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

Notice of Infringement Decision issued by CCS

Infringement of the section 34 prohibition in relation to bid-rigging of tenders in Singapore

28 November 2017

Case number: CCS 700/003/15

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

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EXECUTIVE SUMMARY

1. The Competition Commission of Singapore ("CCS") is issuing an Infringement Decision ("ID") against the undertakings listed in paragraph 2 below for their involvement in one or more of the following anti-competitive agreements and/or concerted practices involving collusive tendering or bid-rigging arrangements that infringe section 34 of the Competition Act (Cap. 50B) ("the Act"):

    (i) the provision of site electrical services for the Singapore Grand Prix (2015 to 2017) (the "F1 Tender"); and

    (ii) the provision of asset tagging services for GEMS World Academy (Singapore) (the "GEMS Tender").

2. The ID is addressed to the following undertakings:

    (i) Chemicrete Enterprises Pte. Ltd. ("Chemicrete"), Cyclect Electrical Engineering Pte. Ltd. ("Cyclect Electrical") and Cyclect Holdings Pte. Ltd. ("Cyclect Holdings") (together the "Cyclect Group");

    (ii) HPH Engineering Pte. Ltd. ("HPH"); and

    (iii) Peak Top Engineering Pte. Ltd. ("Peak Top");

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

3. CCS's investigations revealed that the Parties were involved in collusive tendering and/or bid-rigging in the following tenders in Singapore: (i) the provision of site electrical services for the F1 Tender; and/or (ii) the provision of asset tagging services for the GEMS Tender.

4. CCS finds that:

    (i) In relation to the F1 Tender, the Cyclect Group colluded separately with HPH and Peak Top, entering into two agreements and/or concerted practices in relation to the submission of HPH's and Peak Top's respective individual bids to give the impression of competitive bidding for the F1 Tender. The Parties' conduct is contrary to the principle that each undertaking must determine independently the commercial policy it intends to adopt on the market. HPH and Peak Top actively cooperated with the Cyclect Group by taking account of the set of figures sent to each of them by the Cyclect Group and submitting them wholly as their own bid prices for the F1 Tender; and

    (ii) In relation to the GEMS Tender, Chemicrete (an entity within the Cyclect Group) and HPH colluded in the submission of bids to give the impression

of competitive bidding. In the course of communications, representatives of Chemicrete and HPH had an agreement and/or concerted practice that HPH was to submit a bid higher than Chemicrete's bid, therefore significantly increasing Chemicrete's chances of securing the contract. The Parties' conduct is contrary to the principle that each undertaking must determine independently the commercial policy it intends to adopt on the market. HPH actively cooperated with Chemicrete by taking account of the figures sent to it by Chemicrete and submitting them wholly as its own bid price for the GEMS Tender.

5. CCS is imposing on each of the Parties, penalties of the following amounts: the Cyclect Group S$571,297.00; HPH S$33,128.00; and Peak Top S$21,693.00 for their infringement(s) of the Act. This amounts to a total combined penalty of S$626,118.00 for the two infringements of section 34 of the Act set out above at paragraph 4 and as detailed further in this ID. In determining the penalty amount, CCS has taken into consideration the seriousness of the infringement as well as the relevant aggravating and mitigating factors, where applicable. CCS has also granted a leniency discount to the Cyclect Group.

CHAPTER 1: THE FACTS

A. The Parties

(i) The Cyclect Group, comprising of:

a. Chemicrete Enterprises Pte. Ltd.

6. Chemicrete is a limited private company that was incorporated in Singapore in 1984. Its registered office address is at 515 Yishun Industrial Park A, Singapore 768737.[1] It provides integrated facilities management services which include mechanical and electrical engineering works, and general building maintenance.[2] Chemicrete is a wholly-owned subsidiary of Cyclect Holdings,[3] and its turnover for the financial year ending 31 December 2016 was S$[✂].[4] Melvin Tan Ee Chong ("Melvin Tan"), the Managing Director of Chemicrete, and Tan Ee Wei, a Director of Chemicrete, are common shareholders of Cyclect Electrical and Cyclect Holdings.[5] Melvin Tan is also the Managing Director of Cyclect Electrical and Cyclect Holdings.

b. Cyclect Electrical Engineering Pte. Ltd.

7. Cyclect Electrical is a limited exempt private company that was incorporated in Singapore in 1973. Its registered office address is at 33 Tuas View Crescent, Singapore 637654.[6] It provides engineering, construction and project management services for marine and land industries. These include building and construction works, mechanical and electrical engineering works, sale and integration of energy efficient systems and maintenance and repair services.[7] Cyclect Electrical's turnover for the financial year ending 31 December 2016 was S$[✂].[8] Melvin Tan concurrently holds the position of Managing Director at Cyclect Electrical with his positions as Managing Director and Director in both Chemicrete and Cyclect Holdings.

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[1] Extracted from the Accounting and Corporate Regulatory Authority ("ACRA") record *Business Profile of Chemicrete Enterprises Pte. Ltd.* (on 5 April 2016).
[2] Response to Question 7 of Notes of Information/Explanation provided by Tan Ee Wei dated 22 April 2015 and extracted from ACRA record *Business Profile of Chemicrete Enterprises Pte. Ltd.* (on 5 April 2016).
[3] Extracted from ACRA record *Business Profile of Chemicrete Enterprises Pte. Ltd.* (on 5 April 2016).
[4] Information provided by the Cyclect Group to Question 1 dated 19 October 2017 pursuant to the letter issued by CCS dated 12 October 2017.
[5] Extracted from ACRA record *Business Profile of Cyclect Electrical Engineering Pte. Ltd.* and ACRA record *Business Profile of Cyclect Holdings Pte. Ltd.* (on 5 April 2016).
[6] Extracted from ACRA record *Business Profile of Cyclect Electrical Engineering Pte. Ltd.* (on 5 April 2016).
[7] Response to Question 27 of Notes of Information/Explanation provided by Melvin Tan dated 27 April 2015 and ACRA record *Business Profile of Cyclect Electrical Engineering Pte. Ltd.* (on 27 April 2015).
[8] Information provided by the Cyclect Group to Question 2 dated 17 November 2017 pursuant to the letter issued by CCS dated 12 October 2017.

c. Cyclect Holdings Pte. Ltd.

8. Cyclect Holdings is a limited exempt private company that was incorporated in Singapore in 1993 and shares the same registered office address as Cyclect Electrical. It is registered as an investment holding company, and has the same shareholders as Cyclect Electrical. Cyclect Holdings' turnover for the financial year ending 31 December 2016 was S$[✂].[9] Melvin Tan is the Managing Director of Cyclect Holdings. Both Melvin Tan and Tan Ee Wei are listed as Directors of Cyclect Holdings.[10]

(ii) HPH Engineering Pte. Ltd.

