and held the right to appoint the subsidiary's Chairman, who held the casting vote. The ECJ ruled in *Commercial Solvents* that the parent and subsidiary are an SEE on account of the parent company's power of control over the subsidiary.[66]

59. Operational details can also be taken into account when determining the existence of an SEE. In the *Freight Forwarding Case*[67], CCCS considered that companies formed an SEE when taking into consideration the reporting structure, arrangements with regard to profit sharing, common directorship, the right to nominate directors, and influence in commercial policies.

60. EU competition law has also been clear that the finding of an SEE is not limited to cases where the relationship between the companies in question is that of parent and subsidiary. In certain circumstances, two legally distinct corporate entities which do not have familial relationships with each other can also be found to form part of a single economic unit, by virtue of the existence of an agency relationship. In *Suiker Unie and others v Commission*[68] ("***Suiker Unie***"), the ECJ held that "*if such an agent works for the benefit of his principal he may in principle be regarded as an auxiliary organ forming an integral part of the latter's undertaking, who must carry out his principal's instructions and thus, like a commercial employee, forms an economic unit with this undertaking.*"

61. In *Minoan Lines v Commission*[69] ("***Minoan Lines***"), the Court of First Instance ("**CFI**")[70] considered two factors in determining whether the agent can be regarded as an auxiliary organ forming an integral part of the principal, thereby forming an SEE with the principal.. These factors are first, whether the agent takes on any economic risk, and secondly, whether the services provided by the agent are exclusive.[71]

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[65] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223.
[66] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223, at [41].
[67] CCS 700/003/11 *Infringement of the section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore*, dated 11 December 2014, at [527] to [632].
[68] Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663, at [537] to [557] (see also [458]-[498]).
[69] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515.
[70] The Court of First Instance is now known as the General Court.
[71] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [126].

62. With respect to the application of the first factor, the CFI in *Minoan Lines* cited the ECJ in *Suiker Unie* and stated that "*an agent may not be regarded as an auxiliary body forming part of its principal's business where the agreement entered into with the principal confers upon the agent or allows it to perform duties which from an economic point of view are approximately the same as those carried out by an independent dealer, because they provide for the said agent accepting the financial risks of selling or of the performance of the contracts entered into with third parties.*"[72] It is necessary to assess the extent of the financial and economic risks associated with the activities entrusted upon the agent by the principal, and such an assessment is dependent on the specific facts of the case.

63. With respect to the application of the second factor, the CFI in *Minoan Lines* cited the ECJ in *Suiker Unie* and stated that, the facts would "*tend not to suggest economic unity if, at the same time as it conducts business for the account of its principal, the agent undertakes, as an independent dealer, a very considerable amount of business for its own account on the market for the product or service in question.*"[73]

64. Where the agent represents multiple principals, the agent may still form an SEE with one of the principals, so long as the agent is not in a position to act independently from the principal in respect of the activities the agent was entrusted by the principal to perform. The General Court in *Voestalpine and Voestalpine Wire Rod Austria v Commission*[74] ("***Voestalpine***") had cause to consider the factual scenario wherein the agent carried out activities on behalf on two undertakings. With respect to examining exclusivity in such a factual scenario, the General Court stated as follows:

> "149 As for the second element relied on in the judgment in *Minoan Lines*, cited in paragraph 89 above (EU:T:2003:337), the Commission acknowledges in recital 775 to the contested decision that the fact that Mr G. was also acting on behalf of another cartel participant, CB, had the consequence that the agency was not exclusive in the strict sense.
>
> …
>
> 151 In that regard, although, alongside the activities carried out on behalf of Austria Draht, Mr G. was also carrying out activities on behalf of CB, the Commission is correct to note that, in the present case, 'Mr [G.] was not active on his own behalf on the market in question [and] did not therefore conduct a significant amount of business for his own account as an independent dealer' (contested decision, recital 775) (see, by analogy, judgment in *Suiker Unie*, cited in paragraph 89 above, EU:C:1975:174,

[72] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [127].
[73] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [128].
[74] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516.

paragraph 544, and judgment in *Minoan Lines*, cited in paragraph 89 above, EU:T:2003:337, paragraph 128).

152 In fact, instead of representing one principal for business purposes, Mr G. represented two, namely, essentially, CB, which generated the bulk of Studio Crema's income (around 75% during the period of the infringement which the applicants are found to have committed), but also Austria Draht, which also generated a not insignificant proportion of that income (around 25% during that period).

153 In such a situation, in order to determine the existence of an economic unit between the agent and one of his principals, it is necessary to ascertain whether that agent is in a position, as regards the activities entrusted to him by that principal, to act as an independent trader free to determine his own business strategy. If the agent is not in a position to act in that way, the functions which he carries out on behalf of the principal form an integral part of the latter's activities.

154 Thus, as the Commission states in recital 774 to the contested decision, the decisive factor in determining the existence of an economic unit between Mr G. and Austria Draht lies in the assessment of the financial risks associated with sales or the performance of the contracts concluded with third parties through Mr G. If Mr G. acts as an emanation of Austria Draht, he may then be treated as an 'auxiliary organ forming an integral part of Austria Draht's undertaking and thus [as] a commercial employee', which would not be the case if he acted as an independent trader.

155 In the present case, it has already been established that the agency agreement between Mr G. and Austria Draht did not allow Mr G. to act, within the sense of competition law, as an independent trader so far as the activities in respect of which he had been appointed were concerned.

…

157 It follows from the foregoing that, although the present case differs from the situations previously assessed in the case-law, especially in the judgment in *Minoan Lines*, cited in paragraph 89 above (EU:T:2003:337), where the exclusivity of the agent's representation of the principal was clear from his contract and from the performance of that contract (paragraphs 131 and 132 of the judgment), the double representation by Mr G. of CB and Austria Draht cannot upset the finding that, so far as the activities entrusted to Mr G. by Austria Draht were concerned, Mr G. was not in a position to carry out duties economically comparable with those of an independent trader.

> 158 In conclusion, as stated in the contested decision, Mr G., or Studio Crema, which he represents, ceases to be an independent economic operator when the scope of the agency agreement concluded with Austria Draht is assessed in the light of competition law, since Mr G. does not bear, or bears to a very limited extent, the financial risks resulting from the contracts of sale concluded through him with Austria Draht and since he operates *de facto* as an auxiliary organ forming part of that company."

65. The General Court's decision in *Voestalpine* makes clear that an agent does not have to be found to be acting exclusively on behalf of only one principal, for there to be a finding of SEE between the agent and that principal. In other words, exclusivity is not strictly required for a finding of economic unity.

66. The argument that two distinct legal entities could be an SEE on the basis of a principal-agent relationship had been previously considered by the CAB in *Express Bus Operators Appeal No. 3*.[75] In that case, the CAB had accepted the parties' arguments based on *Minoan Lines* that they were an SEE by reason of their agency relationship as well as other factors which included such matters as sharing of the same general manager, and sharing the same registered address and business premises. The CAB noted that one of the parties to the appeal had represented itself as the authorised agent for the other party's bus tickets and coach package tours, and did not itself operate any coaches. The revenue arising from the sale of bus tickets and coach package tours is paid back to the principal, with the agent taking a percentage of the revenue as commission. Critically, the CAB noted that the financial risks from the sale of bus tickets and coach package tours were borne by the principal and not the agent.[76]

(ii) Attribution of Liability

67. When an economic entity infringes competition law, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.[77]

68. As set out at paragraphs 51 to 66 above, an SEE exists when separate legal entities enjoy no economic independence having regard, *inter alia*, to the economic, organisational and legal links between them. Where an SEE infringes competition law, liability for any infringement can be attributed to the SEE as a whole.[78]

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[75] *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2, at [68] and [69].
[76] *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2, at [73].
[77] Case C-49/92 *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at [145]; Case C-279/98 P *Cascades v Commission* [2000] ECR I-9693, at [78]; and Case C-217/05 *Autorita Garante della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA and Philip Morris Products SA and Others v Autorita Garante della Concorrenza e del Mercato and Others* [2007] ECR I-10983, at [39].
[78] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [77]; Case C-294/98 P *Metsä Serla and Others* v *Commission* [2000] ECR I-10079, at [11], referring to [58] and [59] of the decision of the Court of First Instance.

69. In *Akzo Nobel*[79], the ECJ stated:

> "58 It is clear from settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company (see, to that effect, *Imperial Chemical Industries v Commission*, paragraphs 132 and 133; *Geigy v Commission*, paragraph 44; Case 6/72 *Europemballage and Continental Can v Commission* [1973] ECR 215, paragraph 15; and *Stora*, paragraph 26), having regard in particular to the economic, organisational and legal links between those two legal entities (see, by analogy, *Dansk Rørindustri and Others v Commission*, paragraph 117, and *ETI and Others*, paragraph 49).
>
> 59 That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of the case-law mentioned in paragraphs 54 and 55 of this judgment. Thus, the fact that a parent company and its subsidiary constitute a single undertaking within the meaning of Article 81 EC enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement."

70. In parent-subsidiary relationships, liability can be imputed to the parent company even where the parent company does not directly participate in the infringement.[80] While a parent may not be directly involved in the infringing acts, it could have influenced the policies and conduct of their subsidiaries but failed to do so. Consequently, the EU courts have held that where a presumption of an SEE arises or where a parent company exercises "decisive influence" over the subsidiary, the parent company can be liable for the actions of its subsidiaries.[81]

71. Indicia of decisive influence would include the parent company's shareholding in the subsidiary[82], the parent company being active on the same or adjacent markets to its subsidiary[83], direct instructions being given by the parent company to a

[79] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237.
[80] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [58].
[81] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [77].
[82] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [60] to [62]; Case C-286/98 *P Stora Kopparbergs Bergslags AB v Commission* [2000] ECR I-9925, at [23] and [27] to [29]. More recently, see *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6, at [22].
[83] Case T-308/94 *Cascades SA v. Commission* [2002] ECR II-925, at [158]; Case T-345/94 *Stora Kopparbergs Bergslags AB v. Commission* [1998] ECR II-2111, at [70].

subsidiary[84] or the two entities having shared directors[85]. Importantly, the exercise of decisive influence can be "*indirect and may be established even if the parent does not interfere in the day to day business of the subsidiary and even if the influence is not reflected in instructions or guidelines emanating from the parent to the subsidiary.*"[86]

72. In view of the above, two or more entities can be considered an SEE in light of the economic, legal and organisational links between them in relation to their activities which relate to a finding of infringement. In the case of parent-subsidiary relationships, a parent company may be liable for the conduct of the subsidiary even where it did not participate in the infringement when the presumption of an SEE arises or where the parent company exercises "decisive influence" over the subsidiary.

73. Similarly, where two entities can be considered an SEE in light of their agency relationship, the principal may be liable for the conduct of the agent, even where the principal did not directly participate in the infringement or where the principal was not aware of the infringement.

74. In *Minoan Lines*, the CFI found Minoan Lines SA and ETA to be the principal and agent respectively having considered *inter alia* the management contract between them. In doing so, the CFI was satisfied that the twin factors (referred to in paragraph 61 above) had been met – firstly, that the agent had acted for the account of the principal without taking on any financial risk, and secondly, that the contractual relationship between the agent and principal fulfilled the condition of exclusive representation.[87] The CFI then stated that "*[I]t follows from the foregoing that the Commission was entitled to take the view that ETA should be regarded as Minoan's 'right-hand man' and that the two companies formed a single economic entity for the purposes of applying competition law and imputing to the applicant the actions of ETA complained of in the Decision*".[88] The CFI further added that the principal could not simply allege that it was unaware of the actions undertaken by its agent or that it had not given its agent authorisation or approval to embark upon the anti-competitive conduct to rebut such a finding.[89]

75. This issue of the principal's lack of control, awareness or approval of the agent's anti-competitive conduct was further examined by the General Court in *Voestalpine*. The principal in *Voestalpine* had argued that it lacked awareness of

[84] Case 48/69 *ICI Limited v Commission* [1972] ECR 619, at [132] to [133]; Case 52/69 *J R Geigy AG v Commission* [1972] ECR 787, [44] to [45]; and Case C-73/95 P *Viho Europe BV v Commission* [1996] ECR I-5457, at [16].
[85] *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, at [77] to [80].
[86] *Durkan Holdings Ltd v Office of Fair Trading* [2011] CAT 6, at [22]. See also Case T-25/06 *Alliance One v Commission* [2011] ECR II-5741, at [130], [138] and [139] which states that day to day management control is not required, and the power to define or approve certain strategic decisions is sufficient.
[87] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [132] to [133].
[88] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [138].
[89] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [139].

the activities carried out by the agent and did not authorise or approve of such activities.[90] The General Court in *Voestalpine* noted that the CFI in *Minoan Lines* had considered whether "*first, the offending acts committed by the agent formed part of the activities entrusted by the principal*", "*second, the principal had been regularly informed of the activities entrusted to the agent, including offending acts committed by the agent*", and "*third, the principal had prohibited its agent from carrying out such acts*" in determining that there was awareness on the part on the principal in that case.[91]

76. Notwithstanding this, the General Court in *Voestalpine* proceeded to make clear that awareness on the part of the principal of the agent's anti-competitive conduct is **not a criterion** for imputing the agent's anti-competitive conduct to the principal. In this regard, the General Court stated that "*where the agent acts on behalf of and on account of the principal without assuming the economic risk of the activities entrusted to him, the anti-competitive conduct of that agent in the context of those activities can be imputed to the principal, just as the offending acts committed by an employee can be imputed to the employer, even without proof that the principal was aware of the agent's anti-competitive conduct.*" [92]

77. The General Court noted that the appellant had entrusted all marketing activities to its agent, and that the offending acts were committed by the agent in the context of the activities entrusted to him. The General Court concluded that it is possible to impute to the appellant, the offending acts committed by the agent on behalf of the appellant in the context of the activities entrusted to him, without any need to show that the appellant was aware of the agent's infringing acts.

(iii) Joint and Several Liability

78. Where two legal entities form an SEE, and as an SEE infringe competition law, both legal entities may be held jointly and severally liable for the infringement and the financial penalties imposed on the SEE in respect of the infringement.

79. The ECJ in *Commission v Siemens AG Osterreich and others* ("***Siemens AG***") noted that the European Commission "*has the possibility of holding jointly and severally liable for payment of a fine a number of legal persons forming part of one and the same undertaking that is responsible for the infringement…*".[93] The ECJ expanded upon the rationale behind the European Commission's power:

> "39 Pursuant to Article 23(2) of Regulation No 1/2003, the Commission may, by decision, impose fines on undertakings or

[90] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [164] and [167].
[91] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [168].
[92] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [175].
[93] Joined Cases C-231/11 P to C-233/11 P *Commission v Siemens Osterreich and Others & Siemens Transmission & Distribution and Others v Commission* ECLI:EU:C:2014:256, at [51].

associations of undertakings where, either intentionally or negligently, they infringe Article 81 EC or 82 EC.

…

43 The Court of Justice has consistently held that the concept of an undertaking covers any entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed. **That concept must be understood as covering an economic unit, even if, from a legal perspective, that unit is made up of a number of natural or legal persons** (see, *inter alia*, Joined Cases C 628/10 P and C 141/11 P *Alliance One International and Standard Commercial Tobacco v Commission* [2012] ECR, paragraph 42 and the case-law cited).

44 When such an economic entity infringes the competition rules, it is for that entity, in accordance with the principle of personal responsibility, to answer for that infringement (see, *inter alia*, *Alliance One International and Standard Commercial Tobacco v Commission*, paragraph 42, and *Commission v Stichting Administratiekantoor Portielje*, paragraph 37 and the case-law cited).

45 It should be recalled in that connection that, in certain circumstances, a legal person who is not the perpetrator of an infringement of the competition rules may nevertheless be penalised for the unlawful conduct of another legal person, if both those persons form part of the same economic entity and thus constitute the undertaking that infringed Article 81 EC.

46 Accordingly, it is settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities (see, *inter alia*, *Commission v Stichting Administratiekantoor Portielje*, paragraph 38 and the case-law cited).

47 Where, in a relationship entailing vertical capital links of that kind, the parent company in question is itself deemed to have infringed EU competition rules, its liability for the infringement is wholly derived from that of its subsidiary (see, to that effect, Case C 286/11 P *Commission v Tomkins* [2013] ECR, paragraphs 43 and 49, and Case C 50/12 P *Kendrion v Commission* [2013] ECR, paragraph 55).

> 48 The Commission will thus be able to regard the parent company as jointly and severally liable for payment of the fine imposed on its subsidiary (see, *inter alia*, Joined Cases C 201/09 P and C 216/09 P *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others* [2011] ECR I 2239, paragraph 98).
>
> 49 The General Court was therefore correct to state, at paragraph 150 of the judgment under appeal, that, according to case-law, **where several persons may be held personally responsible for participation in an infringement committed by one and the same undertaking for the purposes of competition law, they must be regarded as jointly and severally liable for that infringement**." **[Emphasis added.]**

80. The European Commission's ability to find two legal entities as an SEE jointly and severally liable for an infringement of competition law is equally applicable in a scenario where the two legal entities form an SEE by virtue of a principal-agent relationship.

81. In *Metsä-Serla and Others v Commission*[94], the European Commission imposed financial penalties jointly and severally on nineteen parties supplying cartonboard, including on a party known as Finnboard that acted "as the alter ego and in the interest of" cartonboard producers, on the ground that they had infringed Article 85 of the Treaty Establishing the European Community (now Article 101 of the Treaty on the Functioning of the European Union) ("**TFEU**"). The Appellants had disputed that the European Commission could hold them jointly and severally liable for payment of the financial penalty on the ground that an economic unit existed. The Court disagreed with the Appellants and found that Finnboard had formed an economic unit with other companies, and that the European Commission was "***entitled**, instead of imposing a fine directly on each of the applicant companies, to decide to hold each of them jointly and severally liable with Finnboard for payment of part of the fine imposed on that trade association.*" **[Emphasis added.]** [95]

C. Attribution of Conduct by Employees and Independent Service Providers

(i) Employees

82. An employer is held liable for the anti-competitive conduct on the part of an employee, who is acting within the scope of his employment as an employee does not exert an economic force on the market that is separate from that of his employer. Hence, the employee is considered to be part of the same economic unit

[94] Case C-294/98 P *Metsä Serla and Others* v *Commission* [2000] ECR I-10079.
[95] Case C-294/98 P *Metsä Serla and Others* v *Commission* [2000] ECR I-10079, at [59].

as the employer.[96] In *SIA 'VM Remonts' and others v Konkurences padome* ("***VM Remonts***"), the ECJ reiterated the principle that "*for the purposes of a finding of infringement of EU competition law any anti-competitive conduct on the part of an employee is thus attributable to the undertaking to which he belongs and that undertaking is, as a matter of principle, held liable for that conduct*". [97]

83. It is no defence for the employer to argue that it had not instructed its employee to engage in the anti-competitive conduct or that the employer had no knowledge of the employee's anti-competitive conduct. The employee's anti-competitive conduct would be attributed to the employer as long as the employee was authorised to act on behalf of the employer. In *Musique Diffusion Francaise v Commission*[98], the General Court made the following observation:

> "96 In Melchers' view, an undertaking may not be fined unless it is established that the infringement is attributable to the undertaking itself, that is to say, in the present case, to the general partners in Melchers. It is argued that the Commission has not shown that the partners intended to commit the alleged infringement or that they acted negligently.
>
> 97 It must be emphasized, in that respect, that Article 15 (1) and (2) of Regulation No 17 empowers the Commission to impose on undertakings or associations of undertakings fines where, intentionally or negligently, they have been guilty of infringements. **For that provision to apply it is not necessary for there to have been action by, or even knowledge on the part of, the partners or principal managers of the undertaking concerned; action by a person who is authorized to act on behalf of the undertaking suffices.**" **[Emphasis added.]**

84. This position was reiterated by the General Court in *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*. [99] In that case, Slovenská sporiteľňa maintained that its employee who took part in the meeting of the representatives of the banks had neither been given authority to that effect, nor endorsed the conclusions of that meeting. In considering this issue, the General Court observed that:

> "… for Article 101 TFEU to apply, it is not necessary for there to have been action by, or even knowledge on the part of, the partners or principal managers of the undertaking concerned; action by a person who is authorised to act on behalf of the undertaking suffices (Joined

[96] Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663, at [539]; Case C-22/98 *Becu and Others* ECLI:EU:C:1999:419, at [26]; *Safeway Stores Ltd v Twigger*, [2010] EWCA Civ 1472 at [20].
[97] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578 at [24].
[98] Joined Cases 100 to 103/80 *Musique Diffusion Francaise v Commission* EU:C:1983:158, at [96] to [97].
[99] Case C-68/12 *Protimonopolný Urad Slovenskej Republiky v Slovenská Sporiteľňa* EU:C:2013:71.

> Cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission* [1983] ECR 1825, paragraph 97)
>
> Furthermore, as the Commission has pointed out, participation in agreements that are prohibited by the FEU Treaty is more often than not clandestine and is not governed by any formal rules. It is rarely the case that an undertaking's representative attends a meeting with a mandate to commit an infringement."[100]

85. The ECJ in *VM Remonts* also cited the General Court's judgment in *Becu and Others*[101] ("***Becu***") with approval. In *Becu*, the General Court stated that where "*the employment relationship which recognised dockers have with the undertakings for which they perform dock work is characterised by the fact that they perform the work in question for and under the direction of each of those undertakings, so that they must be regarded as 'workers'*"[102].

(ii) Independent Service Providers

86. According to the ECJ in *VM Remonts*[103], an undertaking may be held liable for the conduct of its independent service provider if one of the following non-cumulative conditions are met:

    a. The independent service provider was acting under the direction or control of the undertaking concerned; or
    b. The undertaking was aware of the anti-competitive objectives pursued by its competitors and the independent service provider, and intended to contribute to them by its own conduct; or
    c. The undertaking could reasonably have foreseen the anti-competitive acts of its competitors and the independent service provider, and was prepared to accept the risk which they entailed.

87. An independent service provider may be inferred to be acting under the direction or control of the undertaking concerned where the independent service provider had only little or no autonomy or flexibility with regard to the way in which the activity concerned was carried out. In this regard, the ECJ in *VM Remonts*[104] stated the following:

[100] Case C-68/12 *Protimonopolný Urad Slovenskej Republiky v Slovenská Sporiteľňa* EU:C:2013:71, at [25] to [26].
[101] Case C-22/98 *Becu and Others* ECLI:EU:C:1999:419.
[102] Case C-22/98 *Becu and Others* ECLI:EU:C:1999:419, at [26].
[103] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [33].
[104] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [27].

> "27 Nonetheless, it is possible that, in certain circumstances, a service provider which presents itself as independent is in fact acting under the direction or control of an undertaking that is using its services. **That would be the case, for example, in circumstances in which the service provider had only little or no autonomy or flexibility with regard to the way in which the activity concerned was carried out, its notional independence disguising an employment relationship** (see, to that effect, judgment of 4 December 2014 in *FNV Kunsten Informatie en Media*, C-413/13, EU:C:2014:2411, paragraphs 35 and 36). **Furthermore, such direction or control might be inferred from the existence of particular organisational, economic and legal links between the service provider in question and the user of the services, just as with the relationship between parent companies and their subsidiaries** (see, to that effect, judgment of 24 June 2015 in *Fresh Del Monte Produce v Commission* and *Commission v Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraphs 75 and 76 and the case-law cited). In such circumstances, the undertaking using the services could be held liable for the possible unlawful conduct of the service provider." **[Emphasis added.]**

D. Agreements and/or Concerted Practices

(i) Agreements

88. An agreement is formed when parties arrive at a consensus on the actions each party will, or will not, take. The section 34 prohibition applies to both legally enforceable and non-enforceable agreements, whether written or oral, and to so-called gentlemen's agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means. The form of the agreement is irrelevant. An agreement may be found where it is implicit from the participants' behaviour. This is reflected in paragraph 2.10 of the *Section 34 Guidelines*.

89. For an agreement to exist, EU jurisprudence has emphasised that it "is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way".[105] In *Pre-Insulated Pipe Cartel*[106], the European Commission held:

> "An agreement for the purposes of Article 85(1) may also fall well short of the certainty required for the enforcement of a commercial contract. Its exact terms may never be expressed: the fact of agreement will have to be inferred from all the circumstances. The divergent interests of the cartel members may also preclude a full consensus on

[105] Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, at [256].
[106] COMP IV/35.691/E.4 *Pre-Insulated Pipe Cartel* [1999] OJ L24/50, at [134].

all issues. One or other party may have reservations about some particular aspect of the arrangement while still adhering to the common enterprise. Some aspects may deliberately be left vague or undefined. It may be that the parties agree (expressly or tacitly) to adopt a common plan and that they have to meet on a continuing basis to work out the details, alter or amend it from time to time or resolve particular difficulties.

Formal agreement may never be reached on all matters. Agreements in one area may exist alongside conflicts in another. Competition may not be completely eliminated.

The participants may also show varying degrees of commitment to the common scheme. One may exercise a dominant role as ringleader. There may be internal conflicts and rivalries. Some members may even cheat. There could be outbreaks of fierce competition and even 'price wars' from time to time.

None of these elements will however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 85(1) where there is a combination of parties with a single common and continuing objective. A complex cartel may properly be viewed as a single continuing infringement for the time frame in which it existed. The agreement may well be varied or modified, the cartel's activities may progressively be expanded to cover new markets or its mechanisms may be adapted or strengthened.

Members may join or leave the cartel from time to time without its having to be treated as a new 'agreement' with each change in participation.

Furthermore, as a matter both of evidence and of substantive law it is not necessary, for the existence of an agreement, that every alleged participant participated in, gave its express consent to or was even aware of each and every individual aspect or manifestation of the cartel throughout its adherence to the common scheme."

(ii) Concerted Practices

90. 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.[107] A concerted practice

[107] *Section 34 Guidelines*, paragraph 2.18.

exists, if parties, even if they do not enter into an agreement, knowingly substitute the risks of competition for practical cooperation between them.[108]

91. This is summarised in the ECJ decision in *ICI v Commission* ("***Dyestuffs***"),[109] where the Court observed that:

> "64 Article [101] draws a distinction between the concept of 'concerted practices' and that of 'agreements between undertakings' or of 'decisions by associations of undertakings'; **the object is to bring within the prohibition of that article a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.**
>
> 65 By its very nature, then, a concerted practice does not have all the elements of a contract but may inter alia arise out of coordination which becomes apparent from the behaviour of the participants." **[Emphasis added.]**

92. In *Suiker Unie*,[110] the ECJ further considered the features of a concerted practice in light of the principle that economic operators should act independently when determining their conduct in the market:

> "26 The concept of a 'concerted practice' refers to a form of coordination between undertakings, which, without having been taken to the stage where an agreement properly so-called has been concluded, **knowingly substitutes for the risks of competition practical cooperation between them which leads to conditions of competition which do not correspond to the normal conditions of the market**, having regard to the nature of the products, the importance and number of the undertakings as well as the size and nature of the said market.
>
> 27 Such practical cooperation amounts to a concerted practice, particularly if it enables the persons concerned to consolidate established positions to the detriment of …the freedom of consumers to choose their suppliers.
>
> 28 In a case of this kind the question whether there has been a concerted practice can only be properly evaluated if the facts relied on by the

[108] Case 48/69 *ICI v Commission* [1972] ECR 619 at [64], *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4 at [196].
[109] Case 48/69 *ICI v Commission* [1972] ECR 619.
[110] Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663.

Commission are considered not separately but as a whole, after taking into account the characteristics of the market in question.

…

173 The criteria of coordination and cooperation laid down by the case-law of the Court, which in no way require the working out of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition **that each economic operator must determine independently the policy which he intends to adopt on the common market including the choice of the persons and undertakings to which he makes offers or sells**.

174 Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, **it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market**." **[Emphasis added.]**

93. In *Commission v Anic Partecipazioni SpA* [111] ("***Anic***"), the ECJ made the following observations:

"116 The Court of Justice has further explained that criteria of coordination and cooperation must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the policy which he intends to adopt on the market (see *Suiker Unie and Others v Commission*, cited above, paragraph 173; Case 172/80 *Züchner* [1981] ECR 2021, paragraph 13; *Ahlström Osakeyhtiö and Others v Commission*, cited above, paragraph 63; and *John Deere v Commission*, cited above, paragraph 86).

117 According to that case-law, although that requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, **it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, where the object or effect of**

[111] Case C-49/92 *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125.

> **such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market** (see, to that effect, *Suiker Unie and Others v Commission*, paragraph 174; *Züchner*, paragraph 14; and *John Deere v Commission*, paragraph 87, all cited above).
>
> 118 It follows that, as is clear from the very terms of Article [81(1)] of the Treaty, a concerted practice implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.
>
> …
>
> 121 For one thing, subject to proof to the contrary, which it is for the economic operators concerned to adduce, **there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on that market**, particularly when they concert together on a regular basis over a long period, as was the case here, according to the findings of the Court of First Instance." **[Emphasis added.]**

94. Further, EU jurisprudence has established that there can be a concerted practice even when only one competitor informs the other party of its future intention or conduct on the market.

95. In *Cimenteries CBR and Others v Commission*[112] ("***Cimenteries***"), the CFI held:

> "1849 In that connection, the Court points out that the concept of concerted practice does in fact imply the existence of reciprocal contacts (Opinion of Advocate General Darmon in Woodpulp II, cited at paragraph 697 above, points 170 to 175). That condition is met where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it.
>
> …
>
> 1852 In order to prove that there has been a concerted practice, it is not therefore necessary to show that the competitor in question has formally

[112] Joined Cases T-43/95, T-44/95, T-45/95, T-46/95, T-48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/95, T-58/95, T-59/95, T-60/95, T-61/95, T-62/95, T-63/95, T-64/95, T-65/95, T-68/95, T-69/95, T-70/95, T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others v Commission* [2000] ECR II-491, at [1849].

undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have colluded over their future conduct on the market. … It is sufficient that, by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to the conduct to expect of the other on the market ...".

96. In *Tate & Lye and Others v Commission*[113], which dealt with a similar point, the CFI held:

> "54 Moreover, the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice.
>
> …
>
> 57 In the present case, it is undisputed that there were direct contacts between the three applicants, whereby British Sugar informed its competitors, Tate & Lyle and Napier Brown, of the conduct which it intended to adopt on the sugar market in Great Britain.
>
> 58 In *Case T-1/89 Rhône-Poulenc v Commission* [1991] ECT II-867, in which the applicant had been accused of taking part in meetings at which information was exchanged among competitors concerning, *inter alia*, the prices which they intended to adopt on the market, the Court of First Instance held that an undertaking by its participation in a meeting with an anti-competitive purpose, not only pursued the aim of eliminating in advance uncertainty about the future conduct of its competitors but could not fail to take into account, directly or indirectly, the information obtained in the course of those meetings in order to determine the policy which it intended to pursue on the market (*Rhône-Poulenc*, paragraphs 122 and 123). This Court considers that that conclusion also applies where, as in this case, the participation of one or more undertakings in meetings with an anti-competitive purpose is limited to the mere receipt of information concerning the future conduct of their market competitors."

97. Further, in *T-Mobile Netherlands & Others v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* ("***T-Mobile***"), the ECJ found that a

[113] Case T-202/98, T-204/98 and T-207/09 *Tate & Lyle and Others v Commission* [2001] ECR II-2035 (upheld by the ECJ in its judgment of 29 April 2004 in Case C-359/01 *P British Sugar plc v Commission* [2004] ECR I-4933), at [54], [57] to [58].

concertation may involve exchanges between parties at a single meeting or a selective basis in relation to a one-off alteration in the market.[114]

98. This statement of law on concerted practices enunciated in the cases above has been applied by CCCS in the *Pest Control Case*[115] and the *Ferry Operators Case.*[116]

(iii) Necessity to Conclude whether Conduct is an Agreement and/or a Concerted Practice

99. It is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice.[117] It is established jurisprudence in the EU that the conduct of undertakings is capable of being both a concerted practice and an agreement.[118] Both concepts are fluid and may overlap.[119] The non-necessity of drawing a distinction between agreement and concerted practice is likewise the position in the UK. The UK Competition Appeal Tribunal ("**UK CAT**") stated in the case of *JJB Sports plc and Allsports Limited v Office of Fair Trading*[120] ("***JJB Sports***") 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…".

E. Party to an Agreement or a Concerted Practice – Involvement of an Undertaking

100. The mere fact that an undertaking may have played only a limited role in the setting up of 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.[121]

101. The principle that a party to an agreement or concerted practice who did not intend to implement the agreed upon initiatives does not escape liability is also

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[114] Case C-8/08 *T-Mobile Netherlands and Others v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529, at [59] to [62].
[115] *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [134].
[116] *CCS Imposes Financial Penalties on Two Competing Ferry Operators for Engaging In Unlawful Sharing of Price Information* [2012] SGCCS 3, at [53].
[117] Case IV/37.614/F3 *The Community v Interbrew NV and* others *(re The Belgian Beer Cartel)* [2004] CMLR 2, at [223].
[118] Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711.
[119] Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711at [264].
[120] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17.
[121] *CCCS Section 34 Guidelines*, paragraph 2.11.

established EU jurisprudence. In *Dole Food and Dole Germany v Commission*[122], the General Court noted that:

> "… even if a participant in collusive conduct may seek to exploit it for its own ends, or even cheat, that does not however diminish its liability in respect of its participation in that conduct. According to settled case-law, an undertaking which, despite a cartel with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit…".[123]

102. Further, a participant who "cheats" by attempting to gain market share at the expense of other participants through acting differently from the cartel's agreement is still liable for the infringement. In *Re Polypropylene*[124], the European Commission held that the fact that on some occasions producers might not have maintained their initial resolve and gave concessions to customers on price which undermined the price initiatives agreed upon did not preclude an unlawful agreement having been reached.

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

(i) "Object" and "Effect" Requirements are Alternative and Not Cumulative Requirements

103. 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 v CCS*:

> "The Board considers that the phrase "object or effect" in s 34(1) is disjunctive in nature…".[125]

104. 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 state that "*Once it has been established that an agreement has as its object the appreciable restriction of competition, CCCS need not go*

[122] Case T-58/08 *Dole Food and Dole Germany v Commission* ECLI:EU:T:2013:130.
[123] Case T-58/08 *Dole Food and Dole Germany v Commission* ECLI:EU:T:2013:130, at [484]. This passage was cited with approval by the UK CAT in *Balmoral Tanks Limited and Balmoral Group Holdings Limited v Competition and Markets Authority* [2017] CAT 23, at [94].
[124] Case 86/398 Re Polypropylene [1986] OJ L230/1, at [85].
[125] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [30].

further to demonstrate anti-competitive effects. On the other hand, if an agreement is not restrictive of competition by object, CCCS will examine whether it has appreciable adverse effects on competition."

105. Similarly, the ECJ held in *Hüls AG v Commission*[126] that there can be a concerted practice where there is no actual effect on the market.

106. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*[127], 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".

(ii) Object of Preventing, Restricting or Distorting Competition

107. It is well-established in EU 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.[128] 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 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.

108. EU jurisprudence has established that where the object being pursued is to prevent, restrict or distort competition, there can be an infringement of competition law even if an agreement does not have an effect on the market. In *Tréfilunion SA v Commission*[129], the CFI stated that:

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[126] Case C-199/92 *Hüls AG v Commission* [1999] ECR I-4287, at [163] to [165].
[127] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [357].
[128] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* ECLI:EU:C:2014:2204, [2014] 5 CLMR 2, at [50]. See also Case C-32/11 *Allianz Hungária Biztosító and Others* ECLI:EU:C:2013:160, at [35]. More recently, this position is affirmed in Case T-180/15 *Icap plc & Others v Commission* ECLI: EU:T:2017:795, at [43] to [45].
[129] Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].

> "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…".

109. In the ECJ judgment *Groupement des cartes bancaires v Commission*[130] ("***Cartes Bancaires***"), the concept of an "object" infringement was examined in further detail. The case concerned a fee structure established by the nine main members of a payment card system. The ECJ annulled the General Court's finding that the fee structure 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:

> "49 …it is apparent from the Court's case-law that certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects (see, to that effect, judgments in *LTM*, 56/65, EU:C:1966:38, paragraphs 359 and 360; *BIDS*, paragraph 15, and *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraph 34 and the case-law cited).
>
> 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.

[130] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* ECLI:EU:C:2014:2204, [2014] 5 CLMR 2, at [50] to [52] and [58].

> 52 Where the analysis of a type of coordination between undertakings does not reveal a sufficient degree of harm to competition, the effects of the coordination should, on the other hand, be considered and, for it to be caught by the prohibition, it is necessary to find that factors are present which show that competition has in fact been prevented, restricted or distorted to an appreciable extent…
>
> 58 …[the] concept of restriction by competition by object can be applied only to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects…".

110. According to the ECJ in *Cartes Bancaires*, the "essential legal criterion" for ascertaining whether coordination between undertakings restricts competition by object is whether the "coordination reveals in itself a sufficient degree of harm to competition."[131]

111. 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.[132]

112. The aforementioned principles are consistent with CCCS's position in previous cases such as the *Pest Control Case*[133] which was subsequently applied in its other decisions such as the *Ball Bearings Case*[134] in relation to the section 34 prohibition, that the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into an agreement, but rather on:

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

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[131] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* ECLI:EU:C:2014:2204, [2014] 5 CLMR 2, at [57].
[132] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* ECLI:EU:C:2014:2204, [2014] 5 CLMR 2, at [54]; Case C-32/11 *Allianz Hungária Biztosító and Others* ECLI:EU:C:2013:160, at [37]; and Case T-180/15 *Icap plc & Others v Commission* ECLI: EU:T:2017:795, at [48].
[133] *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore* [2008] SGCCS 1 at [49].
[134] *CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5, at [68].

113. Further, an agreement may be regarded to have as its object the restriction of competition even if the agreement by the undertakings did not have the restriction of competition as its sole aim but also pursues other legitimate objectives. In *Competition Authority v Beef Industry Development Society*[135], the parties 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 through a reduction in production overcapacity. Expressly rejecting this argument, the ECJ held that:

> "21 In fact, to determine whether an agreement comes within the prohibition laid down in Art.81(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)"

114. Finally, an agreement or concerted practice may have an anti-competitive object even though there is no direct connection between the anti-competitive conduct and the prices at which the goods are sold. In *T-Mobile*, the ECJ held at [36] – [39] that:

> "36 Third, as to whether a concerted practice may be regarded as having an anti-competitive object even though there is no direct connection between that practice and consumer prices, **it is not possible on the basis of the wording of Article 81(1) EC to conclude that only concerted practices which have a direct effect on the prices paid by end users are prohibited**.
>
> 37 On the contrary, it is apparent from Article 81(1)(a) EC that concerted practices may have an anti-competitive object if they 'directly or indirectly fix purchase or selling prices or any other trading conditions'. In the present case, as the Netherlands Government submitted in its written observations, as far as concerns postpaid subscriptions, the remuneration paid to dealers is evidently a decisive factor in fixing the price to be paid by the end user.
>
> 38 In any event, as the Advocate General pointed out at point 58 of her Opinion, **Article 81 EC, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of**

[135] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6.

> **individual competitors or consumers but also to protect the structure of the market and thus competition as such**.
>
> 39 Therefore, contrary to what the referring court would appear to believe, **in order to find that a concerted practice has an anti-competitive object, there does not need to be a direct link between that practice and consumer prices**." **[Emphasis added.]**

(iii) Exchange of Commercially Sensitive Information

115. Competition may be restricted or distorted where the agreement or concerted practice involves the sharing amongst competitors of pricing or other information of commercial or strategic significance. Where competitors share information which they would otherwise keep secret as confidential business information, this is likely to increase transparency in the market about the undertakings' competitive behaviour and thereby substitute practical cooperation for the risks of competition.[136]

116. The unilateral disclosure of future pricing intentions can amount to an infringement of the section 34 prohibition. In *BPB plc v Commission of the European Communities* [137] ("**BPB**"), it was made clear that the unilateral disclosure of pricing information to competitors can be anti-competitive where it is capable of influencing their future conduct on the market, as will its mere receipt. The General Court stated that:

> "153 … [I]t is true that the concept of concerted practice does in fact imply the existence of reciprocal contacts. However, that condition is met where the disclosure by one competitor to another of its future intentions or conduct on the market is requested or, at the very least, accepted by the latter…"

117. Indeed, in *JJB Sports*[138], the UK CAT held that:

> "873 ... **even if the evidence had established that only JJB had unilaterally revealed its future pricing intentions to Allsports and Sports Soccer a concerted practice falling within the Chapter I prohibition would thereby have been established**. The fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition, which strictly precludes any direct or indirect contact between competitors having, as its object or effect,

[136] For example, see Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, at [217], [259] – [260]; and Case T-29/92 *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and Others v Commission* [1995] ECR II-289, at [121] and [123].
[137] Case T-53/03 *BPB plc v Commission of the European Communities* [2008] ECR II-1333, at [153].
[138] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [873].

either to influence future conduct in the market or to disclose future intentions. Even where participation in a meeting is limited to the mere receipt of information about the future conduct of a competitor, the law presumes that the recipient of the information cannot fail to take that information into account when determining its own future policy on the market: *Tate and Lyle*, cited above, at paragraphs 56 to 58, referring in particular to *Rhône-Poulenc* at paragraphs 122 and 123." **[Emphasis added.]**

118. In the case of *Dole Food and Dole Fresh Fruit Europe v Commission* [139] ("***Dole***"), the ECJ set out the key requirements on what constitutes information exchange and when it will be held to be an object infringement in paragraphs [117] – [122]:

> "117 According to the case-law of the Court, **in order to determine whether a type of coordination between undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of competition 'by object'** within the meaning of Article 81(1) EC, regard must be had, inter alia, to its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question (see, to that effect, judgment in [*Cartes Bancaires*], C-67/13 P, EU:C:2014:2204, paragraph 53 and the case law cited).
> …
>
> 119 In so far as concerns, in particular, the exchange of information between competitors, it should be recalled that the criteria of coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which **each economic operator must determine independently the policy which he intends to adopt on the common market** (judgment in *T-Mobile Netherlands and Others*, C 8/08, EU:C:2009:343, paragraph 32 and the case-law cited).
>
> 120 While 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 or anticipated conduct of their competitors, it does, none the less, **strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions**

[139] C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission* EU:C:2015:184, at [117] and [122].

concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market (judgment in *T-Mobile Netherlands and Others*, C 8/08, EU:C:2009:343, paragraph 33 and the case law cited).