9. HPH is a limited exempt private company that was incorporated in Singapore in 1999. Its registered office address is at 1002 Toa Payoh Industrial Park, #03-1407, Singapore 319074.[11] It provides mechanical and electrical engineering works.[12] HPH's turnover for the financial year ending 31 December 2016 was S$[✂].[13] Pak Hong Kong is the Managing Director and Tan Keng Hong (Chen Qingfeng), also known as Joshua Tan, ("Joshua Tan") is a Director of HPH.[14]

(iii) Peak Top Engineering Pte. Ltd.

10. Peak Top is a limited exempt private company that was incorporated in Singapore in 2000. Its registered office address is at 1 Ang Mo Kio Industrial Park 2A, #03-08, AMK Tech I, Singapore 568049.[15] It provides electrical installation services for commercial and residential buildings such as installation of lighting and electrical wiring, mainly in the private sector.[16] Peak Top's turnover for the financial year ending 31 December 2016 was S$[✂].[17] Andy Chong Kim Whey ("Andy Chong") is the Managing Director of Peak Top.[18]

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[9] Information provided by the Cyclect Group to Question 2 dated 17 November 2017 pursuant to the letter issued by CCS dated 12 October 2017.
[10] Extracted from ACRA record *Business Profile of Cyclect Holdings Pte Ltd* (on 5 April 2016)
[11] Extracted from ACRA record *Business Profile of HPH Engineering Pte Ltd (*on 5 April 2016).
[12] Response to Question 16 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015 and response to Question 14 of Notes of Information/Explanation provided by Pak Hong Kong dated 14 December 2015. See also http://www.hph-engrg.com.sg/about.html.
[13] Information provided by HPH dated 23 October 2017 pursuant to the section 63 Notice issued by CCS dated 19 October 2017.
[14] [✂] (see PHK-010; see also response to Question 1 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015).
[15] Extracted from ACRA record *Business Profile of Peak Top Engineering Pte Ltd (*on 21 March 2016).
[16] Response to Questions 13 and 18 of Notes of Information/Explanation provided by Chong Kim Whey dated 7 April 2016.
[17] Information provided by Peak Top dated 20 October 2017 pursuant to the section 63 Notice issued by CCS dated 19 October 2017.
[18] Response to Question 1 of Notes of Information/Explanation provided by Chong Kim Whey dated 7 April 2016.

B. Background of Relevant Industry

(i) Provision of Electrical Engineering Works

11. The Parties are providers of electrical engineering services in Singapore, and are registered contractors under the Building and Construction Authority's ("BCA") directory of registered contractors and licensed builders.[19] Services provided by electrical engineering firms may include installation, testing, commissioning, maintenance and repair of electrical based systems such as switchgears, transformers and large generators. Such works may be commissioned for buildings or marine vessels.[20] Electrical engineering services may also be commissioned for events which may require the temporary supply of electrical power by way of external temporary generators and electrical cabling with temporary protection.[21]

12. Electrical engineering firms that tender or quote for public sector projects have to be registered with the Contractors Registration System ("CRS") that is administered by the BCA.[22] Depending on the firm's technical qualifications, financial capabilities, management certifications and track record, the firm would then be registered under any of the sixty-three work-heads in the CRS and would accordingly be awarded a financial grading[23] that indicates the limit i.e., the size of project, that it is able to tender or quote for.[24] In some instances, commercial entities (i.e. private sector entities) may also refer to the BCA work-heads and grading as a requirement in their tender notices. The Energy Market Authority ("EMA") further requires that all electrical work and installation must be undertaken or carried out by a licensed electrical worker ("LEW").[25]

13. Generally, commercial entities requiring electrical engineering works, for example, building managers and event managing agents, obtain quotes from electrical engineering firms. In some instances, commercial entities give notice

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[19] Within the Cyclect Group, Chemicrete and Cyclect Electrical each have an L6 grading under the Building and Construction Authority's ME05 workhead for Electrical Engineering. HPH has an L5 grading under the Building and Construction Authority's ME05 workhead for Electrical Engineering, and as at 12 January 2017, Peak Top has an L5 grading under the Building and Construction Authority's ME05 workhead for Electrical Engineering.

[20] Building and Construction Authority, specific registration requirements for mechanical and electrical workheads. URL: https://www.bca.gov.sg/ContractorsRegistry/others/Registration_ME.pdf

[21] Information provided by Cyclect Group to Question 9 dated 4 March 2016 pursuant to the section 63 Notice issued by CCS dated 23 February 2016.

[22] BCA, Contractors Registration System. URL: https://www.bca.gov.sg/ContractorsRegistry/contractors_registration_requirements.html

[23] There are seven major groups of registration categories under the CRS, namely Construction Workhead, Construction-related Workhead, Mechanical and Electrical Workhead, Maintenance Workhead, Supply Head, Trade Head and Regulatory Workhead. Under each of these workheads, there are specific titles and financial grade that a firm may apply for. See CRS Terms of Registration. URL: https://www.bca.gov.sg/ContractorsRegistry/others/Registration_Terms.pdf

[24] See BCA, CRS frequently asked questions. URL: https://www.bca.gov.sg/ContractorsRegistry/others/CRS_FAQ.pdf

[25] Section 67 of the Electricity Act (Cap. 89A); EMA, Licensed Workers/Installation Licences. URL: https://www.ema.gov.sg/Licensees_Licensed_Workers_Installation_Licences.aspx

that a contract for electrical engineering works is being tendered, thus holding an open bidding process for all qualified electrical engineering firms. [26]

(ii) Provision of Integrated Building Services

14. Chemicrete, Cyclect Electrical and HPH are also providers of integrated building services,[27] which generally involve the installation, commissioning, maintenance and repairs of building services.[28]

15. Inventory management services include verifying the existence, condition and location of all assets in a physical inventory, tagging assets with inventory labels and updating records in a physical inventory.[29] Such services may also include the use of a barcode system, Radio Frequency Identification technology-based system, or a web-based system to track and manage physical assets.

C. Investigations and Proceedings

16. On 27 May 2014, CCS received a complaint regarding possible collusive tendering and/or bid-rigging.[30] On 6 August 2014, after conducting a preliminary enquiry, CCS commenced an investigation under section 62 of the Act. On 22 April 2015, CCS conducted an inspection at the premises of Chemicrete, pursuant to section 64 of the Act (the "First Inspection") and also conducted interviews with key personnel at the same premises. The particular tenders on which information was sought for the purposes of the First Inspection are not the subject of this ID.