121 The Court has therefore held that the exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted (judgments in *Thyssen Stahl v Commission*, C 194/99 P, EU:C:2003:527, paragraph 86, and *T-Mobile Netherlands and Others*, C 8/08, EU:C:2009:343, paragraph 35 and the case law cited).

122 In particular, **an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anticompetitive object** (see, to that effect, judgment in *T-Mobile Netherlands and Others*, C 8/08, EU:C:2009:343, paragraph 41)." **[Emphasis added.]**

119. The ECJ in *Dole* agreed with the General Court and the European Commission's characterisation of the pre-pricing communications as making it possible to reduce uncertainty for each of the participants as to the foreseeable conduct of competitor and having the object to create conditions of competition that do not correspond to the normal conditions on the market, thereby giving rise to a concerted practice having as its object the restriction of competition.[140] In *Dole*, three suppliers of bananas engaged in bilateral communications prior to setting and quoting prices to their respective customers. In these bilateral communications, the parties discussed factors relevant to the setting of quotation prices for the forthcoming week. These factors included each competitor's market condition assessment, such as weather conditions. The parties also discussed or disclosed price trends, or gave indications of price quotations for the forthcoming week.

120. In *T-Mobile*[141], the ECJ held that even a limited exchange of information in the context of a single meeting can be infringing conduct:

[140] C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission* EU:C:2015:184, at [135].
[141]Case C-8/08 *T-Mobile Netherlands and Others v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529.

"59 Any other interpretation would be tantamount to a claim that an isolated exchange of information between competitors could not in any case lead to concerted action that is in breach of the competition rules laid down in the Treaty. Depending on the structure of the market, the possibility cannot be ruled out that a meeting on a single occasion between competitors, such as that in question in the main proceedings, may, in principle, constitute a sufficient basis for the participating undertakings to concert their market conduct and thus successfully substitute practical cooperation between them for competition and the risk that that entails.

60 ...the number frequency, and form of meetings between competitors needed to concert their market conduct depend on both the subject-matter of that concerted action and the particular market conditions. If the undertakings concerned establish a cartel with a complex system of concerted action in relation to a multiplicity of aspects of their market conduct, regular meetings over a long period may be necessary. If, on the other hand, as in the main proceedings, the objective of the exercise is only to concert action on a selective basis in relation to a one-off alteration in market conduct with reference simply to one parameter of competition, a single meeting between competitors may constitute a sufficient basis on which to implement the anti-competitive object which the participating undertakings aim to achieve.

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

62 In the light of the foregoing ... **in so far as the undertaking participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertaking on that market, even if the concerted action is the result of the meeting held by the participating undertakings on a single occasion**. **[Emphasis added.]**

121. The exchange of erroneous or inaccurate confidential information could still amount to an infringement, by object, of section 34 of the Act. The General Court made this clear in *Koninklijke Philips NV v Commission*[142], when it stated that:

> "91 Moreover, the Court notes that, **even if, as the applicants claim, the information that they disclosed was inaccurate, in so far as they had not experienced a shortage, the fact remains that the very disclosure of that type of information on future prices, whether correct or inaccurate, is capable of influencing the conduct of undertakings on the market. In that regard, it has been held that, even on the assumption that it is proved that certain participants in the cartel succeeded in misleading other participants by sending incorrect information and in using the cartel to their advantage, by not complying with it, the infringement committed is not eliminated by that simple fact** (judgment of 8 July 2008, *Knauf Gips v Commission*, T-52/03, not published, EU:T:2008:253, paragraph 201; see also, to that effect, judgment of 15 June 2005, *Tokai Carbon and Others v Commission*, T-71/03, T-74/03, T-87/03 and T-91/03, not published, EU:T:2005:220, paragraph 74)". **[Emphasis added.]**

122. In CCCS's *Ferry Operators Case*[143] which concerned the exchange of information between two competitors, CCCS stated that:

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

123. In the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the EU to Horizontal Co-operation Agreements [144] ("**the Horizontal Guidelines**") the Commission has further articulated the legal principles regarding information exchange:

> "60 ...the concept of a concerted practice refers to a form of coordination between undertakings by which, without it having reached the stage where an agreement properly so-called has been

[142] Case T-762/14 *Koninklijke Philips NV v Commission* [2016] EU:T:2016:738, at [91].
[143] *CCS Imposes Financial Penalties on Two Competing Ferry Operators for Engaging In Unlawful Sharing of Price Information* [2012] SGCCS 3, at [52].
[144] [2011] OJC 11/1.

concluded, practical cooperation between them is knowingly substituted for the risks of competition....

61 ...It does, however, preclude any direct or indirect contact between competitors, the object or effect of which is to create conditions of competition which do not correspond to the normal competitive conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings, and the volume of the said market. This precludes any direct or indirect contact between competitors, the object or effect of which is to influence conduct on the market of an actual or potential competitor, or to disclose to such competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, thereby facilitating a collusive outcome on the market. Hence, information exchange can constitute a concerted practice if it reduces strategic uncertainty in the market thereby facilitating collusion, that is to say, if the data exchanged is strategic..."

124. Paragraph 3.20 of the *Section 34 Guidelines* provides that, "*the exchange of information may however have an appreciable adverse effect on competition, where it serves to reduce or remove uncertainties inherent in the process of competition. The fact that the information could have been obtained from other sources is not necessarily relevant. Whether or not the exchange of information has an appreciable adverse effect on competition will depend on the circumstances of each case: the market characteristics, the type of information and the way in which it is exchanged. As a general principle, it is more likely that there would be an appreciable adverse effect on competition the smaller the number of undertakings operating in the market, the more frequent the exchange the more sensitive and confidential the nature of the information which is exchanged, and where information exchanged is limited to certain participating undertakings to the exclusion of their competitors and buyers*".[145]

G. Single Continuous Infringement

125. An infringement of the section 34 prohibition may result not only from a single act but also from a series of acts or continuous conduct. Where it can be established that a set of individual agreements are interlinked in terms of pursuing the same object or as part of a plan, they can be characterised as constituting a single continuous infringement.

126. In order to prove a single continuous agreement, the ECJ in *Aalborg Portland AS v Commission*[146] confirmed at [81] to [83] the elements established in *Anic*:

[145] *Section 34 Guidelines*, paragraph 3.20.
[146] 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* [2004] ECR I-23.

> "81 According to settled case-law, it is sufficient for the Commission to show that the undertaking concerned participated in meetings at which anti-competitive agreements were concluded, without manifestly opposing them, to prove to the requisite standard that the undertaking participated in the cartel. Where participation in such meetings has been established, it is for that undertaking to put forward evidence to establish that its participation in those meetings was without any anti-competitive intention by demonstrating that it had indicated to its competitors that it was participating in those meetings in a spirit that was different from theirs (see Case C-199/92 P Hüls v Commission [1999] ECR I-4287, paragraph 155, and Case C49/92 P Commission v Anic [1999] ECR I-4125, paragraph 96).
>
> 82 The reason underlying that principle of law is that, having participated in the meeting without publicly distancing itself from what was discussed, the undertaking has given the other participants to believe that it subscribed to what was decided there and would comply with it.
>
> 83 The principles established in the case-law cited at paragraph 81 of this judgment also apply to participation in the implementation of a single agreement. In order to establish that an undertaking has participated in such an agreement, the Commission must show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk (*Commission v Anic*, paragraph 87)."

127. In *Team Relocations v Commission*,[147] the General Court summarised the case law on the conditions that must be met in order to establish a single and continuous infringement:

> "37...three conditions must be met in order to establish participation in a single and continuous infringement, namely the existence of an overall plan pursuing a common objective, the intentional contribution of the undertaking to that plan, and its awareness (proved or presumed) of the offending conduct of the other participants."

[147] Joined Cases T-204/08 and T-212/08 *Team Relocations and Others v Commission* [2001] ECR II-2040, at [37]; paragraph cited with approval by the ECJ in the appeal against the GC's judgment: see Case C-444/11 P *Team Relocations NV and Others v Commission* at [51] to [53].

128. The ECJ clarified in *Fresh Del Monte Produce v Commission* that: [148]

> "157 An undertaking which has participated in such a single and complex infringement... may also be responsible for the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk…".

129. Accordingly, for a series of acts or continuous conduct to constitute a single continuous infringement, it must be shown that:

(i) the agreements or concerted practices that made up the single continuous infringement were all in pursuit of the same common objective(s);
(ii) each party to the single continuous infringement intended to contribute by its own conduct to the common objectives of the single overall infringement; and
(iii) each party was aware of or could reasonably have foreseen actual conduct planned or put into effect by other parties in pursuit of the common objectives.

(i) A Common Objective

130. Where a group of undertakings pursue a common objective or objectives, it is not necessary to divide the agreements or concerted practices by treating them as consisting of a number of separate infringements, where there is sufficient consensus to adhere to a plan limiting the commercial freedom of the parties.[149]

131. CCCS applied this principle in the *Price Fixing in Modelling Services Case*[150] (and more recently in the *Ball Bearings Case*[151]) where there was a common objective among the parties to collectively raise modelling rates through various meetings, correspondences and contacts between the parties over a number of years. In this regard, CCCS stated that:

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[148] Joined Cases C-293/13 P and C-294/13 P *Fresh Del Monte Produce v Commission* ECLI:EU:C:2015:416, at [157]; in this case, it was held that the fact that Weichert was unaware of the exchange of information between Dole and Chiquita and did not have to know about it was not such as to negate a finding of a single and continuous infringement even though liability could not be attributed to that company in respect of all of that infringement (see [160]); see also, Case C-441/11 P *Commission v Verhuizingen Coppens NV* ECLI:EU:C:2012:778, at [42] to [43].
[149] Case T-1/89 *Rhone-Poulenc SA v Commission* [1991] ECR II-867, at [126].
[150] *Price-Fixing of Rates Modelling Services in Singapore by Modelling Agencies* [2011] SGCCS 11, at [207].
[151] *CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5, at [53] to [54] and [347] to [348].

> "207 CCS considers that it would not be reflective to split up such continuous conduct, characterised by a single purpose, and treating it as several separate infringements for different types of anti-competitive agreements, when what was involved was, in reality, a single infringement which manifested itself in a series of anti-competitive activities throughout the period of operation of the cartel. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments."

132. In the *Polypropylene* case,[152] the European Commission found that the producers of polypropylene were party to a whole complex web of schemes, arrangements and measures decided in the framework of regular meetings and continuous contact which constituted a single continuous agreement. The producers, by subscribing to a common plan to regulate prices and supply in the polypropylene market, had participated in an overall framework agreement which manifested in a series of more detailed sub-agreements worked out from time to time. The European Commission stated that:

> "83. **The essence of the present case is the combination over a long period of the producers towards a common end, and each participant must take responsibility not only for its own direct role but also for the operation of the agreement as a whole.** The degree of involvement of each producer is not therefore fixed according to the period for which its pricing instructions happened to be available but for the whole of the period during which it adhered to the common enterprise." **[Emphasis added.]**

(ii) Participation in or Contribution by Own Conduct to a Single Continuous Infringement

133. To demonstrate that each undertaking intended to contribute through its own conduct to the common objectives of the single overall infringement and that it was aware or could reasonably have foreseen the actual conduct planned or put into effect by other undertakings in pursuit of the common objectives, it is not necessary to show that all the parties gave their express or implied consent to each and every aspect of the single overall infringement.[153] The parties may show varying degrees of commitment to the common objectives.

[152] Case IV/31.149 *Polypropylene* [1986] OJ L230/1, [1988] 4 CMLR 347.
[153] Case C-49/92 *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at [80].

134. The concept of a single continuous infringement was elaborated on in the *Choline Chloride* case by the European Commission [154] and CFI. [155] The European Commission's decision on this issue was upheld – that the unequal and differing roles of each undertaking and the presence of internal conflict would not defeat the finding of a common unlawful enterprise. The European Commission reiterated the principle set out in *Polypropylene* and went on further to state: [156]

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

135. Further guidance on the concept of a single and continuous infringement was provided by the CFI. The CFI made clear that in order for the "common objective" to provide a sufficiently unifying umbrella such that the various activities can be said to comprise a single continuous infringement, these activities must be complementary in nature and contribute towards the realisation of that common objective. [157] The CFI also affirmed, in *S. A. Hercules Chemicals N.V. v Commission of the European Communities*,[158] that where it would be artificial to split up continuous conduct, characterised by a single purpose, by treating it as a number of separate infringements, a single continuous infringement can be found.

(iii) Knowledge or Reasonable Foreseeability

[154] Case COMP / E-2 / 37.533 *Choline Chloride*, [2005] OJ L 190
[155] Joined Cases T-10l/05 and T-111/05 *BASF AG and UCB SA v Commission* [2007] ECR II-4949, at [158] to [161].
[156] See also Case C-49/92 *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125.
[157] See Joined Cases T-10l/05 and T-111/05 *BASF AG and UCB SA v Commission* [2007] ECR II-4949, at [179] to [181].
[158] Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, at [263].

136. An undertaking may have participated directly in only some of the forms of anti-competitive conduct comprising the single and continuous infringement but if it had been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objective, or could reasonably have foreseen that conduct and had been prepared to take the risk, then liability is attributable to that undertaking in relation to all the forms of anti-competitive conduct in relation to the infringement as a whole.[159]

H. Burden and Standard of Proof

137. CCCS bears the legal burden of proving the infringements in question. Decisions taken by CCCS under the Act follow a purely administrative procedure. As such, the standard of proof to be applied in deciding whether an infringement of the section 34 prohibition has been established is the civil standard, commonly known as proof on the balance of probabilities. The civil standard of burden of proof was applied by the CAB in *Express Bus Operators Appeals Nos. 1 and 2*.[160] The CAB stated:

> "85 There is no dispute that the burden of proof is on the CCS to establish, on a balance of probabilities, the existence and the duration of any alleged infringement".

138. Given the nature of the evidence of anti-competitive conduct in a case concerning cartel or collusive conduct such as that found in this 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.

139. In *JJB Sports*[161], 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*[162], the UK CAT held that in discharging the burden of proof, the Office of Fair Trading ("**OFT**") "*can rely on inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts*".

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[159] See Joined Cases C-293/13 P and C-294/13 P *Fresh Del Monte Produce v Commission* ECLI:EU:C:2015:416, at [157] to [159]; Case COMP/F/38.354 *Industrial Bags*, Doc. C (2005) 4634, OJ 2007 L282/41 at [441]; and Case C-49/92 *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at [83] and [203].

[160] *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].

[161] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [206].

[162] *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [110].

140. 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*[163], 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**..."[164] **[Emphasis added.]**

141. In *Aalborg Portland AS v Commission*[165], the ECJ stated:

> "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.**" **[Emphasis added.]**

I. The Relevant Market

142. 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.

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[163] Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, *JFE Engineering v Commission* [2004] ECR II 2501.
[164] Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00, *JFE Engineering v Commission* [2004] ECR II 2501, at [179] to [180].
[165] 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* [2004] ECR I-23, at [55] to [57].

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.[166]

143. 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 relates to agreements and/or concerted practices involving exchanges of confidential, customer-specific, commercially sensitive information that have as their object the prevention, restriction or distortion of competition. Agreements and/or concerted practices that have as their object the prevention, restriction or distortion of competition are by their very nature, regarded as preventing, restricting or distorting competition to an appreciable extent.[167]

144. 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.

145. As established in paragraphs 33 to 36, the provision of hotel room accommodation to corporate customers differs from that of non-corporate customers in terms of the negotiation process, duration of contracts and the rate setting process. Given the distinct differences which exist in the provision of hotel room accommodation to corporate and non-corporate customers, CCCS considers the provision of hotel room accommodation to corporate customers as a focal product for the purposes of this ID.

146. Accordingly, for the purpose of calculating penalties in this case, CCCS has defined the relevant market based on the focal product. In this regard, CCCS determines that the focal product, and accordingly the relevant market, is the provision of hotel room accommodation in Singapore to corporate customers ("**relevant market**").

J. Evidence relating to the Agreements and/or Concerted Practices, CCCS's Analysis of the Evidence and CCCS's Conclusion on the Infringements

147. CCCS's investigation revealed that sales representatives of Capri and Village Hotels were engaged in an agreement and/or concerted practice in the period between 3 July 2014 and 30 June 2015 to discuss and exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers (the "**Capri-Village Conduct**").

[166] *CCCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.1.
[167] *Section 34 Guidelines*, paragraph 3.2.

148. CCCS's investigation also revealed that the sales representatives of Capri and Crowne Plaza had separately engaged in a similar agreement and/or concerted practice between the period between 14 January 2014 and 30 June 2015 to discuss and exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers (the "**Capri-Crowne Plaza Conduct**").

149. This section sets out:

(i) the relevant background to the ownership, management and operation of each hotel including how hotel room accommodation rates are determined for corporate customers and the role of personnel involved in sales at each of the hotels;

(ii) evidence of the Capri-Village Conduct including excerpts from the bilateral WhatsApp chat between Ms. Priscilla Chong[168] ("**Priscilla Chong**") (a sales representative of Capri) and Mr. Eric Tan[169] (a sales representative of the Village Hotels) ("**Eric Tan**")[170]; and

(iii) evidence of the Capri-Crowne Plaza Conduct including excerpts from the bilateral WhatsApp chat between Priscilla Chong and Ms. Gladys Leong[171] (sales representative of Crowne Plaza) ("**Gladys Leong**").[172]

(i) Background

Background facts pertaining to Capri

Overview of hotel management agreements for Capri

150. Capri is located at 3 Changi Business Park, Central 1, Changi City, Singapore 486037.[173] During the relevant period, Capri had two owners, but the same hotel manager. Prior to 31 March 2015, AFPL was the owner of Capri.[174] Pursuant to the Capri MA 2013, AFPL engaged FHPL as the sole and exclusive provider of

[168] Also known as Ms. Chong Lai Lai.
[169] Also known as Mr. Tan Han Yong Eric.
[170] Information provided by FEHMS dated 2 February 2018 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1d and Annex A.
[171] Also known as Ms. Leong Wai Fong, Gladys.
[172] Information provided by Capri by Fraser Changi City Singapore dated 2 November 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1d.
[173] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1a; and information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1a.
[174] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1b.

management and consultancy services at, and the sole and exclusive operator of, Capri in the period between 11 July 2013 and 30 March 2015.[175]

151. On 31 March 2015, AFPL transferred the ownership of Capri to FH Trustee for due consideration.[176] FH Trustee, in its capacity as trustee-manager [✂][177], has been the legal owner of Capri from 31 March 2015 to date.[178] All transactions entered into by FH Trustee in relation to Capri are in its capacity as trustee-manager [✂].[179] Pursuant to the Capri MA 2015, FH Trustee engaged FHPL to be the sole and exclusive provider of management and consultancy services at, and the sole and exclusive operator of, Capri in the period from 31 March 2015 to date.[180]

152. As provided in clause 5.5 of Capri MA 2013, FHPL's responsibilities as the manager and operator of Capri included the sales and marketing of hotel rooms at Capri. The relevant clause states:

> "[✂]". **[Emphasis added.]**

Clause 5.5 of Capri MA 2015 [✂].

153. However, responsibility for the financial risks for the management and operation of Capri were retained by both AFPL and FH Trustee, as owners of Capri. It should be highlighted that both AFPL and FH Trustee bore the costs for the operation of Capri, including [✂].[181]

Rate setting process of room rates for corporate customers of Capri

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[175] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 5A – Management Agreement; information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; and information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1iii.

[176] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 18; and information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, Annexes 17B – Capri Instrument of Transfer and 17C – Sale and Purchase Agreement dated 27 February 2015.

[177] [✂]. Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1b.

[178] Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1b.

[179] Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 1b, 11, 17a, 19, 20 and 22.

[180] Information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 3b; information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 4A – Management Agreement.

[181] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to questions 9a, 9b, and 11; and information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 10 and 12.

154. At Capri, the Director of Sales and Marketing is responsible for overseeing and managing the conduct of Capri's sales and marketing teams. He also has overall responsibility for securing sales for Capri and for Capri's marketing activities.[182] This includes the setting of corporate room rates and corporate rate charts.[183] Rate charts set out a range of room rates to be offered to corporate customers of Capri. The corporate customers are divided into "tiers", depending on the potential number of room nights the corporate customer is expected to book with Capri for the year (also known as "room night production"). Room rates are then offered to corporate clients depending on the tier in which they fall. The rate chart is usually set sometime in the [✂] of the previous year[184], and is valid from [✂] of each year.[185]

155. The Director of Sales and Marketing is supervised in this responsibility by the General Manager.[186] The rate charts are also approved by FHPL.[187]

156. During the corporate rate negotiation process, sales representatives of Capri typically refer to the rate ranges set out in the rate chart and exercise discretion in determining the more precise room rate to be offered to each corporate customer.[188] In determining the appropriate room rate to be offered, the sales representatives take into account factors such as the corporate customer's historical room night production, the room night production for the coming year, the price sensitivity of the corporate customer, the location of the corporate customer and competitor hotels, and the city wide potential of the corporate customer.[189]

157. Another factor taken into account by sales representatives of Capri is the feedback from the corporate customer(s) about the rates of competitor hotels.[190] For

[182] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 34d.
[183] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.1.
[184] Response to question 37 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017; and Voluntarily Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.3.
[185] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.2.
[186] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 34g.
[187] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 24.
[188] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.3; and response to question 38 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[189] City wide potential refers to the total potential number of room nights the corporate customer will book with hotels in Singapore for the year. Response to questions 39 and 40 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[190] Response to question 39 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.

example, Priscilla Chong and Gladys Leong were acutely aware of the competition posed by other competitor hotels such as Park Avenue Changi. The evidence in the bilateral WhatsApp chat between them reveals that they discussed their pricing strategies for Capri and Crowne Plaza respectively in response to the aggressive pricing strategies employed by competitor hotels such as Park Avenue Changi. In particular, on 14 August 2014, Gladys Leong told Priscilla Chong that "*We cannot follow them* [Park Avenue] *into a price war. We have to hold rates. Then when they* [Park Avenue] *filled with alll* [sic] *the cheap rates we can get the higher ones.*" [191] Thereafter, Priscilla Chong expressed her agreement with Gladys Leong's pricing strategy.

158. Under certain circumstances, the sales representative may in his/her discretion recommend that a corporate customer be offered [✂]. This is done on a case-by-case basis. In such circumstances, the factors which are taken into consideration by the sales representative include the room night production for the coming year and the price sensitivity of the corporate customer.[192] The offering [✂] must be approved by the Director of Sales and Marketing, as well as the General Manager.[193]

159. Upon completion of the negotiation process, the sales representative will prepare a corporate rate letter setting out the agreed negotiated rate, which is acknowledged by the sales representative and the Director of Sales and Marketing.[194]

Sales representative of Capri involved in the Capri-Village Conduct and Capri-Crowne Plaza Conduct

160. The sales representative at Capri who primarily undertook discussions on behalf of Capri in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct was Priscilla Chong. Priscilla Chong was first employed as a member of the sales team of Capri in July 2012.[195] During the period of the Capri-Village Conduct and Capri-Crowne Conduct, she first held the designation of Senior Sales Manager,

[191] Information provided by Capri by Fraser Changi City Singapore dated 2 November 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1d.
[192] Response to question 42 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[193] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.6.
[194] Response to questions 41 and 43 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[195] Information provided by FHCC dated 4 October 2017, pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 22a; and response to question 11 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.

and was then subsequently promoted to Assistant Director of Sales.[196] Her last day of service with Capri's sales team was on 1 February 2017.[197]

161. Priscilla Chong was contractually employed by Frasers Hospitality Changi City Pte. Ltd. ("**FHCC**"). FHCC was incorporated on 13 June 2012, and maintained by FHPL as a wholly-owned subsidiary [✂]. One of the primary functions of FHCC is to contractually employ the individuals appointed to manage and operate Capri.[198] FHCC was engaged by FHPL to provide administrative support for Capri, particularly in relation to the employment of staff members of Capri.[199] [✂].[200] While Priscilla Chong was employed by FHPL's subsidiary, FHCC, Priscilla Chong's day-to-day instructions came from FHPL.

162. During her employment as a sales representative for Capri, Priscilla Chong reported directly first to the Director of Sales at the time[201], then to Ms. Carol Lau (the Deputy Group Director of Sales & Marketing of FHPL)[202], and subsequently to Mr. Ray Hua (the Director of Sales and Marketing of Capri).[203]

163. During the period of the Capri-Village Conduct and Capri-Crowne Plaza Conduct, Priscilla Chong's primary responsibilities included securing sales for Capri, maintaining Capri's relationships with its customers, ensuring that the requirements of said customers are met, and assisting with reports on Capri's financial performance in relation to her role within Capri's sales team.[204]

164. Priscilla Chong had the discretion and authority to negotiate and offer rates to corporate clients during the RFP process.[205] Upon completion of the negotiation

[196] Response to question 14 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[197] Information provided by FHPL dated 22 September 2017, pursuant to section 63 Notice issued by CCCS dated 29 August 2017, response to question 33e; and information provided by FHCC dated 4 October 2017, pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 22a and Annex 22A – Employment Contract.
[198] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 4a and Annex 4A – Service Agreement (1 August 2013).
[199] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 4a.
[200] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 4a.
[201] Response to question 15 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[202] Response to question 15 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017; and information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 7.
[203] Response to question 15 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017; and information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 34g.
[204] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 33d.
[205] Response to questions 38 and 42 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017; and Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.4.3.

process, Priscilla Chong would prepare a corporate rate letter setting out the agreed negotiated rate, which would then be acknowledged by the sales representative and the Director of Sales and Marketing.[206]

Background facts pertaining to Village Hotels

Overview of hotel management agreements for Village Hotels

165. VHK is located at 25 Marine Parade Village Hotel Katong Singapore 449536.[207] It is owned by OM.[208] VHC is located at 1 Netheravon Road Village Hotel Changi Singapore 508502.[209] It is owned by FEOC.[210]

166. The Village Hotels are managed by a common hotel operator FEHMS, which is a provider of hotel management services. Pursuant to the HMA for VHC and the HMA for VHK, FEHMS acts on behalf of and as exclusive agent of FEOC and OM in the operation and management of VHC and VHK respectively.[211]

167. As the manager of FEOC and OM, FEHMS's responsibilities included the employment of hotel staff and the sales and marketing of hotel rooms at VHK and VHC. The relevant clauses in the HMA for VHC and the HMA for VHK state that[212]:

"[✂]".

168. However, responsibility for the financial risks for the management and operation of VHK and VHC are retained by OM and FEOC respectively. OM and FEOC

[206] Response to questions 41 and 43 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[207] Information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1(i).
[208] Information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1(ii). See also, ACRA record Business Profile of Village Hotel Katong (on 19/04/2016).
[209] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1(i).
[210] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1(ii). See also, ACRA record Business Profile of Village Hotel Changi (on 19/04/2016).
[211] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 4 - Hotel Management Agreement for VHC and clause 3.4.1 of Annex 5 - Hotel Management Agreement for VHK; and corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, Annex 2.
[212] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, Annex 4 - Hotel Management Agreement for VHC and Annex 5 - Hotel Management Agreement for VHK.

bear the costs for the operation and management of VHK and VHC respectively. This includes the operating expenses and capital expenditure.[213]

Rate setting process of room rates for corporate customers of Village Hotels

169. At the Village Hotels, the rate grids that set out guideline prices are prepared by the Area Director of Sales & Marketing of the Village Hotels, in consultation with members of the sales team of the Village Hotels, [✂] each year.[214] The rate grids are set based on each of VHC and VHK's annual budget. Each rate grid sets out the guideline prices (best available rate levels) for each category of rooms offered by VHC and VHK, in accordance with the expected level of demand for the year.[215]

170. During the corporate room rate negotiation process, sales representatives of the Village Hotels typically refer to the rate ranges set out in the finalised rate grids and exercise discretion in determining the more precise room rate to be offered to each corporate customer. In determining the appropriate room rate to be offered, the sales representative takes into account factors such as the corporate customer's room night production for the coming year, the budget of the corporate customer for the coming year, the corporate customer's historical room night production, the historical corporate rates offered to the corporate customer by VHC and VHK respectively and any feedback provided by the corporate customer with respect to competitor hotels.[216]

171. The agreed negotiated rate for rooms is approved by the sales representative in charge of the corporate account, the Village Hotels' Area Director of Sales & Marketing and General Manager.[217]

Sales representative of Village Hotels involved in the Capri-Village Conduct

172. The sales representative of the Village Hotels who primarily undertook discussions on behalf of VHC and VHK in the Capri-Village Conduct was Eric Tan. During the period of the Capri-Village Conduct, Eric Tan was employed by FEOC first as a Senior Sales Manager[218] (from 1 March 2012 to 28 February 2015)

[213] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, Annex 4 - Hotel Management Agreement for VHC and Annex 5 - Hotel Management Agreement for VHK.
[214] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 3.2(i).
[215] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 3.2(i).
[216] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 8c(iii).
[217] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 8c(iii).
[218] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 21(a).

and subsequently as an Assistant Director of Sales[219] (from 1 March 2015 to 28 February 2017). While Eric Tan was employed by FEOC, his day-to-day instructions came from FEHMS.

173. In his positions in sales, Eric Tan was responsible for promoting, negotiating and selling hotel room accommodation at VHC and VHK concurrently to corporate customers.[220] His concurrent responsibilities for VHC and VHK arose due to FEHMS's designation of certain sales and revenue analysis functions as "cluster roles" for FEHMS-managed hotels which are located within the same geographical area. Even though Eric Tan is employed by FEOC (owner of VHC), Eric Tan was responsible for the sales of both VHC and VHK, and both properties are marketed to corporate customers together by him.[221] Eric Tan's responsibilities vis-à-vis VHK as well as VHC were assigned to him by FEHMS.[222] During the period of the Capri-Village Conduct, Eric Tan reported to the following Area Directors of Sales and Marketing (employees of FEOC who are directed/instructed on a day-to-day basis by FEHMS[223]):
    a. Ms. Jean Leong (from January 2013 – December 2013);
    b. Mr. Kevin Peeris (from January 2014 – December 2014); and
    c. Ms. Decky Kwok (from January 2015 – July 2016).[224]

174. Eric Tan was in a position to recommend corporate room rates (with reference to rate grids determined by FEHMS) to his Area Director of Sales and Marketing who, together with the Area Revenue Manager and Area General Manager (both employees of FEHMS), is responsible for setting and approving the room rates.[225]

175. The evidence reveals that Eric Tan understood that he was required to make contact with and obtain information from Priscilla Chong. In particular, it was submitted that:

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[219] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 21(a).
[220] Response to question 3 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016; and information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 8(e)(i).
[221] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 16(a); information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 16(a); and response to question 6 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016.
[222] Information provided by FEHMS, FEOC and OM in respect of the Leniency Application Expansion 2 dated 27 November 2017, response to question 2.3(d)(iii).
[223] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a)(ii); and information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4(a)(ii).
[224] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 25.
[225] Responses to questions 8, 9 and 10 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016; and information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 8e(i).

"*Email instructions* [were issued] *from Ms Jean Leong, the Area Director of Sales and Marketing of the East cluster (from 2012 to end 2013 or early 2014), to the sales team of the East cluster, requesting for them to obtain "competitor information" on hotels within their competitor set.* [Specifically there is an email] …. *dated 1 February 2013 (at 4.48 pm) from Ms Jean Leong to Mr Eric Tan requesting for him to obtain information relating to Capri's key corporate customer accounts and corporate rates, following requests from Mr Koh Yan Leng (the Area General Manager, at the time)... Mr Eric Tan surmised that Ms Jean Leong requested for him to obtain the relevant information as she was aware of his close relationship with Ms Priscilla Chong (an employee at Capri).*"[226]

176. Further, it was submitted on behalf of the Village Hotels that the information sharing practices in the hotel industry in Singapore includes the exchange of pricing information and information affecting pricing between competing hotels within the same geographic cluster in Singapore.[227] Relevantly, sales staff of VHC and VHK had competitor contact with hotels within their competitor set, including Capri.[228]

Background facts pertaining to Crowne Plaza

Overview of hotel management agreement for Crowne Plaza

177. Crowne Plaza is located at 75 Airport Boulevard Singapore 819664.[229] OUE Airport Hotel is the owner/master lessee of Crowne Plaza.[230]

178. IHG Singapore is the operator and manager of Crowne Plaza. Pursuant to the CPMA, IHG Singapore acts as the agent of OUE Airport Hotel in the operation and management of Crowne Plaza.[231]

179. As the manager of Crowne Plaza, IHG Singapore's responsibilities included the personnel policies and sales and marketing of hotel rooms at Crowne Plaza. This is in accordance with clause 3.3 of the CPMA, which states that:[232]

"[✂]".

[226] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1.
[227] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1.
[228] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1.
[229] Extracted from ACRA record Business Profile of Crowne Plaza Changi Airport (on 28/02/2017); and Singapore Tourism Board, Hotel Guide 2016, page 224.
[230] Information provided by OUE Airport Hotel dated 2 July 2018 pursuant to the section 63 Notice issued by CCCS dated 27 June 2018, response to question 1.
[231] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, response to question 2bi and clause 3.1 of Annex B2(1) – Management Agreement.
[232] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 3.3 of Annex B2(1) – Management Agreement.

180. However, responsibility for the financial risks for the management and operation of Crowne Plaza is retained by OUE Airport Hotel, as the master lessee of Crowne Plaza. OUE Airport Hotel bears the operating costs incurred by IHG Singapore in the operation and management of Crowne Plaza. [233]

Rate setting process of room rates for corporate customers of Crowne Plaza

181. At Crowne Plaza, the corporate rate grid is prepared by the sales and marketing team, with the final approval of the General Manager of Crowne Plaza.[234] Sales representatives at Crowne Plaza use the corporate rate grid as a "guideline" in determining the rates to be offered to corporate customers.[235]

182. During the corporate rate negotiation process, sales representatives of Crowne Plaza typically refer to the rate ranges set out in the rate grid and exercise discretion in determining the more precise room rate to be offered to each corporate customer. In determining the appropriate room rate to be offered, the sales representative takes into account factors such as the number of room nights booked by the customer in the current year, and the "support" that the customer has given to Crowne Plaza. For example, a sales representative may offer a lower rate if he/she trusts that the customer will likely use the hotel exclusively.[236]

183. If the room rate negotiated with a customer [✂], that rate will have to be approved by the Director of Business Development and the Director of Sales and Marketing.[237]

184. For corporate customers who negotiate their RFPs through [✂], the sales representatives of Crowne Plaza will prepare an [✂] form for each corporate customer. The form sets out the factors which are taken into account by the sales representative, in proposing a particular rate to be offered. The factors include the corporate customer's historical room night production for the hotel, total estimated room night production in Singapore, other hotels that will be bidding for that corporate customer contract, and the anticipated or known rates offered by competitor hotels.[238]

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[233] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 13.2 of Annex B2(1) – Management Agreement.
[234] Response to question 74 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017.
[235] Responses to questions 69 and 71 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017.
[236] Response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[237] Response to question 15 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[238] Response to question 16 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15; and information provided by OUE Airport dated 24 July 2015 pursuant to the section 63 Notice issued by CCCS dated 30 June 2015, Annexes D.2 – H.2.

185. Notably, the evidence reveals that information pertaining to room rates offered by other competitor hotels to Crowne Plaza's corporate customers have been set out by sales representatives of Crowne Plaza (including Gladys Leong) in the [✂] forms containing the sales representatives' proposed rates for corporate customers.[239] These [✂] forms are then signed by the relevant account manager, the Director of Business Development, the Director of Sales and Marketing and the General Manager.[240] Locally negotiated corporate contracts are signed by the account managers, the Director of Business Development or the Director of Sales and Marketing.[241]

Sales representative of Crowne Plaza involved in the Capri-Crowne Plaza Conduct

186. The sales representative at Crowne Plaza who primarily undertook discussions on behalf of Crowne Plaza in the Capri-Crowne Plaza Conduct was Gladys Leong. Gladys Leong was employed by OUE Airport Hotel as a business development coordinator at Crowne Plaza in March 2008.[242] Prior to 1 January 2015, Gladys Leong was the senior business development manager at Crowne Plaza.[243] In January 2015, Gladys Leong was promoted to be the Director of Business Development at Crowne Plaza.[244] Gladys Leong ended her employment at Crowne Plaza on 22 October 2015.[245] While Gladys Leong was employed by OUE Airport Hotel, her day-to-day instructions came from IHG Singapore.

187. When Gladys Leong was the senior business development manager at Crowne Plaza, she was in charge of managing corporate customer accounts at Crowne Plaza, and making recommendations to the management of Crowne Plaza on the corporate room rates for corporate customers.[246] As a senior business development

[239] Response to questions 197 to 200 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[240] Response to question 15 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; and response to question 68 of Notes of Information/Explanation provided by Sunshine Wong (General Manager for Crowne Plaza), 6 September 2017.
[241] Response to question 15 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; and response to question 68 of Notes of Information/Explanation provided by Sunshine Wong (General Manager for Crowne Plaza), 6 September 2017.
[242] Response to questions 4 and 5 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[243] Response to question 5 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[244] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 1(c)(ii); and response to question 4 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[245] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 8; and response to question 4 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[246] Response to question 5 and 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

manager at Crowne Plaza, Gladys Leong reported to the then Director of Business Development, Mr. Damien Soh, who was employed by OUE Airport Hotel.[247]

188. When Gladys Leong was promoted to the Director of Business Development in January 2015, she managed the sales team and was responsible for bringing in sales for the Crowne Plaza.[248] Additionally, Gladys Leong was also responsible for jointly approving corporate room rates for corporate customers with the General Manager.[249] As the Director of Business Development, Gladys Leong reported to Mr. Sam Hoso, an employee of OUE Airport Hotel, who was the Director of Sales and Marketing at Crowne Plaza.[250] The Director of Sales and Marketing in turn reported to the General Manager of Crowne Plaza who was employed by IHG Singapore.[251]

Relationship between Capri and Village Hotels; and Capri and Crowne Plaza

189. Capri, Village Hotels, and Crowne Plaza are all providers of hotel room accommodation that are located in the east of Singapore. The evidence demonstrates that each of (i) Capri and Village Hotels and (ii) Capri and Crowne Plaza regard each other as close competitors, for the reasons set out below.

190. On behalf of the Village Hotels, it was submitted that Capri is recognised as one of the top five competitors. In particular, Capri is regarded as a direct competitor of Village Hotels by the virtue that Capri has the same "star" rating and is situated in the vicinity of the east of Singapore.[252]

191. This position is consistent with the submissions made on behalf of Capri. The Village Hotels are regarded as a direct competitor of Capri by the virtue of the following primary factors which include, but not limited to the following, (i) similar room offerings to Capri; (ii) similar amenities to Capri, e.g. gym facilities, television channels and breakfast among others; (iii) similar volume of room stock; (iv) the perceived star ratings of the hotel in comparison to Capri; (v) the proximity of the hotel to Capri; and (vi) the proximity of the hotel to other

[247] Response to question 6 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[248] Response to question 4 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[249] Response to question 5 and 15 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[250] Response to question 6 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[251] Response to question 32 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017; and information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, response to question 2d.
[252] Information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 5.

important locations and amenities such as transport hubs or common meeting venues.[253]

192. On behalf of Crowne Plaza, it was submitted that Capri is regarded as one of its top five competitor hotels. Capri is regarded as a competitor of Crowne Plaza by virtue of its location – it is within five kilometres of Crowne Plaza, provides easy access to and from Changi Airport, and is located in Changi Business Park, where many of the key contracted accounts of Crowne Plaza are located.[254] This position is similarly consistent with the submissions made on behalf of Capri. It was submitted that Crowne Plaza is regarded by Capri as one of its top five competitors for the same primary factors listed at paragraph 191.[255]

(ii) Conduct of the Parties

Exchange of commercially sensitive information between sales representatives of Capri and Village Hotels

193. The evidence reveals that Priscilla Chong (in her capacity as a sales representative of Capri) and Eric Tan (in his capacity as a sales representative of Village Hotels) were engaged in the Capri-Village Conduct from at least 3 July 2014 to 30 June 2015.

194. CCCS notes, however, that the exchange of commercially sensitive information between Priscilla Chong and Eric Tan is likely to have begun much earlier. Specifically, Eric Tan stated the following: "*We started talking since 2012 when she* [Priscilla Chong] *left for Capri. I think that was the time when Jean* [Jean Leong] *just joined us as well. We exchanged information on occupancy. As Priscilla used to be from my hotel, she knew which of the accounts I was handling and I knew some of the accounts she was handling. Here we exchanged information pertaining to specific accounts and also the contact persons for the accounts*".[256]

195. This is consistent with the evidence provided by Priscilla Chong. She explained that she first became acquainted with Eric Tan in 2010 when they were colleagues at VHC.[257] The two maintained contact with each other even after Priscilla Chong

[253] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 7.
[254] Information provided by IHG Singapore dated 4 November 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 5.
[255] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to questions 6 and 7.
[256] Response to question 140 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016.
[257] Response to question 68 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.

joined the sales team of Capri in July 2012.[258] They maintained contact through phone conversations, face-to-face meetings and conversations on WhatsApp.[259] During this time, they would share experiences and information about their respective customers, including corporate customers.[260] They would also talk about their experiences with bosses or colleagues, and their personal lives. It was only on 30 June 2015, after Priscilla Chong became aware of CCCS's investigation, that she stopped discussing and sharing information about Capri's corporate customers with Eric Tan.[261] Likewise, Eric Tan stopped discussing and sharing information with Priscilla Chong only after 30 June 2015.[262]

196. Priscilla Chong and Eric Tan's communication with each other likewise matched the instructions of their respective employers. At Capri, Mr. Ray Hua instructed each member of the Capri sales team to exchange information with sales representatives of competitor hotels.[263] Each member of the sales team at Capri was assigned to develop an administrative point of contact with employees of hotels located in proximity to Capri.[264] Specifically, Priscilla Chong was assigned to develop an administrative point of contact with VHC and VHK, which were located in the east of Singapore.[265]

197. Similarly, the evidence reveals that Eric Tan, in the course of his work as a sales representative of the Village Hotels, was given instructions to make contact with and to obtain "*information relating to Capri's key corporate customer accounts and corporate rates*" from Priscilla Chong.[266]

198. In particular, FEHMS submitted that:

"*Email instructions* [were issued] *from Ms Jean Leong, the Area Director of Sales and Marketing of the East cluster (from 2012 to end 2013 or early 2014), to the sales team of the East cluster, requesting for them to obtain "competitor information" on hotels within their competitor set.* [Specifically there is an email] *…. dated 1 February 2013 (at 4.48 pm) from Ms Jean Leong to Mr Eric Tan*

[258] Response to questions 69 and 70 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[259] Response to question 71 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[260] Response to question 72 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[261] Response to question 78 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[262] Response to question 137 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016; and corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 1.3(iii)(b)(B).
[263] Response to question 62 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[264] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.2.
[265] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraph 2.3.
[266] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1.

requesting for him to obtain information relating to Capri's key corporate customer accounts and corporate rates, following requests from Mr Koh Yan Leng (the Area General Manager, at the time)... Mr Eric Tan surmised that Ms Jean Leong requested for him to obtain the relevant information as she was aware of his close relationship with Ms Priscilla Chong (an employee at Capri)."[267]

199. The information obtained by Priscilla Chong from the sales representatives of Village Hotels and Crowne Plaza was reported to Mr. Ray Hua and Mr. Vernon Lee (the General Manager of Capri). This includes the information pertaining to corporate customers.[268]

200. Likewise, the information obtained by Eric Tan from the sales representative of Capri was shared internally at internal sales meetings at the Village Hotels or via email communications with the Area Director of Sales and Marketing of the East cluster.[269]

201. The evidence detailed in this Chapter reveals that contact between Priscilla Chong and Eric Tan occurred frequently, especially during periods when corporate customers sought to contract or re-contract with hotels in Singapore. The commercially sensitive information shared between them included factors which can affect the future determination of prices (room rates) offered to corporate customers, such as:
    a. bid prices in response to corporate customers' requests;
    b. percentages by which customers asked for prices to be dropped and the position that each sales representative's hotel would take in response;
    c. customers' potential room night requirements (room night production) for the sales representative's hotel in the coming contractual period;
    d. customers' current and/or historical room rates and/or room night take-up for the sales representative's hotel; and
    e. whether or not a corporate customer is a key account of the sales representative's hotel.

202. The commercially sensitive information shared between Priscilla Chong and Eric Tan also included each other's future price-related strategies in connection with corporate customers (for instance, agreements to refrain from offering free inclusions or upgrades and agreements to offer corporate customers higher priced room types at points of room booking), which can impact the prices (room rates) paid by the corporate customer.

203. The exchange of such commercially sensitive information between the sales representatives eliminates or reduces uncertainties inherent in the process of

[267] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1.
[268] Response to questions 30 and 34 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017; and response to question 12 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.
[269] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1(i)(a)(D).

competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

204. Set out below in paragraphs 205 to 292 are examples (including excerpts) from the bilateral WhatsApp chat between Priscilla Chong and Eric Tan which evince their involvement in the Capri-Village Conduct.

*Discussions on Panalpina World Transport (Singapore) Pte. Ltd. ("**Panalpina**")*

Background information on Panalpina's procurement processes

205. Panalpina enters into corporate contracts for hotel room accommodation to service its facility located in the east of Singapore[270] as well as Panalpina Asia Pacific Management Pte. Ltd.'s facility which is located in the Suntec area of Singapore.[271] For the years 2013, 2014 and 2015, Panalpina entered into corporate contracts with a number of hotels in Singapore.[272]

206. Panalpina informed CCCS that in choosing hotel room accommodation, close proximity to its office location(s) is key.[273] It stated that in respect of its office located in the east of Singapore, it is "*very important*" to choose a hotel located in the east of Singapore.[274] In making its decisions about awarding a corporate contract to a hotel in Singapore, Panalpina indicated that room rates and geographic location of the hotel are the most important factors.[275]

207. In [✂], Panalpina had corporate contracts with Capri.[276] In [✂], Panalpina had corporate contracts with the Village Hotels.[277]

[270] Panalpina's address is 16 Changi North Way, Singapore 498772. Information provided by Panalpina World Transport (S) Pte. Ltd dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 1.
[271] Information provided by Panalpina World Transport (S) Pte. Ltd. dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 3.
[272] Information provided by Panalpina World Transport (S) Pte. Ltd. dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.
[273] Information provided by Panalpina World Transport (S) Pte. Ltd. dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 6.
[274] Information provided by Panalpina World Transport (S) Pte. Ltd. dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 6.
[275] Classification of the hotel as a 'corporate hotel' or a hotel with a specific ranking is also important. Other factors such as amenities provided, long standing business relationship and regional/global contracts with hotel chains are less important. Information provided by Panalpina World Transport (S) Pte. Ltd dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 7.
[276] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 2A.
[277] Information provided by Panalpina World Transport (S) Pte. Ltd. dated 24 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9; and information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 1(b).

208. As mentioned at paragraph 35 above, a hotel would first compete to be on a corporate customer's list of preferred hotels in signing a corporate contract. Once a corporate contract is secured, the hotel then competes with the corporate customer's other preferred hotels to secure actual room bookings by the corporate customer throughout the contract term.

209. Eric Tan was responsible for the Panalpina account as a sales representative of the Village Hotels.[278] He was assigned this responsibility after Priscilla Chong left her former employment as a sales representative of VHC, sometime in 2012. Subsequently, Priscilla Chong handled the Panalpina account as a sales representative of Capri.[279]

210. As can be seen from the exchanges between Priscilla Chong and Eric Tan set out below, the sales representatives initially discussed their respective corporate rate negotiations with Panalpina in securing corporate contracts. Subsequently, the sales representatives also discussed their strategies in connection with a possible room booking by Panalpina.

Discussions concerning Panalpina

211. The excerpts below show WhatsApp conversations between Priscilla Chong and Eric Tan which included the sharing of information on Capri's and the Village Hotels' bid prices in response to Panalpina's requests for corporate room rate quotations. The conversations between them also include the sharing of information on Capri's and the Village Hotels' future pricing and non-pricing strategies in relation to Panalpina; and Panalpina's historical, current and estimated room night production for their hotels. The discussions on Panalpina took place on 22 July 2014; 25 July 2014; 29 August 2014; 1 September 2014; 22 December 2014; and 1 April 2015.

212. On 22 and 25 July 2014:

> "22 Jul 2014 17:24 – Eric Tan: *That bloody bitch keep saying oh never mind lor. Park Ave will get my business*
> *22 Jul 2014 17:24 - CVH Priscilla: U mean who* [✂]*?*
> *22 Jul 2014 17:24 - Eric Tan: See u guess also can guess who*
> *22 Jul 2014 17:25 - CVH Priscilla: Let her be la*
> *22 Jul 2014 17:25 - CVH Priscilla: Idc*
> *22 Jul 2014 17:25 - Eric Tan: Ya let her go lor. Crazy one. I think she expect me to give her everything free*

[278] Response to question 112 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016.
[279] Response to question 112 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016; and response to question 45 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.

22 Jul 2014 17:26 - CVH Priscilla: I have already told her if she cannot meet her expected room nights then we have to increase for year 2015

…

25 Jul 2014 15:01 - CVH Priscilla: Hey ask you hor

25 Jul 2014 15:01 - CVH Priscilla: I tot u mentioned [✂] *confirm her rm at park Ave right 4-5 sept?*

25 Jul 2014 15:03 - Eric Tan: No lah

25 Jul 2014 15:03 - Eric Tan: Not park ave. She said town hotel

25 Jul 2014 15:04 - CVH Priscilla: Is it?

25 Jul 2014 15:04 - CVH Priscilla: She jus called me to check the availability of my meeting room. wor

25 Jul 2014 15:04 - Eric Tan: Ya lah I didn't say park ave. Park ave is for her colleague family

25 Jul 2014 15:04 - Eric Tan: 4 to 5 sep?

25 Jul 2014 15:05 - CVH Priscilla: Yup

25 Jul 2014 15:05 - Eric Tan: Crazy bitch. Must be the town hotel play her out

25 Jul 2014 15:07 - Eric Tan: She's really not very honest and manipulating us. I think we really have to keep close contact when it comes to her

25 Jul 2014 15:10 - CVH Priscilla: Ya I think so too

25 Jul 2014 15:11 - Eric Tan: So angry

25 Jul 2014 15:11 - CVH Priscilla: Actually my meeting room is still available but I told her it is not cos there is another enquiry

25 Jul 2014 15:11 - Eric Tan: I won't give her priority and freebies anymore

25 Jul 2014 15:11 - Eric Tan: Don't give her. Hahaha

25 Jul 2014 15:12 - CVH Priscilla: Ya

25 Jul 2014 15:13 - CVH Priscilla: No more ok

25 Jul 2014 15:14 - CVH Priscilla: And pls lor

25 Jul 2014 15:14 - CVH Priscilla: She tot we hotelier stupid

25 Jul 2014 15:14 - CVH Priscilla: We talk ok

25 Jul 2014 15:14 - Eric Tan: Hahaha let's bully her back

25 Jul 2014 15:14 - CVH Priscilla: Ok sure

25 Jul 2014 15:14 Eric Tan: I want to go make friend with [✂]

25 Jul 2014 15:14 - CVH Priscilla: We should la

25 Jul 2014 15:14 - CVH Priscilla: u should

25 Jul 2014 15:14 - Eric Tan: Cos [✂] *say I shouldn't*

25 Jul 2014 15:14 - CVH Priscilla: Ok next time she ask u for fit room

25 Jul 2014 15:15 - CVH Priscilla: And u don't have entry level

25 Jul 2014 15:15 - CVH Priscilla: Offer her higher category

25 Jul 2014 15:15 - CVH Priscilla: Then sms me

25 Jul 2014 15:15 - Eric Tan: Oh I don't usually squeeze for her one

25 Jul 2014 15:15 - CVH Priscilla: I will oso give her my higher category room

25 Jul 2014 15:15 - Eric Tan: Don't have means don't have and I will ask her buy club or f off. Haha

25 Jul 2014 15:24 - CVH Priscilla: Ok so onz

***25 Jul 2014 15:25 - Eric Tan: On!*"**

[Emphasis added.]

213. This conversation was explained by Priscilla Chong in her interview with CCCS on 29 July 2015. Priscilla Chong explained how she shared with Eric Tan that she told "[✂]" (of Panalpina) that Capri would have to increase rates for 2015 if Panalpina could not meet its expected number of room nights. Priscilla Chong explained that [✂] had expected a lot from the hotels, e.g., free upgrades, complimentary checkouts. Priscilla Chong found [✂] difficult to handle, as [✂] would tell them (sales representatives) that other hotels were offering various free inclusions to Panalpina even though it might not be true.

214. Priscilla Chong then explained that Eric Tan was suggesting that they "*should keep in close contact when it comes to her* [[✂]] *so we* [Capri and Village Hotels] *don't have to be squeezed into the corner or to listen to* [✂] *and give her everything she wants*."[280] Priscilla Chong explained how she had agreed to Eric Tan's suggestion that both Village Hotels and Capri should not give this corporate customer anything extra in terms of free inclusions moving forward. Priscilla Chong also confirmed that she and Eric Tan had made an agreement that they would offer Panalpina higher category rooms than those requested by Panalpina, even if the lower category room type requested by Panalpina was available. In this regard, Priscilla Chong said:

> "*I was telling Eric that in future if* [✂] *asked him for a FIT* [Free Independent Traveller] *booking in his properties and he does not have his first category which is the lowest booking at the lowest rate, he can offer her the higher rate and text me to inform … me about that. If he quoted her the higher category room, I would also quote her the higher category room, even if I still have a lower category room available. …He replied that he would not squeeze out lower category rooms for her if they are not available*".[281]

215. In his interview with CCCS on 18 April 2016, Eric Tan stated that,

> "*I did share information with Priscilla on another account call* [sic] *Panalpina. I cannot remember if I shared the information or if she shared the information with me. … It should be some time earlier in 2014…Priscilla handled the Panalpina account when she was in VHC, and when she moved to Capri, I took over the Panalpina account. She took on the Panalpina account at Capri. The customer would go to Priscilla to tell her that Eric was offering her a particular rate and ask if she could better it. The customer would also try to get me to better what she claimed Priscilla was offering. Priscilla and I would then ask each other about what the customer said, i.e. what rates Capri and my hotels were offering, to ensure we were not being cheated by the customer. We may only*

[280] Response to question 44 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[281] Response to question 47 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

indicate whether we were agreeing to a reduction in rate because we were sensitive about the exact rate. However, I think we were ultimately lying to each other as we both wanted the business."[282]

216. When asked specifically about the WhatsApp conversation which took place on 22 and 24 July 2014, Eric Tan admitted to keeping close contact with Priscilla Chong:

"*... in this case we felt very frustrated by* [✂] *calling us to get better rates. We would call each other after* [✂] *called us to make sure we were not taken advantage of. It is not quite "bullying" her, we were just making sure that we were not taken advantage of.* [✂] *takes advantage of hoteliers. She will ask me to pick her up from home, send her home, call me after office hours etc. She would tell me that Capri was offering her certain rates and ask why I could not offer her those rates; she would also call Priscilla and tell her I was offering her certain rates and ask for better rates from Capri.*"[283]

217. On 29 August 2014 and 1 September 2014, Eric Tan and Priscilla Chong engaged in the following conversation regarding their common corporate customer, Panalpina:

29 Aug 2014 15:38- Eric Tan: That bloody bitch got one booking from 11 to 14 sep
29 Aug 2014 15:38- Eric Tan: She playing games with us again
29 Aug 201415:39- CVH Priscilla: Is it for [✂]*?*
29Aug 201415:39 -Eric Tan: Yes!
29 Aug 2014 15:39- Eric Tan: She ask for comp upgrade then keep chasing
29 Aug 2014 15:39- CVH Priscilla: Wan early check in at l0am?
29 Aug 2014 15:40- Eric Tan: I say need time to approve and now kp questioning me
29 Aug 2014 15:40- CVH Priscilla: She book with me le hor
29 Aug 2014 15:40- Eric Tan: Why so many times upgrade. She also book with me already
29 Aug 2014 15:40- Eric Tan: Also confirmed liao
29 Aug 2014 15:40- CVH Priscilla: I didn't give her comp upgrade
29 Aug 2014 15:40- CVH Priscilla: And oso early check in fyi
29 Aug 201415:40- CVH Priscilla: So don't give in!
29 Aug 2014 15:40- Eric Tan: Yes. Everything she also wants
29 Aug 2014 15:41 - CVH Priscilla: So r u giving?
29 Aug 2014 15:41 -Eric Tan: I think don't give lor
...
29 Aug 2014 15:42 - CVH Priscilla: See she cancel where lo

[282] Response to question 112 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016.
[283] Response to question 158 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016.

29 Aug 2014 15:42 - CVH Priscilla: Better cancel my side la
29 Aug 2014 15:42 -Eric Tan: Then you take the booking lah. Anyway next year we up her rates to quite high
29 Aug 2014 15:42 - Eric Tan: She wants cheap then go vhc lah
29 Aug 2014 15:42 - CVH Priscilla: Give my room to other customer who can pay
29 Aug 2014 15:42 - CVH Priscilla: Ya lor
29 Aug 2014 15:43 - CVH Priscilla: Cheap and good then go ibis or something
29 Aug 2014 15:43 - Eric Tan: So frustrating. YTD she already upgraded 9 times
29 Aug 2014 15:44 - CVH Priscilla: Lol
29 Aug 2014 15:44 - CVH Priscilla: Ya must keep record
29 Aug 2014 15:44 - Eric Tan: And every booking is comp early
29 Aug 2014 15:44- CVH Priscilla: How many room nights she give u?
29 Aug 2014 15:44- Eric Tan: [✂]
29 Aug 2014 15:44- CVH Priscilla: Not bad
29 Aug 2014 15:45- CVH Priscilla: I think I only have less than [✂]
29 Aug 2014 15:45 - CVH Priscilla: Wat is your otb for sept?
29 Aug 2014 15:47 - CVH Priscilla: We r [✂]*%*
29 Aug 2014 16:09 - Eric Tan: We only [✂] *for both sidew*
29 Aug 2014 16:09 - CVH Priscilla: Ok tq
29 Aug 2014 16:10 - CVH Priscilla: If u tell kevin he will jump
29 Aug 2014 16:10 - Eric Tan: Sure jump one
29 Aug 2014 16:10 - Eric Tan: He already checking how many times
29 Aug 2014 16:11 - CVH Priscilla: How many times wat?
29 Aug 2014 16:15 Eric Tan: Upgrade lor
...
1 Sep 201414:56- CVH Priscilla: Haha [✂] *cancel my side booking*
1 Sep 201414:57- Eric Tan: Cos the upgrade approved
1 Sep 201414:57- Eric Tan: Then give her that and she still dare ask for early check in
1 Sep 2014 14:5 7- Eric Tan: I told ah pang to give her a tree
1 Sep 2014 14:57- CVH Priscilla: I tot u say kevin say too much free upgrade for her?
1 Sep 201414:58- CVH Priscilla: Give her market la
1 Sep 2014 14:58- Eric Tan: He said this is the last time and also next year must increase her rate at vhk
1 Sep 2014 14:58- Eric Tan: She want cheap and free can go vhc
1 Sep 2014 14:58- CVH Priscilla: Haha
1 Sep 2014 14:58- CVH Priscilla: Good
1 Sep 201414:59- CVH Priscilla: This kind of ppl hor
1 Sep 2014 14:59- CVH Priscilla: Give her mountain she wan sky
1 Sep 201414:59 -Eric Tan: Ya too much lah
1 Sep 2014 14:59- Eric Tan: She really thinks she some kind of goddess
1 Sep 2014 15:00- CVH Priscilla: Ya she try with me first
1 Sep 2014 15:00- CVH Priscilla: Then go to u

1 Sep 2014 15:00- CVH Priscilla: Take us as clown
1 Sep 2014 15:00- CVH Priscilla: She forgotten we talk lo
1 Sep 2014 15:01 -Eric Tan: She thinks we very aggressive competitor but she doesn't know she will lose in the end. **[Emphasis added.]**

218. During his interview with CCCS on 19 April 2016, Eric Tan gave the following evidence about this exchange with Priscilla Chong:

> "*This is a continuation of the booking from* [✂] *for Panalpina. There was a booking sent to both Capri and myself, and the booker,* [✂]*, was asking for a complimentary upgrade and early check in and I was seeking approval for the request. Priscilla told me that the booking was confirmed at her end. We were discussing what the booker actually wanted from us, i.e. complimentary upgrade, freebies and early check in, and to see which side's booking she would cancel. Priscilla asked how many room nights the booker gave, and I told her it was around* [✂] *and she said it was less than* [✂] *on her side. We then exchanged our respective occupancy rates for September. Priscilla then commented that if I told Kevin Peeris* [Director of Sales and Marketing for the Village Hotels] *about* [✂]*'s request, he would have a strong reaction. Kevin had previously asked about the number of times complimentary upgrades were given. Priscilla later told me that the booker cancelled the booking on her side. The last part of the conversation was a casual chat about dealing with the booker. When I said that the booker would lose in the end, I didn't think this was true as she got what she wanted in the end.*"[284]

219. When asked whether the number of room nights for a corporate customer is confidential or public information, Eric Tan said:

> "*Usually when the clients ask us for corporate rates, they would tell us how many room nights they are likely to give to us. If we ask the clients, they may also tell us how many room nights they are giving to our competitors. Apart from asking from the clients and competitors, there is no other way of finding out the information.*"[285]

220. When asked the same question, Priscilla Chong also noted the following:

> "[The number of room nights] *was confidential. This was for my personal knowledge and information.*"[286]

221. Both Eric Tan and Priscilla Chong admitted that the information about the number of room nights that a customer is likely to give a competitor hotel is confidential

[284] Response to question 1 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[285] Response to question 6 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[286] Response to question 68 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

information which could only be obtained either from the customer themselves or from a competitor hotel. In this case, the confidential information on a corporate customer's number of room nights (i.e. room night production) was exchanged between two close competitors. Both were aware that room night production is an important factor to be considered in the determination of room rates offered to corporate customers. Priscilla Chong explained that in determining the appropriate room rate to be offered by Capri to a corporate customer, she takes into account factors such as the corporate customer's historical room nights, the room night production for the coming year, the price sensitivity of the corporate customer, the location of the corporate customer and competitor hotels, and the city wide potential of the corporate customer.[287] For Village Hotels, a customer's corporate rate is based on the following key factors "*the corporate customer's estimated production for the following year, historical corporate rates and the budget of the corporate customer*." [288] Further, when asked about the factors taken into consideration in determining room rates for corporate customers, Eric Tan explained that he took into account the "*volume of rooms that the client is looking to buy and their budget*".[289]

222. Moreover, in this conversation on 1 September 2014, Eric Tan also confirmed that for VHK, rates to Panalpina would be increased for 2015. This came after Priscilla Chong stated on 22 July 2014 in their WhatsApp chat that Capri would have to increase Panalpina's rates in 2015 if it cannot meet estimated room night demand.

223. It is clear from the above that the exchange between Eric Tan and Priscilla Chong on confidential, customer-specific, commercially sensitive information - such as the room night production of a customer and future pricing strategies in relation to the specific corporate customer - served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers.

224. A further conversation in the bilateral WhatsApp chat between Eric Tan and Priscilla Chong on Panalpina took place on 22 December 2014. During this conversation, Priscilla Chong informed Eric Tan that she was going to propose S$[✂]++ for room only for Panalpina.[290] She indicated that Capri went in at S$[✂]++ for room only in December, but ended up with S$[✂]++ with breakfast.[291]

"*22 Dec 2014 14:30 - Eric Tan: Did u increase rates for Panalpina?*

[287] Response to questions 39 and 40 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[288] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 3.2(iii)(a).
[289] Response to question 11 of Notes of Information/Explanation provided by Eric Tan (sales representative of Capri), 18 April 2016.
[290] Response to question 145 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[291] Response to question 147 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

22 Dec 2014 14:30 - CVH Priscilla: I have not prepare yet
22 Dec 2014 14:31 - Eric Tan: ***Will u increase?***
22 Dec 2014 14:31 - CVH Priscilla: ***But will be at*** [✂]++ ***for room only***
22 Dec 2014 14:31 - CVH Priscilla: She sure scream
22 Dec 2014 14:31 - Eric Tan: That [✂] *still wants to squeeze me*
22 Dec 2014 14:31 - CVH Priscilla: Lol
22 Dec 2014 14:31 - Eric Tan: And she say ok lor u increase then I look for Pris …
22 Dec 2014 14:32 - Eric Tan: I told her to go ahead" **[Emphasis added.]**

225. When asked about this exchange, Priscilla Chong confirmed that both she and Eric Tan were competing for the same customer, Panalpina.[292]

226. Priscilla Chong confirmed that she had disclosed to Eric Tan that she was proposing to bid a price of S$[✂]++ to Panalpina.[293] When asked why she disclosed this information to her competitor, Priscilla Chong said only that it was "*just to share with him.*"[294]

227. When asked about this exchange during his interview, Eric Tan said:

> "*I was asking Priscilla if she was going to increase the corporate rates for Panalpina. She answered that she had not prepared the rates, so I asked if she was going to increase the rates. She said that it will be at $*[✂]++. *I responded that* [✂] *would still want to "squeeze me", and that* [✂] *said that if I increased my rates she would look for Priscilla, and I told her to go ahead. When Priscilla said $*[✂]++*, she meant that this is the rate that Capri will offer to Panalpina*."[295]

228. CCCS is aware that Eric Tan had already prepared his offer to Panalpina before he asked Priscilla Chong whether her hotel would increase its prices. Nonetheless, Eric Tan's conduct in seeking and obtaining Priscilla Chong's likely room rate reduced/eliminated uncertainties inherent in the process of competition between Capri and Village Hotels; and could thereby result in Eric Tan not independently determining his response to Panalpina in circumstances where Panalpina might seek to further negotiate the Village Hotel prices downwards. In this way, the conduct of Eric Tan and Priscilla Chong served to substitute practical cooperation for the risks of competition[296] which is antithetical to the idea that in a competitive

[292] Response to question 144 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[293] Response to question 145 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[294] Response to question 146 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[295] Response to question 111 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[296] See Case 48/69 *ICI v Commission* [1972] ECR 619 at [64], and Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663.

market each economic operator must operate independently the practices it tends to adopt in the market.[297]

229. On 1 April 2015, Eric Tan and Priscilla Chong engaged in the following conversation regarding Panalpina:

> "***1 Apr 13:44 - CVH Priscilla: Eric just to check with u after*** [✂] ***left do u still get alot of bookings from panalpina?***
> ***1 Apr 13:44 - Eric Tan: Not as much but still have lah***
> ***1 Apr 13:45 -Eric Tan: Drop by*** [✂]***% at least***
> *1 Apr 13:45 - Eric Tan: Think they use quite a lot town*
> *1 Apr 13:45 - CVH Priscilla: Wow ok that is becos* [✂] *use alot on mercure*
> *1 Apr 13:45 - Eric Tan: Ya that stupid bitch*
> *1 Apr 13:45 - Eric Tan: She is worst than* [✂]
> *1 Apr 15:16 - CVH Priscilla: Lol*
> *1 Apr 15:16 - CVH Priscilla: Omg what has she done to u?*
> *1 Apr 15:17 - Eric Tan: Nothing lah. Just never support me lor*
> *1 Apr 15:17 - CVH Priscilla: Alamak ok I tot she have done terrible things to u that is y u say that*
> *1 Apr 15:18 - Eric Tan: Hahaha no lah. Actually I also didn't put in more effort to be close to her*
> *1 Apr 15:18 - Eric Tan: Cos at first I thought I have to give up this account*
> ***1 Apr 15:18 - CVH Priscilla: I heard mercure offering long stay with abf at*** [✂]++ ***with long stay benefits to them***
> *1 Apr 15:19 - Eric Tan: Wah*
> ***1 Apr 15:19 - Eric Tan: I offer them*** [✂] ***for vhc***
> *1 Apr 15:19 - CVH Priscilla: She has alot of long stay wor*
> ***1 Apr 15:19 - Eric Tan: Ya lor. But vhk I cannot give so low***
> *1 Apr 15:20 - CVH Priscilla: Mercure give them same corporate rate as your vhk*
> *1 Apr 15:20 - CVH Priscilla: I think*
> *1 Apr 15:20 - Eric Tan: Must be lah. She didn't go and compare the service lor*
> *1 Apr 15:20 - Eric Tan: Like I always can give her what she request*
> *1 Apr 15:20 - Eric Tan: Sigh*
> ***1 Apr 15:20 - CVH Priscilla: Do u have generic long stay rate for vhk?***
> ***1 Apr 15:20 - Eric Tan: Ya*** [✂]
> ***1 Apr 15:20 - CVH Priscilla: Pls giving in eric***
> ***1 Apr 15:21 - CVH Priscilla: U spoilt the pa eventually***
> ***1 Apr 15:21 - CVH Priscilla: Don't give in***
> ***1 Apr 15:21 - CVH Priscilla: I mean***
> ***1 Apr 15:21 - CVH Priscilla: Lol***
> ***1 Apr 15:21 - Eric Tan: Haha ya I will work on*** [✂]**."**
> **[Emphasis added.]**

[297] Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663 at [173].

230. During an interview on 19 April 2016, Eric Tan gave the following evidence about this exchange with Priscilla Chong:

> "*Priscilla was checking with me about the bookings from Panalpina after* [✂] *left. I told her that the bookings dropped by* [✂]*%, and Priscilla told me that one of the new bookers for Panalpina,* [✂]*, used a lot of Grand Mercure.* [✂] *and* [✂] *were the new bookers for Panalpina. Priscilla was telling me that Grand Mercure was offering long stay rates at $*[✂]*++, in response to which I said I was offering $*[✂] *for VHC. She shared that Mercure was giving the same corporate rates as VHK, and asked if we had any generic long stay rates. I said yes, and told her $*[✂]*. Priscilla told me not to always give in to the personal assistants, for example acceding to* [✂]*'s requests when she asked.*"[298]

231. When asked further whether the amount of bookings the respective hotels obtain from Panalpina was public information, Eric Tan submitted that "*the amount of bookings is confidential information*".[299] Similarly, Eric Tan also submitted that the information in relation to the long stay rates offered by VHC and VHK to their corporate customer, Panalpina, is confidential in nature.[300]

232. When asked about the reason he informed Priscilla Chong of the generic long stay rates in relation to VHC and VHK, Eric Tan submitted that "*Because she* [Priscilla Chong] *asked whether we had a long stay rate*."[301] When asked whether he was worried that Priscilla might undercut him upon hearing his long stay rates, Eric Tan submitted that he was not, given that "*in this instance, my* [Eric Tan's] *gut feel was that Capri will not go down to this level, so they will not try to undercut my* [Eric Tan's] *rates which are quite low.*"[302]

233. The exchange between Eric Tan and Priscilla Chong on confidential, customer-specific, commercially sensitive information - such as long stay accommodation room rates and the number of bookings that a customer had given to competing hotels - demonstrates the on-going nature of discussions between Capri and Village Hotels on corporate customers. Such discussions served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

*Discussions on Barclays Bank PLC ("**Barclays**")*

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[298] Response to question 145 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[299] Response to question 146 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[300] Response to question 151 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[301] Response to question 147 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[302] Response to question 148 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.

Background information on Barclays' procurement processes

234. Barclays procures hotels for the Barclays Global Preferred Hotel Program, the purpose of which is, "…*to establish a list of preferred hotels which meet Barclays' business needs and with which Barclays has negotiated discounted rates and preferential terms in return for making these hotels available to book to Barclays' employees*".[303] For the years 2013, 2014 and 2015, Barclays had a number of hotels in Singapore selected as preferred hotels.[304]

235. In terms of its procurement process, Barclays described it as follows: [✂] ("**Barclays' RFP**"). In [✂] of each year, Barclays will provide the selected hotels with a document setting out information about Barclays' business; expectations and requirements for the Barclays' RFP; timelines and forecasted room nights required for each city.[305] In [✂] of each year, [✂] Barclays [✂] enters into negotiations to achieve the best possible rates, inclusions, access to inventory, cancellation penalty and blackout periods.[306] In [✂] each year, Barclays informs all hotels and chains of its selection for the following year. No corporate contracts are signed, rather, for Barclays the preferred hotels load their agreed rates into the various booking systems used by Barclays.[307]

236. In [✂], Barclays was a corporate customer of Capri, [✂].[308]

237. At the time of the WhatsApp conversation set out below, Capri and Village Hotels were both responding to the Barclays' RFP for 2015 rates to be selected for inclusion in the list of Barclays' preferred hotels in Singapore.

Discussions concerning Barclays

238. The excerpt below shows a WhatsApp conversation between Priscilla Chong and Eric Tan which included the sharing of information on bid prices in response to Barclays' RFP. The discussion pertaining to Barclays took place on 16 September 2014.

> "*16 Sep 2014 10:50 - CVH Priscilla: By the way yesterday ah fat ask me about wat did I offer to barclays*

[303] Information provided by Barclays Bank Plc. dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[304] Information provided by Barclays Bank Plc. dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 5.
[305] Information provided by Barclays Bank Plc. dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[306] Information provided by Barclays Bank Plc. dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[307] Information provided by Barclays Bank Plc. dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017 response to question 2.
[308] Information provided by Barclays Bank Plc. dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017 response to question 5.

16 Sep 201410:51- Eric Tan: Did u tell him?
16 Sep 2014 10:51- CVH Priscilla: Jus share no of room nights
16 Sep 20I4 I0:51- CVH Priscilla: Rates how to share
16 Sep 2014 11:02 - CVH Priscilla: He says around [✂] ***and I say abt there buy forgot to tell him it is without abf haha***
16 Sep 2014 11:02- Eric Tan: So high ah
16 Sep 2014 11:03- CVH Priscilla: Ya
16 Sep 2014 11:03 - CVH Priscilla: Clean rate**" [Emphasis added.]**

239. Priscilla Chong has confirmed that the reference to "ah fat" is a reference to Max Low[309] who was a Senior Sales Manager of VHC/VHK at that point in time.[310] In relation to the exchange above, Priscilla Chong explained that she communicated her conversation with Max Low to Eric Tan because she, Max Low and Eric Tan were all friends.[311]

240. In her conversation with Eric Tan, Priscilla Chong disclosed Capri's room rate offered to Barclays, which she had previously shared with Max Low. In this conversation, Priscilla Chong goes further to clarify that the indicated rate of S$[✂] was without "abf" (American breakfast).[312] In this way, Priscilla Chong provided Eric Tan with further insight and details about what was included in Capri's price to Barclays.

241. When asked to explain this conversation in greater detail, Eric Tan said:

> "*Priscilla told me that Max* [Max Low, Mr. Tan's colleague] *went to ask her what was Capri's rate offered to Barclays. I asked Priscilla if she told him, and she told me that she only shared information on the number of room nights but not the rates. Max then asked her if the rate offered to Barclays is around $*[✂]*, and she told him yes but forgot to tell him that the rate was without breakfast. I remarked that the rate offered was high, and she responded with "clean rate". Clean rate is an industry term for room rates without additional perks.*"[313]

242. The disclosure by Priscilla Chong to Eric Tan of confidential, customer-specific, commercially sensitive information - such as Capri's bid prices in response to Barclays' RFP - demonstrates the on-going nature of discussions between Capri and Village Hotels on corporate customers. Such discussions served to reduce or

[309] Response to question 78 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[310] Response to question 9 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015; and information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 29(d)(iii).
[311] Response to question 78 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[312] CCCS understands that the term "abf" is a reference to American Breakfast which would include coffee and tea and toast. See response to question 49 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[313] Response to question 22 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.

eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

*Discussion on Ministry of Education ("**MOE**")*

Background information on MOE's procurement processes

243. Since 2008, Whole of Government Demand Aggregate contacts for hotels (both local and overseas) have been established for all ministries and statutory boards. In 2012, through an open exercise, VITAL[314] invited all interested hotels to submit their bids through a Hotel Request for Proposal Management Tool and evaluated the offered rates from the hotels against the hotel's best available unrestricted online rates. Since then, the list of awarded hotels (including the accepted hotel corporate rates and information) are published on the Online Hotel Directory managed by VITAL. Information on the awarded hotels as well as the estimated contract sum are published in the Gebiz and ministries and statutory boards including MOE will use these to meet their accommodation requirements.

244. The evidence shows that at the relevant time of the WhatsApp exchange on 23 September 2014, both Capri and Village Hotels were published on the Online Hotel Directory managed by VITAL. The published hotels on VITAL, including Capri and Village Hotels, compete for the provision of room accommodation to Ministries and statutory boards including for MOE's business.

Discussions concerning MOE

245. The excerpt below shows a WhatsApp conversation between Priscilla Chong and Eric Tan which included the exchange of information pertaining to MOE's room night take-up for their hotels in the 'current' contractual period. Eric also disclosed that VHC and VHK continued to extend "[✂] rates" to MOE; and that MOE was a [✂] customer of VHC. MOE was a corporate customer of Capri and Village Hotels.[315]

246. The discussion pertaining to MOE took place on 23 September 2014.

"23 Sep 2014 08:25 - CVH Priscilla: Can I check if u still offer [✂] ***rates for moe?***
23 Sep 2014 08:25 - CVH Priscilla: How is the pick up annually?
23 Sep 2014 08:26 - Eric Tan: Ya still have. Very healthy numbers lah

[314] VITAL is a Singapore government platform which aggregates common services e.g. selected human resource and finance processing activities within the public sector to leverage economies of scale, improve efficiency and effectiveness.
[315] Response to question 49 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016; and response to question 85 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

23 Sep 2014 08:26 - Eric Tan: They are my stanchart
23 Sep 2014 08:26 - CVH Priscilla: Can I have some numbers?
23 Sep 2014 08:26 - CVH Priscilla: Keke
23 Sep 2014 08:26 - CVH Priscilla: Rough la
23 Sep 2014 08:26 - CVH Priscilla: U offer for both hotel?
23 Sep 2014 08:31 - Eric Tan: Ya but katong not so popular lah
23 Sep 2014 08:31 - Eric Tan: It's more than [✂] ***for changi***
23 Sep 2014 08:32 - CVH Priscilla: Hmm not bad
23 Sep 2014 08:32 - Eric Tan: Why u want to disturb
23 Sep 2014 08:32 - Eric Tan: Don't disturb
23 Sep 2014 08:32 - CVH Priscilla: I remember u have given me the email add
23 Sep 2014 08:32 - CVH Priscilla: But I cannot find
23 Sep 2014 08:32 - Eric Tan: Hahaha
23 Sep 2014 08:32 - CVH Priscilla: Boss asking la
23 Sep 2014 08:33 - Eric Tan: Anyway hor they like changi very much
23 Sep 2014 08:33 - Eric Tan: Katong only got less than [✂]
23 Sep 2014 08:34 - CVH Priscilla: Totally agree" **[Emphasis added.]**

247. When asked about this conversation, Priscilla Chong explained that Capri would sometimes offer "[✂] rates" to organisations at their request.[316] Priscilla Chong explained that "[✂] rates" are rates that tend to be lower than corporate rates but that they are subject to certain terms and conditions.[317] Priscilla Chong confirmed that given her previous role in sales for VHC and VHK, she was aware that VHC and VHK also offered "[✂] rates" to MOE.[318]

248. Priscilla Chong further explained, in her interview with CCCS on 19 December 2017, that the sales team of Capri had been considering running "[✂] rates" for MOE at the time of the conversation with Eric Tan (reproduced above). She initiated this conversation because she was instructed by Mr. Ray Hua to obtain more information from Eric Tan about the promotions which VHC runs for MOE.[319]

249. In his interview with CCCS on 19 April 2016, Eric Tan said,

> "*Priscilla was asking if we still offered* [✂] *rates for Ministry of Education ("MOE") and the number of room nights in the year. I said we still offered the* [✂] *rates, and that the room nights are healthy. And she asked for numbers, and I shared that we offered the rates for VHK and VHC, though VHK is not as*

[316] Response to question 82 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[317] Response to question 83 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[318] Response to question 82 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[319] Response to questions 75 and 76 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.

popular. I asked why she wanted to "disturb" this account. She said that she remembered me giving her the email address and that she could not find it, and that her boss was asking about the account. I also shared that the guests preferred Changi."[320]

250. By "*They are my stanchart*" and "*Why u want to disturb…Don't disturb*", Eric Tan explained that 'stanchart' was a reference to "*Standard Chartered Bank*"[321] and that "*MOE was supporting VHC as much as SCB account was supporting Capri*."[322] It suggests that SCB was a [✂] customer of Capri and that MOE was a [✂] customer of VHC and that Eric Tan was concerned that if Capri were to offer [✂] rates to MOE, VHC might lose business. Consequently, Eric Tan was keen to impress upon Priscilla Chong that he would prefer it if Capri did not disrupt the status quo by offering [✂] rates to MOE.[323]

251. The disclosure by Eric Tan to Priscilla Chong of confidential, customer-specific, commercially sensitive information - such as MOE's room night take-up at the Village Hotels and the pricing strategy employed by the Village Hotels (provision of "[✂] rate") for MOE - demonstrates the on-going discussions between them regarding corporate customers. Such discussions served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

*Discussions on Standard Chartered Bank ("**SCB**")*

Background information on SCB's procurement processes

252. SCB procures hotel accommodation at corporate rates for travellers visiting SCB's four main offices in Singapore. For this purpose, SCB has an annual global hotel request for proposal program ("**SCB RFP Program**") run by its appointed vendor [✂]. The negotiation process for the SCB RFP Program lasts from [✂] of each year.[324] In the years 2013, 2014 and 2015, SCB chose a number of hotels in Singapore to be on its list of selected hotels.[325]

[320] Response to question 43 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[321] Response to question 45 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[322] Response to question 46 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[323] Response to questions 43 and 49 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[324] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2(a); information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 1(b).
[325] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.

253. SCB has submitted that location is one of the deciding factors for hotel selection and the selection of hotel will change depending on the office location.[326] For the SCB RFP Program selection process, SCB submitted that room rates and proximity to office are very important factors. Certain amenities, including whether breakfast and Wifi are included are also important, however, the classification of the hotel is not important save that the hotel must meet SCB's safety and security standards.[327]

254. In [✂] Capri and VHK were hotels selected by SCB as SCB's corporate hotels.[328]

255. The evidence shows that [✂] both sought to be chosen as a SCB selected hotel at the time when the WhatsApp conversations set out below took place.