17. On 23 April 2015, CCS received information from a secret complainant on alleged bid-rigging conduct in tenders (including in tenders that CCS was previously unaware of, such as the F1 Tender and the GEMS tender) by various parties including Chemicrete, Cyclect Holdings and HPH. In light of the information provided, on 27 April 2015, CCS conducted inspections at the premises of Chemicrete and Cyclect Holdings pursuant to section 64 of the Act (the "Second Inspection") under a broadened scope of investigation. On the same day, interviews were also conducted with key personnel at the same premises.

18. During the Second Inspection, CCS received a leniency application from the Cyclect Group in relation to anti-competitive conduct including the exchange of information, collaboration and bid-rigging for the provision of lighting services for the F1 Tender. Subsequently, on 29 April 2015, CCS received a separate

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[26] Response to Question 32 of Notes of Information/Explanation provided by Melvin Tan dated 27 April 2015 and response to Question 12 of Notes of Information/Explanation provided by Dass s/o Arunasalam dated 22 April 2015.
[27] https://www.bca.gov.sg/BCADirectory/Company/Details/198400980E; https://www.bca.gov.sg/BCADirectory/Company/Details/199805771R; https://www.bca.gov.sg/BCADirectory/Company/Details/197302305N (last accessed on 25 November 2016).
[28] https://www.bca.gov.sg/ContractorsRegistry/others/Registration_ME.pdf.
[29] Exhibit marked SM-009.
[30] [✂]

leniency application from Chemicrete in relation to anti-competitive conduct including the exchange of information, collaboration and bid-rigging for the GEMS Tender. The Cyclect Group subsequently submitted documents to CCS on 19 June 2015, in order to perfect the leniency markers granted by CCS for the F1 Tender and the GEMS Tender.

19. On 28 July 2015, CCS conducted another inspection at the premises of HPH pursuant to section 64 of the Act (the "Third Inspection"). On the same day, interviews were also conducted with Joshua Tan, Pak Hong Kong and other employees of HPH at the same premises.

20. Between February 2016 and November 2016, CCS sent further notices pursuant to section 63 of the Act to the Parties requesting documents and information relating to each Party's relevant tenders, tender preparation process, and turnover for the past financial years. CCS received the responses from the Parties between 4 March 2016 and 25 November 2016.

21. On 8 March 2016, CCS also sent a notice pursuant to section 63 of the Act to Faithful+Gould Project Management Pte. Ltd. ("F+G") requesting information to ascertain the services required under the F1 Tender, the evaluation process of the proposals received and the outcome of such proposals. CCS received responses from F+G on 18 March 2016. Further documents were also obtained under section 63 of the Act during interviews with personnel of F+G on 14 and 15 April 2016. CCS likewise obtained further documents and information on the GEMS Tender during interviews with personnel of GEMS World Academy (Singapore) on 15 April 2016.

22. On 7 April 2016, CCS conducted a further inspection at the premises of Peak Top pursuant to section 64 of the Act (the "Fourth Inspection"). Interviews were also conducted with Andy Chong and Peak Top employees at the same premises.

23. In summary, in assessing the infringements under this ID, CCS considered information obtained from the thirty-three interviews conducted and documents obtained pursuant to section 63 of the Act from key personnel of the Parties, and relevant personnel of F+G and GEMS World Academy (Singapore) affected by the Parties' conduct. The dates of the interviews conducted by CCS with the relevant personnel of the Parties are set out in **Annex A**.

24. As the secret complainant came forward with information on alleged anti-competitive conduct which led to CCS's investigation of the F1 Tender and the GEMS Tender, the secret complainant will be eligible for a financial reward under the CCS Reward Scheme should the conditions for a financial reward be met.[31]

[31] Information relating to the CCS Reward Scheme can be found at: https://www.ccs.gov.sg/faq/approachingccs-for-leniency-or-reward.

CHAPTER 2: LEGAL AND ECONOMIC ASSESSMENT

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

A. The Section 34 Prohibition

26. 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*".

Applicability of European Law

27. In *Pang's Motor Trading v CCS*, [32] 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 section 34 of the Act and 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

28. Section 2 of the Act defines "undertaking" to mean "*...any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services*." The concept of an "undertaking" in section 2(1) of the Act covers any entity capable of carrying on commercial or economic activities, regardless of its legal status or the way in which it is financed.[33] Each of the Parties carries on

[32] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [33].
[33] Case C-41/90 *Hofner and Elser v Macrotron GmbH* [1991] ECR I-1979, at [21]. Also see in particular, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and others v*

commercial or economic activities as set out at paragraphs 6 to 10 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

29. The section 34 prohibition applies to agreements *between* undertakings. Consequently, agreements between entities which form a single economic unit, i.e. where there is only one undertaking, will not be caught within the scope of the section 34 prohibition. The *CCS Guidelines on the Section 34 Prohibition 2016* state that, in particular, two entities – a parent and its subsidiary company or two companies which are under the control of a third company, form a single economic entity ("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.[34]

30. In this connection, where there are several undertakings 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 an SEE. 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. This section sets out in brief the legal framework for the application of the doctrine of an SEE followed by how liability can be attributed in the context of an SEE.

31. 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.[35]

32. The law on SEE applicable in Singapore has been neatly summarised in the CAB decision, *Express Bus Operators Appeal No.3*:[36]

> "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

European Commission [2005] ECR I-5425, recital 112; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, recital 107; Case C-205/03 P *FENIN v Commission*, [2006] ECR I-6295, at [25] and Case C-97/08 P *Akzo Nobel NV v Commission* [2009] ECR I-08237, at [54].

[34]*CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 2.7.

[35] 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].

[36] *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.

> 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])".[37]

33. 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.[38] The European Court of Justice ("ECJ") in *Akzo Nobel NV v Commission* ("*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 itself which in its view are apt to demonstrate that they do not constitute a single economic entity*".[39]

34. 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*"),[40] 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 were an SEE on account of the parent company's power of control over the subsidiary.[41]

35. Operational details are also taken into account when determining the existence of an SEE. The CAB in the *Express Bus Operators Appeal No. 3*[42] accepted the parties' arguments based on *Minoan Lines v Commission*[43] that they were an SEE by reason of their agency relationship as well as other factors which included matters like sharing of the same general manager, the same registered address and business premises. In the *Freight Forwarding Case*,[44] CCS 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.

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[37] *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].
[38] 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].
[39] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [60].
[40] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223.
[41] Case C-6/73 *Istituto Chemioterapico SpA & Commercial Solvents Corp v Commission* [1974] ECR 223, at [41].
[42] *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].
[43] Case T-66/99 *Minoan Lines v Commission* [2003] ECR II-5515; [2005] 5 CMLR 32.
[44] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore*, at [527] to [632].