Discussions concerning SCB

256. The excerpts below show WhatsApp conversations between Priscilla Chong and Eric Tan which included the exchange of information pertaining to the bid prices in response to the SCB RFP Program; percentages by which SCB asked for prices to be dropped and the position that each hotel would take in response; and SCB's room night productions for their hotels. In addition, Priscilla Chong suggested that they should adopt a common pricing strategy vis-à-vis corporate customers which are [✂] i.e. to offer all [✂] rates which are similar.

257. There was a series of exchanges between Priscilla Chong and Eric Tan in relation to the percentage price reduction requested by SCB and whether each hotel proposed to meet the price reduction, or, if not, how it proposed to respond to the price reduction request. Some examples are set out below:

258. In November 2014 during the negotiation period for the SCB RFP Program, Priscilla Chong and Eric Tan had the following conversation:

> "***3 Nov 2014 10:35 - Eric Tan: Can check with u how many percent is SCB renegotiating from your offered rate?***
> *3 Nov 2014 10:35 - CVH Priscilla: Morninf*
> *3 Nov 2014 10:35 - Eric Tan: My god. that bloody ass*

[326] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 6.
[327] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 7.
[328] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to questions 9 and 10. This is likewise confirmed by Priscilla Chong and Eric Tan; see response to question 72 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016, and response to question 105 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

3 Nov 2014 10:35 - CVH Priscilla: All I can tell u that they are requesting rates lower than this year
3 Nov 2014 10:35 - Eric Tan: Same here
3 Nov 2014 10:39 - Eric Tan: He ask for [✂]***% reduction***
3 Nov 2014 10:39 - Eric Tan: u can tell me in percent or not
3 Nov 2014 10:40 - CVH Priscilla: Same la" **[Emphasis added.]**

259. When asked about the exchange above, Priscilla Chong shared that Eric Tan knew that SCB was a corporate customer of Capri and she confirmed that at the time of this exchange, Capri was preparing bids to be in the SCB RFP Program for 2015.[329] She also confirmed that both VHC/VHK and Capri were preparing bids for the SCB RFP Program.[330]

260. Priscilla Chong confirmed that in relation to this conversation on 3 November 2014, she and Eric Tan, "*shared that reduction in rate that SCB were requesting from both of us*".[331] That rate was a [✂]% reduction.

261. When asked about this exchange, Eric Tan said, "*SCB is Standard Chartered Bank. I was asking Priscilla about SCB's negotiation with Capri on Capri's offered rates. She told me that SCB has requested lower rates from the current year. And I told her SCB was asking for the same from us and that they were requesting for a* [✂]*% reduction, and when I asked her about the request for reduction to Capri, she said it was the same*."[332]

262. Thereafter, there was a further discussion between Priscilla Chong and Eric Tan on 5 and 6 November 2014, about whether or not they will agree to SCB's price reduction request as set out in the following:

"***5 Nov 2014 18:15 - CVH Priscilla: R u going to to*****[sic]*** ***match scb request for 2015?***
5 Nov 2014 19:09 - Eric Tan: Of cos not
5 Nov 2014 19:09 - Eric Tan: Hahaha they ask for so low leh
5 Nov 2014 19:09 - Eric Tan: u leh
5 Nov 2014 19:16 - CVH Priscilla: We oso not
5 Nov 2014 19:16 - CVH Priscilla: Must stand firm
5 Nov 2014 19:16 - CVH Priscilla: Jus finish meeting with boss and stuart
5 Nov 2014 19:16 - CVH Priscilla: We need to sync all the [✂] ***rate to similar***
5 Nov 2014 19:16 - CVH Priscilla: Cos they talk
5 Nov 2014 19:17 - CVH Priscilla: U get what I mean?

[329] Response to question 105 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[330] Response to question 106 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[331] Response to question 110 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[332] Response to question 71 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.

5 Nov 2014 19:38 - Eric Tan: Ya but how to be same
5 Nov 2014 19:39 - Eric Tan: Volume different
5 Nov 2014 20:00 - CVH Priscilla: They only use vhk right?
5 Nov 2014 20:00 - CVH Priscilla: Wat is your rn production for scb?
5 Nov 2014 20:04 - Eric Tan: They also use vhc leh
5 Nov 2014 20:04 - Eric Tan: Now vhk is over [✂] ***slightly only***
5 Nov 2014 20:05 - CVH Priscilla: Ok tq…
6 Nov 2014 17:35 - CVH Priscilla: I have submitted scb renego [renegotiation] ***le***
6 Nov 2014 17:35 - CVH Priscilla: U lei?
6 Nov 2014 17:35 - Eric Tan: Me too
6 Nov 2014 17:35 - Eric Tan: Fingers crossed
6 Nov 2014 17:35 - Eric Tan: U curious how much I give right
6 Nov 2014 17:45 - CVH Priscilla: Haha
6 Nov 2014 17:45 - CVH Priscilla: Ok let's be like this
6 Nov 2014 17:45 - Eric Tan: I curious u u curious me
6 Nov 2014 17:45 - CVH Priscilla: I have submitted with a [✂]***% increase from this year***
6 Nov 2014 17:46 - CVH Priscilla: u lei?
6 Nov 2014 17:46 - Eric Tan: Same same!!" **[Emphasis added.]**

263. Priscilla Chong explained that in this conversation, *"I asked Eric if he would be matching the percentage reduction in price sought by SCB. Eric shared that he would not. I also shared with him that I would not be matching the request too. I would not say that we were sharing the exact details. The information shared was confidential*."[333]

264. In addition, as can be seen from the conversation above, Eric also shared SCB's room night production for VHK with Priscilla Chong. Priscilla Chong confirmed that such information was confidential.[334]

265. When asked what was meant by "*We need to sync all the* [✂] *rate to similar*" "*Cos they talk*" "*U get what I mean*", Priscilla said that what she meant was that, "*…since they* [the [✂]] *talk we try to offer all the different* [✂] *the same rates so they do feel that we are treating them equally and fairly*."[335]

266. When asked about the conversation above, Eric Tan gave the following evidence:

> "*Priscilla was asking if I will agree to SCB 's request for year 2015. I said no, as they asked for a very low rate. I asked if she would accept the request, she said that Capri would not. She shared that she just finished a meeting with her*

[333] Response to question 112 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[334] Response to question 116 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[335] Response to question 115 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

boss and Stuart, and that they had to sync all the [✂] *rates as they spoke to each other. I asked her how the rates could be the same given the difference in volume from* [✂] *to* [✂]*. I shared that SCB used both VHC and VHK. On 6 Nov she told me that she had submitted the rates for SCB re-negotiation, and we shared information with each other on the increase in rates from our submissions from the previous year*."[336]

267. Notably, CCCS's further inquiries of FEHMS revealed that the internal approval by Village Hotels for SCB rates was not given until 5 November 2014 which is two days after the exchange between Priscilla Chong and Eric Tan. In response to a section 63 Notice issued by CCCS to FEHMS, FEHMS produced an email from Mr. Kevin Matthew Peeris (Area Director of Sales and Marketing of Village Hotels) to Ms. Christine Chin Sun Lee (Director of Sales of Village Hotels), wherein Eric Tan was copied, dated 5 November 2014 at 12:01pm which contains an authorisation for room rate of $[✂] to be submitted in response to the SCB RFP Program.[337]

268. Moreover, based on the computerised approval process for SCB rates submitted, Village Hotel's final bid was not submitted to SCB until 14 December 2014.[338] In addition, in terms of Capri's response to the SCB RFP Program, on 21 November 2014, [✂] wrote to Priscilla Chong thanking her for her re-bid submission and asking that Capri "*hold your 2014 offer in line with the market conditions…*".[339] As such, CCCS finds that the exchange by sales representatives of Capri and Village Hotels of percentage price reduction requests of SCB to each of Capri and Village Hotel constitutes an exchange of confidential, price sensitive information between hotels at a time when they were still engaged in the corporate rate negotiation process and therefore still competing to be selected as a corporate hotel for the SCB RFP Program.

269. Based on the bilateral WhatsApp chat and Eric Tan's evidence, it is clear that on 5 November 2014, Eric Tan and Priscilla Chong exchanged information as to whether or not they would agree to the price reduction request made by SCB in relation to the VHK/VHC and Capri room rates. Such discussions served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to (i) whether a price decrease would be offered in response to the SCB RFP Program and (ii) the quantum of the increase in the price offered by each of Capri and Village Hotels in respect of the SCB RFP Program. This constitutes an exchange of confidential, commercially sensitive, pricing information between the two hotels at a time when they were still engaged in the

[336] Response to question 77 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[337] Information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 1(c).
[338] Information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1c(ii).
[339] Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1B.

corporate rate negotiation process. Absent this information exchange, each hotel might have offered more competitive prices to SCB.

270. Further, it is also clear, that on 6 November 2014, both Eric Tan and Priscilla Chong exchanged that they both imposed a price increase of [✂]% for room rates for 2015 over their 2014 room rates. The disclosure of future pricing decisions significantly reduces, and may indeed eliminate, uncertainty as to competitors' future conduct on the market allowing an undertaking to alter its behaviour accordingly. As a result of the disclosure or exchange of information, the participant undertakings are likely to behave differently on the market then if they were required to rely only on their own perceptions, predictions and experience of the market. Accordingly, the outcome of such an exchange is that the market will not be as competitive as it might otherwise have been.

271. On 6 November 2014, there was a further discussion about SCB in the WhatsApp chat between Priscilla Chong and Eric Tan:

"*6 Nov 2014 17:46 - CVH Priscilla: I spoke to* [✂] *jus now too*
6 Nov 2014 17:46 - CVH Priscilla: Haha
6 Nov 2014 17:46 - CVH Priscilla: Ok hi5
6 Nov 2014 17:46 - Eric Tan: Hahaha
6 Nov 2014 17:46 - Eric Tan: We both get kick out lah
6 Nov 2014 17:47 - CVH Priscilla: He says his production in Changi increase this year wor
6 Nov 2014 17:47 - CVH Priscilla: To be honest my boss is ready to part
6 Nov 2014 17:48 - Eric Tan: Ya he say next year will have more
6 Nov 2014 17:48 - Eric Tan: But I'm getting less than [✂]***% of his citywide***
6 Nov 2014 17:48 - Eric Tan: What the hell
6 Nov 2014 17:48 - CVH Priscilla: His citywide is [✂] ***right***
6 Nov 2014 17:49 - CVH Priscilla: I'm only slightly better [✂]***% haha***
6 Nov 2014 17:49 - CVH Priscilla: Well they have too many hotels in their program liao
6 Nov 2014 17:49 - CVH Priscilla: So bookings are too saturated
6 Nov 2014 17:51 - Eric Tan: Unfair to us
6 Nov 2014 17:52 - CVH Priscilla: If he still gives me [✂] ***room nights I will consider to lower rates***
6 Nov 2014 17:52 - CVH Priscilla: Lol
6 Nov 2014 17:52 - Eric Tan: Hahahaha me too
6 Nov 2014 17:52 - CVH Priscilla: u koe hor
6 Nov 2014 17:52 - Eric Tan: I give him the park avenue rates also can
6 Nov 2014 17:53 - CVH Priscilla: When moon cake festival I ask him how is his new office extension
6 Nov 2014 17:53 - CVH Priscilla: When ppl moving in
6 Nov 2014 17:53 - CVH Priscilla: He says likely will sublet out not sure yet
6 Nov 2014 17:53 - CVH Priscilla: Just now he says they will take a few levels
6 Nov 2014 17:54 - CVH Priscilla: Did he share with your corporate team that his room nights increase in Changi?

6 Nov 2014 17:55 - Eric Tan: Ya he said overall increased into changi
6 Nov 2014 17:58 - CVH Priscilla: Did he mention how many room nights?
6 Nov 2014 17:59 - Eric Tan: No leh ... only say it's about [✂] ***over percent***
6 Nov 2014 17:59 - CVH Priscilla: Wow that is [✂] ***room nights lei***
6 Nov 2014 17:59 - Eric Tan: Ya went where
6 Nov 2014 17:59 - CVH Priscilla: Where did it go to?
6 Nov 2014 18:00 - CVH Priscilla: Ol
6 Nov 2014 18:00 - Eric Tan: Hahaha I think he bluff". **[Emphasis added.]**

272. In relation to this discussion, Priscilla Chong explained that the reference to "[✂]" was a reference to the corporate customer contact at SCB.[340] Priscilla Chong also stated that the information about the room nights that each of VHC/VHK and Capri were getting as a percentage of SCB's [✂] room nights city-wide potential is information that is not public.[341] In this conversation, Priscilla Chong disclosed to Eric Tan that Capri would consider lowering its rates to SCB if Capri were able to secure [✂] room nights from SCB.

273. During his interview, Eric Tan also confirmed that "[✂]" was the person in charge of procurement for SCB.[342] Eric Tan confirmed that in this WhatsApp conversation, he and Priscilla Chong had exchanged information about room night productions from the corporate customer SCB[343] whereby he (Eric Tan) disclosed that his room night production from SCB was [✂]% of [✂] room nights (being [✂] room nights) and Priscilla Chong disclosed that her room night production was [✂]% (being [✂] room nights). Eric Tan confirmed that this exchange about room night production was useful for him and that he, "… *would use it to justify the rate that I am proposing for SCB.*"[344]

274. Further, in this exchange, Eric Tan and Priscilla Chong indicated that they would only lower rates to SCB if SCB offered them [✂] room nights. In this way, the exchange about room night productions and the number of room nights required in order for SCB to secure a room rate reduction from each of the hotels served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to their pricing strategies. This was confirmed by Eric Tan during his interview. When asked whether production is a factor one would consider when recommending a room rate, Eric Tan answered that, *"[T]he*

[340] Response to question 118 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[341] Response to question 119 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[342] Response to question 82 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[343] Response to question 84 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[344] Response to question 86 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.

production level helps me justify to my management why I am offering a lower rate for the account".[345]

275. On 24 November 2014, there was a subsequent discussion between Priscilla Chong and Eric Tan in relation to the SCB account which is set out below. This subsequent discussion comes only days after the 21 November 2014 email wherein, [✂] wrote to Priscilla Chong thanking her for her re-bid submission for the SCB RFP Program and asking that Capri, "*hold your 2014 offer in line with the market conditions and our continued support to your property. With all the competitors holding their rates and deflating, Capri by Fraser has really stood out amongst other bids*.[346] Chronologically, after having received [✂]'s request to hold rates as well as the remark that her competitors are holding their rates, Priscilla Chong reaches out to Eric Tan to check whether he had increased VHK rates by [✂]% (as he had informed her he would in their previous conversation) or whether Village Hotels held or reduced their rates (as alluded to in the [✂] correspondence). The conversation is reproduced below:

"*24 Nov 2014 15:23- CVH Priscilla: Priscilla: Can I check scb came back to re negotiate with u?*
24 Nov 2014 15:24- Eric Tan: No leh
24 Nov 2014 15:24- CVH Priscilla: So r u accepted already?
24 Nov 2014 15:25- Eric Tan: Not yet
24 Nov 2014 15:28- Eric Tan: U leh?
24 Nov 2014 15:34- CVH Priscilla: Haiz still renego lor
24 Nov 2014 15:37- CVH Priscilla: Wat is your rough production for vhk from scb?
24 Nov 2014 15:37- CVH Priscilla: Got [✂] ***rn's?***
24 Nov 201415:38- Eric Tan: Not even [✂]
2014 15:40- CVH Priscilla: Oic
2014 15:40- CVH Priscilla: Hmm
2014 15:40- CVH Priscilla: Park Ave got about [✂] *rn's u koe*
2014 15:40- Eric Tan: Really???
201415:41- CVH Priscilla: But don't say ok
24 Nov 201415:41- Eric Tan: Maybe they got lots of long stays
24 Nov 2014 15:41- Eric Tan: Cos they are so cheap
24 Nov 2014 15:42 - CVH Priscilla: I guess so
24 Nov 2014 15:42- Eric Tan: Then still squeeze me until like that
24 Nov 2014 15:42- Eric Tan: Shameless
24 Nov 201416:21- CVH Priscilla: But u still increase rate right even they squeeze u
24 Nov 201416:22- Eric Tan: Yesss
24 Nov 201416:22- Eric Tan: Now I should increase even higher.

[345] Response to question 87 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[346] Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1B.

***24 Nov 2014 16:22- Eric Tan: My volume accounts also pay higher than them*". [Emphasis added.]**

276. Priscilla Chong confirmed that at the time of this conversation, Capri was renegotiating the proposal put by Capri for the corporate customer SCB. Priscilla Chong, having been approached by SCB, asked Eric Tan whether SCB had similarly approached him to renegotiate in relation to VHK.[347] Eric Tan disclosed to Priscilla Chong that he had not been approached. This prompted Priscilla Chong to ask Eric Tan whether VHK had been accepted onto the SCB RFP Program. Eric Tan informed her that it had not.

277. Priscilla Chong went on to verify whether Eric Tan increased his rates despite SCB "squeezing" him. During her interview with CCCS, Priscilla Chong explained that she was asking Eric Tan "…*if SCB was still requesting for him* [Eric] *to submit a lower rate and I* [Priscilla] *wanted to verify the information he had shared with me that he was quoting* [✂]*% higher*".[348]

278. During his interview, Eric Tan confirmed that he had informed Priscilla Chong that SCB had not approached him to renegotiate the prices he quoted, that Eric Tan had sought to increase rates for SCB and that VHK had not yet been accepted into the 2015 SCB RFP Program.[349] Eric Tan also gave Priscilla Chong an indication of the room night production for VHK from SCB.[350]

279. It is clear from the conversation that Priscilla Chong was concerned about pricing quoted by VHK, as she asked pointedly, "*But u still increase rate right even they squeeze u*"; and Eric Tan informed Priscilla Chong that he had not reduced his quoted price on renegotiation. (Eric Tan explained that "squeeze" or "squeezing" "*refers to negotiating and asking for a very low rate.*"[351])

280. This exchange of confidential, customer-specific, commercially sensitive information demonstrates the on-going nature of discussions between Capri and Village Hotels on corporate customers that served to reduce or eliminate uncertainties in the process of competition between Capri and Village Hotels. The exchanges set out in paragraphs 258 to 275 above show that Priscilla Chong and Eric Tan discussed, *inter alia*, details of their bids to SCB, percentages by which SCB asked for prices to be dropped and the position that each sales representative's hotel would take in response. The discussion on 24 November 2014 occurred at a point in time when [✂] (for SCB) was attempting to

[347] Response to question 120 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[348] Response to question 122 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[349]Response to question 88 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[350]Response to question 88 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[351]Response to question 94 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.

renegotiate for lower prices at Capri. This part of the WhatsApp chat demonstrates the close contact between Priscilla Chong and Eric Tan that provided an open communication channel whereby Priscilla Chong was able to check whether Eric Tan had in fact increased VHK rates (as he had informed her he would in their previous conversation) or whether Village Hotels held or reduced their rates (as alluded to in the [✂] correspondence). Absent the exchange of information with Eric Tan, at this stage in the renegotiation, more competitive prices for Capri may have been offered in response to the SCB RFP Program.

*Discussion on Yokogawa Electric International Pte. Ltd. ("**Yokogawa**")*

Background information on Yokogawa's procurement processes

281. Yokogawa usually contacts hotels around the beginning of [✂] of each year to request that they submit their corporate hotel rates to Yokogawa for the new calendar year. The deadline for submission is usually in [✂] of each year.[352] For the years 2013, 2014 and 2015 Yokogawa had entered into corporate contracts with a number of hotels in Singapore.[353]

282. In terms of selecting hotels to include in Yokogawa's list of corporate hotels, Yokogawa submitted that the most important factor is room rates; the next most important factor is long standing business relationship, followed by geographic proximity to Yokogawa's Singapore location and amenities offers followed by classification of hotel.[354]

283. In [✂], Yokogawa only had corporate contracts with Capri and VHC.[355] In [✂], Yokogawa had corporate contracts with Capri and the Village Hotels.[356]

284. The WhatsApp conversations below show the exchange between Capri and Village Hotels of confidential room night information when both were seeking to secure a corporate contract with Yokogawa. As set out in paragraph 156 and 170 above, room night information is one relevant factor in setting proposed corporate rates, i.e. such information impacts price-setting for the purposes of corporate contracts.

[352] Information provided by Yokogawa dated 21 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[353] Information provided by Yokogawa dated 21 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9 and Annex B.
[354] Information provided by Yokogawa dated 21 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017 response to question 7.
[355] Information provided by Yokogawa dated 21 April 2017 pursuant to the section 63 Notice issued by CCS dated 14 March 2017, Annex B.
[356] Information provided by Yokogawa dated 21 April 2017 pursuant to the section 63 Notice issued by CCS dated 14 March 2017, Annex B.

Discussions concerning Yokogawa

285. According to Eric Tan and Priscilla Chong, Yokogawa was a corporate customer of Capri and Village Hotels.[357] The excerpt below shows a WhatsApp conversation between Priscilla Chong and Eric Tan which included the disclosure of information pertaining to Yokogawa's room night productions for VHK. The conversation which took place on 20 November 2014 is reproduced here:

> "*20 Nov 2014 17:29 - CVH Priscilla: Can share share later on yokogawa production for u?*
> *20 Nov 2014 17:29 - CVH Priscilla: Haiz he says all my comp hotel lower rates*
> *20 Nov 2014 17:30 - CVH Priscilla: Ask me to maintain la*
> *20 Nov 2014 18:20 - Eric Tan: Aiya cannot share yokogawa lah. But it's more than* [✂]
> *20 Nov 2014 18:30 - CVH Priscilla: Ok that is enough*".

286. Priscilla Chong explained that Capri was *"…doing recontracting with them at the time and I wanted to know what was the room night production it had given to VHC and VHK. From there, based on my guideline I can offer a corporate rate to them. I just needed the room night production information and that was what he* [Eric Tan] *had given to me so I said that was enough*."[358]

287. When asked further what Priscilla Chong meant when she said "*he says all my comp hotel are lower rates*", Priscilla Chong said, "*I was sharing with Eric that my client told me that that* [sic] *for 2015 the other hotels they are using are lowering the rates*".[359]

288. When asked how VHK/VHC's room night production information from Eric Tan assisted her with pricing, Priscilla Chong indicated that, "*This was not for me to understand VHC and VHK's pricing but to understand Yokogawa's production so I can negotiate with the client how many room nights they can give me. It could also reflect the client's overall potential and whether I was doing my job well enough in ensuring the client gave me more rooms*".[360]

289. When asked about the conversation relating to Yokogawa above, Eric Tan submitted that the reason why he told Priscilla Chong, "*Aiya cannot share yokogawa lah. But it's more than* [✂]", was "*because Yokogawa was* [✂] *at*

[357] Response to question 98 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016; and response to question 131 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[358] Response to question 131 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[359] Response to question 132 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[360] Response to question 132 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.

VHK and so I [Eric] *did not want to let our competitor know too much information about it*".[361]

290. When asked how Priscilla Chong could use the room nights information that Eric Tan provided to her, Eric Tan said, "*The information is enough for her to have a gauge of room night production for the account*",[362] and that "*she* [Priscilla] *might be using the information that Yokogawa in actual fact has more than* [✂] *room night in VHK to justify her maintaining her rates*".[363]

291. The disclosure of the room night production from Yokogawa for VHK (which is commercially sensitive) by Eric Tan could have an impact on the determination of Capri room rates quoted by Priscilla Chong in her contract negotiations with Yokogawa. Absent the information exchange, Priscilla Chong may have been inclined to revise the initial quote and provide cheaper Capri rates in response to Yokogawa's claim that competitor hotels are offering it lower or maintained rates compared to their current year's rates. However, equipped with the knowledge that Yokogawa has given VHK more than [✂] room nights, Priscilla Chong faced less uncertainty in her negotiations with Yokogawa, and proceeded to offer room rates which included an increase over its current year's rates. (The representative from Yokogawa had expressed surprise at this: "*I'm very surprise*[sic] *that your room rates increased ... Your hotel is the first hotel which I seen so far with such big increase as compared to most hotel who either reduce or remain*".[364])

292. The sharing between Priscilla Chong and Eric Tan of confidential, customer-specific, commercially sensitive information - such as the room night production of Yokogawa – demonstrates the on-going discussions between them regarding corporate customers. Such discussions served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers.

Summary of the evidence relating to the Capri-Village Conduct

293. The evidence set out in paragraphs 193 to 292 above shows that the sales representatives of Capri and Village Hotels had, from at least 3 July 2014 to 30 June 2015, maintained open lines of communication through which they discussed and exchanged confidential, customer-specific, commercially sensitive information, regarding a number of corporate customers and corporate customer

[361] Response to question 100 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[362] Response to question 101 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[363] Response to question 102 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[364] Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1E.

accounts in connection with the provision of hotel room accommodation in Singapore to corporate customers.

294. The evidence reveals that contact between Priscilla Chong and Eric Tan occurred frequently, especially during periods when corporate customers sought to contract or re-contract with hotels in Singapore. They had discussed and exchanged commercially sensitive information which can influence each other's future conduct on the market and/or place them in a position of advantage over their customers in contract negotiations that served to create the illusion of competition.

295. Crucially, the information discussed and exchanged included each hotel's prices, i.e. room rates, price-related strategies and critical factors that are taken into consideration in the determination of their future prices offered to corporate customers, such as:
    a. bid prices in response to corporate customers' requests;
    b. percentages by which customers asked for prices to be dropped and the position that each sales representative's hotel would take in response;
    c. customers' potential room night requirements (room night production) for the sales representative's hotel in the coming contractual period;
    d. customers' current and/or historical room rates and/or room night take-up for the sales representative's hotel; and
    e. whether or not a corporate customer is a key account of the sales representative's hotel.

296. Priscilla Chong and Eric Tan also discussed, *inter alia*, agreements to refrain from offering free inclusions or upgrades as well as agreements to offer corporate customers higher priced room types at points of room booking, which can impact the prices (room rates) paid by the corporate customer.

297. The sharing of commercially sensitive information between Priscilla Chong and Eric Tan served to eliminate or reduce uncertainties inherent in the process of competition between Capri and Village Hotels as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

298. CCCS's analysis of the evidence and its conclusion is set out in section (iii) below.

<u>Exchange of commercially sensitive information between sales representatives of Capri and Crowne Plaza</u>

299. The evidence reveals that Priscilla Chong (in her capacity as sales representative of Capri) and Gladys Leong (in her capacity as sales representative of Crowne Plaza) were engaged in the Capri-Crowne Plaza Conduct, from at least 14 January 2014 to 30 June 2015.

300. In the course of her work as a sales representative for Capri, Priscilla Chong was instructed to obtain information from Gladys Leong, the sales representative of Crowne Plaza.[365] This began on the instruction of Ms. Carol Lau, Deputy Group Director of Sales & Marketing of FHPL, who instructed Priscilla Chong to obtain information from Gladys Leong. In her interview with CCCS, Priscilla Chong stated that "*the trigger for my Whatsapp conversation with Ms. Gladys Leong was Ms. Carol Lau's instruction. After that, when Mr. Ray Hua came into the picture, he continued to give instructions to check on information from our competitors, including information on corporate customers*". [366] While the impetus for establishing an open line of communication between Priscilla Chong and Gladys Leong was the instruction of Ms. Carol Lau, this was reinforced by the instruction of Mr. Ray Hua, the Director of Sales and Marketing of Capri.

301. Likewise, Gladys Leong, in the course of her work as a sales representative for Crowne Plaza, was given directions and/or instructions to collect information on competitor hotels. [367] Prior to her promotion as the Director of Business Development, Gladys Leong received directions and/or instructions from Mr. Sam Hoso (the Director of Sales and Marketing at the time) and Mr. Damien Soh (the Director of Business Development at the time) to collect information on competitor hotels.[368] Gladys Leong continued to collect such information even after Mr. Sam Hoso and Mr. Damien Soh left the employment of Crowne Plaza.[369] The senior personnel at Crowne Plaza, including Mr. Sunshine Wong (the General Manager at the time), Ms. Andrea Fung (the Director of Finance at the time), and Mr. Keith Ong (the Revenue Manager at the time), were aware that the sales representatives at Crowne Plaza (which includes Gladys Leong), were tasked to collect information on competitor hotels.[370]

302. The competitor information obtained would be shared during the weekly meetings of the Crowne Plaza sales team.[371] The information shared was also sometimes recorded in a Microsoft Excel spreadsheet or a Google Drive document.[372] Gladys

[365] Response to question 62 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[366] Response to question 62 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[367] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 2; and information provided by OUE Airport Hotel dated 2 July 2018 pursuant to the section 63 Notice issued by CCCS dated 27 June 2018, response to question 4.
[368] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 2.
[369] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.
[370] Information provided by OUE Airport Hotel dated 2 July 2018 pursuant to the section 63 Notice issued by CCCS dated 27 June 2018, response to question 5.
[371] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.
[372] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9; Information provided by OUE Airport Hotel dated 2 July 2018 pursuant to the section 63 Notice issued by CCCS dated 27 June 2018, response to question 6.

Leong would also occasionally share information on competitor hotels at the Revenue and Yield meetings at Crowne Plaza.[373]

303. Priscilla Chong and Gladys Leong maintained contact with each other through phone calls, face-to-face meetings and chatting on WhatsApp.[374] This open line of communication meant that Gladys Leong could ask Priscilla Chong questions about Capri, and vice versa.[375]

304. It was only on 30 June 2015, after Priscilla Chong became aware of CCCS's investigation, that she stopped discussing and sharing information about Capri's corporate customers with Gladys Leong.[376] Likewise, the practice of sharing confidential information on corporate customers by sales representatives of Crowne Plaza only ceased, following OUE Airport Hotel's receipt of a notice pursuant to section 63 of the Act from CCCS on or around 1 July 2015.[377]

305. The evidence detailed in this Chapter reveals that contact between Priscilla Chong and Gladys Leong occurred frequently, especially during periods when corporate customers sought to contract or re-contract with hotels in Singapore. The commercially sensitive information shared between them included factors which can affect the future determination of prices (room rates) offered to corporate customers, such as:
    a. bid prices in response to corporate customers' requests;
    b. percentages by which customers asked for prices to be dropped and the position that each sales representative's hotel would take in response;
    c. customers' potential room night requirements (room night production) for the sales representative's hotel in the coming contractual period;
    d. customers' current and/or historical room rates and/or room night take-up for the sales representative's hotel;
    e. the perceived price sensitivity of a particular customer;
    f. whether or not a corporate customer is a key account of the sales representative's hotel; and
    g. whether or not one hotel intends to pursue the other's corporate customer.

306. The exchange of such commercially sensitive information between the sales representatives served to eliminate or reduce uncertainties inherent in the process of competition between Capri and Crowne Plaza as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other

[373] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.
[374] Response to question 27 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016; and response to question 64 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[375] Response to question 81 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[376] Response to question 65 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[377] Information provided by OUE Airport Hotel dated 2 July 2018 pursuant to the section 63 Notice issued by CCCS dated 27 June 2018, response to question 7.

sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

307. Set out below in paragraphs 308 to 359 are examples (including excerpts) from the bilateral WhatsApp chat between Priscilla Chong and Gladys Leong which evince their involvement in the Capri-Crowne Plaza Conduct.

*Discussions on Swire Pacific Offshore Operations Pte. Ltd. ("**Swire Pacific**")*

Background information on Swire Pacific's procurement processes

308. Swire Pacific enters into corporate contracts for hotel room accommodation in connection with its businesses at the Swire Pacific office (on Beach Road) and training facility (in Loyang).[378] For the years 2013, 2014 and 2015, Swire Pacific had entered into corporate contracts with a number of hotels in Singapore.[379]

309. Swire Pacific submitted that there is typically [✂]. Instead the process is [✂]. Swire Pacific is individually approached by hotels with offers of corporate rates, and there is a separate negotiation process for each hotel.[380] Further, Swire Pacific submitted that there is [✂] for the negotiation process.[381]

310. Capri and Crowne Plaza were selected by Swire Pacific to enter into corporate contracts with it in [✂].[382]

311. At the time of the WhatsApp conversations set out below, both Capri and Crowne Plaza were vying to secure a corporate contract with Swire Pacific for 2015.[383] [✂][384], while [✂].[385]

[378] Information provided by Swire Pacific dated 3 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 1.
[379] Information provided by Swire Pacific dated 3 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.
[380] Information provided by Swire Pacific dated 3 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017 response to question 2.
[381] Information provided by Swire Pacific dated 3 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017 response to question 2.
[382] Information provided by Swire Pacific dated 3 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017 response to question 9; Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1E; and Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15, Annex A–3.
[383] Response to question 84 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016; and responses to questions 145, 147 and 151 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.
[384] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15, Annex A–3.
[385] Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1E.

312. The excerpt below shows a WhatsApp conversation between Priscilla Chong and Gladys Leong which included the sharing of information on bid prices in connection with the corporate rate negotiation process with Swire Pacific; and the percentages by which Swire Pacific asked for prices to be dropped and the position that Capri and Crowne Plaza would take in response.

313. According to Priscilla Chong and Gladys Leong, Swire Pacific was, at [✂], a corporate customer common to both Crowne Plaza and Capri,[386] which is consistent with the information obtained from Swire Pacific and noted in paragraph 310 above.

Discussions concerning Swire Pacific

314. Set out below is an extract of the WhatsApp conversation between Priscilla Chong and Gladys Leong dated 17 June 2014. Reference to "[✂]" in this chat is a reference to the representative of Swire Pacific engaged in rate negotiation for Swire Pacific at the time[387]:

"***17 Jun 2014 9:52AM - Priscilla Chong: Have u met*** [✂] ***on 2015 rates yet?***
17 Jun 2014 9:56AM- Gladys Leong: I oso hope we can pick up very slow leh now
17 Jun 2014 9:56AM- Gladys Leong: Nope havent met up
17 Jun 2014 9:56AM- Gladys Leong: Meeting next week
17 Jun 2014 9:57AM- Gladys Leong: u meet already?
17 Jun 2014 9:58AM- Priscilla Chong: we r quite stagnant for this month liao
17 Jun 2014 9:58AM- Priscilla Chong: still have alot of rev shortfall to pick up
17 Jun 2014 9:58AM- Priscilla Chong: Met [✂] ***liao***
17 Jun 2014 9:58AM- Priscilla Chong: Haiz
17 Jun 2014 9:58AM- Priscilla Chong: Need to increase her rates next year la
17 Jun 2014 9:58AM- Gladys Leong: we oso same all slow no adr no occupancy
17 Jun 2014 9:58AM- Priscilla Chong: Add [✂]***.bucks haha***
17 Jun 2014 9:58AM- Gladys Leong: we are also going to increase
17 Jun 2014 9:58AM- Gladys Leong: we probably go [✂]
17 Jun 2014 9:59AM- Gladys Leong: wah u so high ah
17 Jun 2014 9:59AM- Priscilla Chong: cos your rates already high mah
17 Jun 2014 9:59AM- Priscilla Chong: Haha
17 Jun 2014 9:59AM- Gladys Leong: Ya la
17 Jun 2014 9:59AM- Priscilla Chong: ours is low
17 Jun 2014 9:59AM- Gladys Leong: wah I think need to discuss again maybe go [✂]
17 Jun 2014 10:00AM- Priscilla Chong: wow cannot la

[386] Response to questions 145, 147 and 151 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015; and response to question 84 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[387] Response to question 145 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015; and response to question 85 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.

17 Jun 2014 10:00 AM- Priscilla Chong: u must give her high first then.nego
17 Jun 2014 10:01 AM- Gladys Leong: Yea my boss will go
17 Jun 2014 10:18 AM- Priscilla Chong: Go nego with [✂]*?*
17 Jun 2014 10:34 AM Gladys Leong: Yup" **[Emphasis added.]**

315. During her interview on 14 July 2015, CCCS asked Priscilla Chong to explain the subject matter of this conversation.[388] Priscilla Chong explained that on 17 June 2014, she asked Gladys Leong whether she had met "[✂]" (of Swire Pacific) to discuss corporate rates for the following contract term, 2015.

316. It is evident from the WhatsApp conversation that Priscilla Chong shared with Gladys Leong that she had already met [✂]. It is also clear that Priscilla Chong intended to quote Swire Pacific an increase of $[✂] for the rates in 2015. CCCS also verified, through documentary evidence, that Capri had provided Swire Pacific an initial quote that was $[✂] higher than its previous year's rates.[389]

317. It is also clear from the WhatsApp conversation that Gladys Leong, in turn, shared with Priscilla Chong her intention to quote Swire Pacific an increase of $[✂], or maybe $[✂]. Priscilla Chong encouraged Gladys Leong to start off negotiations by offering [✂] a high rate.

318. During her interview, Priscilla Chong indicated that she initiated the conversation with Gladys Leong to, "*get a feel of the rate she was going to offer to the customer and an understanding that we were both going to increase our rates,…*".[390] Priscilla Chong also stated that she shared her rate increase information with Gladys Leong so that she could get "*a feel of whether Gladys would increase her rate as well*"… "*and also to find out from her on her rates*".[391]

319. In Gladys Leong's interview with CCCS, she indicated that it would be likely that she had reported information about Capri's proposed price increase to Swire Pacific of $[✂] to Mr. Damien Soh, the Director of Business Development, and Mr. Sam Hoso, the Director of Sales and Marketing.[392]

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[388] Response to question 145 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.
[389] Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1E. The relevant documents are the Preferred Corporate Rate Agreement for Year 2014 between Capri and Swire, dated 19 September 2013, and the email from Priscilla Chong to [✂] of Swire Pacific, containing the draft Preferred Corporate Rate Agreement for Year 2015 dated 17 June 2014.
[390] Response to question 155 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.
[391] Response to questions 149 and 153 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.
[392] Response to question 96 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.

320. CCCS notes that the rates offered by Capri and Crowne Plaza to Swire Pacific are not identical.[393] However, absent the exchange between the sales representative of Capri and the sales representative of Crowne Plaza of each hotels' proposed price increase to Swire Pacific, neither Crowne Plaza nor Capri would have been aware that the other proposed price increases for corporate room rates to Swire Pacific (compared to the current contract term); and neither Capri nor Crowne Plaza would have known the quantum of that proposed price. The exchange also provided Capri with the opportunity to seek to influence Crowne Plaza to also quote a higher price to Swire Pacific as well as the quantum of Crowne Plaza's price increase.

321. Such exchanges between the sales representatives on proposed price increases to corporate customers (and the quantum of this increase) served to eliminate or reduce uncertainties otherwise inherent in the process of competition between Capri and Crowne Plaza. Consequently, the corporate room rates offered to customers (such as Swire Pacific) by Capri and Crowne Plaza were potentially higher than what they would be if price increase information was not shared between the sales representatives.

322. There was a further conversation between Priscilla Chong and Gladys Leong on 8 July 2014 concerning the common corporate customer Swire Pacific:

> "*8 Jul 2014 9:50AM- Priscilla Chong: Babe morning*
> *8 Jul 2014 9:50AM-Priscilla Chong: Ytd* [✂] *meet u to talk abt 2015 rates is it?*
> *8 Jul 2014 9:50AM- Gladys Leong: Yox good morning*
> *8 Jul 2014 9:50AM- Gladys Leong: Yup*
> ***8 Jul 2014 9:51AM- Gladys Leong: ooo she ask me maintain***
> ***8 Jul 2014 9:51AM- Priscilla Chong: Did she says changi and roxy lowering their rates!?***
> ***8 Jul 2014 9:51AM- Priscilla Chong: I went up*** [✂] ***bucks she jump*****". [Emphasis added.]**

323. When asked about this WhatsApp conversation, Priscilla Chong indicated that on 8 July 2014, she asked Gladys Leong whether Gladys had met with [✂] from Swire Pacific to discuss 2015 rates. Gladys Leong responded that she had met with [✂] and that [✂] had made a request that Crowne Plaza's rates be maintained for 2015. Priscilla Chong informed Gladys Leong that she had quoted [✂] an increase of $[✂]; but [✂] had "jumped"[394] at the price increase as she was not happy with the corporate rate that was offered to Swire Pacific. Accordingly, Capri's rate was not finalised at that point and negotiations continued.[395]

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[393] Information provided by Swire Pacific dated 3 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.
[394] Response to question 63 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[395] Response to question 8 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.

324. In her interview with CCCS, Gladys Leong indicated that she disclosed to Priscilla Chong that "[✂] *asked me* [Gladys] *to maintain the same Crowne Plaza 2014 rates for 2015*."[396]

325. Both Crowne Plaza and Capri subsequently maintained their rates for Swire Pacific for the year 2015.[397]

326. Exchanges between Priscilla Chong and Gladys Leong of confidential, customer-specific, commercially sensitive information relating to contract negotiations with Swire Pacific demonstrate the on-going nature of discussions between Capri and Crowne Plaza regarding corporate customers that served to eliminate the uncertainties between Capri and Crowne Plaza otherwise inherent in the process of competition between these two hotels. Consequently, the corporate room rates offered to corporate customers (such as Swire Pacific) by Capri and Crowne Plaza were potentially higher than what they would be if price increase information was not shared between the sales representatives.

Discussions on SCB

Background information on SCB procurement processes

327. The procurement processes of SCB are detailed in paragraphs 252 to 253 above. As noted in paragraph 252, the negotiation process for the SCB RFP Program lasts from [✂] of each year.

328. In the years 2013, 2014 and 2015, SCB chose a number of hotels in Singapore to be on its list of selected hotels.[398] The information from SCB shows that in [✂], Capri was a hotel selected by SCB as SCB's corporate hotel[399], and this is confirmed by Priscilla Chong.[400] The information from SCB also shows that in [✂], Crowne Plaza had been vying to be contracted with SCB, [✂].[401]

[396] Response to question 112 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2015.
[397] Exhibit marked GL-009; and information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1E. The relevant document is the Preferred Corporate Rate Agreement between Capri and Swire Pacific dated 7 August 2014.
[398] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.
[399] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to questions 9 and 10.
[400] Response to question 105 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[401] Information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.

329. Hotels in Singapore compete to be one of the hotels selected by SCB; and the evidence shows that [✂] both were therefore seeking to be a SCB selected hotel at the time when the WhatsApp conversations set out below took place.

Discussions concerning SCB

330. The excerpt below shows a WhatsApp conversation between Priscilla Chong and Gladys Leong which included the sharing of information pertaining to SCB's citywide potential room nights and the perceived price sensitivity of the corporate customer. As noted in paragraph 184 above, the citywide potential room nights of a customer, which is the total estimated room night production in Singapore is a factor that sales representatives at Crowne Plaza takes into account in determining the corporate rates to be proposed to corporate customers.[402] With a higher number of potential city-wide room nights, the sales representatives at Crowne Plaza would expect to receive a high volume of room bookings from the corporate client, and therefore would be inclined to offer a lower room rate to that corporate client.[403]

331. SCB was, at [✂], a corporate customer of Capri, but not a corporate customer of Crowne Plaza.[404] In relation to SCB, Priscilla Chong and Gladys Leong had the following conversation on 16 July 2014:

"*16 Jul 2014 11:39 AM- Gladys Leong: Gd morning·*
16 Jul 2014 11:39 AM- Priscilla Chong: Hello.
16 Jul 2014 11:39 AM- Gladys Leong: Pris paisei need some help
16 Jul 2014 11:39 AM- Priscilla Chong: ok
16 Jul 2014 11:39 AM- Gladys Leong: can check with u standard chartered bank
16 Jul 2014 11:40 AM- Priscilla Chong: Yes
16 Jul 2014 11:44 AM- Gladys Leong: can share with me their citywide potential and the agar agar room nights they support u ytd
16 Jul 2014 11:45 AM- Gladys Leong: If cannot nvm ..
16 Jul 2014 11:46 AM- Gladys Leong: sorry ah. cos we not in the prog [✂]***years liao just wanna check if they are still a good acct and if they are still rate sensitive***
16 Jul 2014 11:54 AM- Priscilla Chong: Their city wide potential/or this year?
16 Jul 2014 11:54 AM- Priscilla Chong: This year they give me very [✂]
16 Jul 20I4 11:55 AM- Priscilla Chong: I projected by end of 2014 maybe about [✂] ***room nights***
16 Jul 2014 11:55 AM- Gladys Leong: Huh
16 Jul 2014 11:55 AM- Gladys Leong: Really ah

[402] Response to question 14 of Notes of Information/Explanation by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[403] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 10a.
[404] Response to question 30 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015; and Response to question 125 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.

16 Jul 2014 11:55AM-GladysLeong: [✂]*??*
16 Jul 20I4 11:55 AM- Priscilla Chong: Yup
16 Jul 20I4 11:55 AM- Gladys Leong: They go park ave?
16 Jul 20I4 11:55 AM- Gladys Leong: so shocking
16 Jul 2014 11:56 AM - Gladys Leong: They used to havr quite alot w us
16 Jul 2014 11:56 AM- Priscilla Chong: Last year [✂]
16 Jul 2014 11:56 AM- Gladys Leong: I tot they went to u
16 Jul 2014 11:57 AM- Priscilla Chong: They using alot park Ave
16 Jul 2014 11:57 AM- Gladys Leong: Aiyoyo
16 Jul 20I4 11:57 AM- Gladys Leong: [✂] *to this year*
16 Jul 20I4 11:58 AM- Gladys Leong: Their rates very gd meh
16 Jul 20I4 11:58 AM- Gladys Leong: Wah faintz leh
16 Jul 2014 11:59 AM -Priscilla Chong: Last year [✂] *was becos there was few big groups 4-5*
16 Jul 20I4 11:59 AM- Priscilla Chong: [✂] *rooms*
16 Jul 2014 11:59 AM- Gladys Leong: orh
16 Jul 20I4 11:59 AM- Gladys Leong: But still
16 Jul 2014 11:59 AM- Priscilla Chong: Now project ended le
16 Jul 2014 11:59 AM- Gladys Leong: I last time oso got [✂] ***room nights***
16 Jul 2014 11:59AM- Gladys Leong: Now [✂]
I6 Jul 20I4 12:00 PM- Priscilla Chong: Haiz
16 Jul 2014 12:02 PM- Gladys Leong: Hmm. I wan go see them
16 Jul 2014 12:02 PM- Gladys Leong: see wads left haha
16 Jul 2014 12:02 PM- Priscilla Chong: u should la
16 Jul 2014 12:02 PM - Gladys Leong: But they rejected me when my rate was [✂]
16 Jul 2014 12:02 PM- Priscilla Chong: Anyway when we do rfp never contract for [✂] *years lei*
16 Jul 2014 12:02 PM- Gladys Leong: Huh
16 Jul 2014 12:03 PM- Priscilla Chong: u koe y they rejected u?
16 Jul 2014 12:03 PM- Gladys Leong: u oso [✂] *contract*
16 Jul 2014 12:03 PM- Priscilla Chong: Becos there is new kid on the block
16 Jul 2014 12:03 PM- Priscilla Chong: which is park Ave
16Jul 201412:03 PM- Gladys Leong: Becos of u
16 Jul 2014 12:03 PM- Gladys Leong: Hahaha kiddibg la
16 Jul 2014 12:03 PM- Gladys Leong: No la that time
16 Jul 2014 12:03 PM- Priscilla Chong: Lol
16 Jul 2014 12:03 PM- Gladys Leong: I already out liao
16 Jul 2014 12:03 PM- Gladys Leong: I was out since [✂]
16 Jul 2014 12:04 PM - Priscilla Chong: Oops
16 Jul 2014 12:36 PM - Gladys Leong: Haiz ke lian
16 Jul 2014 1:23 PM - Priscilla Chong: Don't worry la find something else to replace lo"

332. When asked about this conversation, Priscilla Chong explained that Gladys Leong had lost the SCB account and "*wanted to get contracted for the following year*

again and was finding out market [information] *and intel*" from her.[405] Gladys Leong had wanted to find out from Priscilla Chong SCB's city wide potential, which is the total number of room nights generated in Singapore from the client, and whether SCB was "rate sensitive".[406] Priscilla Chong then provided Gladys Leong with SCB's projected room night production for Capri in 2014 and shared with her that Park Avenue Hotel appeared to be favoured by SCB.[407]

333. Likewise, in her interview with CCCS, Gladys Leong stated that she had wanted to know SCB's city wide potential and the perceived rate sensitivity of SCB to determine whether SCB was still a viable corporate client for Crowne Plaza.[408]

334. Pricilla Chong had disclosed to Gladys Leong current, non-aggregated and specific information relating to SCB's room night production for Capri; and indicated to Gladys Leong that the [✂] numbers from SCB may be due to competitive pressure from Park Avenue Hotel.

335. CCCS is of the view that this sharing between Priscilla Chong and Gladys Leong of confidential, customer-specific commercially sensitive information – such as SCB's city wide potential, SCB's room night production for Capri and the perceived rate sensitivity of SCB – demonstrates the nature of on-going discussions regarding corporate customers. Such discussions served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Crowne Plaza as to their conduct on the market vis-à-vis their corporate customers. This could thereby result in Crowne Plaza not independently determining whether to actively compete for SCB as a client; and/or how to price its offerings to SCB.

*Discussion on CISCO Systems (USA) Pte. Ltd. ("**Cisco**")*

Background information on Cisco's procurement processes

336. Cisco enters into corporate contracts for hotel room accommodation for its business travellers.[409] In 2013, 2014 and 2015, Cisco included a number of Singapore hotels on its preferred hotel list.[410]

[405] Response to question 30 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[406] Response to question 30 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[407] Response to question 30 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[408] Response to questions 126 to 128 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[409] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[410] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 9.

337. When procuring hotels in Singapore, Cisco will [✂] draw up a list of potential hotel operators to contact for a request for proposal[411] ("**Cisco RFP**"). A negotiation regarding room rates and other terms and conditions may follow, and based on the results of that negotiation, Cisco will select particular hotel properties for inclusion in its preferred hotel list.[412] Cisco does not have a procurement process specific to hotels in Singapore, rather it selects hotel chains on a global basis. The timeline for the Cisco RFP process is approximately [✂].[413]

338. Both Capri and Crowne Plaza featured in Cisco's preferred hotel list in [✂].[414]

339. At the time of the WhatsApp conversation detailed below, bid negotiations between Cisco and Crowne Plaza were on-going. [415] Crowne Plaza was still in the midst of room rate negotiations with Cisco on 28 November 2014.[416]

Discussions concerning Cisco

340. The excerpt below shows a WhatsApp conversation between Priscilla Chong and Gladys Leong which included the sharing of information on whether Cisco is a key account of Capri's, the perceived price sensitivity of Cisco and the approximate room rate offered by Capri to Cisco.

341. Cisco was, at [✂], a corporate customer common to both Capri and Crowne Plaza.[417] On 27 November 2014, Priscilla Chong and Gladys Leong had a conversation in relation to Cisco as set out below. During this time period the Cisco RFP negotiation process was still ongoing for Crowne Plaza[418]:

"***27 Nov 2014 8:45 AM - Gladys Leong: sorry can ask a quick qns***
27 Nov 2014 8:45 AM - Gladys Leong: If cisco is using ur hotel
27 Nov 2014 8:55AM - Priscilla Chong: Yup
27 Nov.2014 8:56AM - Gladys Leong: can ask .. approz
27 Nov 2014 8:56AM - Gladys Leong: Ops

[411] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[412] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[413] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.
[414] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 3.
[415] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15, Annex A-3.
[416] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15, Annex A-3.
[417] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 3; response to question 189 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016; and response to question 58 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[418] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15, Annex A-3.

27 Nov 2014 8:56AM - Priscilla Chong: Room night u mean?
27 Nov 2014 8:56AM - Priscilla Chong: I can't tell u exactly
27 Nov 2014 8:57AM - Gladys Leong: Rate
27 Nov 2014 8:57AM - Gladys Leong: Opsss
27 Nov 2014 8:57AM - Priscilla Chong: But they r 1 of our [✂] ***account***
27 Nov 2014 8:57AM - Gladys Leong: No agar agar
27 Nov 2014 8:57AM - Priscilla Chong: Rate cannot la
27 Nov 2014 8:57AM - Gladys Leong: ok gd gd thank u
27 Nov 2014 8:57AM - Priscilla Chong: Above [✂] ***defintely***
27 Nov 2014 8:57AM - Gladys Leong: ok thats ok
27 Nov 2014 8:57AM - Priscilla Chong: They are willing to pay
27 Nov 2014 9:04 AM - Gladys Leong: Thank u" **[Emphasis added.]**

342. Gladys Leong stated in her interview with CCCS that she asked Priscilla Chong whether Cisco was Capri's corporate customer, as she wanted to find out Capri's room rates for Cisco. She stated that Priscilla Chong shared with her that Capri's rate for Cisco would be above S$[✂].[419]

343. In her interview with CCCS, Priscilla Chong explained that she had shared with Gladys Leong that Cisco was "*willing to pay*", as she had "*noticed when handling the account on behalf of Stuart that when the lower categories of cheaper rooms were taken up, Cisco was willing to pay for more expensive rooms.*"[420]

344. CCCS notes that Priscilla Chong had claimed that the "above [✂]" was a reference to the room night production for Cisco.[421] However, the evidence gathered by CCCS suggests that "above [✂]" is more likely to be a reference to Capri's room rate (consistent with Gladys Leong's explanation). In this regard, CCCS notes that Priscilla Chong had mentioned in the same conversation that Cisco was a [✂] account.[422] CCCS also notes that Cisco is ranked as a [✂] account for Capri[423], and that Cisco had booked a total of [✂] hotel rooms at Capri in 2015.[424]

345. CCCS notes that Gladys Leong had sought, from a competitor, confidential, customer-specific, commercially sensitive information relating to the competitor's client. Even though Priscilla Chong did not divulge the exact room rates offered

[419] Response to question 187 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[420] Response to question 58 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[421] Response to question 58 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[422] Response to question 58 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[423] Information provided by Capri by Fraser Changi City Singapore dated 12 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, Annex 16A.
[424] Information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 3.

by Capri to Cisco, Priscilla Chong had disclosed to Gladys Leong that (1) Cisco was a corporate customer of Capri's (with a rate above S$[✂]); (2) Cisco was one of Capri's [✂] accounts; and (3) Cisco was a client that was willing to pay for more expensive rooms.

346. In her interview with CCCS, Gladys Leong acknowledged that she would have reported her findings on Capri's estimated Cisco rates to Crowne Plaza's Director of Sales and Marketing.[425] In addition, she indicated that she would have made use of Capri's estimated Cisco rates if she had done up an [✂] form for Cisco.[426] CCCS notes that the bid negotiations between Cisco and Crowne Plaza were still on-going during the time of the WhatsApp conversation, and the information is likely to have had an impact on the determination of rates offered to Cisco.[427]

347. CCCS is of the view that this sharing between Priscilla Chong and Gladys Leong of confidential, customer-specific commercially sensitive information – such as the perceived price sensitivity of Cisco and the approximate room rate offered by Capri – demonstrates the nature of the on-going discussions between Capri and Crown Plaza regarding corporate customers that served to reduce or eliminate uncertainties inherent in the process of competition between Capri and Crowne Plaza. In this particular instance, the conversation on Cisco between Priscilla Chong and Gladys Leong occurred at a time when the Cisco RFP process was ongoing. This could thereby result in Crowne Plaza not independently determining whether to actively compete for Cisco as a client; and/or how to price its offerings in its response to Cisco's RFP process.

*Discussion on TNT Express Worldwide N.V. ("**TNT**")*

Background information on TNT's procurement processes

348. TNT enters into corporate contracts with providers of hotel room accommodation in connection with its businesses at Raffles Place and Changi.[428] In this regard, TNT submitted that there is [✂] observed for negotiations in the context of its procurement process for the award of corporate contracts to hotels in Singapore. TNT submitted that generally it will try to perform the negotiation exercise in the [✂] of each year for the following year's corporate hotel rates.[429]

[425] Response to questions 198 and 199 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[426] Response to question 200 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[427] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 15, Annex A-3.
[428] Information provided by TNT dated 3 May 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 1.
[429] Information provided by TNT dated 3 May 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.

349. For the years 2013, 2014 and 2015, TNT had entered into corporate contracts with a number of hotels in Singapore.[430] In particular, CCCS notes that TNT has entered into corporate contracts with hotels located in the east of Singapore including Capri in [✂]; and Capri and Crowne Plaza in [✂].[431]

350. The excerpt below shows a WhatsApp conversation between Priscilla Chong and Gladys Leong which included the sharing of information pertaining to a TNT's room night production; and an understanding as between the sales representative of Capri and the sales representative of Crowne Plaza, that Crowne Plaza will not pursue TNT as a corporate customer.

351. According to Priscilla Chong and Gladys Leong, TNT, at [✂], was a corporate customer of Capri, but not Crowne Plaza.[432] This is consistent with the information from TNT which shows that Crowne Plaza was a corporate hotel of TNT in [✂] but not in [✂].[433]

Discussions concerning TNT

352. In relation to TNT, Priscilla Chong and Gladys Leong had the following conversation on 6 March 2015:

"*6 Mar 2015 3:00 PM - Gladys Leong: Pris*
6 Mar 2015 2:59 PM - Priscilla Chong: yes
6 Mar 2015 3:01 PM - Gladys Leong: can check if u have Tnt this act
6 Mar 2015 2:59 PM - Priscilla Chong: yes
6 Mar 2015 3:01 PM - Gladys Leong: They support u a lot?
6 Mar 2015 3:37 PM - Priscilla Chong: not like [✂] ***account***
6 Mar 2015 3:37 PM - Priscilla Chong: [✂] ***rns***
6 Mar 2015 3:39 PM - Gladys Leong: Wah ok
6 Mar 2015 3:39 PM - Gladys Leong: I dun have
6 Mar 2015 3:39 PM - Gladys Leong: I will let u keep
6 Mar 2015 3:39 PM - Priscilla Chong: haha
6 Mar 2015 3:42 PM - Gladys Leong: Haha no kaki ddint
6 Mar 2015 3:42 PM - Gladys Leong: Kidding
6 Mar 2015 3:42 PM - Gladys Leong: Becos we Nv had them"
[Emphasis added.]

[430] Information provided by TNT dated 3 May 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to questions 9 and 10.
[431] Information provided by TNT dated 3 May 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 10.
[432] Response to question 209 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016; and response to question 68 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[433] Information provided by TNT dated 3 May 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response at paragraph 10.

353. During her interview with CCCS, Priscilla Chong provided the following explanation of this conversation with Gladys Leong:

> "*Tnt is a corporate client of Capri. This client probably asked Gladys to offer a rate, that's why she asked me. I told her yes I had this account. This is just a rough estimation of the number of room nights the client gave me. I do not know how she uses this information. The information that they are Capri clients is confidential. The information on the number of room nights is also confidential but I am not giving her an exact number. The way I interpret "I will let u keep", she is saying that since it is not a* [✂] *account, she does not want to get into their program so she was saying she would let me keep the client.*"[434]

354. In her interview with CCCS, Gladys Leong indicated that she asked Priscilla Chong whether TNT was a corporate client of Capri's, as she wanted to know whether there was any potential business for Crowne Plaza from TNT at that time.[435]

355. Gladys Leong stated that she formed an understanding with Priscilla Chong that she would not pursue TNT as a corporate account, and she does not "*remember going after the TNT account*".[436]

356. CCCS further notes that for [✂], TNT was not a corporate customer of Crowne Plaza. During his interview with CCCS, Mr. Sunshine Wong, General Manager at Crowne Plaza, stated that he did not remember that Crowne Plaza had signed corporate rate agreements with TNT in [✂].[437]

357. CCCS notes that Gladys Leong had sought, from a competitor, confidential, customer-specific, commercially sensitive information relating to the competitor's client. Priscilla Chong had disclosed to Gladys Leong (1) that TNT is a corporate customer of Capri's [✂]; and (2) an estimation of TNT's room night production for Capri. In her interview, Priscilla Chong acknowledged that this information is confidential.[438]

358. In the WhatsApp conversation, Gladys Leong disclosed in response that she would not be pursuing TNT as a corporate customer. It appears that Gladys Leong disclosed to Priscilla Chong her/Crowne Plaza's future conduct/intention (i.e. that she/Crowne Plaza would not be competing for the TNT account) upon disclosure by Priscilla Chong that TNT is a client of Capri's [✂]. This disclosure of this

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[434] Response to question 68 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.
[435] Response to question 209 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[436] Response to questions 213 and 214 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[437] Response to question 33 of Notes of Information/Explanation provided by Sunshine Wong (General Manager for Crowne Plaza), 7 September 2017.
[438] Response to question 68 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 22 July 2015.

information by Gladys Leong compromises the process of competition between these two competitors as it could influence Capri's behaviour in the market (for instance, price their offerings to TNT higher, with the knowledge that Crowne Plaza is not actively competing for TNT's business).

359. CCCS is of the view that the disclosure by Priscilla Chong of confidential, customer-specific, commercially sensitive information demonstrates the on-going nature of discussions between Capri and Crowne Plaza that served to reduce or eliminate uncertainties inherent in the process of competition. The provision of information - such as that relating to TNT's estimated room night production for Capri - is likely to have influenced Crowne Plaza's behaviour in its determination of whether or not to actively compete for TNT as a client; and/or how to price its offerings to TNT. The disclosure of confidential, customer-specific, commercially sensitive information by Gladys Leong - such as Crowne Plaza's future conduct in the market (not to compete for the TNT account) - could similarly influence Capri's behaviour, including the determination of its sales and marketing strategies, in the provision of hotel room accommodation to TNT.

Summary of the evidence relating to the Capri-Crowne Plaza Conduct

360. The evidence set out in paragraphs 308 to 359 above shows that the sales representatives of Capri and Crowne Plaza had, from at least 14 January 2014 to 30 June 2015, maintained open lines of communication through which they discussed and exchanged confidential, customer-specific, commercially sensitive information regarding a number of corporate customers and corporate customer accounts in connection with the provision of hotel room accommodation in Singapore to corporate customers.

361. The evidence reveals that contact between Priscilla Chong and Gladys Leong occurred frequently, especially during periods when corporate customers sought to contract or re-contract with hotels in Singapore. They had discussed and exchanged commercially sensitive information which could influence each other's future conduct on the market and/or place them in a position of advantage over their customers in contract negotiations.

362. Crucially, the information discussed and exchanged included each hotel's prices, i.e. room rates, price-related strategies and critical factors that are taken into consideration in the determination of their future prices offered to corporate customers, such as:
    a. bid prices in response to corporate customers' requests;
    b. percentages by which customers asked for prices to be dropped and the position that each sales representative's hotel would take in response;
    c. customers' potential room night requirements (room night production) for the sales representative's hotel in the coming contractual period;
    d. customers' current and/or historical room rates and/or room night take-up for the sales representative's hotel;

e. the perceived price sensitivity of a particular customer;
f. whether or not a corporate customer is a key account of the sales representative's hotel; and
g. whether or not one hotel intends to pursue the other's corporate customer.

363. The sharing of commercially sensitive information between Priscilla Chong and Gladys Leong served to eliminate or reduce uncertainties inherent in the process of competition between Capri and Crowne Plaza as to their conduct on the market vis-à-vis their corporate customers, such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

364. CCCS's analysis of the evidence is set out in section (iii) below.

(iii) CCCS's Analysis and Conclusions on the Evidence

365. The evidence set out in paragraphs 193 to 292 above shows that Priscilla Chong (sales representative of Capri) and Eric Tan (sales representative of the Village Hotels) were engaged in the Capri-Village Conduct from at least 3 July 2014 to 30 June 2015.

366. The evidence set out in paragraphs 299 to 363 above shows that Priscilla Chong and Gladys Leong (sales representative of Crowne Plaza) were engaged in the Capri-Crowne Plaza Conduct from at least 14 January 2014 to 30 June 2015.

367. The evidence shows that Capri and Village Hotels, and Capri and Crowne Plaza are close competitors located within close proximity of one another, each vying on an almost annual basis to retain or win more corporate customers and/or increase the number of rooms each customer bought or allocated from their city-wide projected needs. This is underscored by the information received from customers. Customers repeatedly emphasised in their responses the importance of location in their decision to engage the services of a particular hotel. The evidence also shows customers sought to negotiate better rates and inclusions from Capri, by referring to rates or quotes received from their competitors, Village Hotels and Crowne Plaza, and vice-versa.

368. The provision of commercially sensitive information discussed/exchanged between the sales representatives set out in paragraphs 193 to 363 above, provided valuable information that each sales representative could utilise for their negotiations with customers and provided key insights that would otherwise have been unavailable. The information included commercially sensitive information about each hotel's prices, i.e. room rates, price-related strategies and factors which can materially affect the future determination of prices offered to corporate customers.

369. The bilateral WhatsApp chats show that the sales representatives disclosed to each other the corporate room rates that had been negotiated on a confidential basis and

agreed upon with specific customers. Notably, the sales representatives also discussed future price-related strategies such as their proposed price increases for the following contractual year, their proposed bid prices in response to customers' requests and whether or not they intended to agree to a particular customer's price reduction request in the course of corporate rate negotiations. The disclosure of future pricing decisions significantly reduces, and may indeed eliminate, uncertainty as to competitors' future conduct on the market allowing an undertaking to alter its behaviour accordingly. For instance, when Priscilla Chong was informed by SCB, in the course of renegotiations, that her competitors were not increasing their rates, she may have reconsidered her initial offer (which included an increase in rates). Instead, she contacted Eric Tan and asked him pointedly, "*But u still increase rate right even they squeeze u*"; and Eric Tan assured her that he had not reduced his quoted price on renegotiation.

370. Similarly, information relating to factors such as the room night production of a particular customer to a competitor hotel has an impact on the determination of room rates quoted by sales representatives in contract negotiations with the customer. For example, in Capri's negotiation with Yokogawa, Yokogawa informed Priscilla that competitor hotels were offering it lower or maintained rates compared to their current year's rates. Absent the information exchange, Priscilla Chong may have been inclined to revise her initial quote for Capri rates downwards in response to Yokogawa's claim. However, equipped with the knowledge that Yokogawa has given VHK more than [✂] room nights, Priscilla Chong faced less uncertainty in her negotiations with Yokogawa, and proceeded to offer room rates which included an increase over its current year's rates.[439]

371. The disclosure of confidential, customer-specific, commercially sensitive information such as whether a customer is a competitor's key account customer, or whether a customer price sensitive, also served to reduce or eliminate uncertainty, allowing a hotel to alter its behaviour on the market accordingly. Information that a customer is a competitor's key account customer indicates that the customer procures a high volume of room nights from the competitor. It may also indicate that the customer receives favourable prices from the competitor. This is likely to influence a hotel's behaviour in determining whether to actively compete for the customer as a corporate client; and/or how to price its offerings to that customer. Likewise, hotels would be more likely to actively pursue, and/or to quote higher prices to, customers that are not price sensitive (i.e. willing to pay higher prices).

372. As a further example, the communication by one sales representative to another that the former does not intend to pursue the latter's corporate customer could lead to the latter quoting the corporate customer a higher price (and/or less favourable terms) than he/she otherwise would have in contract negotiations.

[439] Information provided by Capri by Fraser Changi City Singapore dated 31 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 1, Annex 1E.

373. Clearly, the sales representatives had knowingly substituted practical cooperation between them for the risks of competition.[440] They had discussed and exchanged confidential, customer-specific, commercially sensitive information which can influence each other's future conduct on the market and/or place them in a position of advantage over their customers in contract negotiations. This includes critical factors that are taken into consideration in the determination of future prices offered to corporate customers.

374. Without the agreements and/or concerted practices between them to share commercially sensitive information, each sales representative would have had to determine their conduct on the market relying only on their own perceptions, predictions and experience of the market. This is likely to have resulted in more competitive rates (and/or terms) offered to corporate customers for hotel room accommodation.

375. In this regard, CCCS notes that in *Dole*[441], pre-pricing communications (in which competitors discussed price-setting factors relevant to the setting of future quotation prices) were considered by the ECJ to be object restrictions of Article 101 of the TFEU. In that case, parties had held weekly bilateral phone calls to discuss or disclose their pricing intentions; and their communications included volumes and market information, price trends, and likely future quotation prices.

376. Similarly in the *Infringement of Chapter 1 of the CA98 and Article 101 of the TFEU by Royal Bank of Scotland Group plc and Barclays Bank plc*[442], where the Royal Bank of Scotland plc ("**RBS**") disclosed confidential, commercially sensitive pricing information to Barclays via a number of contacts over a period of months, the disclosures facilitated the co-ordination of the parties' respective pricing on loans supplied to large professional services firms; and included generic and customer-specific information (such as the interest margins which would be charged on a loan facility to two separate corporate customers). The OFT in its assessment noted that having regard to established case law, it was entitled to presume that the information received from RBS was taken into account by Barclays when pricing future deals. The OFT also considered that RBS could reasonably have expected the information to be taken into account by Barclays. The OFT concluded that RBS and Barclays had infringed Chapter 1 of the UK Competition Act 1998 and Article 101 of the TFEU by participating in an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of loan products to large professional services firms.

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[440] See Case CE/2890-03 and Decision No. CA98/05/2006: *Exchange of information on future fees by certain independent fee-paying schools* (20 November 2006) at [1356] to [1358]. In particular, the OFT noted that "*the threat to effective competition is especially obvious where the arrangement involves the regular and systematic exchange of specific information as to future pricing intentions between competitors*".

[441] C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission* EU:C:2015:184.

[442] Case CE/8950/08 and Decision No. CA98/01/2011: *Infringement of Chapter I of the CA98 and Article 101 of the TFEU by Royal Bank of Scotland Group plc and Barclays Bank plc* (20 January 2011).

377. CCCS also notes the principle set out in *Suiker Unie* (cited in paragraph 92 above) that economic operators should act independently when determining their conduct in the market. Although the requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, "*it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market*".[443]

378. FHPL, FH Trustee and AFPL, in their representations, submitted that most of the exchanges in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct cannot be considered to be restrictive of competition by object because "*most of the information exchanged… was general information that did not relate to specific rates at which each hotel was prepared to offer its corporate customers, and was not capable of reducing or eliminating the uncertainties inherent in the process of competition…*".[444] In this regard, FHPL, FH Trustee and AFPL submitted that the information was generally not relied upon by the recipients or exchanged only after an initial offer had been prepared for the customer. It was also submitted by FHPL, FH Trustee and AFPL that a customer's room night production for a competitor is irrelevant to the determination of the room rates which Capri is likely to offer the corporate customer. FEOC, OM and FEHMS, which together applied for leniency as an SEE, also urged CCCS to consider that the Capri-Village Conduct may not be anti-competitive by object.[445] In this regard, it was submitted that the information exchanged was generally inaccurate, unreliable, and hardly utilised in determining pricing strategies in respect of corporate customers; as in most instances, the figures exchanged between the salespersons were estimates, exaggerations or even blatant lies.[446]

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[443] Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663 at [174].

[444] Written Representations of FHPL and FH Trustee dated 21 September 2018, paragraph 3.11; Written Representations of AFPL dated 21 September 2018, paragraph 3.11; and Agreed Record of FHPL and FH Trustee's Oral Representations on 9 October 2018, paragraphs 2.5, 2.6 and 2.18.

[445] The leniency programme under the *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016* is designed to enable undertakings which are participating (or which have participated) in cartel activities to come forward to inform CCCS of the cartel activities in exchange for lenient treatment (i.e. immunity from or a reduction in the level of financial penalties). "Cartel activities" is defined in the *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016* as "*agreements between undertakings, decisions by associations of undertakings or concerted practices* ***which have as their object****, the prevention, restriction or distortion of competition within Singapore*". At its hearing of oral representations on 8 October 2018, FEOC, OM and FEHMS clarified that it was not withdrawing its leniency application and that that the "*purpose of the representation* [relating to the Capri-Village Conduct not having as its object the prevention, restriction or distortion of competition within Singapore] *was merely to put forth some arguments for CCCS's consideration… and to assist CCCS in its determination on whether the conduct was in fact an object infringement*". See Agreed Record of FEOC, OM and FEHMS's Oral Representations on 8 October 2018, paragraphs 9.16 to 9.19.

[446] Written Representations of FEOC, OM and FEHMS, dated 17 September 2018, paragraphs 2.2.8 and 2.2.9.

379. As set out in paragraphs 100 to 102 above, the agreement or concerted practice would attract liability under the section 34 prohibition even if an undertaking did not have the intention to implement or adhere to the terms of the agreement.[447] It is not necessary for CCCS to show that the sales representatives had relied upon or utilised the information exchanged in the bilateral communication.

380. Further, as set out in paragraph 121 above, the exchange of erroneous or inaccurate confidential information could still amount to an infringement under section 34 of the Act.[448] It is no defence that the sales representatives had provided inaccurate or unreliable information.

381. In any event, the evidence revealed that the sales representatives did rely on/utilise the information exchanged in the bilateral communications. For instance, in relation to the conversation between Priscilla Chong and Eric Tan reproduced above at paragraph 224, Eric Tan explained during his interview with CCCS that [✂], the booker from Panalpina, "…*told me that Priscilla was going to maintain or decrease the rates, and that if I raised my rates she would go to Priscilla. This is why I checked with Priscilla if she was increasing her rates.*"[449] In other words, Panalpina had attempted to negotiate for a more competitive corporate rate offered by the Village Hotels by informing Eric Tan that Priscilla Chong was going to maintain or decrease the corporate rate offered by Capri. Panalpina had also informed Eric Tan that it would switch away from the Village Hotels to Capri if the corporate rates offered by the Village Hotels were increased from the previous year.[450] When asked about how the information exchanged in the conversation affected the corporate rates offered by Village Hotels to Panalpina, Eric Tan explained during his interview with CCCS that "*If what* [✂] *said was true, I would most likely accept what she said and I will not raise our rates. If what* [✂] *said was untrue, I would give her the rates which had already been approved.*"[451] In other words, Eric Tan would not have raised his rates if Priscilla Chong confirmed that Panalpina was stating the truth. Conversely, if the information obtained from Priscilla Chong did not corroborate the information provided by Panalpina, Eric Tan would offer the corporate rate which was already approved.[452] The evidence makes clear that Eric Tan relied upon the information provided by Priscilla Chong as a means to verify the information provided by the corporate

[447] Case T-58/08 *Dole Food and Dole Germany v Commission* ECLI:EU:T:2013:130, at [484]; *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [128].
[448] Case T-762/14 *Koninklijke Philips NV v Commission* [2016] EU:T:2016:738, at [91].
[449] Response to question 113 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHK/VHC), 19 April 2016.
[450] Response to question 113 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHK/VHC), 19 April 2016.
[451] Response to question 116 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHK/VHC), 19 April 2016.
[452] Response to question 116 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHK/VHC), 19 April 2016.

customer in the negotiation process, so as to determine whether to offer the corporate customer a more competitive price.

382. Another example of the reliance placed by the sales representatives on the information exchanged is in relation to the conversation between Priscilla Chong and Eric Tan at paragraph 285 above. In this conversation, Priscilla Chong asks Eric Tan for Yokogawa's room night production at the Village Hotels. As set out in paragraph 288 above, Priscilla Chong explained that this information would help her assess Yokogawa's overall potential, as well as help her in her negotiations with Yokogawa over its room night production at Capri.[453] This, in turn, could affect the corporate rate offered by Capri to Yokogawa – for instance, if Yokogawa was offering Capri a significantly smaller room night production compared to the room night production at VHK, Priscilla Chong might be able to justify offering Yokogawa a higher corporate rate (or less favourable terms) compared to VHK. This is corroborated by Eric Tan, who explained that Priscilla Chong "*might be using the information that Yokogawa in actual fact has more than* [✂] *room nights in VHK to justify maintaining her rates*".[454]

383. This example above also shows that a customer's room night production at a competitor hotel is a relevant factor in the determination of Capri's corporate rate. As set out in paragraphs 368 to 374 above, the exchange of information which includes factors that are taken into consideration in the determination of future prices offered to corporate customers, can influence the Parties' future conduct on the market and/or place them in a position of advantage over their customers in contract negotiations. CCCS reiterates that the information exchanges in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct served to reduce or eliminate the uncertainties inherent in the process of competition.

384. The Parties[455] also made representations that the information exchanges did not have the "objective" of preventing, restricting or distorting competition in the market. In relation to this, FHPL, FH Trustee and AFPL made representations that the "*parties' suggestion to "keep in close contact" was for the legitimate objective of checking the veracity of claims*" made by the corporate customer; and "*such communications are* ***necessary to reduce the information asymmetries inherent in the negotiating process*** *and* ***prevent the customer from "gaming the system"*** [**Emphasis added.**]".[456] Representations were also made that the information

[453] Response to question 132 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[454] Response to question 102 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 19 April 2016.
[455] FHPL, FH Trustee, AFPL, FEOC, OM and FEHMS.
[456] Written Representations of FHPL and FH Trustee dated 21 September 2018, paragraph 3.15; Written Representations of AFPL dated 21 September 2018, paragraph 3.15.

exchanges by the salespersons were merely to vent their frustrations and were not mean to be taken seriously[457] or were to gauge market sentiments[458].

385. CCCS reiterates the established legal principles summarised in paragraphs 111 to 113 above - the Parties' subjective intention is not a necessary factor in assessing whether or not conduct had as its object the prevention, restriction or distortion of competition. Further, even if parties to an agreement and/or concerted practice acted without any subjective intention of restricting competition (or even if they had intended to pursue other legitimate objectives), "*such considerations are irrelevant*"[459] in assessing whether a conduct has as its object the prevention, restriction or distortion of competition in Singapore.

386. In any event, the evidence revealed that the Parties did have the subjective intention of restricting competition when they exchanged confidential, customer-specific, commercially sensitive information to "*reduce information asymmetries inherent in the negotiating process and prevent the customer from "gaming the system"*". To reiterate what is set out in paragraphs 373 and 374 above, the sales representatives had knowingly substituted practical cooperation between them for the risks of competition.[460] The so-called "information asymmetries" that the Parties sought to "reduce" is precisely the normal process of competition where two competitors do not know each other's offer to a potential customer, and "the system" that the Parties sought to "prevent the customer from gaming" is precisely the exercise of consumer choice. Their discussion and exchange of confidential, customer-specific, commercially sensitive information can influence each other's future conduct on the market and/or placed them in a position of advantage over their customers in contract negotiations. In this regard, CCCS also reiterates the principle set out in *Suiker Unie* (cited in paragraph 92 above) that economic operators should act independently when determining their conduct in the market. Without the agreements and/or concerted practices between them to share such information, each sales representative would have had to determine their conduct on the market relying only on their own perceptions, predictions and experience of the market. This is likely to have resulted in more competitive rates (and/or terms) offered to corporate customers for hotel room accommodation. This supports the finding that the Capri-Village Conduct and the Capri-Crowne Plaza Conduct had as their object the prevention, restriction or distortion of competition in Singapore.

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[457] Written Representations of FHPL and FH Trustee dated 21 September 2018, paragraph 3.16 and 3.39; Written Representations of AFPL dated 21 September 2018, paragraph 3.16 and 3.40; and Written Representations of FEOC, OM and FEHMS, dated 17 September 2018, paragraph 2.2.7.

[458] Written Representations of FEOC, OM and FEHMS, dated 17 September 2018, paragraph 2.2.10.

[459] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21].

[460] See Case CE/2890-03 and Decision No. CA98/05/2006: *Exchange of information on future fees by certain independent fee-paying schools* (20 November 2006) at [1356] to [1358]. In particular, the OFT noted that "*the threat to effective competition is especially obvious where the arrangement involves the regular and systematic exchange of specific information as to future pricing intentions between competitors*".

387. FEOC, OM and FEHMS also submitted representations that the hotels involved in the exchange of information constituted a very insignificant portion of the hotels industry in Singapore.[461] FEOC, OM and FEHMS further submitted that hotels are highly differentiated products and that corporate customers have high bargaining power to either reject the offered price and renegotiate or to simply shift their business to other hotels.[462]

388. As explained in paragraphs 103 to 106, *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.* The considerations raised by FEOC, OM and FEHMS, as summarised in the paragraph above, are not relevant to the determination of whether an agreement has as its object the appreciable restriction of competition.

389. In view of the evidence, CCCS takes the view that the Capri-Village Conduct and the Capri-Crowne Plaza Conduct caused serious harm to competition and had the object of preventing, restricting or distorting competition. In particular, the sharing of confidential, customer-specific, commercially sensitive information eliminated or reduced uncertainties inherent in the process of competition (i) between Capri and the Village Hotels, and (ii) between Capri and Crowne Plaza, as to their conduct on the market vis-à-vis their corporate customers; such as the determination of prices and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

390. Further, CCCS finds that the Capri-Village Conduct and the Capri-Crowne Plaza Conduct each constitutes a single continuous infringement of section 34 of the Act.

391. As evinced by the WhatsApp chats between the sales representatives, Priscilla Chong and Eric Tan, and Priscilla Chong and Gladys Leong had discussed and exchanged various types of commercially sensitive information frequently, whilst in pursuit of a common overall objective to reduce or eliminate uncertainties inherent in the process of competition between the hotels as to their conduct on the market vis-à-vis their corporate customers with respect to pricing and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

392. By way of example, Priscilla Chong indicated that she initiated the conversation with Gladys Leong on a particular customer to, "*get a feel of the rate she* [Gladys Leong] *was going to offer to the customer and an understanding that we were both going to increase our rates,…*".[463] Within the WhatsApp chat between Eric Tan

[461]Written Representations of FEOC, OM and FEHMS, dated 17 September 2018, paragraphs 1.2.1(a) and 2.2.6.
[462] Written Representations of FEOC, OM and FEHMS, dated 17 September 2018, paragraphs 1.2.1(a) and 2.2.5.
[463] Response to question 155 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.

and Priscilla Chong, they agreed that they should keep in close contact when it comes to a particular corporate customer so that Capri and Village Hotels will not "*have to be squeezed into the corner or to listen to* [✂] *and give her everything she wants.*"[464]

393. The information exchanged included *inter alia* discussions on each other's bid prices, percentages by which customers asked for bid prices to be dropped and the position that each sales representative would take in response to such requests. Even though the specific information exchanged differed on occasion, the exchanges were nonetheless part of an overall series of efforts in pursuit of a common overall objective, which is to reduce or eliminate uncertainties inherent in the process of competition between the hotels as to their conduct on the market vis-à-vis their corporate customers with respect to pricing and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers. The sales representatives were clearly aware or could reasonably have foreseen that their contributions to the information exchanges were in pursuit of the common overall objective.

394. The characterisation of a cartel as a single continuous infringement is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute infringements.[465] Therefore, even though the various discussions/exchanges of commercially sensitive information engaged in by the sales representatives could individually constitute infringements, this does not preclude CCCS from finding that the Capri-Village Conduct and the Capri-Crowne Plaza Conduct each constitutes a single continuous infringement. CCCS considers that it would be artificial and contrary to the commercial reality of the situation to split up such continuous conduct into a number of separate infringements where it is characterised by a single objective i.e. to reduce or eliminate uncertainties inherent in the process of competition between the hotels as to their conduct on the market vis-à-vis their corporate customers with respect to pricing and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers.

395. During the relevant time periods over which the Capri-Village Conduct and the Capri-Crowne Plaza Conduct took place, CCCS notes that the respective sales representatives had directly participated in the discussions/exchanges of commercially sensitive information and took turns to solicit information from the other. CCCS also notes there is no evidence that the participants took any steps - before 30 June 2015 (when CCCS's investigation became known) - to denounce the agreements and/or concerted practices made by them or to publicly distance themselves from the agreements and/or concerted practices or their objectives.

[464] Response to question 44 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[465] Case C-49/92 *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125 at [81].