(ii) Attribution of Liability

36. When an economic entity infringes competition law, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.[45]

37. As set out at paragraphs 29 to 35 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.[46]

38. In *Akzo Nobel*, 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).
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> 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."

39. In parent-subsidiary relationships, liability can be imputed to the parent company even where the parent company does not directly participate in the infringement.[47] 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, where a presumption of an SEE arises or where a parent company

[45] Case-C 49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [145]; Case C-279/98 P *Cascades v Commission* [2000] ECR I-9693, at [78]; and Case C-280/06 *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-10893, at [39].
[46] 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*, at [11], referring to [58] and [59] of the decision of the Court of First Instance.
[47] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [58].

exercises "decisive influence" over the subsidiary, the parent company can be liable for the actions of its subsidiaries.[48]

40. Indicia of decisive influence would include the parent company's shareholding in the subsidiary,[49] the parent company being active on the same or adjacent markets to its subsidiary,[50] direct instructions being given by the parent company to a subsidiary[51] or the two entities having shared directors.[52] 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.*"[53]

41. 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.

42. The characterisation of the Cyclect Group as an SEE is discussed in "Chapter 3: CCS's Infringement Decision" below.

C. Agreements and/or Concerted Practices

Agreements

43. 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 *CCS Guidelines on the Section 34 Prohibition 2016*.

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[48] Case C-97/08 P *Akzo Nobel NV and Others v Commission* [2009] ECR I-8237, at [77].
[49] 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].
[50] Case T-308/94 *Cascades SA v Commission* [2002] ECR II-925, at [158]; Case T-345/94 *Stora Kopparbergs Bergslags AB v Commission* [2011] ECR II-2111, at [70].
[51] 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].
[52] *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, at [77] to [80].
[53] *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.

44. 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".[54] Further, the fact that a formal agreement has not been reached on all matters does not preclude the finding of an agreement. In *Pre-Insulated Pipe Cartel*,[55] 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 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

[54] Case T-7/89 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, at [256].
[55] COMP IV/35.691/E.4 [1999] OJ L24/50, 1999 CMLR 402, at [134].

aware of each and every individual aspect or manifestation of the cartel throughout its adherence to the common scheme."

Concerted practices

45. The section 34 prohibition also applies to concerted practices. The *CCS Guidelines on the Section 34 Prohibition 2016* state at paragraph 2.18 that the key difference between a concerted practice and an agreement is that a concerted practice may exist where there is informal cooperation, without any formal agreement or decision. A concerted practice exists, if parties, even if they do not enter into an agreement, knowingly substitute the risks of competition for practical co-operation between them.[56]

46. This is summarised in the ECJ decision in *ICI v Commission* ("*Dyestuffs*"),[57] 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.
>
> 66. Although parallel behaviour may not by itself be identified with a concerted practice, it may however amount to strong evidence of such a practice if it 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 size and number of the undertakings, and the volume of the said market.
>
> 67. This is especially the case if the parallel conduct is such as to enable those concerned to attempt to stabilize prices at a level different from that to which competition would have led, and to consolidate established positions to the detriment of effective freedom of movement of the products in the common market and of the freedom of consumers to choose their suppliers.

[56] 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. See also the *CCS Guidelines on the Section 34 Prohibition 2016* , paragraph 2.18.
[57] Case 48/69 *ICI v Commission* [1972] ECR 619.

68. Therefore the question whether there was a concerted action in this case can only be correctly determined if the evidence upon which the contested Decision is based is considered, not in isolation, but as a whole, account being taken of the specific features of the market in the products in question." [Emphasis added.]

47. In *Suiker Unie and others v Commission* ("*Suiker Unie*"),[58] a case concerned with restrictions on those to whom sugar would be supplied, 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 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*

[58] 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.

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.]

48. In *Commission v Anic Partecipazioni SpA* ("*Anic*"),[59] 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 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*

[59] Case C-42/92P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125.

> *exchanged with their competitors when determining their conduct on that marke*t, 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.]

49. Further, European jurisprudence has established that there can be a concerted practice even when only one competitor lets the other party know its future intention or conduct on the market. This statement of law on concerted practice has been applied by CCS in the *Pest Control Case*[60] and the *Ferry Operators Case*.[61]

50. In *Cimenteries CBR and Others v Commission* ("*Cimenteries*"),[62] the Court of First Instance ("CFI") (now the European General Court) 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 undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have colluded over their future conduct on the market. … It is sufficient that, by its statement of intention, the competitor should have eliminated, or at the very least, substantially reduced uncertainty as to the conduct [on the market to be expected on his part]."

51. In *Tate & Lyle plc v Commission*,[63] 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.
> …

[60] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [134].
[61] *Re CCS Imposes Financial Penalties on Two Competing Ferry Operators for Engaging in Unlawful Sharing of Price Information* [2012] SGCCS 3, at [53].
[62] 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].
[63] Case T-202/98, T-204/98 and T-207/09 [2001] ECR II-2035 (upheld by the Court of ECJ in its judgment of 29 April 2004 in Case C-359/01 P *British Sugar plc v Commission*), at [54], [57] to [58].

> 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 (*Rhone-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."

52. Finally, in *T-Mobile v Netherlands v Raad van Bestuur van de Nederlandse Mededingingsautoriteit*, the ECJ found that a concertation may involve exchanges between parties at a single meeting or a selective basis in relation to a one-off alteration in the market.[64]

Necessity to conclude whether conduct is an agreement and/or a concerted practice

53. It is not necessary for the purposes of finding an infringement, to characterise conduct as exclusively an agreement or a concerted practice.[65] It is established jurisprudence in the EU that the conduct of undertakings is capable of being both a concerted practice and an agreement.[66] Both concepts are fluid and may overlap.[67] 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* ("*JJB Sports*")[68] 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

[64] Case C-8/08 *T-Mobile v Netherlands v Raad van Bestuur van de Nederlandse Mededingingsautoriteit*, 4 June 2009 at [59] to [62].
[65] Case IV/37.614/F3 *The Community v Interbrew NV and Others (re the Belgian beer cartel)* [2004] CMLR 2, at [223].
[66] Case T-7/89 *SA Hercules Chemicals v Commission* [1991] ECR II-1711.
[67] Case T-7/98 *SA Hercules Chemicals NV v Commission* [1991] ECR II-1711, at [264].
[68] [2004] CAT 17.

practice: it is sufficient that the conduct in question amounts to one or the other…".