396. Correspondingly, in light of all the evidence, CCCS makes the following findings:
    a. that the Capri-Village Conduct constitutes a single continuous infringement of section 34 of the Act by object, in the period from 3 July 2014 to 30 June 2015; and
    b. that the Capri-Crowne Plaza Conduct constitutes a single continuous infringement of section 34 of the Act by object, in the period from 14 January 2014 to 30 June 2015.

CHAPTER 3: INFRINGEMENT DECISION

A. Addressees of CCCS's Infringement Decision

(i) Attribution of Liability

397. In assessing liability for the infringements and the calculation of financial penalties in Chapter 4, it is necessary to identify the undertakings which may be held liable for each infringement.

398. It is established case law that where natural and legal persons belong to an SEE (and are therefore an "undertaking" within the meaning of section 2 of the Act) liability for any infringement, can be attributed to the SEE as a whole.[466]

399. As set out in paragraph 65 above, the doctrine of SEE applies not only to companies with parent-subsidiary relationships, but also to companies in a principal-agent relationship.[467]

400. To assess whether each hotel owner/master lessee forms an SEE by reason of a principal and agent relationship with the hotel manager engaged to manage/operate its hotel, CCCS considered all the evidence having regard to principles set out in relevant case law such as *Suiker Unie, Minoan Lines and Voestalpine*[468]: primarily, whether the agent could be regarded as an auxiliary organ forming an integral part of the principal. In particular, CCCS considered whether the agent takes on any economic risk. As set out in paragraph 65 above, 65CCCS notes the position in *Voestalpine* that exclusivity is not a strict legal requirement for a finding of economic unity. Notwithstanding this, CCCS considered whether the services provided by the hotel manager for the hotel owner/master lessee in relation to the management and operation of each hotel are exclusive.

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[466] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [77]; Case C-294/98 P *Metsä Serla and Others* v *Commission* [2000] ECR I-10079, at [11], referring to [58] and [59] of the decision of the Court of First Instance.

[467] See for example, Case C-294/98 P *Metsä Serla and Others* v *Commission* [2000] ECR I-10079.

[468] Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73 *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission* [1975] ECR 1663, Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515; and Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516.

401. In identifying the undertakings liable for each infringement, CCCS considered all the evidence it had received in the course of its investigation to assess the undertaking to which the conduct of the hotel sales representative should be attributed. In this regard, CCCS considered whether anti-competitive conduct on the part of the hotel sales representative can be attributed to the SEE (comprising the hotel owner/master lessee and hotel manager) on behalf of which he/she acts in the performance of his/her duties in the sales and marketing of hotel rooms to corporate customers. CCCS notes that for the purpose of a finding of infringement of competition law, any anti-competitive conduct on the part of an employee is attributable to the undertaking to which he belongs and that undertaking is, as a matter of principle, held liable for that conduct.[469] An undertaking may also be held liable, as for the conduct of non-employees (i.e. independent service providers) if one of the following conditions are met:[470]
    a. The independent service provider was acting under the direction or control of the undertaking concerned; or
    b. The undertaking was aware of the anti-competitive objectives pursued by its competitors and the independent service provider, and intended to contribute to them by its own conduct; or
    c. The undertaking could reasonably have foreseen the anti-competitive acts of its competitors and the independent service provider, and was prepared to accept the risk which they entailed.

402. The evidence for each hotel and CCCS's conclusions are set out below.

Infringements relating to Capri

AFPL and FHPL

(A) Principal-Agent SEE

403. From at least the commencement of operations of Capri until 30 March 2015, AFPL was the owner of Capri.[471] AFPL engaged FHPL as the sole and exclusive manager and operator of Capri in the period between 11 July 2013 and 30 March 2015.[472] The terms and conditions of this contractual arrangement are found in the

[469] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [24]; Joined Cases 100 to 103/80 *Musique Diffusion Francaise v Commission* EU:C:1983:158, at [96] to [97]; Case C-68/12 *Protimonopolný Urad Slovenskej Republiky v Slovenská Sporiteľňa* EU:C:2013:71, at [25] to [26]; Case C-22/98 *Becu and Others* ECLI:EU:C:1999:419, at [26].
[470] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [33].
[471] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1b.
[472] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 5A – Management Agreement; information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; and information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1iii.

Capri MA 2013.[473] For the purposes of this Management Agreement, AFPL is known as the "Owner" and FHPL is known as the "Manager" of Capri.

404. It is apparent from the terms of the Capri MA 2013 that AFPL bore the financial risks of managing and/or operating Capri, during the period of its ownership.[✂][474] [✂][475] All funds required for the operation of Capri, including [✂], were to be supplied by AFPL.[476]

405. Moreover, the revenues derived from the operation of Capri were received by AFPL.[477] Whilst FHPL received an incentive fee [✂], it cannot be said to have shared in the financial risks of the operation of Capri, especially as it continued to receive a basic management fee regardless of the success of the hotel business.[478] In view of the financial arrangements between AFPL and FHPL, CCCS finds that AFPL bore the financial risks of managing and/or operating Capri.

406. CCCS also notes that FHPL is appointed as the "*sole and exclusive*" provider of management and consultancy services and the "*sole and exclusive*" operator of Capri. [479] CCCS's investigation revealed that in relation to the hotel management/operation services that FHPL provided, FHPL provided these services solely and exclusively for and on behalf of AFPL at Capri. In relation to the management and operation of Capri, including the sales and marketing of hotel room accommodation at Capri to corporate customers, FHPL did not undertake, as an independent dealer, any business for its own account on the market.

407. FHPL was entrusted to manage and operate Capri in the name of and on behalf of AFPL following annual plans which were approved by AFPL, in accordance with the terms of Capri MA 2013.[480] Evidence provided by AFPL and FHPL, in response to CCCS's notices under section 63 of the Act, confirmed that, at all

[473] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 5A – Management Agreement; information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; and information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1iii.
[474] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 4.2.4 of Annex 5A – Management Agreement.
[475] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 4.2.5 of Annex 5A – Management Agreement.
[476] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to questions 9a, 9b, and 11.
[477] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to questions 10.
[478] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 6.2 of Annex 5A – Management.
[479] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.1 of Annex 5A – Management Agreement.
[480] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.5 of Annex 5A – Management Agreement.

material times, the management and operation of Capri was carried out under the Capri MA 2013.[481]

408. Importantly, the management and operation of Capri included the marketing and promotion of Capri.[482] This is provided in clause 5.5 of the Capri MA 2013 which reads as follows:

> "[✂]". **[Emphasis added.]**

409. In view of the above set out in paragraphs 403 to 408, CCCS finds that, in the period between 11 July 2013 and 30 March 2015, **AFPL and FHPL were an SEE for the management and operation of Capri** which included the sales and marketing of hotel room accommodation at Capri to corporate customers. Liability for anti-competitive conduct in that period which relates to the sales and marketing of hotel room accommodation at Capri to corporate customers is consequently attributable to the SEE.

410. CCCS further notes that AFPL was also involved in discussions with FHPL on, or at the very least was kept apprised of, marketing strategies of Capri. Clause 5.4 of the Capri MA 2013 also provides that "[✂]". **[Emphasis added.]**[483]

411. It is also clear from the evidence that the sales and marketing of hotel rooms in Capri was an activity entrusted by AFPL to FHPL pursuant to their principal-agent relationship. Notably, there is no evidence to suggest that AFPL prohibited the practice of exchanging commercially sensitive information with Capri's competitors in the sale and marketing of hotel rooms in Capri.

(B) Employment, direction and supervision of Capri's sales representative, Priscilla Chong

412. Pursuant to the Capri MA 2013, FHPL, as the sole and exclusive manager of Capri, was also entrusted by AFPL to supervise the personnel employed to perform the day-to-day operations of the Capri hotel business.[484] FHPL confirmed that it is accountable to AFPL for the acts and omissions of the key personnel which negatively affect the financial interest of the owners of Capri.[485]

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[481] Response by AFPL dated 22 September 2017, to CCCS Section 63 Notice dated 29 August 2017, response to questions 1c, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, and 23; and response by FHPL dated 22 September 2017, to CCCS Section 63 Notice dated 29 August 2017, response to questions 3a, 4a, 6, 7, 9, 10, 11, 14, 15, and 16.
[482] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.5.5 of Annex 5A – Management Agreement.
[483] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.4 of Annex 5A – Management Agreement.
[484] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.6 of Annex 5A – Management Agreement.
[485] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 10g.

413. Both the Director of Sales and Marketing and the General Manager at Capri were key personnel at Capri who were appointed by FHPL in consultation with AFPL. Clause 5.8 of the Capri MA 2013 reads as follows:

"[✂]". **[Emphasis added.]**

414. As set out in Chapter 2 above, Priscilla Chong participated in the Capri-Village Conduct from at least 3 July 2014 to 30 June 2015 and participated in the Capri-Crowne Plaza Conduct from at least 14 January 2014 to 30 June 2015.

415. During the period of the Capri-Village Conduct and the Capri-Crowne Plaza Conduct, Priscilla Chong was contractually employed[486] by FHCC,[487] a wholly-owned subsidiary of FHPL that provided administrative support for the operation of Capri. As stated in paragraph 160 above, Priscilla Chong was appointed to her role as a member of Capri's sales team and given *inter alia* her responsibilities of securing sales for Capri, maintaining Capri's relationships with its customers, ensuring that the requirements of said customers are met by the General Manager and management team at Capri.[488]

416. Further, as set out in paragraphs 193 to 196 and paragraph 300 above, as part of her responsibilities, Priscilla Chong, in the course of her work as a sales representative for Capri, was given instructions to obtain competitors' information from Eric Tan at the Village Hotels and Gladys Leong at Crowne Plaza. Ms. Carol Lau (Deputy Group Director of Sales & Marketing of FHPL)[489] had instructed Priscilla Chong to obtain information from Gladys Leong.[490] Mr. Ray Hua (the Director of Sales and Marketing of Capri) also instructed each member of the sales team at Capri to exchange information with sales representatives of competitor hotels.[491] Specifically, Priscilla Chong was assigned to develop an administrative point of contact with the Village Hotels, which were located in the east of

[486] During Priscilla Chong's employment in respect of Capri, she held the designations of Sales Manager, Senior Sales Manager and Assistant Director of Sales.
[487] FHCC was a wholly-owned subsidiary of FHPL in the period between 11 July 2013 and 30 March 2015. [✂] FHPL [✂] maintain FHCC as its wholly-owned subsidiary to, *inter alia*, employ all employees for the operation of Capri. FHPL and FHCC share two common directors are the material time, of whom one is the Chief Executive Officer of FHPL. See information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 27f; and information provided by FHCC dated 4 October 2017, pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 4e.
[488] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 33d.
[489] Response to question 15 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017; and information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 7.
[490] Response to questions 62 and 81 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[491] Response to question 62 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.

Singapore.[492] Such instructions extended to the exchange of information pertaining to corporate customers.[493]

417. The information obtained from both of Priscilla Chong's bilateral WhatsApp chats with Eric Tan and Gladys Leong respectively was reported to Mr. Ray Hua and Mr. Vernon Lee (the General Manager of Capri). Mr. Ray Hua and Mr. Vernon Lee were both key personnel of Capri who were appointed by FHPL in consultation with AFPL, in accordance with clause 5.8 of the Capri MA 2013.[494]

418. As per paragraph 409 above, CCCS finds that AFPL and FHPL were an SEE for the management and operation of Capri, including the sales and marketing of hotel rooms, in the period between 11 July 2013 and 30 March 2015. During this time, Priscilla Chong performed her duties as a sales representative of Capri, for and under the direction of the SEE comprising AFPL and FHPL. CCCS considers that the evidence set out in paragraphs 412 to 417 supports a finding that Priscilla Chong acted (i) within the scope of her role as a sales representative for Capri; and (ii) under the direction or control of FHPL, an agent of AFPL, who together with AFPL comprised an SEE, when engaging in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct. As per *VM Remonts*[495], an undertaking may be held liable for the conduct of its independent service provider (non-employees) if the independent service provider was acting under the direction or control of the undertaking concerned. As such, CCCS considers that liability stemming from Priscilla Chong's conduct is attributable to the SEE comprising AFPL and FHPL.

(C) CCCS's finding in relation to (A) and (B) above

419. CCCS considers, in light of all the evidence, that liability for the Capri-Village Conduct and the Capri-Crowne Plaza Conduct can be attributed to AFPL and FHPL as an SEE in view of the following:
    a. AFPL and FHPL formed an SEE by virtue of the principal-agent relationship between them for the management and operation of Capri (which included the sales and marketing of hotel room accommodation at Capri to corporate customers);
    b. As a member of the sales team at Capri, Priscilla Chong's primary responsibilities included securing sales for Capri. She also had the discretion and authority to negotiate and offer rates to corporate clients;
    c. Priscilla Chong had been acting within the scope of her role as a sales representative of Capri when engaging in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct;
    d. Priscilla Chong was specifically instructed to obtain competitors'

[492] Voluntary Submission to the Competition Commission of Singapore by Capri by Fraser Changi City Singapore dated 8 August 2016, paragraphs 2.3.
[493] Response to questions 62 and 81 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[494] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 10.
[495] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [33].

information by key personnel at Capri who were appointed by FHPL in consultation with AFPL;

e. FHPL, as an agent of AFPL and therefore part of the SEE comprising AFPL and FHPL, had directed/controlled Priscilla Chong in the performance of her duties as a sales representative of Capri; and
f. Priscilla Chong acted under the direction or control of the SEE comprising AFPL and FHPL in engaging in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct.

420. Therefore, CCCS finds that AFPL and FHPL are jointly and severally liable for the infringements relating to the Capri-Village Conduct (in the period between 3 July 2014 and 30 March 2015) and the Capri-Crowne Plaza Conduct (in the period between 14 January 2014 and 30 March 2015).

FH Trustee and FHPL

(A) Principal-Agent SEE

421. On 31 March 2015, AFPL transferred the ownership of Capri, the hotel, to FH Trustee for due consideration.[496] From 31 March 2015 onwards, FH Trustee engaged FHPL as the sole and exclusive manager and operator of Capri.[497] The terms and conditions of this contractual arrangement are found in the Capri MA 2015.[498] Within Capri MA 2015, FH Trustee is referred to as the "Owner" and FHPL is referred to as the "Manager" of Capri.[499]

422. It is apparent from the applicable clauses of Capri MA 2015 that FH Trustee bears the financial risks of managing and/or operating Capri, during the period of its ownership. Pursuant to the clauses of Capri MA 2015, [✂].[500] [✂].[501] All funds

[496] Information provided by AFPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 18; and information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, Annexes 17B – Capri Instrument of Transfer and 17C – Sale and Purchase Agreement dated 27 February 2015.
[497] Information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 3b; information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 4A – Management Agreement.
[498] Information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 3b; information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 1c; information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 4A – Management Agreement.
[499] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, Annex 4A – Management Agreement.
[500] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 4.2.4 of Annex 4A – Management Agreement.
[501] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 4.2.5 of Annex 4A – Management Agreement.

required for the operation of Capri, including [✂], were to be supplied by FH Trustee.[502]

423. Moreover, the revenues derived from the operation of Capri are received by FH Trustee [✂].[503] Whilst FHPL receives an incentive fee [✂], it cannot be said to share in the financial risks of the operation of Capri as it continues to receive a basic management fee regardless of the success of the hotel business.[504] In light of this, CCCS finds that FH Trustee bears the financial risks of managing and/or operating Capri.

424. FHPL is appointed by FH Trustee as the "*sole and exclusive*" provider of management and consultancy services and the "*sole and exclusive*" operator of Capri. [505] CCCS's investigation revealed that in relation to the hotel management/operation services that FHPL provides, FHPL provides these services solely and exclusively for and on behalf of FH Trustee at Capri. In relation to the management and operation of Capri, including the sales and marketing of hotel room accommodation at Capri to corporate customers, FHPL does not undertake, as an independent dealer, any business for its own account on the market.

425. In relation to the activities entrusted by FH Trustee to FHPL, FHPL was entrusted to manage and operate Capri in the name of and on behalf of FH Trustee following annual plans approved by FH Trustee, in accordance with the terms of the Capri MA 2015.[506] Evidence provided by FH Trustee and FHPL, in response to notices under section 63 of the Act, confirm that, at all material times, the management and operation of Capri was carried out in accordance with the terms of Capri MA 2015.[507]

426. Importantly, the management and operation of Capri includes the marketing and promotion of Capri.[508] Clause 5.5 of the Capri MA 2015 reads as follows:

> "[✂]". **[Emphasis added.]**

[502] Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 10 and 12.
[503] Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 11.
[504] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 6.2 of Annex 4A – Management Agreement.
[505] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.1 of Annex 4A – Management Agreement.
[506] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.5 of Annex 4A – Management Agreement.
[507] Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 1c, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 26; and information provided by FHPL dated 22 September 2017 pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to questions 1b, 3b, 5, 6, 7, 9, 10, 12, 18, 19, and 20.
[508] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.5.5 of Annex 4A – Management Agreement.

427. In view of paragraphs 421 to 426 above, CCCS finds that from 31 March 2015 onwards, **FH Trustee and FHPL are an SEE for the management and operation of Capri** which includes the sales and marketing of hotel room accommodation at Capri to corporate customers. Liability for anti-competitive conduct in that period which relates to the sales and marketing of hotel room accommodation at Capri to corporate customers is consequently attributable to the SEE.

428. CCCS further notes that FH Trustee was also involved in discussions with FHPL on, or at the very least is kept apprised of, marketing strategies of Capri. Clause 5.4 of the Capri MA 2015 also provides that "[✂]".[509]

429. It is also clear from the evidence that the sales and marketing of hotel rooms in Capri is an activity entrusted by FH Trustee to FHPL pursuant to their principal-agent relationship. Notably, there is no evidence that FH Trustee prohibited the practice of exchanging commercially sensitive information with Capri's competitors in the sale and marketing of hotel rooms in Capri.

(B) Employment, direction and supervision of Capri's sales representative, Priscilla Chong

430. Pursuant to the Capri MA 2015, FHPL, the sole and exclusive manager of Capri, was entrusted by FH Trustee to supervise the personnel employed to perform the day-to-day operations of the Capri hotel business.[510] FHPL has further confirmed that it is accountable to FH Trustee for the acts and omissions of the key personnel which negatively affect the financial interest of the owners of Capri.[511] Both the Director of Sales and Marketing and the General Manager at Capri are key personnel at Capri who are appointed by FHPL in consultation with FH Trustee. Clause 5.8 of the Capri MA 2015 reads as follows:

> "[✂]". **[Emphasis added.]**

431. As set out in Chapter 2 above, Priscilla Chong participated in the Capri-Village Conduct from at least 3 July 2014 to 30 June 2015 and the Capri-Crowne Plaza Conduct from at least 14 January 2014 to 30 June 2015. During the period when FH Trustee took ownership of Capri, Priscilla Chong remained contractually

[509] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.4 of Annex 4A – Management Agreement.
[510] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, clause 5.6 of Annex 4A – Management Agreement.
[511] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 10g.

employed by FHCC.[512] FHCC remained responsible for providing administrative support in relation to the employment of staff members of Capri pursuant to a Service Agreement FHCC entered into with FH Trustee when ownership of Capri was transferred on 31 March 2015. It was submitted on behalf of FH Trustee that the staff members involved in the management and operation of Capri did not take any directions or seek approval from FHCC on any issue.[513]

432. Following the transfer of ownership to FH Trustee, Priscilla Chong's responsibilities did not materially change. Her primary responsibilities including securing sales for Capri, maintaining Capri's relationships with its customers, ensuring that the requirements of said customers are met, and assisting with reports on Capri's financial performance in relation to her role within Capri's sales team[514] continued.[515]

433. As set out in paragraphs 193 to 196 and paragraph 300 above, Priscilla Chong, in the course of her work as a sales representative for Capri, had been given instructions by members of the management team at Capri to obtain competitors' information from Eric Tan at the Village Hotels and Gladys Leong at Crowne Plaza. Notwithstanding the transfer of ownership to FH Trustee, Priscilla Chong continued to adhere to the instructions to obtain competitors' information from Eric Tan and Gladys Leong. The information obtained from both of Priscilla Chong's bilateral WhatsApp chats with Eric Tan and Gladys Leong respectively continued to be reported to Mr. Ray Hua and Mr. Vernon Lee. Both Mr. Ray Hua and Mr. Vernon Lee remained as key personnel of Capri, who were appointed by FHPL in consultation with FH Trustee, as set out in clause 5.8 of the Capri MA 2015 entered into between FHPL and FH Trustee.[516]

434. As per paragraph 427, CCCS find that FH Trustee and FHPL are an SEE for the management and operation of Capri from 31 March 2015. During this time, Priscilla Chong performed her duties as a sales representative of Capri, for and under the direction of the SEE comprising FH Trustee and FHPL. CCCS considers that the evidence set out in paragraphs 430 to 433 supports a finding that Priscilla Chong acted (i) within the scope of her role as a sales representative for Capri; and (ii) under the direction or control of FHPL, an agent of FH Trustee, who together with FH Trustee comprise an SEE, when engaging in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct. As per *VM Remonts*[517], an undertaking may be held liable for the conduct of its independent service provider

[512] During Priscilla Chong's employment in respect of Capri, she held the designations of Sales Manager, Senior Sales Manager and Assistant Director of Sales.
[513] Information provided by FH Trustee dated 19 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 3b.
[514] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, response to question 33d.
[515] Response to question 25 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 19 December 2017.
[516] Information provided by FHPL dated 22 September 2017, pursuant to the section 63 Notice issued by CCCS dated 29 August 2017, responses to question 10.
[517] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [33].

(non-employees) if the independent service provider was acting under the direction or control of the undertaking concerned. As such, CCCS considers that liability stemming from Priscilla Chong's conduct is attributable to the SEE comprising FH Trustee and FHPL.

(C) CCCS's finding in relation to (A) and (B) above

435. CCCS considers, in light of all the evidence, that liability for the Capri-Village Conduct and the Capri-Crowne Plaza Conduct can be attributed to FH Trustee and FHPL as an SEE in view of the following:
   a. FH Trustee and FHPL formed an SEE by virtue of the principal-agent relationship between them for the management and operation of Capri (which includes the sales and marketing of hotel room accommodation at Capri to corporate customers);
   b. As a member of the sales team at Capri, Priscilla Chong's primary responsibilities included securing sales for Capri. She also had the discretion and authority to negotiate and offer rates to corporate clients;
   c. Priscilla Chong had been acting within the scope of her role as a sales representative of Capri when engaging in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct;
   d. Priscilla Chong was specifically instructed to obtain competitors' information by key personnel at Capri who were appointed by FHPL in consultation with FH Trustee;
   e. FHPL, as an agent of FH Trustee and therefore part of the SEE comprising FH Trustee and FHPL, had directed/controlled Priscilla Chong in the performance of her duties as a sales representative of Capri; and
   f. Priscilla Chong acted under the direction or control of the SEE comprising FH Trustee and FHPL, in engaging in the Capri-Village Conduct and the Capri-Crowne Plaza Conduct.

436. Therefore, CCCS finds that FH Trustee and FHPL are jointly and severally liable for the infringements relating to the Capri-Village Conduct (in the period between 31 March 2015 and 30 June 2015) and the Capri-Crowne Plaza Conduct (in the period between 31 March 2015 and 30 June 2015).

Infringement relating to the Village Hotels

FEOC, OM and FEHMS

(A) SEE: FEOC, OM and FEHMS

437. CCCS finds that FEOC, OM and FEHMS constitute an SEE. FEOC, OM and FEHMS are all entities under the Far East Organization Group (the "**FE Group**"). The FE Group comprises unlisted and listed companies. The unlisted companies

include FEOC and OM.[518] FEHMS is a wholly owned subsidiary of Far East Hospitality Holdings Pte. Ltd. ("**FEHH**"). FEHH is a joint venture between Far East Orchard Limited, a listed company under the FE Group, and The Straits Trading Company Limited.[519]

438. FEOC is 93.75% held by the estate of the late Mr. Ng Teng Fong and 6.25% held by Mdm. Tan Kim Choo; and OM is wholly owned by Far East Organisation Pte. Ltd. which is in turn 50% held by the estate of the late Mr. Ng Teng Fong and 50% held by Mdm. Tan Kim Choo.[520] In addition to sharing common ultimate parents, CCCS notes that FEOC and OM (as well as other unlisted companies under the FE Group) share the same Chief Executive Officer, Mr. Ng Chee Tat, Philip (son of the late Mr. Ng Teng Fong).[521] [✂].[522] FEOC and OM also share a common director[523] and the same registered address: 14 Scotts Road #06-01, Far East Plaza, Singapore 228213.[524]

439. CCCS also finds that principal-agent relationships exist between FEOC and FEHMS; and between OM and FEHMS. As set out in paragraphs 18 to 19 above, FEHMS is the exclusive manager and operator of VHC pursuant to the HMA for VHC[525]; as well as the exclusive manager and operator of VHK pursuant to the HMA for VHK[526].

[518] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 1a; and corporate statement dated 9 March 2018 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.4.
[519] Far East Orchard Limited owns 70% of FEHH. See also information provided by FEHMS dated 7 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 1a.
[520] Corporate statement dated 9 March 2018 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.2.
[521] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 16d; information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 16d; and corporate statement dated 9 March 2018 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.4.
[522]Corporate statement dated 9 March 2018 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.4.
[523] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 16d; and information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 16d.
[524] Extracted from ACRA record Business Profile of Far East Organization Centre Pte. Ltd. (on 09/05/2017); and ACRA record Business Profile of Orchard Mall Pte. Ltd. (on 09/05/2017).
[525] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 4 - Hotel Management Agreement for VHC, read with Annex 6 - novation agreement dated 27 August 2012 between FEOC, Far East Hospitality Services Pte Ltd and Jelco Properties Pte Ltd and Annex 10 - novation agreement dated 1 November 2013 between FEOC, Jelco Properties Pte Ltd and FEHMS.
[526] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 5 – Hotel Management Agreement for VHK, read with Annex 7 - novation agreement dated 27 August 2012 between OM, Far East Hospitality Services Pte Ltd and Jelco Properties Pte Ltd and Annex 11 - novation agreement dated 1 November 2013 between OM, Jelco Properties Pte Ltd and FEHMS.

440. FEHMS conducts the business of VHC and VHK on the market in the name of and for the account of FEOC and OM.[527] In return, FEHMS receives a management fee, comprising a fee [✂] and an incentive fee [✂].[528] FEOC and OM receive all the revenues of VHC and VHK respectively, after deducting the expenses relating to the operation of the hotels. This is in accordance with clauses 8.3, 8.4 and 9.2 in the HMA for VHC and the HMA for VHK.[529]

441. The terms in the HMAs between FEOC and FEHMS and between OM and FEHMS show that FEHMS does not bear the financial risks of managing and/or operating VHC and VHK. For example, "[✂]" (clauses 3.4.1 in the HMA for VHC and the HMA for VHK).

442. CCCS finds that in relation to the hotel management/operation services that FEHMS provides, FEHMS provides these services solely and exclusively for and on behalf of FEOC at VHC; and solely and exclusively for and on behalf of OM at VHK. In relation to the management and operation of the Village Hotels, including the sales and marketing of hotel room accommodation at the Village Hotels to corporate customers, FEHMS does not undertake, as an independent dealer, any business for its own account on the market. In this regard, clause 3.4.1 in both the HMA for VHC and the HMA for VHK read as follows: "[✂]".

443. Evidence provided by FEOC and OM confirm that the management and operation of the Village Hotels was, and is, carried out in accordance with the terms of the HMAs.[530]

444. The management and operation of the Village Hotels includes the marketing of, as well as the determination of policy and pricing for, hotel room accommodation at the hotels.[531] Clause 3.2 of the HMA for VHC and the HMA for VHK read as follows:

> "[✂]".

445. In view of the above, CCCS considers that there are principal-agent relationships between FEOC and FEHMS, and between OM and FEHMS, for the management

[527] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.3(b).
[528] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 9.1 of Annex 4 - Hotel Management Agreement for VHC and clause 9.1 of Annex 5 – Hotel Management Agreement for VHK.
[529] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 10; information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 10; and Agreed Record of Oral Representations of FEOC/OM/FEHMS dated 8 October 2018; paragraph 9.20.
[530] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1iv; and information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 1iv.
[531] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.2 of Annex 4 - Hotel Management Agreement for VHC and clause 3.2 of Annex 5 – Hotel Management Agreement for VHK.

and operation of VHC and VHK respectively, which includes the sale and marketing of hotel room accommodation at VHC/VHK to corporate customers.

446. CCCS also notes that there is no evidence that FEOC or OM prohibited the practice of exchanging commercially sensitive information with Village Hotels' competitors in the sale and marketing of hotel rooms in Village Hotels. Rather, it is notable that under Schedule 1, Part 2 of both HMAs, the items listed under "Revenue Management Services" to be performed by FEHMS for and on behalf of FEOC and OM, include "[✂]".

447. CCCS further notes that FEOC, OM and FEHMS had, in their corporate statement, provided evidence to support their submissions to the effect that the three form "*one and the same economic unit*".[532] In this regard, FEOC, OM and FEHMS had submitted, *inter alia*, that "*FEHMS, FEOC and OM are in a single economic unit due to an agency relationship arising out of the respective hotel management agreements ("HMAs") entered in by FEHMS … and FEOC and OM respectively*".[533] It was submitted that the agency relationship was evidenced by some of the terms set out in the HMAs.[534] This includes clauses 3.1 and 3.2 of the HMAs, by which FEHMS was "[✂]".[535] Further, FEOC, OM and FEHMS submitted that "*it is evident that FEHMS conducts the business of VHC and VHK on the market in the name of and for the account of each hotel owner*"[536] and that "*FEHMS assumes no risk in connection with the operation of each hotel insofar that debts, obligations and liabilities to third parties incurred by FEHMS in respect of each hotel's operations have arisen in a manner consistent with the HMA*"[537].

448. Notwithstanding the above, FEOC, OM and FEHMS urged CCCS to exercise its discretion not to hold FEOC and OM liable for the conduct of FEHMS because FEHMS acted on the market as an "independent contractor"[538] rather than as an agent of FEOC and OM as understood in competition law. In this regard, representations were made that FEHMS does assume risks in the management and operation of VHK and VHC. Such financial and contractual risks include liability to third parties should FEHMS not perform services in accordance with the HMAs; the obligation to indemnify each of FEOC and OM for any loss arising

[532] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM; and corporate statement dated 9 March 2018 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 4.1.
[533] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 1.5.
[534] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.3.
[535] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.3(a).
[536] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.3(b).
[537] Corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.3(c).
[538] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 3.2.7; and Agreed record of oral representations of FEOC/OM/FEHMS dated 8 October 2018; paragraph 3.6.

from its wilful misconduct, gross negligence or bad faith or wilful breach of the respective HMAs; and the risk of punitive sanctions if FEHMS fails to meet its financial targets under the HMAs (e.g. [✂]).[539] It was also submitted that the reputation of FEHMS as a chain hotel operator would suffer if it is unable to achieve a certain scale in respect of the brands under its management, which in turn, will have an impact on its performance as a chain hotel operator. The risks faced by FEHMS "*goes beyond the inherent nature of all agency relationships due to the severe repercussions such loss would have on the integrity and goodwill of the "Village" brand, which it owns and operates*".[540]

449. In this regard, the case law indicates that the financial risk factor relevant to the determination of whether there exists a principal-agent relationship pertains to the economic risk linked to the sale of the goods which the agent has been entrusted to sell, i.e. *not* the economic risk associated with the provision of the agency service to the principal. In *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* ("***Confederación Española***"), the ECJ set out the criteria to enable an assessment of the actual allocation of financial and commercial risks, in order to ascertain whether the relationship between the two parties involved (service-station operators and fuel suppliers) is that of a principal-agent or whether the service-station operator is actually an independent economic operator. First, the risks linked to the sale of the goods should be taken into account. Second, the risks linked to investments specific to the market should also be taken into account.[541] In this regard, the ECJ elaborated as follows:

> "52 First, as regards the risks linked to the sale of the goods, it is likely that the service-station operator assumes those risks when he takes possession of the goods at the time he receives them from the supplier, that is to say, prior to selling them on to a third party.
>
> 53 Likewise, the service-station operator who assumes, directly or indirectly, the costs linked to the distribution of those goods, particularly the transport costs, should be regarded as thereby assuming part of the risk linked to the sale of the goods.
>
> 54 The fact that the service-station operator maintains stocks at his own expense could also be an indication that the risks linked to the sale of the goods are transferred to him.
>
> 55 Furthermore, the national court should determine who assumes responsibility for any damage caused to the goods, such as loss or deterioration, and for damage caused by the goods sold to third parties.

[539] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraphs 3.3.2 to 3.3.6.
[540] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 3.3.7.
[541] Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* ECLI:EU:C:2006:784, at [50] to [51].

If the service-station operator were responsible for such damage, irrespective of whether or not he had complied with the obligation to keep the goods in the conditions necessary to ensure that they undergo no loss or deterioration, the risk would have to be regarded as having been transferred to him.

56 It is also necessary to assess the allocation of the financial risk linked to the goods, in particular as regards payment for the fuel should the service-station operator not find a purchaser, or where payment is deferred as a result of payment by credit card, on the basis of the rules or practices relating to the payment system for fuel.

57 In that connection, it is apparent from the order for reference that the service-station operator is required to pay CEPSA the amount corresponding to the sale price of the fuel nine days after the date of delivery and that, by the same date, the service-station operator receives commission from CEPSA, in an amount corresponding to the quantity of fuel delivered.

58 In those circumstances, it is for the national court to ascertain whether the payment to the supplier of the amount corresponding to the sale price of the fuel depends on the quantity actually sold by that date and, as regards the turnover period for the goods in the service-station, whether the fuel delivered by the supplier is always sold within a period of nine days. If the answer is in the affirmative it would have to be concluded that the commercial risk is born by the supplier.

59 As regards the risks linked to investments specific to the market, if the service-station operator makes investments specifically linked to the sale of the goods, such as premises or equipment such as a fuel tank, or commits himself to investing in advertising campaigns, such risks are transferred to the operator.

60 It follows from the foregoing that, in order to determine whether Article 85 of the Treaty is applicable, the allocation of the financial and commercial risks between the service-station operator and the supplier of fuel must be analysed on the basis of criteria such as ownership of the goods, the contribution to the costs linked to their distribution, their safe-keeping, liability for any damage caused to the goods or by the goods to third parties, and the making of investments specific to the sale of those goods.

> 61 However, as the Commission rightly submits, the fact that the intermediary bears only a negligible share of the risks does not render Article 85 of the Treaty applicable."[542]

450. The ECJ's finding at [61] i.e. "*the fact that the intermediary bears only a negligible share of the risks does not render Article 85 of the Treaty applicable*" means that the bearing of a negligible share of the risk by the agent does not render it an independent economic operator. This makes clear that the bearing of a negligible share of the financial risk by the agent does not preclude the finding of an SEE.

451. In addition, the commission risk borne by an agent does not equate to the bearing of financial risk. In the Advocate-General's Opinion in *Confederación Española*, it was noted that "*the requisite evaluation does not depend on the commission risk. In the classic agency relationship, the agent's remuneration depends wholly or partly on his performance, and in particular on the number and/or value of the transactions he negotiates. Thus, the agent normally bears the commission risk whether he is a genuine or non-genuine agent.*"[543]

452. In the present case, the financial and economic risk for the sale of hotel room accommodation at the Village Hotels falls upon FEOC and OM, as owners of the hotel. It should be highlighted that whilst FEHMS is entrusted with the sale and marketing of hotel room accommodation at the Village Hotels, it does not take on the possession of said hotel rooms. In other words, it does not bear any inventory risk. In the event that there are no customers who purchase the hotel room accommodation despite genuine efforts by FEHMS to sell and market the hotel rooms, it is FEOC and OM which will bear the loss in revenues. FEHMS merely bears commission risks (such as lower fees and/or punitive sanctions for failure to meet the targets set in the HMAs), which cannot be considered a significant financial risk linked to the sale of the goods. While the commission structure in this case is partially dependent on room sales, it is inherently the compensation to FEHMS for the provision of agency services to its principals (FEOC and OM), *not* the sale of hotel rooms itself. This includes the possible impact on its reputation as a chain hotel operator. The above should be contrasted with, for example, a scenario wherein a hotel operator rents the hotel premises from the building owner for a fixed rental fee. In that scenario, the hotel operator takes possession of the hotel rooms and takes on the financial risk for the sale of the hotel room accommodation, including inventory risk. The building owner would bear no financial risk from the sale of hotel room accommodation as the building owner would receive a fixed rental fee regardless of the number of hotel rooms sold by the hotel operator.

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[542] Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* ECLI:EU:C:2006:784, at [52] to [61].

[543] Opinion of Advocate-General Kokott in Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* ECLI:EU:C:2006:473, at [65].

453. Further, FEOC and OM remain responsible for the operating costs and the debts or liabilities incurred in the course of the operation of the Village Hotels. As set out in paragraph 441 above, clauses 3.4.1 in the HMA for VHC and the HMA for VHK states that *"*[✂]". The fact that FEHMS may be liable to third parties, or even to indemnify the principal, if it causes losses/damage as a result of its own negligence/misconduct in performing the activities entrusted to it, does not mean that it bears financial risks linked to the sale of the goods. Instead, it represents the economic risk associated with the provision of agency services to the principal.

454. To support the representation that FEHMS undertakes, as an independent dealer, business on its own account on the market, FEOC, OM and FEHMS submitted that FEHMS (through its parent, FEHH) owns the intellectual property trademark "Village"; and that contracts concluded with third parties are primarily in the name of VHC and VHK rather than in the name of the hotel owners or the operator.[544] It was also submitted that FEHMS should not be considered as a true auxiliary of FEOC and OM since the main part of its turnover is derived independently and is unconnected to the business relationships with FEOC and OM (FEHMS's annual turnover is derived from the operations of the various properties under its portfolio).[545]

455. CCCS notes that where one party enters into third party contracts in the name of another party, this may be a factor that supports a finding that the parties have a principal-agent relationship between them. However, the converse is not true since a principal may allow its agent to conclude third party contracts using a brand name, or even the agent's own name, in selling goods or performing services on the principal's behalf. It is clear from the case of *Voestalpine* that an agency agreement can cover "*a situation in which 'a legal or physical person (the agent) is vested with the power to negotiate and/or conclude contracts on behalf of another person (the principal), either in the agent's own name or in the name of the principal, for the … purchase of goods or services supplied by the principal'*".[546] The fact that third party contracts are concluded in the name of VHC, VHK or even FEHMS at the Village Hotels does not detract from the finding that FEHMS acts as an agent of FEOC and OM in the management and operation of VHC and VHK respectively. The fact that FEHMS has turnover that is derived independently and is unconnected to the business relationships with FEOC and OM is immaterial to the finding that **in relation to the hotel management/operation services that FEHMS provides at VHC and VHK**, FEHMS provides these services for and on behalf of FEOC at VHC; and for and on behalf of OM at VHK.

[544] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraphs 3.4.3 and 3.4.4.
[545] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 3.4.5.
[546] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [145].

456. In this regard, CCCS reiterates that FEHMS performs the services for FEOC and OM's benefit in exchange for a contracted fee.[547] FEOC and OM keep the profits[548] and bear the costs of the operating expenses and capital expenditure of the respective hotels (including staff salaries).[549] FEOC and OM also bear all debts, obligations and liabilities to third parties incurred by FEHMS in the course of its management/operation of VHC and VHK.[550]

457. FEOC, OM and FEHMS also urged CCCS to exercise its discretion not to hold FEOC and OM liable bearing in mind common law agency principles[551] and the general principle of personal responsibility (which should stand such that the infringement decision be addressed only to FEHMS). It was submitted that FEOC and OM do not exercise control or decisive influence over FEHMS, and FEHMS carries out the management of the Village Hotels without interference from the respective hotel owners.[552] FEOC, OM and FEHMS also submitted that (i) the Capri-Village Conduct undertaken by FEHMS did not form part of the activities entrusted to it by each of FEOC and OM; (ii) FEOC and OM were not informed of the Capri-Village Conduct; and (iii) whilst there is no express prohibition relating to anti-competitive conduct, FEHMS was contractually obliged under the HMAs to manage/operate the Village Hotels in compliance with the law.[553] In addition, it was submitted that "*[e]ven if the FEHMS is in a true sense an agent of the hotel owners in operating the hotels, FEHMS has acted ultra vires in the alleged offending acts such as the Capri-Village Conduct…*".[554]

458. FEOC, OM and FEHMS added that CCCS should, in considering the representations, take into account the unique nature of the hotel industry that is structured such that hotel owners and hotel operators have separate and distinct legal and economic roles (i.e. it is structured in a manner which requires minimal involvement by hotel owners).[555] FEOC, OM and FEHMS urged CCCS to

[547] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 9.1 of Annex 4 - Hotel Management Agreement for VHC and clause 9.1 of Annex 5 – Hotel Management Agreement for VHK.
[548] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 10; information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 10; and Agreed record of oral representations of FEOC/OM/FEHMS dated 8 October 2018; paragraph 9.20.
[549]Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 8.1 of Annex 4 - Hotel Management Agreement for VHC and clause 8.1 of Annex 5 – Hotel Management Agreement for VHK.
[550]Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 4 - Hotel Management Agreement for VHC and clause 3.4.1 of Annex 5 – Hotel Management Agreement for VHK; and corporate statement dated 27 November 2017 pursuant to leniency application by FEHMS/FEOC/OM, paragraph 2.3(c).
[551] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraphs 3.2.3 and 3.2.7.
[552] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraphs 1.2.1, 4.1 and 4.2.
[553] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 4.2.7.
[554] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 4.2.7(a)(ii).
[555] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, *inter alia*, paragraphs 3.1, 4.1.10 and 4.3.11.

consider the impact on the hotel industry in attributing liability to FEOC and OM.[556]

459. In relation to the submission that hotel operators are given a wide discretion to carry out its function due to the unique nature of the hotel industry, it is pertinent to note that the CFI in *Minoan Lines* had observed that the agent in that case "*enjoyed very broad powers of representation*" and was "*authorised and instructed not only to organise the network of local agents and to promote the sale of tickets for foreign destinations but also, more generally, to manage the vessels on the international routes, to represent the applicant, to concern itself with all questions and actions relating to the vessels which it managed and to promote their use in the name of and on behalf of*" the principal. [557] The extent of discretion given to FEHMS, or the level of involvement by FEOC and OM in the day-to-day operations of the Village Hotels, do not affect the finding that FEHMS was entrusted to manage and operate the Village Hotels for and on behalf of FEOC and OM. It is important to note that the Capri-Village Conduct had taken place in the context of the sale and marketing of hotel rooms at the Village Hotels, falling squarely within the very task entrusted to FEHMS by FEOC and OM.

460. Furthermore, as set out in paragraph 445 above, CCCS reiterates that Schedule 1, Part 2 of both HMAs identified "[✂]" as an activity under "Revenue Management Services" to be performed by FEHMS for and on behalf of FEOC and OM. The Capri-Village Conduct falls squarely within this activity entrusted to FEHMS by FEOC and OM.

461. CCCS also emphasises that the two factors considered in *Minoan Lines* and *Voestalpine*[558] in determining whether an agent can be regarded as an auxiliary organ forming an integral part of its principal, are likewise present in this case. In particular, FEHMS does not bear significant financial risks of managing and/or operating VHC and VHK; and that FEHMS provides these services solely and exclusively for and on behalf of FEOC at VHC; and solely and exclusively for and on behalf of OM at VHK.

462. Additionally, the ECJ in *Siemens AG* had made clear that in accordance with the principle of personal responsibility, when an economic entity has infringed competition rules, it is for that economic entity to answer for that infringement. A legal person who is not the perpetrator of an infringement of competition rules may nevertheless be penalised for the unlawful conduct of another legal person, if both persons form part of the same economic entity.[559] This principle was also espoused by the English High Court in *Provimi Ltd v Aventis Animal Nutrition SA*

[556] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 6.2; and and Agreed record of oral representations of FEOC/OM/FEHMS dated 8 October 2018; paragraph 10.1.
[557] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [110].
[558] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515; and Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516.
[559] Joined Cases C-231/11 P to C-233/11 P *Commission v Siemens Osterreich and Others & Siemens Transmission & Distribution and Others v Commission* ECLI:EU:C:2014:256, at [45].

and others and other actions ("***Provimi***"), where it is stated that "*[t]he EU competition law concept of an "undertaking" is that it is one economic unit. The legal entities that are a part of the one undertaking, by definition of the concept, have no independence of mind or action or will. They are to be regarded as all one. Therefore, so it seems to me, the mind and will of one legal entity is, for the purposes of Article 81, to be treated as the mind and will of the other entity. There is no question of having to "impute" the knowledge or will of one entity to another, because they are one and the same.*"[560] Having been satisfied that FEOC, OM and FEHMS constitute an SEE, CCCS considers that liability for anti-competitive conduct is attributable to the SEE. Such a finding would be consistent with the principle of personal responsibility.

463. CCCS emphasises that the General Court had made clear in *Voestalpine* that where the principal and agent are an SEE, it is not necessary to prove that the principal had been aware of the anti-competitive conduct of the agent, for the principal to be held liable.[561] It is not a defence for FEOC or OM to argue that they do not exercise control or decisive influence over FEHMS, or that FEHMS carried out the management of the Village Hotels without interference from the respective hotel owners.

464. In relation to the potential impact on the hotel industry in attributing liability to FEOC and OM, CCCS highlights that the assessment of the allocation of financial risk and the existence of an exclusive relationship must be done on a case-by-case basis. Having assessed the specific facts and circumstances of the present case, CCCS considers that FEOC, OM and FEHMS form an SEE. CCCS stresses that it has not concluded that all hotel owners must be liable for any anti-competitive conduct on the part of their respective hotel operators. It should be highlighted that players in the hotel industry are free to choose the manner in which they run and structure their business, including the determination of the activities to be entrusted to others and the allocation of financial risks between them.

465. In light of all the above, CCCS finds that **FEOC, OM and FEHMS constitute an SEE for the operation and management of the Village Hotels** which includes the sales and marketing of hotel room accommodation at the Village Hotels to corporate customers. Liability for anti-competitive conduct which relates to the sales and marketing of hotel room accommodation at the Village Hotels to corporate customers is consequently attributable to the SEE.

[560] *Provimi Ltd v Aventis Animal Nutrition SA and others and other actions* [2003] All ER (D) 59 (May) [2003] EWHC 961 (Comm), at [31].
[561] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [175].

(B) Employment, direction and supervision of Village Hotel's sales representative, Eric Tan

466. As set out in Chapter 2 above, Eric Tan participated in the Capri-Village Conduct from at least 3 July 2014 to 30 June 2015. At the relevant time period, Eric Tan was employed by FEOC first as a Senior Sales Manager[562] (from 1 March 2012 to 28 February 2015) and subsequently as an Assistant Director of Sales[563] (from 1 March 2015 to 28 February 2017). In both positions, Eric Tan was responsible for promoting, negotiating and selling hotel rooms at VHC and VHK concurrently to corporate customers.[564]

467. Eric Tan was acting within the scope of his employment in engaging in the practice of exchanging commercially sensitive information with Priscilla Chong in the sale and marketing of hotel rooms at Village Hotels. As set out in paragraphs 197 to 198 above, Eric Tan, in the course of his work as a sales representative of the Village Hotels, was given instructions by Jean Leong (the Area Director of Sales and Marketing[565]) to make contact with and to obtain "*information relating to Capri's key corporate customer accounts and corporate rates*" from Priscilla Chong.[566]

468. Applying the principle set out in *VM Remonts*, anti-competitive conduct on the part of an employee acting within the scope of his/her employment is attributable to the employer and the employer is held liable for the employee's conduct.[567] As such, Eric Tan's conduct, which had taken place following instructions given by Jean Leong, is attributable to his employer, FEOC. FEOC can be held liable for Eric Tan's actions even if it had no knowledge of the conduct.

469. CCCS further considered whether Eric Tan could be found to have acted under the direction or control of FEHMS who was appointed as the exclusive agent of FEOC and OM.[568] Under the HMAs, FEHMS has exclusive control, discretion and authority over matters which include the supervision and direction of staff at

[562] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCS dated 21 June 2017, response to question 21.
[563] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCS dated 21 June 2017, response to question 21.
[564] Response to question 3 of Notes of Information/Explanation provided by Eric Tan (sales representative of VHC/VHK), 18 April 2016; and formation provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCS dated 21 June 2017, paragraph 8(e)(i).
[565] CCCS notes that Jean Leong, as a "Core Executive Staff" during her term as an Area Director of Sales and Marketing, was a cluster employee who was employed by FEOC. Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 8.
[566] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, paragraph 4.1.
[567] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [24].
[568] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, clause 3.4.1 of Annex 4 - Hotel Management Agreement for VHC and clause 3.4.1 of Annex 5 – Hotel Management Agreement for VHK.

VHC and VHK; marketing of VHC and VHK; and well as the determination of policies and prices of VHC and VHK.

470. As set out in paragraph 197 above, in both his roles as a Senior Sales Manager and Assistant Director of Sales, Eric Tan reported to the Area Director of Sales and Marketing of VHC and VHK,[569] who in turn, reported to the Area General Manager of VHC and VHK.[570] These employees i.e. the Area General Managers at VHC and VHK are employees of FEHMS (with the authority to approve the room rates recommended by the relevant sales staff at VHC and VHK).

471. As per paragraph 465 above, CCCS finds that FEOC, OM and FEHMS constitute an SEE for the operation and management of the Village Hotels. For the duration of the Capri-Village Conduct, Eric Tan performed his duties as a sales representative of the Village Hotels, for and under the direction of the SEE comprising FEOC, OM and FEHMS. In view of paragraphs 466 to 470 above, CCCS finds that Eric Tan was acting (i) within the scope of his employment as a sales representative for the Village Hotels; and (ii) under the direction or control of FEHMS, an agent of FEOC and OM, who together with them comprised an SEE, when engaging in the Capri-Village Conduct. As per *VM Remonts*[571], an undertaking may be held liable for the conduct of its independent service provider (non-employees) if the independent service provider was acting under the direction or control of the undertaking concerned. As such, CCCS considers that liability stemming from Eric Tan's conduct is attributable to the SEE comprising FEOC, OM and FEHMS.

(C) CCCS's finding in relation to (A) and (B) above

472. CCCS finds, in light of all the evidence, that liability for the Capri-Village Conduct can be attributed to FEOC, OM and FEHMS as an SEE in view of the following:
    a. FEOC, OM and FEHMS constitute an SEE for the operation and management of the Village Hotels (which includes the sale and marketing of hotel room accommodation at Village Hotels to corporate customers);
    b. As a member of the sales team at the Village Hotels, Eric Tan's primary responsibilities included securing sales for the Village Hotels. He also had the discretion and authority to recommend rates offered to corporate clients;
    c. Eric Tan had been acting within the scope of his employment when engaging in the Capri-Village Conduct;
    d. FEHMS, as an agent of FEOC and OM, and therefore part of the SEE comprising FEOC, OM and FEHMS, had directed/controlled Eric Tan in the performance of his duties as a sales representative of the Village Hotels;
    e. Eric Tan was acting under the direction or control of the SEE comprising

[569] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCS dated 21 June 2017, response to question 25.
[570] Information provided by FEHMS dated 11 July 2017 pursuant to the section 63 Notice issued by CCS dated 21 June 2017, response to question 26.
[571] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [33].

FEOC, OM and FEHMS, in engaging in the Capri-Village Conduct; and

f. Additionally, Eric Tan's conduct is directly attributable to his employer, FEOC.

473. In their written representations, FEOC, OM and FEHMS submitted that the Capri-Village Conduct arose out of *"misguided instructions that Mr. Eric Tan (in his capacity as a salesperson for the Village Hotels) received from Ms. Jean Leong (the former Director of Sales and Marketing of the Village Hotels)… FEHMS (as the entity responsible for the supervision, management and direction of the staff employed for the benefit of the Village Hotels), FEOC and OM were neither aware nor had they sanctioned the aforementioned conduct by Ms. Jean Leong and Mr. Eric Tan*".[572]

474. In light of the legal principles as set out in paragraphs 82 to 85 and the findings in paragraphs 471 and 472 above, the assertion that FEOC, OM and FEHMS were neither aware nor sanctioned the conduct by Ms. Jean Leong and Eric Tan, does not preclude imputation of Eric Tan's conduct to the SEE comprising FEOC, OM and FEHMS. In particular, the evidence revealed that Eric Tan was under the direction or control of the SEE in the performance of his role as the sales representative of VHC and VHK when engaging in the Capri-Village Conduct and that Ms. Jean Leong had instructed Eric Tan (to obtain information relating to Capri's key corporate customer accounts and corporate rates) in response to request from Mr. Koh Yan Leng (the Area General Manager, at the time).[573]

475. FEOC, OM and FEHMS also submitted that liability should not be attributed to FEOC by virtue of Eric Tan's employment relationship with FEOC. In this regard, it was highlighted that the employer-employee relationship exists only in name but not in substance and that Eric Tan was in fact under the sole direction, management and supervision of FEHMS.[574]

476. This submission is rebutted by the evidence that Eric Tan's remuneration and employee benefits are borne by FEOC and OM.[575] CCCS reiterates that FEOC, being Eric Tan's employer, can held liable for Eric Tan's actions even if it had no knowledge of the conduct. Furthermore, CCCS notes that Eric Tan performed his duties as a sales representative for and under the direction of the SEE comprising FEOC, OM and FEHMS. The evidence supports CCCS's finding that liability for Eric Tan's anti-competitive conduct is attributable to the SEE comprising FEOC, OM and FEHMS. To this end, CCCS notes that FEOC, OM and FEHMS do not refute CCCS's finding that they form an SEE.[576] CCCS finds, in view of all the

[572] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraphs 2.1.3 to 2.1.5.
[573] Corporate statement dated 4 July 2016 pursuant to leniency application by FEHMS, Annex 9.
[574] Written Representations of FEOC, OM and FEHMS dated 17 September 2018, paragraph 4.3.4.
[575] Information provided by FEOC dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 8(e); information provided by OM dated 11 October 2017 pursuant to the section 63 Notice issued by CCCS dated 20 September 2017, response to question 8(e); and Written Representations of FEHMS, FEOC and OM, dated 17 September 2018, paragraph 4.3.4.
[576] Agreed record of oral representations of FEOC/OM/FEHMS dated 8 October 2018; paragraph 9.26.

evidence and facts set out above, that liability for the Capri-Village Conduct is attributable to the SEE comprising FEOC, OM and FEHMS.

477. In light of the above, CCCS finds that FEOC, OM and FEHMS are jointly and severally liable for the infringement relating to the Capri-Village Conduct in the period between 3 July 2014 and 30 June 2015.

Infringement relating to Crowne Plaza

OUE Airport Hotel and IHG Singapore

(A) Principal-Agent SEE

478. OUE Airport Hotel, as the owner/master lessee of Crowne Plaza, engaged IHG Singapore to manage and operate Crowne Plaza on its behalf subject to the CPMA. The CPMA "*defines the terms and conditions under which Manager* [IHG Singapore], *on Owner's* [OUE Airport Hotel's] *behalf, will manage the Hotel*".[577]

479. It is apparent from the CPMA that OUE Airport Hotel bears the financial risks of managing and/or operating Crowne Plaza. Clause 13.1 of the CPMA states that the "[✂]".[578]

480. Further, clause 13.2 of the CPMA provides that OUE Airport Hotel "[✂]".[579]

481. CCCS also finds that in relation to the hotel management/operation services that IHG Singapore provides at Crowne Plaza, IHG Singapore provides these services solely and exclusively for and on behalf of OUE Airport Hotel. In return, IHG receives a base management fee, [✂] as well as an incentive management fee, [✂].[580] OUE Airport Hotel receives all the revenues of Crowne Plaza after deducting the expenses relating to the operation of the hotel. This is in accordance with clause 4.3 of the CPMA.[581] In relation to the management and operation of Crowne Plaza, including the sales and marketing of hotel room accommodation at Crowne Plaza to corporate customers, IHG Singapore does not undertake, as an

[577] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 1.1 of Annex B2(1) - Management Agreement.
[578] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 13.1 of Annex B2(1) - Management Agreement.
[579] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 13.2 of Annex B2(1) - Management Agreement.
[580] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 9.1 of Annex B2(1) - Management Agreement.
[581] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 4.3 of Annex B2(1) - Management Agreement.; and Agreed Record of OUE Airport Hotel's Oral Representations on 3 October 2018, paragraph 95.

independent dealer, any business for its own account on the market. In this regard, clause 3.1a of the CPMA clearly states that "[✂]".[582]

482. In his interview with CCCS on 6 and 7 September 2017, Mr. Sunshine Wong, the General Manager of Crowne Plaza, confirmed that the management of Crowne Plaza is carried out in accordance with the CPMA. Mr. Sunshine Wong also confirmed that he represents IHG Singapore in managing Crowne Plaza, for and on behalf of OUE Airport Hotel.[583]

483. In relation to the activities entrusted by OUE Airport Hotel to IHG Singapore, CCCS notes IHG Singapore was entrusted to manage and operate Crowne Plaza, for and on behalf of OUE Airport Hotel "[✂]".[584] The management and operation of Crowne Plaza by IHG Singapore includes the determination of policies/processes relating to pricing as well as sales and marketing activities at Crowne Plaza:

> "[✂]". **[Emphasis added.]**[585]

484. In light of all the above, CCCS finds that OUE Airport Hotel and IHG Singapore are an SEE for the management and operation of Crowne Plaza (which includes the sales and marketing of hotel room accommodation at Crowne Plaza to corporate customers).

485. It is clear from the evidence that the sales and marketing of hotel rooms in Crowne Plaza is an activity entrusted to IHG Singapore by OUE Airport Hotel pursuant to their principal-agent relationship. CCCS also notes that there is no evidence that OUE Airport Hotel prohibited the practice of exchanging commercially sensitive information with Crowne Plaza's competitors in the sale and marketing of hotel rooms in Crowne Plaza.

486. Both OUE Airport Hotel and IHG Singapore made representations that IHG Singapore did bear financial risks in the management and operation of Crowne Plaza.[586] In particular, OUE Airport Hotel submitted that [✂] IHG Singapore will be liable for losses, if the losses are caused by the negligence, omission or default of IHG Singapore, IHG Singapore's agents or servants or any party under IHG Singapore's control and supervision. Similarly, OUE Airport Hotel's obligation

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[582] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 3.1 of Annex B2(1) - Management Agreement.
[583] Response to questions 40 and 48 of Notes of Information/Explanation provided by Sunshine Wong (General Manager of Crowne Plaza), 6 September 2017.
[584] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 3.3 of Annex B2(1) - Management Agreement.
[585] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 3.3 of Annex B2(1) - Management Agreement.
[586] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 22 to 51; and Written Representations of IHG Singapore dated 19 September 2018, paragraphs 2.7.1, 3.6.8 to 3.6.10.

under the CPMA to indemnify IHG Singapore from various liabilities and costs from the operation of Crowne Plaza does not arise to the extent that such liability is caused by (i) the negligent act or omission, material breach by IHG Singapore of its obligations under the CPMA; or (ii) wilful misconduct of IHG Singapore, IHG Singapore's employees, or Crowne Plaza's employees under IHG Singapore's supervision and direction.[587] OUE Airport Hotel also submitted that there will be a financial impact on IHG Singapore if third parties who have entered into contracts with Crowne Plaza do not fulfil their contractual obligations, as this will affect the fees earned by IHG Singapore.[588] IHG Singapore submitted that it bears some financial risk in the management and operation of Crowne Plaza because "*the CPMA provides that IHG may make up to OUE Airport Hotel a shortfall in* [✂] *under certain circumstances…*" if budgeted [✂] targets are not met.[589]

487. Further, OUE Airport Hotel submitted that if IHG Singapore does not perform up to the standards expected of it in the management of Crowne Plaza, this will inevitably have a detrimental impact on the reputation, the business opportunities and the profits of IHG Singapore and the InterContinental Hotels Group.[590] It will also damage the reputation of the "Crowne Plaza Brand" which is a brand that is owned by Six Continents Hotels Inc., IHG Singapore and the subsidiaries of InterContinental Hotels Group PLC.[591]

488. With reference to paragraph 449 above, CCCS reiterates that the financial risk factor relevant to the determination of whether there exists a principal-agent relationship pertains to the economic risk linked to the sale of the goods which the agent has been entrusted to sell.[592] Further, the bearing of a negligible share of the risk by the agent does not render it an independent economic operator. In other words, the bearing of a negligible share of the financial risk by the agent does not preclude the finding of an SEE. In addition, the commission risk borne by an agent does not equate to the bearing of financial risk. In the Advocate-General's Opinion in *Confederación Española*, it was noted that "*the requisite evaluation does not depend on the commission risk. In the classic agency relationship, the agent's remuneration depends wholly or partly on his performance, and in particular on the number and/or value of the transactions he negotiates. Thus, the agent normally bears the commission risk whether he is a genuine or non-genuine agent.*"[593]

489. In the present case, the financial and economic risk for the sale of hotel room accommodation at Crowne Plaza falls squarely upon OUE Airport Hotel, as owner

[587] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 22 to 32.
[588] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 33 to 39.
[589] Written Representations of IHG Singapore dated 19 September 2018, paragraphs 2.7.1, 3.6.8 to 3.6.10.
[590] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 40 to 42.
[591] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 43 to 51.
[592] Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA* ECLI:EU:C:2006:784 at [50] to [61].
[593] Opinion of Advocate General Kokott delivered on 13 July 2006 ECLI:EU:C:2006:473 at [65].

of the hotel. It should be highlighted that whilst IHG Singapore is entrusted with the sale and marketing of hotel room accommodation at Crowne Plaza, it does not take on the possession of said hotel rooms. In other words, it does not bear inventory risk. In the event that there are no customers who purchase the hotel room accommodation despite genuine efforts by IHG Singapore to sell and market the hotel rooms, it is OUE Airport Hotel which will bear the loss in revenue. IHG Singapore bears commission risks (such as lower fees and/or punitive sanctions [✂] if budgeted [✂] targets are not met), which cannot be considered a significant financial risk linked to the sale of the goods. While the commission structure in this case is partially dependent on room sales, it is inherently the compensation to IHG Singapore for the provision of agency services to its principal (OUE Airport Hotel), *not* the sale of hotel rooms itself. This includes the possible impact on its reputation as a chain hotel operator. The above should be contrasted with, for example, a scenario wherein a hotel operator rents the hotel premises from the building owner for a fixed rental fee. In that scenario, the hotel operator takes possession of the hotel rooms and takes on the financial risk for the sale of the hotel room accommodation. The building owner would bear no financial risk from the sale of hotel room accommodation as he would receive a fixed rental fee regardless of the number of hotel rooms sold.

490. In this case, the management/operation of Crowne Plaza is an activity entrusted to IHG Singapore by OUE Airport Hotel; and IHG Singapore performs the activity in exchange for a contracted fee.[594] OUE Airport Hotel keeps the profits[595] and bears the costs of the operating expenses and capital expenditure of the hotel (including staff salaries).[596] OUE Airport Hotel also indemnifies IHG Singapore from various liabilities and costs from the operation of the hotel.[597] The fact that IHG Singapore will be liable (or is not indemnified by OUE Airport Hotel) for losses due to its own acts or the acts of personnel under its supervision does not mean that it bears financial risks linked necessarily to the sale of the goods, i.e. hotel rooms. Instead, it represents the economic risk associated with the provision of agency services to the principal.

491. OUE Airport Hotel and IHG Singapore also made representations that IHG Singapore did not act solely and exclusively for and on behalf of OUE Airport

[594] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 9.1 of Annex B2(1) - Management Agreement.
[595] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 4.3 of Annex B2(1) - Management Agreement.; and Agreed Record of OUE Airport Hotel's Oral Representations on 3 October 2018, paragraph 95.
[596]Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clauses 4.1 to 4.3 of Annex B2(1) - Management Agreement.
[597] Except for when such liability is caused by the negligent act or omission, material breach by IHG Singapore of its obligations under the CPMA; or wilful misconduct of IHG Singapore, IHG Singapore's employees, or Crowne Plaza's employees under IHG Singapore's supervision and direction. See [✂] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 26 and 27.

Hotel in providing hotel management/operation services at Crowne Plaza.[598] It was submitted that IHG Singapore operates and manages Crowne Plaza independently (i.e. it was able to determine business strategies without interference from OUE Airport Hotel) [599] and IHG Singapore did not hold itself out as representing OUE Airport Hotel nor did it enter into contracts on OUE Airport Hotel's behalf.[600]

492. It is pertinent to note that the CFI in *Minoan Lines* had observed that the agent in that case "*enjoyed very broad powers of representation*" and was "*authorised and instructed not only to organise the network of local agents and to promote the sale of tickets for foreign destinations but also, more generally, to manage the vessels on the international routes, to represent the applicant, to concern itself with all questions and actions relating to the vessels which it managed and to promote their use in the name of and on behalf of*" the principal.[601] The extent of discretion given to IHG Singapore, or the level of involvement by OUE Airport Hotel in the day-to-day operations of Crowne Plaza, do not affect the finding that that IHG Singapore was entrusted to manage and operate Crowne Plaza for and on behalf of OUE Airport Hotel. It is important to note that the Capri-Crowne Plaza Conduct had taken place in the context of the sale and marketing of hotel rooms at Crowne Plaza, falling squarely within the very task entrusted to IHG Singapore by OUE Airport Hotel.

493. CCCS notes that where one party enters into third party contracts in the name of another party, this may be a factor that supports a finding that the parties have a principal-agent relationship between them. However, the converse is not true since a principal may allow its agent to conclude third party contracts using a brand name, or even the agent's own name, in selling goods or performing services on the principal's behalf. It is clear from the case of *Voestalpine* that an agency agreement can cover "*a situation in which 'a legal or physical person (the agent) is vested with the power to negotiate and/or conclude contracts on behalf of another person (the principal), either in the agent's own name or in the name of the principal, for the ... purchase of goods or services supplied by the principal'*".[602] The fact that third party contracts are concluded in the name of Crowne Plaza or even InterContinental Hotels Group does not detract from the finding that IHG Singapore acts as an agent of OUE Airport Hotel in the management and operation Crowne Plaza.

494. OUE Airport Hotel and IHG Singapore also submitted that InterContinental Hotels Group undertakes business for its own account on the market as it manages numerous other hotels (including those under the Crowne Plaza Brand and the

[598] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 55 to 84; and Written Representations of IHG Singapore dated 19 September 2018, paragraphs 2.7.1, 3.6.1 to 3.6.7.
[599] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 55 to 62.
[600] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 75 to 84.
[601] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515, at [110].
[602] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [145].

other hotel brands that it owns).[603] Some of these hotels are managed by InterContinental Hotels Group "*as an agent of other hotel owners*"[604], while some are owned and managed by InterContinental Hotels Group[605]. IHG Singapore made the representation that "*IHG* [Singapore] *cannot be held to form a SEE with OUE Airport Hotel in this case, given that Crowne Plaza is just one of many other hotels which IHG* [Singapore] *manages under other IHG Group brands as an agent of other hotel owners*".[606]

495. To reiterate, CCCS's finding is that in relation to the hotel management/operation services IHG Singapore provides at Crowne Plaza (the hotel located at Changi Airport), these services are solely and exclusively for and on behalf of OUE Airport Hotel. The fact that InterContinental Hotels Group manages many other hotels - or that it acts as agents for owners of other hotels - does not detract from the finding that IHG Singapore manages and operates Crowne Plaza (i.e. the hotel located at Changi Airport) for and on behalf of OUE Airport Hotel. As set in paragraph 64 above, the case of *Voestalpine* makes clear that even where the agent represents multiple principals, the agent may still form an SEE with one of the principals.[607]

496. CCCS notes OUE Airport Hotel's submission that "*even when IHG Singapore was doing work for Crowne Plaza Hotel, it was simultaneously undertaking work for its own account*"; for example, room rate negotiations with certain corporate customers are performed by IHG Singapore not only for Crowne Plaza, but for multiple hotels managed by InterContinental Hotels Group.[608] However, IHG Singapore's negotiation of rates for rooms at Crowne Plaza is performed for and on behalf of OUE Airport Hotel. The profits received from the sales of these rooms still belong to OUE Airport Hotel.

497. OUE Airport Hotel also represented that it should not be liable for IHG Singapore's conduct because (i) IHG Singapore did not, in practice[609], keep OUE Airport Hotel regularly updated on the sales and marketing of rooms at Crowne Plaza[610]; and (ii) whilst there is no evidence that OUE Airport Hotel specifically instructed and/or reminded sales representatives at Crowne Plaza not to engage in

[603] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 63 to 74; and Written Representations of IHG Singapore dated 19 September 2018, paragraphs 3.6.4 to 3.6.7.
[604] Written Representations of IHG Singapore dated 19 September 2018, paragraph 3.6.7.
[605] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraph 71.
[606] Written Representations of IHG Singapore dated 19 September 2018, paragraph 3.6.7.
[607] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [157]. In relation to this, IHG Singapore represented that CCCS cannot rely on the case of *Voestalpine* in finding SEE. In support of the representation, IHG Singapore submitted that *Voestalpine* should be distinguished on its facts because, *inter alia*, the two principals represented by the offending agent were both participants in the cartel. See Written Representations of IHG Singapore dated 19 September 2018, paragraph 3.7. CCCS does not agree with the representation and considers that the application of the principles in *Voestalpine* is not limited to the specific facts of that case.
[608] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 72 and 73.
[609] CCCS notes that IHG Singapore is obliged, under clause 3.7 of the CPMA, to [✂], including marketing plans.
[610] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 89 to 113 and 144.

conduct that would breach competition law, IHG Singapore was contractually obliged under the CPMA to ensure that the operation of Crowne Plaza was carried out in accordance with the relevant laws and regulations.[611] Conversely, IHG Singapore submitted that the authorities cited by CCCS do not support the attribution of liability from principal to agent; and as such, it should not be held liable for OUE Airport Hotel's infringement of section 34 prohibition.[612]

498. The ECJ in *Siemens AG* had made clear that in accordance with the principle of personal responsibility, when an economic entity has infringed competition rules, it is for that economic entity to answer for that infringement. A legal person who is not the perpetrator of an infringement of competition rules may nevertheless be penalised for the unlawful conduct of another legal person, if both persons form part of the same economic entity. [613] This principle was also espoused by the English High Court in *Provimi*, where it is stated that "*[t]he EU competition law concept of an "undertaking" is that it is one economic unit. The legal entities that are a part of the one undertaking, by definition of the concept, have no independence of mind or action or will. They are to be regarded as all one. Therefore, so it seems to me, the mind and will of one legal entity is, for the purposes of Article 81, to be treated as the mind and will of the other entity. There is no question of having to "impute" the knowledge or will of one entity to another, because they are one and the same.*"[614] Having been satisfied that OUE Airport Hotel and IHG Singapore constitute an SEE, CCCS considers that liability for anti-competitive conduct is attributable to the SEE.

499. CCCS further notes that even though the CFI and the General Court, in *Minoan Lines* and *Voestalpine* respectively, had found that the principals were aware of the offending acts of their agents, the General Court had made clear in *Voestalpine* that where the principal and agent are an SEE, it is not necessary to prove that the principal had been aware of the anti-competitive conduct of the agent, for the principal to be held liable.[615]

500. IHG Singapore further submitted that in determining if OUE Airport Hotel and IHG Singapore form an SEE for purposes of attributing liability for competition law infringements from OUE Airport Hotel (a principal) to IHG Singapore (an agent), the consideration of "*whether IHG had instructed OUE Airport Hotel (or its employee, Ms Leong) to carry on the infringing Conduct*" should constitute a "*crucial factor*".[616] CCCS considers that IHG Singapore's representation above is

[611] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 114 to 125 and 144.
[612] Written Representations of IHG Singapore dated 19 September 2018, paragraphs 4.1 to 4.3.
[613] Joined Cases C-231/11 P to C-233/11 P *Commission v Siemens Osterreich and Others & Siemens Transmission & Distribution and Others v Commission* ECLI:EU:C:2014:256, at [45].
[614] *Provimi Ltd v Aventis Animal Nutrition SA and others and other actions* [2003] All ER (D) 59 (May) [2003] EWHC 961 (Comm), at [31].
[615] Case T-418/10 *Voestalpine and Voestalpine Wire Rod Austria v Commission* ECLI:EU:T:2015:516, at [175].
[616] Written Representations of IHG Singapore dated 19 September 2018, paragraph 3.8. IHG Singapore also submitted that CCCS's treatment of IHG Singapore and OUE Airport Hotel as two separate undertakings in carrying out its investigation indicates that CCCS itself does not consider IHG Singapore and OUE Airport Hotel

unsubstantiated in law. In any event, CCCS stresses that it is not attributing liability from OUE Airport Hotel to IHG Singapore.

501. In light of all the above, **CCCS finds that OUE Airport Hotel and IHG Singapore are an SEE for the management and operation of Crowne Plaza** (which includes the sales and marketing of hotel room accommodation at Crowne Plaza to corporate customers). It follows that liability for anti-competitive conduct which relates to the sales and marketing of hotel room accommodation at Crowne Plaza to corporate customers is attributable to the SEE.

(B) Employment, direction and supervision of Crowne Plaza's sales representative, Gladys Leong

502. As set out in Chapter 2 above, Gladys Leong participated in the Capri-Crowne Plaza Conduct from at least 14 January 2014 to 30 June 2015. During the relevant period, Gladys Leong was contractually employed by OUE Airport Hotel as a Director of Business Development at Crowne Plaza.[617]

503. In her role as a Director of Business Development at Crowne Plaza, Gladys Leong managed the sales team at Crowne Plaza and was "*responsible for bringing in sales for the hotel*".[618] Additionally, Gladys Leong was involved in the setting of room rates for Crowne Plaza.[619]

504. As set out in paragraph 301 above, prior to her promotion as the Director of Business Development, Gladys Leong received directions and/or instructions from Mr. Sam Hoso and Mr. Damien Soh (Director of Business Development at the time) to collect information on competitor hotels.[620] Gladys Leong continued to collect such information even after Mr. Sam Hoso and Mr. Damien Soh left their employment at Crowne Plaza.[621]

505. The competitor information obtained would be shared during the weekly meetings of the Crowne Plaza sales team.[622] The information shared was also sometimes

to be an SEE. IHG Singapore and OUE Airport Hotel should therefore not be treated as an SEE for the purposes of attributing to IHG Singapore, liability arising from OUE Airport Hotel's breach of the section 34 prohibition. See Written Representations of IHG Singapore dated 19 September 2018, paragraph 3.9.

[617] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCS dated 21 June 2017, response to question 8.

[618] Response to question 4 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

[619] Response to question 14 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

[620] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 2.

[621] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.

[622] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.

recorded in a Microsoft Excel spreadsheet or a Google Drive document.[623] Gladys Leong would also occasionally share information on competitor hotels at the Revenue and Yield meetings at Crowne Plaza.[624]

506. Notably, the evidence reveals that, in the relevant time period, information pertaining to room rates offered by other competitor hotels to Crowne Plaza's corporate customers have been set out by sales representatives (such as Gladys Leong) into [✂] forms containing the sales representatives' proposed rates for corporate customers.[625] These [✂] forms are then signed by the relevant account manager, the Director of Business Development, the Director of Sales and Marketing and the General Manager.[626]

507. The evidence shows that Gladys Leong was acting within the scope of her employment in engaging in the practice of exchanging commercially sensitive information with Priscilla Chong in the sale and marketing of hotel rooms at Crowne Plaza.

508. As per *VM Remonts*, anti-competitive conduct on the part of an employee acting within the scope of his/her employment is attributable to the employer and the employer is held liable for the employee's conduct.[627] As such, Gladys Leong's conduct is directly attributable to her employer, OUE Airport Hotel. OUE Airport Hotel can be held liable for Gladys Leong's actions even if it had no knowledge of the conduct.

509. The evidence also shows that Gladys Leong acted under the direction or control of IHG Singapore. Pursuant to the CPMA, IHG Singapore "[✂]".[628]

510. Moreover, clause 8.2 of the CPMA expressly states that the "[✂]".[629] **[Emphasis added.]**

511. As set out in paragraphs 187 and 188 above, Gladys Leong, in her role as the Director of Business Development, reported to Mr. Sam Hoso, the Director of Sales and Marketing at Crowne Plaza.[630] In turn, Mr. Sam Hoso reported to the

[623] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.
[624] Information provided by OUE Airport Hotel dated 19 July 2017 pursuant to the section 63 Notice issued by CCCS dated 21 June 2017, response to question 9.
[625] Response to questions 197 to 200 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 15 March 2016.
[626] Response to question 15 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.
[627] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [24].
[628] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 3.2 of Annex B2(1) - Management Agreement.
[629] Information provided by IHG Singapore dated 30 June 2017 pursuant to the section 63 Notice issued by CCCS dated 29 May 2017, clause 8.2 of Annex B2(1) - Management Agreement.
[630] Response to question 6 of Notes of Information/Explanation provided by Gladys Leong (sales representative of Crowne Plaza), 11 March 2016.

General Manager of Crowne Plaza.[631] The position of General Manager at Crowne Plaza is held by employees of IHG Singapore who are seconded to lead the management team at Crowne Plaza (which oversees the day-to-day operations of Crowne Plaza).[632]

512. As per paragraph 501 above, CCCS finds that OUE Airport Hotel and IHG Singapore constitute an SEE for the management and operation of Crowne Plaza. For the duration of the Capri-Crowne Plaza Conduct, Gladys Leong performed her duties as a sales representative of Crowne Plaza, for and under the direction of the SEE comprising OUE Airport Hotel and IHG Singapore. In view of paragraphs 502 and 511 above, CCCS finds that Gladys Leong was acting (i) within the scope of her employment as a sales representative for Crowne Plaza; and (ii) under the direction or control of IHG Singapore, an agent of OUE Airport Hotel, who together with OUE Airport Hotel comprise an SEE, when engaging in the Capri-Crowne Plaza Conduct. As per *VM Remonts*[633], an undertaking may be held liable for the conduct of its independent service provider (non-employees) if the independent service provider was acting under the direction or control of the undertaking concerned. As such, CCCS considers that liability stemming from Gladys Leong's conduct is attributable to the SEE comprising OUE Airport Hotel and IHG Singapore.

(C) CCCS's finding in relation to (A) and (B) above

513. CCCS finds, in light of all the evidence, that liability for the Capri-Crowne Plaza Conduct can be attributed to OUE Airport Hotel and IHG Singapore as an SEE in view of the following:
    a. OUE Airport Hotel and IHG Singapore constitute an SEE for the operation and management of Crowne Plaza (which includes the sale and marketing of hotel room accommodation at Crowne Plaza to corporate customers);
    b. As a member of the sales team at Crowne Plaza, Gladys Leong's primary responsibilities included securing sales for Crowne Plaza. She was also involved in the setting of room rates for Crowne Plaza;
    c. Gladys Leong had been acting within the scope of her employment when engaging in the Capri-Crowne Plaza Conduct;
    d. IHG Singapore, as an agent of OUE Airport Hotel and therefore as part of the SEE comprising OUE Airport Hotel and IHG Singapore, had directed/controlled Gladys Leong in the performance of her duties as a sales representative of Crowne Plaza;
    e. Gladys Leong was acting under the direction or control of the SEE comprising OUE Airport Hotel and IHG Singapore in engaging in the Capri-

[631] Response to question 32 of Notes of Information/Explanation provided by Sunshine Wong (General Manager at Crowne Plaza), 6 September 2017.
[632] Responses to questions 80 and 81 of Notes of Information/Explanation provided by Sunshine Wong (General Manager of Crowne Plaza), 6 September 2017.
[633] Case C-542/14 *SIA 'VM Remonts' and others v Konkurences padome* ECLI:EU:C:2016:578, at [33].

Crowne Plaza Conduct;

f. Additionally, Gladys Leong's conduct is directly attributable to her employer, OUE Airport Hotel.

514. OUE Airport Hotel made representations that Gladys Leong's conduct should not be attributed to it.[634] In this regard, OUE Airport Hotel submitted that "*the party which should be held liable for the personnel working at Crowne Plaza Hotel should be IHG Singapore, given that these personnel are all working under the control and direction of IHG Singapore. While the personnel working at Crowne Plaza Hotel are notionally employed by OUE Airport Hotel in the sense that their salaries are paid by OUE Airport Hotel, it is not disputed that these employees are all hired, trained and supervised by IHG Singapore*".[635]

515. On the other hand, IHG Singapore made representations that Gladys Leong's conduct should be imputed to OUE Airport Hotel, as her employer. In this regard, IHG Singapore submitted that since "*Ms Leong is not an employee of IHG, but simply an employee of OUE Airport Hotel (i.e. IHG's principal), the CCCS has no basis to attribute OUE Airport Hotel's liability (arising from Ms Leong's Conduct) to IHG*".[636]

516. In addition, IHG Singapore submitted that no evidence has been adduced to show that IHG Singapore had in fact directed/controlled Gladys Leong in respect of the infringing conduct that she carried out; nor was there any evidence that IHG Singapore was aware of or could reasonably have foreseen Gladys Leong's infringing conduct.[637]

517. CCCS stresses that it is not attributing liability from OUE Airport Hotel to IHG Singapore. To reiterate, as set out above in paragraphs 478 to 500, the evidence supports CCCS's finding that OUE Airport Hotel and IHG Singapore form an SEE. Further, as set out in in paragraphs 502 to 513, the evidence supports CCCS's finding that Gladys Leong's conduct in engaging in the Capri-Crowne Plaza Conduct can be imputed to the SEE comprising OUE Airport Hotel and IHG Singapore. CCCS further notes that, in order to make this finding, it is not required to adduce evidence to show that IHG Singapore had in fact directed/controlled Gladys Leong in respect of the infringing conduct that she carried out; or that IHG Singapore was aware of or could reasonably have foreseen Gladys Leong's infringing conduct. However, in imputing the conduct of Gladys Leong to the SEE comprising OUE Airport Hotel and IHG Singapore, CCCS considered all the evidence set out above which shows that Gladys Leong was under the direction or control of IHG Singapore in the performance of her role as the Director of Business Development at Crowne Plaza when she engaged in the Capri-Crowne Plaza Conduct.

[634] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 131 to 143.
[635] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraph 134.
[636] Written Representations of IHG Singapore dated 19 September 2018, paragraphs 4.1 to 4.3.11 and 4.4.9.
[637] Written Representations of IHG Singapore dated 19 September 2018, paragraphs 4.4.1 to 4.4.8.

518. In light of the above, CCCS finds that OUE Airport Hotel and IHG Singapore are jointly and severally liable for the infringement relating to the Capri-Crowne Plaza Conduct in the period between 14 January 2014 and 30 June 2015.

B. CCCS's Infringement Decision

519. CCCS is satisfied that there is sufficient evidence to find that the respective Parties listed at paragraph 1 above, infringed the section 34 prohibition by entering into agreement(s) and/or concerted practice(s) to discuss and exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers. CCCS is also satisfied that each of the Parties consists of different corporate entities which form an SEE.