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

54. The fact that a party may have played only a limited role in setting up the agreement or concerted practice, or may not be fully committed to its implementation, or participated only under pressure from the other parties, does not mean that it is not party to the agreement or concerted practice. This is set out at paragraph 2.11 of the *CCS Guidelines on the Section 34 Prohibition 2016* and is established in EU jurisprudence.[69]

55. The agreement or concerted practice would still be caught under the section 34 prohibition even if an undertaking did not have the intention to implement or adhere to the terms of agreement.[70]

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

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

56. 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*:[71]

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

57. Thus, for the purposes of applying section 34 of the Act, it is sufficient for CCS 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 *CCS Guidelines on the Section 34 Prohibition 2016*, which states that "Once it has been established that an agreement has as its object the appreciable restriction of competition, CCS need not go further to demonstrate anti-competitive effects. On

[69] Case C-291/98 *P Sarrio v Commission* [2000] ECR I-9991, at [50]*;* Case C-49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, at [90].
[70] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [120] to [128].
[71] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [30].

the other hand, if an agreement is not restrictive of competition by object, CCS will examine whether it has appreciable adverse effects on competition."

58. European jurisprudence has established that where the object being pursued is to prevent, restrict or distort competition, there can be an infringement even if an agreement does not have an effect on the market. In *Tréfilunion SA v Commission*,[72] the CFI said:

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

Similarly, the ECJ has held that there can be a concerted practice even if there is no actual effect on the market: *Hüls AG v Commission*.[73]

59. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v Office of Fair Trading*,[74] 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".

Object of Restricting, Preventing or Distorting Competition

60. It is well-established in European jurisprudence that the finding of an infringement by "object" is grounded in the principle that certain types of coordination between undertakings can be regarded, by their very nature as being injurious to the proper functioning of normal competition.[75] This is also reflected at paragraphs 2.23 and 2.24 of the *CCS Guidelines on the Section 34 Prohibition 2016* – 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

[72] Case T-148/89 *Tréfilunion SA v Commission* [1995] ECR II-1063, at [79].
[73] Case C-199/92 *Hüls AG v Commission* [1999] ECR I-4287, at [163] to [165].
[74] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [357].
[75] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [50]

particular restriction constitutes a restriction of competition by object, agreements involving restrictions of competition by object, for example an agreement involving price-fixing, bid-rigging, market-sharing or output limitations, will always have an appreciable adverse effect on competition. Thus, once it is established that an agreement and/or concerted practice constitutes a restriction of competition by object, CCS 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.

61. In the recent ECJ case of *Groupement des cartes bancaires v Commission* ("*Cartes Bancaires*"),[76] 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:

> "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.
>
> 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

[76] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2.

> which reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects…"

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

> "such coordination reveals in itself a sufficient degree of harm to competition." [77]

63. 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.[78]

64. The aforementioned principles are consistent with CCS's position in previous cases such as the *Pest Control Case*[79] which was subsequently applied in its other decisions such as the *Ball Bearings Case*[80] 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."

65. Furthermore, an agreement may be regarded as having a restrictive object even if the restriction of competition is not its sole aim. In *Competition Authority v Beef Industry Development Society Ltd* ("*Irish Beef*")[81], the Beef Industry Development Society argued that the arrangements in question were not anti-competitive in purpose or injurious for consumers or competition, but rather were intended to rationalise the beef industry in order to make it more competitive by reducing production overcapacity.

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

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[77] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [57].
[78] Case C-67/13 P *Groupement des cartes bancaires (CB) v European Commission* [2014] 5 CMLR 2, at [54]; Case C-32/11 *Allianz Hungária Biztosító Zrt v Gazdasagi Versenyhivatal* [2013] 4 CMLR 25 at [37].
[79] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [49].
[80] *Re CCS Imposes Penalties on Ball Bearings Manufacturers involved in International Cartel* [2014] SGCCS 5, at [68].
[81] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6.

> "21 In fact, to determine whether an agreement comes within the prohibition laid down in art. [101(1)] EC, close regard must be paid to the wording of its provisions and to the objectives which it is intended to attain. In that regard, even supposing it to be established that the parties to an agreement acted without any subjective intention of restricting competition, but with the object of remedying the effects of a crisis in their sector, such considerations are irrelevant for the purposes of applying that provision. *Indeed, an agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives* (*General Motors* [2006] 5 C.M.L.R. 1 at [64] and the case law cited)" [Emphasis added]. [82]

67. The proposition that an agreement may still be restrictive by object even if it purports to pursue other legitimate aims was endorsed by the General Court in *Lundbeck v Commission*,[83] where the argument that restrictions in the agreements at issue were necessary to protect the parties' intellectual property rights was rejected – notwithstanding that such restrictions may have been the most cost-effective or least risky option from a commercial perspective, the General Court did not agree that this precludes the application of Article 101 of the Treaty of the Functioning of the European Union ("TFEU"), which prohibits cartels. Likewise, in *Automobiles Peugeot SA and Peugeot Nederland NV v Commission*,[84] the CFI also adopted the position taken in *General Motors v Commission*[85] and held that the remuneration system adopted by the parties was anti-competitive because it treated export sales of Peugeot vehicles less favourably than national sales, notwithstanding their claim that their sole aim was to boost sales in the Netherlands.

F. Collusive or bid-rigging arrangements

68. The *CCS Guidelines on the Section 34 Prohibition 2016* and case law make it clear that a collusive tendering or bid-rigging agreement will always have an appreciable adverse effect on competition.[86] Tendering procedures are designed to provide competition in areas where it might otherwise be absent. An essential feature of the tendering process system is that each interested supplier prepares and submits bids independently. Any tenders submitted as a result of collusion or co-operation between the suppliers competing for the award of the tender will, by their very nature, be regarded as restricting competition appreciably.[87]

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[82] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21]. See also Case 96/82 *IAZ International Belgium v Commission* [1983] ECR 3369, at [22] to [25].
[83] Case T-472/13 *H. Lundbeck A/S and Lundbeck Ltd v Commission,* at [459].
[84] Case T-450/05 *Automobiles Peugeot SA and Peugeot Nederland NV v Commission,* at [56] to [57].
[85] Case C-551/03 P *General Motors v Commission* [2006] ECR I-3173, at [64].
[86] *CCS Guidelines on the Section 34 Prohibition*, paragraph 2.24. See also *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [30].
[87] *CCS Guidelines on the Section 34 Prohibition*, paragraph 3.8.

69. The requirement for independent bids in the tendering process is illustrated in the cases of *Apex Asphalt and Paving Co Limited v Office of Fair Trading*[88] ("Apex") (cited in the *Pest Control Case*[89]) and *Makers UK Limited v Office of Fair Trading* ("Makers")[90], which applied the principles set out in *Apex*.