520. Accordingly, CCCS makes a decision that:
    (i) AFPL and FHPL as an SEE, and FEOC, OM and FEHMS as an SEE, have infringed the section 34 prohibition by engaging in the Capri-Village Conduct in the period between 3 July 2014 and 30 March 2015.
    (ii) FH Trustee and FHPL as an SEE, and FEOC, OM and FEHMS as an SEE, have infringed the section 34 prohibition by engaging in the Capri-Village Conduct in the period between 31 March 2015 and 30 June 2015.
    (iii) AFPL and FHPL as an SEE, and OUE Airport Hotel and IHG Singapore as an SEE, have infringed the section 34 prohibition by engaging in the Capri-Crowne Plaza Conduct in the period between 14 January 2014 and 30 March 2015.
    (iv) FH Trustee and FHPL as an SEE, and OUE Airport Hotel and IHG Singapore as an SEE, have infringed the section 34 prohibition by engaging in the Capri-Crowne Plaza Conduct in the period between 31 March 2015 and 30 June 2015.

521. CCCS is imposing on the Parties the penalties listed in Chapter 4 below. The different corporate entities forming an SEE (Party) are jointly and severally liable for the penalty(ies) imposed on the Party in respect of the Party's infringement(s).

CHAPTER 4: CCCS'S ACTION

A. Financial Penalties - General Points

522. Under section 69(2)(d) of the Act, CCCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty. Any financial penalty imposed by CCCS

may 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.[638]

523. Before exercising the power to impose a financial penalty, CCCS must be satisfied, as a threshold condition, that the infringement had been committed intentionally or negligently.[639] This is similar to the position in the EU and the UK. In this respect, CCCS notes that in determining whether this threshold condition is met, both the European Commission and the UK Competition and Markets Authority ("**CMA**")[640] are not required to decide whether the infringement was specifically committed intentionally or negligently, so long as they are satisfied that the infringement was *either* intentional *or* negligent.[641]

524. As established in the *Pest Control Case*[642], the *Express Bus Operators Case*[643], the *Electrical Works Case*[644] and the *Freight Forwarding Case*[645], the circumstances in which CCCS might find that an infringement has been committed intentionally include the following:

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

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

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

525. Ignorance or a mistake of law is no bar to a finding of 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.[646]

526. CCCS finds that the Capri-Village Conduct and the Capri-Crowne Plaza Conduct were each a single continuous infringement in pursuit of the common overall

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[638] Section 69(4) of the Act.
[639] Section 69(3) of the Act and *CCCS Guidelines on Enforcement 2016*, paragraphs 4.3 to 4.11.
[640] The CMA acquired its powers on 1 April 2014 when it took over many of the functions of the Competition Commission and the OFT, see https://www.gov.uk/government/organisations/competition-and-markets-authority/about.
[641] Case C-137/95P *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and Others v Commission* [1996] ECR I-1611 at [356]; and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [452] to [458].
[642] *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[643] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[644] *Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[645] CCS 700/003/11 *Infringement of the section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore*, dated 11 December 2014, at [635] to [636].
[646] *CCCS Guidelines on Enforcement 2016*, paragraph 4.10.

objective to reduce/eliminate uncertainties inherent in the process of competition between the hotels as to their conduct on the market vis-à-vis their corporate customers with respect to pricing and other sales and marketing strategies in the provision of hotel room accommodation to corporate customers. CCCS finds that each single continuous infringement, which have as their object the restriction of competition, are likely to have been, by their very nature, committed intentionally.

527. In this regard, CCCS finds that the Parties must have been aware that the agreements and/or concerted practices in which they participated would restrict competition but still decided to carry on with them. The Parties were aware that discussing and exchanging confidential, customer-specific, commercially sensitive information reduces/eliminates uncertainties inherent in the process of competition between the hotels. The Parties knowingly substituted the risks of competition in favour of practical cooperation related to the disclosure of information - including factors which can affect the determination of prices (room rates) offered to the corporate customers - instead of setting and determining their sales/marketing strategies (including pricing strategies) independently.

528. By way of example, Priscilla Chong and Eric Tan agreed that they should keep in close contact when it comes to a particular corporate customer so that Capri and Village Hotels will not "*have to be squeezed into the corner or to listen to* [✂] *and give her everything she wants.*"[647] Priscilla Chong indicated that she initiated the conversation with Gladys Leong on a particular customer to, "*get a feel of the rate she* [Gladys Leong] *was going to offer to the customer and an understanding that we were both going to increase our rates,…*".[648]

529. Based on the above evidence, CCCS is satisfied that the Parties had infringed the section 34 prohibition intentionally or negligently. CCCS therefore imposes a penalty on the Parties as set out in the following section.

B. Calculation of Penalties

530. The *CCCS Guidelines on the Appropriate Amount of Penalty 2016* ("**Penalty Guidelines**") provides that the twin objectives in imposing any financial penalty are: (i) to reflect the seriousness of the infringement, and (ii) to deter undertakings from engaging in anti-competitive practices.[649] A financial penalty to be imposed by CCCS under section 69 of the Act will be calculated following a six-step approach: calculation of the base penalty having regard to the seriousness of the infringement (expressed as a percentage rate) and the turnover of the business of the undertaking in Singapore for the relevant product and relevant geographic markets affected by the infringement ("**the relevant turnover**") in the

[647] Response to question 44 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 29 July 2015.
[648] Response to question 155 of Notes of Information/Explanation provided by Priscilla Chong (sales representative of Capri), 14 July 2015.
[649] *Penalty Guidelines*, paragraph 1.7.

undertaking's last business year; the duration of the infringement; other relevant factors such as deterrent value; any aggravating and mitigating factors; statutory maximum penalty as provided for under section 69(4) of the Act; and immunity, leniency reductions and/or fast-track procedure discounts. Similar approaches were adopted in the *Pest Control Case*[650], the *Express Bus Operators Case*[651], the *Electrical Works Case*[652] and the *Freight Forwarding Case*.[653]

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

(i) Step 1: Calculation of the base penalty

532. The seriousness of the infringement and the relevant turnover of each Party are taken into account when setting the starting point for calculating the base penalty amount as a percentage rate of each Party's relevant turnover in each infringement.

Seriousness

533. 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 other factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement(s), entry conditions and the effect on competitors and third parties. The impact and effect of the infringement(s) 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.[654]

534. The seriousness of the infringement may also depend on the nature of the infringement. CCCS considers that each of the two infringements, which involved the exchange of commercially sensitive information (including information which can affect the future determination of prices), had the object of preventing, restricting or distorting competition and is a serious infringement of the Act.

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[650] *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [360].
[651] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [452].
[652] *Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [296].
[653] CCS 700/003/11 *Infringement of the section 34 prohibition in relation to the provision of air freight forwarding services for shipments from Japan to Singapore*, dated 11 December 2014, at [648].
[654] *Penalty Guidelines*, paragraph 2.4.

535. Nature of the product and structure of the market - The relevant market in this case is the provision of hotel room accommodation in Singapore to corporate customers. In relation to this market, CCCS notes that there are numerous players besides the Parties providing hotel room accommodation in Singapore to corporate customers. However, the evidence shows that Capri and Village Hotels; and Capri and Crowne Plaza, compete very closely with each other on the market.[655]

536. As set out in paragraphs 189 to 192 above, each of (i) Capri and Village Hotels and (ii) Capri and Crowne Plaza regard each other as close competitors. This is by the virtue of factors which include, but are not limited to, the following: (i) similarity in room offerings; (ii) similarity in amenities; (iii) similarity in volume of room stock; (iv) the perceived star ratings of the hotels; (v) the proximity of the hotels to each other; and (vi) the proximity of the hotels to other important locations and amenities such as transport hubs or common meeting venues.[656]

537. CCCS further notes that Capri and Village Hotels, and separately Capri and Crowne Plaza, overlap in the corporate customers that they serve. This is consistent with evidence that demonstrates that a critical consideration of their corporate customers is the hotels' geographical location vis-à-vis the customer's own office(s)/facility(s) and the hotels' room rates, followed by other factors such as amenities provided by the hotels.[657] In light of the above, CCCS finds that Capri and Village Hotels; and Capri and Crowne Plaza, compete very closely with each other on the market.

538. Effect on customers, competitors and third parties - CCCS considers that it is difficult to quantify the amount of any loss caused to corporate customers as a result of the infringements. This is due to the lack of information on the prices that would have been quoted to the corporate customers under a "counterfactual" scenario.[658]

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[655] Information provided by FEHMS dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 5; information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 7; and information provided by Inter-Continental Hotels (Singapore) Pte Ltd dated 4 November 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 5.

[656] Information provided by Capri by Fraser Changi City Singapore dated 24 October 2016 pursuant to the section 63 Notice issued by CCCS dated 30 September 2016, response to question 7.

[657] Information provided by Barclays dated 28 March 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by Cisco dated 25 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by Medtronic dated 28 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by SCB dated 11 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; information provided by UPS dated 24 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2; and information provided by Yokogawa dated 10 April 2017 pursuant to the section 63 Notice issued by CCCS dated 14 March 2017, response to question 2.

[658] 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 concerted practice to exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers.

539. However, CCCS considers that the agreement(s) and/or concerted practice(s) allowed the Parties to substitute the risks of competition in favour of practical cooperation related to the disclosure of commercially sensitive information between them including information which can affect the future determination of prices (room rates) offered to corporate customers. The information exchanged included *inter alia* the hotels' bid prices; percentages by which customers asked for bid prices to be dropped and the position that each sales representative's hotel would take in response to such requests. Priscilla Chong and Eric Tan also discussed price-related strategies - such as agreements to refrain from offering free inclusions or upgrades and agreements to offer higher priced room types at points of room booking - which can impact the prices (room rates) paid by the corporate customer.

540. CCCS finds that the sharing of such commercially sensitive information served to eliminate or reduce uncertainties inherent in the process of competition (i) between Capri and the Village Hotels, and (ii) between Capri and Crowne Plaza, as to their conduct on the market vis-à-vis their corporate customers. If not for the conduct of each of the Parties, as competitors, there would have existed a higher level of uncertainty between the hotels in terms of the sales and marketing strategies (including pricing strategies) of their competitor(s). In such a situation, the Parties would have had to adopt more competitive pricing and/or non-pricing strategies in competing to be on a corporate customer's list of preferred hotels as well as to secure actual room bookings by corporate customers. As such, CCCS is of the view that each of the infringements, is likely to have had a significant impact on the intensity of competition between the hotels, particularly in relation to the prices (room rates) offered by the hotels to corporate customers.

Relevant turnover

541. An undertaking's relevant turnover is the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year.[659] An undertaking's last business year refers to the financial year preceding the date when the infringement ended.[660]

542. Applying the relevant market definition above, relevant turnover in this case would therefore be the turnover of each Party from the provision of hotel room accommodation in Singapore to corporate customers in the financial year preceding the year the infringement ended.

[659] *Penalty Guidelines*, paragraph 2.5. Generally, CCCS will base relevant turnover on figures from the undertaking's audited accounts, and is typically limited to the amounts derived by the undertaking from the sale of relevant products and provision of relevant services falling within the undertaking's ordinary activities in Singapore after the deduction of sales rebates, goods and services tax, and other taxes directly related to turnover. Nonetheless, CCCS retains the discretion to base relevant turnover on different figures in certain circumstances. See *Penalty Guidelines*, paragraph 2.6.
[660] *Penalty Guidelines*, paragraph 2.5.

Starting point percentage

543. In determining the starting point, CCCS considered the nature of the infringement, the nature of the product, the structure of the market, and the potential effect of the infringements on customers, competitors and third parties.

544. In its representations to CCCS, IHG Singapore submitted that CCCS should have applied a lower starting percentage in this case given that the Capri-Crowne Plaza Conduct did not constitute a hardcore cartel.[661] IHG Singapore also submitted that CCCS should apply a lower starting percentage than that applied in the *Ferry Operators Case* as Crowne Plaza and Capri have lower market shares than the parties in the *Ferry Operators Case*.[662] AFPL as well as FH Trustee and FHPL submitted in their representations that the starting percentage is disproportionately high in view that a significant part of the exchanges of information were not anti-competitive, that CCCS is unable to quantify the impact of the alleged infringement, and that only two out of a significant number of suppliers in the relevant market, whose collective market share is small, were involved in the alleged infringement.[663]

545. As set out in paragraphs 533 to 540, CCCS has considered the seriousness of the infringement in setting the starting percentage, including the nature of the infringement, the nature of the product, structure of market, and the effect on customers, competitors and third parties. In relation to the *Ferry Operators Case*, CCCS would highlight that one of the factors considered in setting the starting percentage in that case was that it was CCCS's first information exchange case.

546. Taking all factors into account, CCCS considers that [✂]% is an appropriate starting point.

(ii) Step 2: Duration of the infringements

547. After calculating the base penalty sum, CCCS adjusts this sum by multiplying it by the duration of the infringement.[664] In this case, the duration is determined by having regard to the date when each became party to a single continuous infringement, and the date on which their participation ceased.

548. An infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement. Penalties for infringements that last more than one year may be multiplied by the number of years of the infringement;

[661] Written Representations of IHG Singapore dated 19 September 2018, paragraph 5.2.1.
[662] Written Representations of IHG Singapore dated 19 September 2018, paragraphs 5.2.2 to 5.2.3.
[663] Written Representations of FHPL and FH Trustee dated 21 September 2018, paragraphs 4.2 to 4.3 and paragraph 4.9; and Written Representations of AFPL dated 21 September 2018, paragraphs 4.2 to 4.3 and paragraph 4.9.
[664] *Penalty Guidelines*, paragraph 2.9.

and a part of a year may be treated as a full year for the purpose of calculating the duration of the infringement.[665]

549. However, CCCS may, in cases involving duration over one year, round down part years to the nearest month.[666] In such cases, the duration multiplier used will be the actual length of the infringement rounded down to the nearest month.

(iii) Step 3: Aggravating and mitigating factors

550. At this stage, CCCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[667] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

(iv) Step 4: Other relevant factors

551. At Step 4, 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.

552. CCCS considers that if the financial penalty imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of deterrence, CCCS will adjust the penalty to meet the objectives of deterrence.[668] In determining whether to impose an uplift, CCCS may take into account other 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.[669]

553. CCCS notes that in the *Express Bus Operators Appeal No. 3*[670], the CAB revised upwards the financial penalty against Regent Star to S$10,000 to achieve the objective of deterrence. CCCS further notes that this practice is in line with the position in other competition regimes. For instance, in the UK, the CMA refers to "*The OFT's Guidance as to the Appropriate Amount of Penalty*" which adopts a similar approach.[671]

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[665] *Penalty Guidelines*, paragraph 2.10.
[666] *Penalty Guidelines*, paragraph 2.10.
[667] *Penalty Guidelines*, paragraph 2.13.
[668] *Penalty Guidelines*, paragraph 2.3. See also *Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [378].
[669] *Penalty Guidelines*, paragraph 2.18.
[670] *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Regent Star Travel Pte Ltd* [2011] SGCAB 2, at [106].
[671] OFT 423, *OFT's Guidance as to the Appropriate Amount of Penalty*, September 2012, paragraph 2.11. This guidance, originally published by the OFT, has been adopted by the CMA when it acquired its powers on 1 April 2014. The original text has been retained unamended.

(v) Step 5: Maximum statutory penalty

554. Section 69(4) of the Act provides that the maximum penalty CCCS can impose on an undertaking may not exceed 10% of the turnover of the business of the undertaking in Singapore for each year of infringement, up to a maximum of three years (the "**Statutory Maximum Penalty**"). The Competition (Financial Penalties) Order 2007 states that applicable turnover shall be limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities in Singapore after deduction of sales rebates, goods and services tax and other taxes directly related to turnover.[672]

555. For the purpose of this ID, CCCS will determine the respective Statutory Maximum Penalty for each Party by using the business' applicable turnover for the year preceding the ID and will multiply this figure by 10% and by the duration of the infringement (up to a maximum of three years).[673]

556. For each SEE, CCCS will determine the Statutory Maximum Penalty based on the aggregate turnover of each of the component entities that form the SEE. However, if the entities no longer form an SEE, CCCS will determine the Statutory Maximum Penalty separately for each of the entities. This method of determining the Statutory Maximum Penalty has been applied by the European Commission in the *Kendrion* case[674]. In *Kendrion*, the ECJ stated that:

> "57 …where two separate legal persons, such as a parent company and its subsidiary, no longer constitute an undertaking within the meaning of [Article 101 TFEU] on the date on which a decision imposing a fine on them for breach of the competition rules is adopted, each of them is entitled to have the 10% ceiling applied individually to itself and that, in those circumstances, Kendrion could not claim to benefit from the ceiling applicable to its former subsidiary."

557. If the penalty calculated after steps 1 to 4 exceeds the Statutory Maximum Penalty, then the financial penalty payable will be adjusted downwards to ensure that the figure is less than the Statutory Maximum Penalty.

(vi) Step 6: Adjustments for leniency reductions

558. 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*

[672] Paragraph 1 of the Schedule to the Competition (Financial Penalties) Order 2007.
[673] Refer to section 69(4) of the Act.
[674] C-50/12 P *Kendrion NV v Commission* ECLI:EI:C:2013:771.

Information in Cartel Activity 2016. 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.[675]

C. Penalty for AFPL, owner of Capri (up to 30 March 2015), and its appointed agent, FHPL

559. The SEE comprising AFPL and FHPL was involved in two separate single continuous infringements in relation to agreements and/or concerted practices to discuss and exchange confidential, customer-specific, commercially sensitive information in connection with the provision of hotel room accommodation in Singapore to corporate customers.

560. Given that there are two separate single continuous infringements involving Capri, CCCS will consider the penalties calculation for each infringement in turn.

(i) Capri–Village Conduct

561. Step 1: Calculation of the base penalty: The SEE comprising AFPL and FHPL was party to the infringement relating to the Capri-Village Conduct from 3 July 2014 until 30 March 2015. AFPL's financial year commences on 1 April and ends on 31 March.[676] FHPL's financial year commences on 1 October and ends on 30 September.[677] The relevant turnover figures for the SEE comprising AFPL and FHPL for the provision of hotel room accommodation in Singapore to corporate customers for the financial year preceding the end of infringement was S$[✂].[678]

562. In accordance with CCCS's assessment of the seriousness of this infringement as set out at paragraphs 533 to 540 above, the starting point for the SEE comprising AFPL and FHPL is [✂]% of its relevant turnover. The quantum of the base financial penalty for the SEE comprising AFPL and FHPL is therefore S$[✂].

563. Step 2: Duration of infringement: The SEE comprising AFPL and FHPL was party to the infringement relating to the Capri-Village Conduct from 3 July 2014 until 30 March 2015. In this respect, CCCS adopted a duration multiplier of 0.67 for the SEE comprising AFPL and FHPL after rounding down the duration to eight months. Therefore, the financial penalty after adjustment for duration is S$[✂].

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[675] *Penalty Guidelines*, paragraph 2.21.

[676] Information provided by AFPL dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1.

[677] Information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 1.

[678] Information provided by AFPL dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 5; and information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 5.

564. Step 3: Aggravating and mitigating factors: Having taken into consideration all the facts and circumstances of this case, CCCS adjusts the penalty applicable to the SEE comprising AFPL and FHPL by [✂]%.

565. In its representations, AFPL submitted that CCCS should take into consideration that it had been cooperative throughout the investigative process by responding to the requests for information from CCCS in a timely and comprehensive manner.[679] FHPL submitted in its representations that it had been extremely cooperative throughout the investigative process by responding to CCCS's requests for information in a timely and comprehensive manner, and had provided support to CCCS beyond its strict legal obligations.[680] CCCS reiterates that it has already considered the extent of cooperation in deciding on the appropriate mitigating discount for both the Capri-Village Conduct and Capri-Crowne Plaza Conduct. In this regard, AFPL did not provide cooperation over and above the extent to which it was legally required.[681] While FHPL may have provided some additional information beyond its strict legal obligations, CCCS notes, taking into consideration all the circumstances, that the extent of cooperation did not result in a more effective and/or speedy conclusion of the enforcement process.[682]

566. Thus, at the end of Step 3, the financial penalty to be imposed on the SEE comprising AFPL and FHPL is S$[✂].

567. Step 4: Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to the SEE comprising AFPL and FHPL and to other undertakings which may consider engaging in similar information exchanges. No adjustments were made to the financial penalty at this stage.

568. Step 5: Adjustment to prevent statutory maximum being exceeded: While AFPL and FHPL was an SEE at the time of the infringement conduct, CCCS notes that AFPL and FHPL are no longer an SEE. As such, CCCS has determined and applied separate Statutory Maximum Penalties on each of AFPL and FHPL by reference to AFPL's total turnover and FHPL's total turnover respectively.

569. With respect to AFPL, the financial penalty of S$[✂] exceeds the Statutory Maximum Penalty that CCCS may impose on it in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 31 March 2018.[683]

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[679] Written Representations of AFPL dated 21 September 2018, paragraph 5.2.
[680] Written Representations of FHPL and FH Trustee dated 21 September 2018, paragraphs 5.2.1 to 5.2.3.
[681] As the same set of representations from AFPL apply to both the Capri-Village Conduct and the Capri-Crowne Plaza Conduct, CCCS's consideration of this representation applies to both infringements.
[682] As the same set of representations from FHPL apply to both the Capri-Village Conduct and the Capri-Crowne Plaza Conduct, CCCS's consideration of these representations applies to both infringements.
[683] Information provided by AFPL dated 31 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, Annex – financial statements for the financial year ended 31 March 2018.

570. With respect to FHPL, the financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCCS may impose on it in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 30 September 2017.[684]

571. Accordingly, the financial penalty imposed on SEE comprising AFPL and FHPL is S$288,700, of which AFPL is jointly and severally liable for up to its statutory maximum.

(ii) Capri–Crowne Plaza Conduct

572. Step 1: Calculation of the base penalty: The SEE comprising AFPL and FHPL was party to the infringement relating to the Capri-Crowne Plaza Conduct from 14 January 2014 until 30 March 2015. AFPL's financial year commences on 1 April and ends on 31 March.[685] FHPL's financial year commences on 1 October and ends on 30 September.[686] The relevant turnover figures for the SEE comprising AFPL and FHPL for the provision of hotel room accommodation in Singapore to corporate customers for the financial year preceding the end of infringement was S$[✂].[687]

573. In accordance with CCCS's assessment of the seriousness of this infringement as set out at paragraphs 533 to 540 above, the starting point for the SEE comprising AFPL and FHPL is [✂]% of its relevant turnover. The quantum of the base financial penalty for the SEE comprising AFPL and FHPL is therefore S$[✂].

574. Step 2: Duration of infringement: The SEE comprising AFPL and FHPL was party to the infringement relating to the Capri-Crowne Plaza Conduct from 3 July 2014 until 31 March 2015. In this respect, CCCS adopted a duration multiplier of 1.17 for the SEE comprising AFPL and FHPL after rounding down the duration to fourteen months. Therefore, the financial penalty after adjustment for duration is S$[✂].

575. Step 3: Aggravating and mitigating factors: Having taken into consideration all the facts and circumstances of this case, CCCS adjusts the penalty applicable to the SEE comprising AFPL and FHPL by [✂]%. Thus, at the end of Step 3, the financial penalty to be imposed on the SEE comprising AFPL and FHPL is S$[✂].

[684] Information provided by FHPL dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.
[685] Information provided by AFPL dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1.
[686] Information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 1.
[687] Information provided by AFPL dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 5; and information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 5.

576. Step 4: Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to the SEE comprising AFPL and FHPL and to other undertakings which may consider engaging in similar information exchanges. No adjustments were made to the financial penalty at this stage.

577. Step 5: Adjustment to prevent statutory maximum being exceeded: While AFPL and FHPL was an SEE at the time of the infringement, CCCS notes that AFPL and FHPL are no longer an SEE. As such, CCCS has determined and applied separate Statutory Maximum Penalties on each of AFPL and FHPL by reference to AFPL's total turnover and FHPL's total turnover respectively.

578. With respect to AFPL, the financial penalty of S$[✂] exceeds the Statutory Maximum Penalty that CCCS may impose on it in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 31 March 2018.[688]

579. With respect to FHPL, the financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCCS may impose on it in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 30 September 2017.[689]

580. Accordingly, the financial penalty imposed on the SEE comprising AFPL and FHPL is S$505,225, of which AFPL is jointly and severally liable for up to its statutory maximum.

D. Penalty for FH Trustee, owner of Capri (from 31 March 2015), and its appointed agent FHPL

(i) Capri–Village Conduct

581. Step 1: Calculation of the base penalty: The SEE comprising FH Trustee and FHPL was party to the infringement relating to the Capri-Village Conduct from 31 March 2015 until 30 June 2015. The financial year for FH Trustee and FHPL commences on 1 October and ends on 30 September.[690] The relevant turnover figures for the SEE comprising FH Trustee and FHPL for the provision of hotel

[688] Information provided by AFPL dated 31 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, Annex – financial statements for the financial year ended 31 March 2018.
[689] Information provided by FHPL dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.
[690] Information provided by FH Trustee dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1; and information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 1.

room accommodation in Singapore to corporate customers for the financial year preceding the end of infringement was S$[✂].[691]

582. In accordance with CCCS's assessment of the seriousness of this infringement as set out at paragraphs 533 to 540 above, the starting point for the SEE comprising FH Trustee and FHPL is [✂]% of its relevant turnover. The quantum of the base financial penalty for the SEE comprising FH Trustee and FHPL is therefore S$[✂].

583. Step 2: Duration of infringement: The SEE comprising FH Trustee and FHPL was party to infringement relating to the Capri-Village Conduct from 31 March 2015 until 30 June 2015. In this respect, CCCS adopted a duration multiplier of 0.25 for the SEE comprising FH Trustee and FHPL after rounding down the duration to three months. Therefore, the financial penalty after adjustment for duration is S$[✂].

584. Step 3: Aggravating and mitigating factors: Having taken into consideration all the facts and circumstances of this case, CCCS adjusts the penalty applicable to the SEE comprising FH Trustee and FHPL by [✂].

585. In their representations, FH Trustee and FHPL jointly submitted that they had been extremely cooperative throughout the investigative process by responding to CCCS's requests for information in a timely and comprehensive manner, and had provided support to CCCS beyond their strict legal obligations.[692] CCCS reiterates that it has already considered the extent of cooperation in deciding on the appropriate mitigating discount for both the Capri-Village Conduct and Capri-Crowne Plaza Conduct. While FH Trustee and FHPL may have provided some additional information beyond their strict legal obligations, CCCS notes, taking into consideration all the circumstances, that the extent of cooperation did not result in a more effective and/or speedy conclusion of the enforcement process.[693]

586. Thus, at the end of Step 3, the financial penalty to be imposed on the SEE comprising FH Trustee and FHPL is S$[✂].

587. Step 4: Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to the SEE comprising FH Trustee and FHPL and to other undertakings which may consider engaging in similar information exchanges. No adjustments were made to the financial penalty at this stage.

[691] Information provided by FH Trustee dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 5; and information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 5.
[692] Written Representations of FHPL and FH Trustee dated 21 September 2018, paragraphs 5.2.1 to 5.2.3.
[693] As the same set of representations from FH Trustee and FHPL apply to both the Capri-Village Conduct and the Capri-Crowne Plaza Conduct, CCCS's consideration of these representations applies to both infringements.

588. Step 5: Adjustment to prevent statutory maximum being exceeded: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCCS may impose in accordance with section 69(4) of the Act. The Statutory Maximum Penalty is S$[✂], which is calculated based on a total turnover of S$[✂] for the financial year ending 30 September 2017.[694]

589. Accordingly, the financial penalty imposed on the SEE comprising FH Trustee and FHPL is S$108,263.

(ii) Capri–Crowne Plaza Conduct

590. Step 1: Calculation of the base penalty: The SEE comprising FH Trustee and FHPL was party to the infringement relating to the Capri-Crowne Plaza Conduct from 31 March 2015 until 30 June 2015. The financial year for FH Trustee and FHPL commences on 1 October and ends on 30 September.[695] The relevant turnover figures for the SEE comprising FH Trustee and FHPL for the provision of hotel room accommodation in Singapore to corporate customers for the financial year preceding the end of infringement was S$[✂].[696]

591. In accordance with CCCS's assessment of the seriousness of this infringement as set out at paragraphs 533 to 540 above, the starting point for the SEE comprising FH Trustee and FHPL is [✂]% of its relevant turnover. The quantum of the base financial penalty for the SEE comprising FH Trustee and FHPL is therefore S$[✂].

592. Step 2: Duration of infringement: The SEE comprising FH Trustee and FHPL was party to the infringement relating to the Capri-Crowne Plaza Conduct from 31 March 2015 until 30 June 2015. In this respect, CCCS adopted a duration multiplier of 0.25 for the SEE comprising FH Trustee and FHPL after rounding down the duration to three months. Therefore, the financial penalty after adjustment for duration is S$[✂].

593. Step 3: Aggravating and mitigating factors: Having taken into consideration all the facts and circumstances of this case, CCCS adjusts the penalty applicable to the SEE comprising FH Trustee and FHPL by [✂]%. Thus, at the end of Step 3, the financial penalty to be imposed on the SEE comprising FH Trustee and FHPL is S$[✂].

[694] Information provided by FHPL dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a; and information provided by FH Trustee dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.
[695] Information provided by FH Trustee dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1; and information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 1.
[696] Information provided by FH Trustee dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 5; and information provided by FHPL dated 25 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 5.

594. Step 4: Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to the SEE comprising FH Trustee and FHPL and to other undertakings which may consider engaging in similar information exchanges. No adjustments were made to the financial penalty at this stage.

595. Step 5: Adjustment to prevent statutory maximum being exceeded: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCCS may impose in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 30 September 2017.[697]

596. Accordingly, the financial penalty imposed on the SEE comprising FH Trustee and FHPL is S$108,263.

E. Penalty for FEOC, OM and their appointed agent, FEHMS

(i) Capri–Village Hotels Conduct

597. Step 1: Calculation of the base penalty: The SEE comprising FEOC, OM and FEHMS was party to the infringement relating to the Capri-Village Conduct from 3 July 2014 until 30 June 2015. The financial year for FEOC, OM and FEHMS commences on 1 January and ends on 31 December.[698] The total relevant turnover figures for the SEE comprising FEOC, OM and FEHMS for the provision of hotel room accommodation in Singapore to corporate customers for the financial year preceding the end of infringement was S$[✂].[699]

598. In accordance with CCCS's assessment of the seriousness of this infringement as set out at paragraphs 533 to 540 above, the starting point for the SEE comprising FEOC, OM and FEHMS is [✂]% of its relevant turnover. The quantum of the base financial penalty for the SEE comprising FEOC, OM and FEHMS is therefore S$[✂].

599. Step 2: Duration of infringement: The SEE comprising FEOC, OM and FEHMS was party to the infringement relating to the Capri-Village Conduct 3 July 2014

[697] Information provided by FHPL dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a; and information provided by FH Trustee dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.

[698] Information provided by OM dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1; information provided by FEOC dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1; and information provided by FEHMS dated 29 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 1.

[699] Information provided by OM dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 5; information provided by FEOC dated 7 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 5; and information provided by FEHMS dated 29 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 5.

until 30 June 2015. In this respect, CCCS adopted a duration multiplier of 0.92 for the SEE comprising FEOC, OM and FEHMS after rounding down the duration to eleven months. Therefore, the financial penalty after adjustment for duration is S$[✂].

600. Step 3: Aggravating and mitigating factors: Having taken into consideration all the facts and circumstances of this case, CCCS adjusts the penalty applicable to the SEE comprising FEOC, OM and FEHMS by [✂]%. Thus, at the end of Step 3, the financial penalty to be imposed on the SEE comprising FEOC, OM and FEHMS is S$[✂].

601. Step 4: Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to the SEE comprising FEOC, OM and FEHMS and to other undertakings which may consider engaging in similar information exchanges. No adjustments were made to the financial penalty at this stage.

602. Step 5: Adjustment to prevent statutory maximum being exceeded: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCCS may impose in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 31 December 2016.[700] The financial penalty at the end of this step is therefore S$[✂].

603. Step 6: Adjustment for leniency: The SEE comprising FEOC, OM, and FEHMS came forward with a leniency application with effect from 18 April 2016. FEOC, OM and FEHMS's leniency application was received after CCCS had commenced its investigation, and particularly only after CCCS had exercised its formal powers of investigation by issuing FEOC, OM, and FEHMS with a formal notice under section 63 of the Act. The SEE comprising FEOC, OM, and FEHMS was the first undertaking to come forward for lenient treatment for the Capri-Village Conduct. As such, FEOC, OM, and FEHMS is entitled to a reduction of up to 100% of financial penalties.[701] The SEE comprising FEOC, OM and FEHMS would also be entitled to a leniency plus discount, for providing CCCS with information pertaining to a separate cartel activity in another market.

604. Taking into consideration all the facts and circumstances of this case, including the stage at which the SEE comprising FEOC, OM and FEHMS came forward, the evidence already in CCCS's possession and the quality of the information provided by FEOC, OM and FEHMS, CCCS reduces the penalty by [✂]% as part of CCCS's leniency programme.

[700] Information provided by OM dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a; information provided by FEOC dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a; and information provided by FEHMS dated 10 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a.

[701] *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraph 3.

605. Accordingly, the financial penalty imposed on the SEE comprising FEOC, OM and FEHMS is S$286,610.

F. Penalty for OUE Airport Hotel and its appointed agent, IHG Singapore

(i) Capri–Crowne Plaza Conduct

606. Step 1: Calculation of the base penalty: The SEE comprising OUE Airport Hotel and IHG Singapore was party to the infringement relating to the Capri-Crowne Plaza Conduct from 14 January 2014 until 30 June 2015. The financial year for OUE Airport Hotel and IHG Singapore commences on 1 January and ends on 31 December.[702] The total relevant turnover figures for the SEE comprising OUE Airport Hotel and IHG Singapore for the provision of hotel room accommodation in Singapore to corporate customers for the financial year preceding the end of infringement was S$[✂].[703]

607. In accordance with CCCS's assessment of the seriousness of this infringement as set out at paragraphs 533 to 540 above, the starting point for the SEE comprising OUE Airport Hotel and IHG Singapore is [✂]% of its relevant turnover. The quantum of the base financial penalty for the SEE comprising OUE Airport Hotel and IHG Singapore is therefore S$[✂].

608. Step 2: Duration of infringement: The SEE comprising OUE Airport Hotel and IHG Singapore was party to the infringement relating to the Capri-Crowne Plaza Conduct from 14 January 2014 until 30 June 2015. In this respect, CCCS adopted a duration multiplier of 1.42 for the SEE comprising OUE Airport Hotel and IHG Singapore after rounding down the duration to seventeen months. Therefore, the financial penalty after adjustment for duration is S$[✂].

609. Step 3: Aggravating and mitigating factors: Having taken into consideration all the facts and circumstances of this case, CCCS adjusts the penalty applicable to the SEE comprising OUE Airport Hotel and IHG Singapore by [✂]%.

610. In its representations, OUE Airport Hotel submitted that CCCS has not taken into account that OUE Airport Hotel has provided continuous and complete cooperation throughout CCCS's investigation.[704] OUE Airport Hotel also submitted that it took it upon itself to implement a competition law compliance programme for Crowne Plaza after it was made aware of CCCS's section 63

[702] Information provided by OUE Airport Hotel dated 6 December 2017 pursuant to the section 63 Notice issued by CCCS dated 16 November 2017, response to question 1; and information provided by IHG Singapore dated 30 January 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 1.
[703] Information provided by IHG Singapore dated 28 March 2018 pursuant to the section 63 Notice issued by CCCS dated 15 January 2018, response to question 2b.
[704] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 147 to 160.

Notice on 30 June 2015. In particular, the programme was tailored to the specific roles of personnel working at the various departments at Crowne Plaza, e.g. management, IT, sales and marketing team.[705]

611. IHG Singapore submitted in its representations that it had a competition compliance programme in place for its employees as well as employees of IHG-managed hotels even prior to the relevant period in which the Capri-Crowne Plaza Conduct occurred, which includes ongoing training. In particular, IHG Singapore submitted that some of the employees at Crowne Plaza attended such training, including Gladys Leong who completed the training in March 2014. IHG Singapore also submitted that the relevant training materials prohibited any discussion of prices or other types of competitively sensitive information which may influence market conduct or pricing decisions.[706]

612. Separately, IHG Singapore submitted that the financial penalty should be further reduced on the basis that IHG Singapore was not "*actually involved*" in the Capri-Crowne Plaza Conduct.[707]

613. CCCS highlights that the quality of information and cooperation provided by the SEE comprising OUE Airport Hotel and IHG Singapore has already been considered in determining the leniency discount.

614. CCCS considers that IHG Singapore's compliance programme, which was in place prior to the Capri-Crowne Plaza Conduct, is a mitigating factor. In this regard, CCCS notes that IHG Singapore had in place competition compliance measures during the period of infringement, which included instructions regarding its policy of prohibiting employees from engaging in conduct that may be seen to obstruct or restrict fair competition. However, having regard to the ineffectiveness of the programme (given the infringement), CCCS considers that an adjustment of [✂]% is appropriate. In respect of the compliance programme implemented by OUE Airport Hotel, CCCS notes that the compliance programme was implemented after its investigation had started and hence no further mitigating discount is warranted.

615. Additionally, CCCS disagrees with IHG Singapore's representation that it is not "*actually involved*" in the Capri-Crowne Plaza Conduct. CCCS notes that the SEE comprising OUE Airport Hotel and IHG Singapore is the undertaking involved in the Capri-Crowne Plaza Conduct, and is therefore liable for the financial penalty.

616. Thus, at the end of Step 3, the financial penalty to be imposed on the SEE comprising OUE Airport Hotel and IHG Singapore is S$[✂].

[705] Written Representations of OUE Airport Hotel dated 17 September 2018, paragraphs 161 to 164.
[706] Written Representations of IHG Singapore dated 19 September 2018, paragraph 5.3.5.
[707] Written Representations of IHG Singapore dated 19 September 2018, paragraphs 5.4.1 and 5.4.2.

617. Step 4: Adjustment for other factors: CCCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to the SEE comprising OUE Airport Hotel and IHG Singapore and to other undertakings which may consider engaging in similar information exchanges. No adjustments were made to the financial penalty at this step.

618. Step 5: Adjustment to prevent statutory maximum being exceeded: The financial penalty of S$[✂] does not exceed the Statutory Maximum Penalty that CCCS may impose in accordance with section 69(4) of the Act. The Statutory Maximum Penalty of S$[✂] is calculated based on a total turnover of S$[✂] for the financial year ending 31 December 2017 for OUE Airport Hotel and the financial year ending 31 December 2017 for IHG Singapore.[708] The financial penalty at the end of this step is therefore S$[✂].

619. Step 6: Adjustment for leniency: OUE Airport Hotel came forward with its leniency application on 21 July 2015. OUE Airport Hotel's leniency application was received after CCCS had commenced its investigation, and particularly only after CCCS had exercised its formal powers of investigation by issuing OUE Airport Hotel with a formal notice under section 63 of the Act. OUE Airport Hotel was the first undertaking to come forward for lenient treatment for the Capri-Crowne Plaza Conduct. As such, the SEE comprising OUE Airport Hotel and IHG Singapore is entitled to a reduction of up to 100% of financial penalties.[709]

620. Taking into consideration all the facts and circumstances of this case, including the stage at which the SEE comprising OUE Airport Hotel and IHG Singapore came forward, the evidence already in CCCS's possession and the quality of the information provided by the SEE comprising OUE Airport Hotel and IHG Singapore, CCCS reduces the penalty by [✂]% as part of CCCS's leniency programme.

621. Accordingly, the financial penalty imposed on the SEE comprising OUE Airport Hotel and IHG Singapore is S$225,293.

[708] Information provided by OUE Airport Hotel dated 3 July 2018 pursuant to the section 63 Notice issued by CCCS dated 28 June 2018, response to question 2a; and information provided by IHG Singapore dated 15 November 2018 pursuant to the section 63 Notice issued by CCCS dated 8 November 2018, response to question 2.

[709] *CCCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016,* paragraph 3.

G. Conclusion on Penalties

622. In conclusion, pursuant to section 69(2)(d) of the Act, CCCS directs each of the Parties to pay the following financial penalties:

Party	Financial Penalty
AFPL and FHPL	S$793,925
FH Trustee and FHPL	S$216,526
FEOC, OM and FEHMS	S$286,610
OUE Airport Hotel and IHG Singapore	S$225,293
Total	**S$1,522,354**

623. All Parties must pay their respective financial penalties to CCCS by no later than 5 p.m. on 31 March 2019. If any of the Parties fail to pay the penalty within the deadline specified above, and no appeal within the meaning of the Act against the imposition or the amount, of a financial penalty, has been brought or such appeal has been unsuccessful, CCCS may apply to register the direction to pay the penalty in a District Court. Upon registration, the direction shall have the same force and effect as an order originally obtained in a District Court and can be executed and enforced accordingly.

Toh Han Li
Chief Executive
Competition and Consumer Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCCS FOR THE PURPOSES OF THE INFRINGEMENTS UNDER THIS ID

Hotel	Key Personnel Interviewed	Dates of Interview	Designation
Capri	Priscilla Chong, also known as Chong Lai Lai	30 June 2015 14 July 2015 22 July 2015 29 July 2015 19 December 2017	Senior Sales Manager of Capri
	William Sim	30 June 2015	Sales Manager of Capri
	Stuart Giam, also known as Giam Jinrong, Stuart	15 March 2016 16 March 2016	Sales Manager of Capri
Village Hotels	Eric Tan, also known as Tan Han Yong Eric	30 June 2015 18 April 2016 19 April 2016	Assistant Director of Sales of Village Hotels
Crowne Plaza	Gladys Leong, also known as Leong Wai Fong, Gladys	11 March 2016 15 March 2016 16 March 2016	Director of Business Development of Crowne Plaza
	Sunshine Wong, also known as Wong Sung-Hee	6 September 2017 7 September 2017	General Manager of Crowne Plaza