70. In *Apex*, Apex, a building contractor had sent another building contractor, Briggs, a fax containing figures for Briggs in respect of two projects with Birmingham City Council for maintenance and improvement services for flat roofs. Briggs declined to submit a bid. Five contractors submitted bids and Apex was eventually awarded the contract. In finding a concerted practice between Apex and Briggs, the UK CAT highlighted the anti-competitive harm of cover bids:[91]

    (a) it reduces the number of competitive bids submitted in respect of that particular tender;
    (b) it deprives the tenderee of the opportunity of seeking a replacement (competitive) bid;
    (c) it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so; and
    (d) it gives the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.

71. The importance of independent bid preparation in the tendering process was set out by the UK CAT, as follows:[92]

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

[88] [2005] CAT 4.
[89] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [59].
[90] [2007] CAT 11.
[91] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [251].
[92] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [208] to [209].

calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market."

72. Collusive tendering is also a practice that has been condemned by the European Commission under Article 101(1) of the Treaty on the Functioning of the European Union (the "Treaty") (formerly Article 81(1) of the European Community Treaty). In *Car Glass*,[93] the European Commission imposed fines on four car glass manufacturers for an infringement of Article 81 of the European Community Treaty. The agreement consisted in the sharing of deliveries of car glass between the cartel participants in order to maintain their market shares. The European Commission found, amongst other things, that there was an infringement by the cartel participants' practice of "covering each other"[94] i.e. by "preselecting" the winner of a bid by either not quoting at all to car manufacturers that requested for quotes from the participants, or by quoting higher prices than the agreed winner.[95] This gave the pretence of competition. The parties' actions, along with other actions, constituted a "complex of infringements" which "presents all the characteristics of an agreement and/or concerted practice within the meaning of Article 81 of the European Community Treaty (now Article 101 of the Treaty)."[96]

73. In another case, *International Removal Services*,[97] the European Commission found that certain undertakings had participated in a cartel in the international removal services sector in Belgium to fix prices, share customers and manipulate the submissions of tenders. In particular, the European Commission found that the undertakings had cooperated in submitting cover quotes. The requesting firm (the firm which wanted the contract) indicated to its competitors the price and the rate of storage costs that they were to quote. The European Commission stated that the submission of cover quotes constituted a concerted practice within Article 81 of the European Community Treaty, as the undertakings had "entered into concertation on the prices of the services to be provided, on the hidden price elements (the commissions), and on the submission of bids as part of the procedure for selecting the service provider."[98] In this way, the undertakings had "replaced

[93] Case COMP/39125 – *Carglass* Commission Decision of 12 November 2008 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement.
[94]Case COMP/39125 – *Carglass* Commission Decision of 12 November 2008 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, at [103].
[95]Case COMP/39125 – *Carglass* Commission Decision of 12 November 2008 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, at [103].
[96]Case COMP/39125 – *Carglass* Commission Decision of 12 November 2008 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, at [496].
[97] Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement.
[98]Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement, at [299].

the risks of competition with practical cooperation" among themselves.[99] This direct and indirect fixing of prices was, by its very nature, a restriction of competition within the meaning of Article 81 of the European Community Treaty (now Article 101 of the Treaty). The European Commission held that the submission of cover quotes (amongst other things) gave the customer a false choice and the prices quoted in all the bids which he received were deliberately higher than the price of the company which was the "lowest bidder", and at all times, higher than they would be in a competitive environment. This therefore restricted competition.[100]

74. On appeal in *Gosselin Group*,[101] one of the arguments advanced was that there was a lack of evidence of anti-competitive effects, or of any restriction of competition. The General Court rejected this argument. The General Court noted that "[i]n order to prepare cover quotes, the removal undertakings concerned exchanged information, such as the exact date and details of the removal to be carried out, and the prices of that service, so that the undertaking which submitted a cover quote deliberately waived any real competition with the undertaking which had requested that cover quote. The result was a sophisticated system resulting in an artificial price rise." The General Court stated that as a result of the cover quotes, the institution which pays for the service could not benefit from competition, although that was precisely the reason why it would have asked for quotes in the first place. [102]

75. In another related appeal arising from the European Commission decision in *International Removal Services*,[103] the General Court held that "[a]s regards the quotes, the price indicated in a 'false' quote was determined by the requesting company and accepted by the company drawing up the cover quote, which enabled the former to set its price at a higher level than would have resulted from the free play of competition, close to the 'false' price agreed in common accord."[104]

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[99]Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement, at [299].

[100] Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement, at [359] to [370].

[101] Joined Cases T-208/08 *Gosselin Group and Stichting Administratiekantoor Portielje v Commission* and T-209/08 *Stichting Administratiekantoor Portielje v Commission* [2011] ECR II-3639.

[102] Joined Cases T-208/08 *Gosselin Group and Stichting Administratiekantoor Portielje v Commission* and T-209/08 *Stichting Administratiekantoor Portielje v Commission* [2011] ECR II-3639, at [67]. Whilst the General Court upheld in essence the decision of the Commission, the General Court reduced the amount of fine imposed on Gosselin, and annulled the Commission's decision that the parent foundation Stichting Administratiekantoor Portielkie constituted an undertaking for the purposes of competition law, and annulled the Commission's decision to impose a fine on the parent foundation. On 11 July 2013, the companies' appeal against the General Court's decision was dismissed by the European Court of Justice: see Cases C-429/11 P, C-439/11 P, C-440/11 P, C-444/11 P *Gosselin Group v Commission, Ziegler v Commission, Commission v Stichting Administratiekantoor Portielje, Team Relocations and Others v Commission*. The Court of Justice also set aside the General Court's decision that Portielje did not constitute an undertaking with Gosselin: see paragraph 45 of C-440/11P *Commission v Stichting Administratiekantoor Portielje*.

[103]Case COMP/38.543 – *International Removal Services*, Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement.

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

76. As will be described further in this ID, the conduct by the Parties concerning collusive tendering and/or bid-rigging severely undermined the independence of bids submitted by the Parties for the F1 Tender and the GEMS Tender.

G. Burden and Standard of Proof

77. CCS bears the legal burden of proving the infringements in question. Decisions taken by CCS under the Act follow a purely administrative procedure. As such, the standard of proof to be applied in deciding whether an infringement of the section 34 prohibition has been established is the civil standard, commonly known as proof on the balance of probabilities. The civil standard of burden of proof was applied by the CAB in *Express Bus Operators Appeals Nos. 1 and 2*.[105] 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*".

78. 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.

79. In *JJB Sports*,[106] the UK CAT was of the view that given the hidden and secret nature of cartels where little or nothing may be committed in writing, even a single item of evidence, or wholly circumstantial evidence, depending on the particular context and the particular circumstances may be sufficient to meet the required standard. Similarly, in *Napp v OFT*, the UK CAT held that in discharging the burden of proof, the OFT "can rely on inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts".[107]

80. 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*,[108] the CFI observed that:

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[105] *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].
[106] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [206].
[107] *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, [2002] Comp AR 13, at [110].
[108] [2004] ECR II 2501.

> "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..."[109] [Emphasis added.]

81. In *Aalborg Portland AS v Commission*, 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*."[110] [Emphasis added.]

H. The Relevant Market

82. Market definition typically serves two purposes in the context of the section 34 prohibition. First, it provides the framework for assessing whether an agreement and/or concerted practice appreciably prevents, restricts or distorts competition. Second, where liability has been established, market definition can help to determine the turnover of the business of the undertaking in Singapore for the relevant markets that are affected by the infringement and therefore, the appropriate amount of penalty.[111]

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[109] 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].
[110] Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P *Aalborg Portland A/S and Others v Commission*, at [55] to [57].
[111] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.1.

83. In the present case, a distinct market definition is not necessary for the purpose of establishing an infringement of the section 34 prohibition as the present investigation involves agreements and/or concerted practices that amount to collusive tendering or bid-rigging. Agreements and/or concerted practices that have as their object the prevention, restriction and distortion of competition by way of price-fixing, collusive tendering or bid-rigging, market sharing or output limitations, are, by their very nature, regarded as preventing, restricting or distorting competition to an appreciable extent.[112]

84. In this regard, CCS in the *Pest Control Case*,[113] a case on agreements and/or concerted practices involving collusive tendering or bid-rigging, adopted the position taken by the UK CAT in *Argos Limited & Littlewoods Limited v Office of Fair Trading,*[114] that market definition is not intrinsic to the determination of liability. The UK CAT held that:

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

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

86. For the purposes of calculation of penalties in this case, CCS has defined the market for each of the F1 Tender and the GEMS Tender based on the focal product of the infringement as the relevant market. In this regard, CCS determines that the focal products and accordingly the relevant markets are (i) the provision of site electrical services for temporary events; and (ii) the provision of asset and inventory tagging services in relation to the F1 Tender and the GEMS Tender, respectively.

[112] *CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.2.
[113] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [67].
[114] [2005] CAT 13, at [178] and [179].

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

87. This section of the ID on the respective conduct relating to the F1 Tender and the GEMS Tender is organised as follows:

(i) Background;
(ii) Facts and evidence obtained by CCS in respect of the Parties' conduct; and
(iii) CCS's analysis and conclusion on the evidence.

F1 Tender

(i) Background

88. On 8 December 2014, F+G issued a tender for site electrical services known as ME006 in relation to the F1 Tender.[115] F+G was appointed by Singapore GP Pte. Ltd. ("Singapore GP") as the Engineering Project Manager for the Formula 1 Singapore Grand Prix. On behalf of Singapore GP, F+G is responsible for the [✂] required for the staging of the Formula 1 Singapore Grand Prix. This includes the [✂] for the temporary works implemented for the event.[116] For the Formula 1 Singapore Grand Prix, F+G tendered or negotiated [✂].[117]

89. ME006 of the F1 Tender concerned the provision of site electrical installation works comprising the design and calculation, provision and management of labour, the provision of materials and equipment to transport, install and remove electrical works, inspections of existing electrical switchboards, the distribution of boards and equipment and the provision of maintenance and service support to lighting and electrical items, including for the pit building, during the Formula 1 Singapore Grand Prix event.[118] [✂][119] The duration of the contract was for three years from 2015 to 2017. Cyclect Electrical was the incumbent contractor for site electrical services for ME006 prior to the F1 Tender being called.

90. F+G conducted an open tender for the F1 Tender. It placed an advertisement in the Straits Times on 6 December 2014 inviting interested companies to participate in the F1 Tender.[120] According to F+G, the decision to seek an open market tender

[115] '141203 RFT Adv for ME006 and TC005.tiff' of F+G's response to question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[116] Responses to Questions 8 and 9 of F+G's response dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016. See also https://www.fgould.com/asia/projects/singapore-grand-prix/ .
[117] [✂] of F+G's response to Question 8 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[118] Section 1.2 of 'Schedule A Technical Specifications of Request for Tender for Package No: ME006 Site Electrical Services 2015 – 2017' of F+G's response to Question 13 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[119] Response to Question 25 of Notes of Information/Explanation provided by Ricky John Hancock dated 15 April 2016.
[120] F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.

was [✂] a more competitive price could be obtained.[121] To qualify for the project, the tenderer was required to be a current registered contractor with a minimum grading of L4 under the ME05 – Electrical Engineering work-head and a minimum grading of L1 under the ME15 – Integrated Building Services work-head.[122]

91. Potential tenderers who were interested to put in a bid were also required to attend a site inspection and briefing conducted on 12 December 2014. Representatives from Cyclect Electrical, Chemicrete, HPH and Peak Top attended the site inspection. The deadline for interested companies to submit their bids to F+G was 2 January 2015.[123]

92. F+G received a total of four bids from HPH, Chemicrete, Cyclect Electrical and Peak Top.[124] Price and quality (i.e. technical aspects) of the bids were assessed separately by F+G, with the technical evaluation and scoring completed prior to an evaluation of prices.[125] Following the technical and price evaluation stage, HPH, Chemicrete and Cyclect Electrical were shortlisted for the tender interviews which were held individually on 15 January 2015. Peak Top was disqualified as it did not meet the minimum grading of L4 under the ME05 – Electrical Engineering work-head and the minimum grading of L1 under the ME15 – Integrated Building Services work-head. Following the tender interviews, post-tender clarifications were sent to HPH, Chemicrete and Cyclect Electrical on 19 January 2015 and responses were due on 26 January 2015.[126]

93. On 23 April 2015, F+G awarded the F1 Tender to Cyclect Electrical.

[121] Paragraph 3.1 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[122] Section 1.2 of 'Schedule A Technical Specifications of Request for Tender for Package No: ME006 Site Electrical Services 2015 – 2017' of F+G's response to Question 13 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[123] Paragraph 3.3 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016. See also 'AT2-008\SGP (F1)\Correspondence\RFT ME006 Site Electrical Services Site Show-around.pdf'.
[124] Paragraph 3.3 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[125] Paragraph 3.2 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[126] Paragraph 4 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.

(ii) Conduct of the Parties

Evidence relating to the agreement concerning the F1 Tender

94. F+G took active steps to solicit bids for the F1 Tender. It appears that there may have been a requirement by [✂][127] or [✂] for at least three bidders[128] for the F1 project. Besides advertising in the Straits Times, F+G also tried to contact potential tenderers.[129] To this end, around late November 2014, before the tender was advertised to the public,[130] Lim Poh Beng, Head of the Projects Department at Cyclect Electrical, received a phone call from Ervin Koh, the Power and Communications Manager of F+G. Ervin Koh informed Lim Poh Beng of the F1 Tender, and sought his assistance to recommend potential candidates for the tender.[131] At an interview, Ervin Koh stated that he had contacted Lim Poh Beng to request for contacts as Lim Poh Beng was an LEW from the industry, and not because Lim Poh Beng was an employee of Cyclect Electrical.[132] Lim Poh Beng subsequently conveyed Ervin Koh's request to Melvin Tan, who then requested Mr. Dass s/o Arunasalam ("Dass"), the General Manager of Chemicrete, to assist with recommending two contractors in the electrical field, and who possessed the criteria for tendering in the F1 Tender.[133]

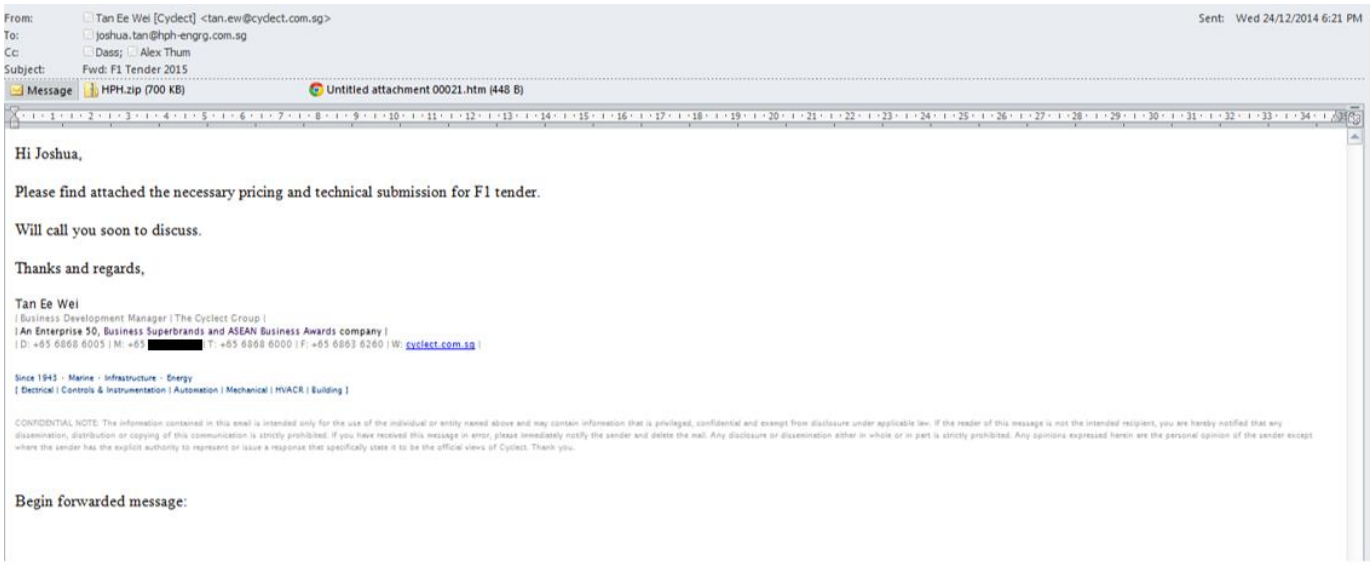
95. The Cyclect Group went on to approach three companies. They approached Peak Top as suggested by Lim Poh Beng,[134] as well as [✂] and HPH, both of which were recommended by Dass of Chemicrete.[135] Of the three companies approached, HPH and Peak Top put in bids for the F1 Tender.

HPH

96. Joshua Tan of HPH was contacted by Dass about the F1 Tender on or around 5 December 2014.[136] Joshua Tan responded by asking Cyclect for information on

[127] Response to Question 29 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[128] Response to Question 35 of Notes of Information/Explanation provided by Ricky John Hancock dated 15 April 2016 and response to Question 28 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[129] Responses to Questions 38 and 44 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[130] Response to Question 16 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[131] Responses to Questions 18 and 19 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015. See also responses to Questions 34 and 43 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[132] Responses to Questions 34 and 43 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[133] Response to Question 62 of Notes of Information/Explanation provided by K. A. Dass dated 4 November 2015.
[134] Response to Question 23 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[135] Responses to Questions 27 to 30 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.
[136] Exhibit marked KAD-025.

pricing as HPH was "unable to cost the project accurately".[137] Specifically, on 10 December 2014, Joshua Tan, Executive Director of HPH, sent a message via his mobile phone to Dass of Chemicrete, asking him "Bro have u check with your md on the Grand Prix tender. How he want to work together. Or he want me to submit a bogus price only. The tender quite big and a lot of things to do. Please advise".[138] Subsequently, on 24 December 2014, an email was sent by Tan Ee Wei, Director (then listed as Business Development Manager) of the Cyclect Group, to Joshua Tan providing the pricing and technical submission prepared by Cyclect for HPH.[139] The relevant email is set out as follows:



From: Tan Ee Wei [Cyclect] <tan.ew@cyclect.com.sg>
To: joshua.tan@hph-engrg.com.sg
Cc: Dass; Alex Thum
Subject: Fwd: F1 Tender 2015
Sent: Wed 24/12/2014 6:21 PM
Message HPH.zip (700 KB) Untitled attachment 00021.htm (448 B)

Hi Joshua,

Please find attached the necessary pricing and technical submission for F1 tender.

Will call you soon to discuss.

Thanks and regards,

Tan Ee Wei
| Business Development Manager | The Cyclect Group |
| An Enterprise 50, Business Superbrands and ASEAN Business Awards company |
| D: +65 6868 6005 | M: +65 [redacted] T: +65 6868 6000 | F: +65 6863 6260 | W: cyclect.com.sg |

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Begin forwarded message:

97. Melvin Tan stated that he could not recall what price he had instructed his staff to provide to HPH, but stated that it would have been "higher" than the bid submitted by Cyclect Electrical.[140] When he was asked to clarify his intention in giving such instructions, Melvin Tan said that "[they] did not want HPH to win". He further agreed that the intention of giving HPH the suggested price was to give Cyclect Electrical a better chance of winning the tender.[141] The relevant statements are set out as follows:[142]

Q34 *I refer you to your response to Question 56. What is your intention in asking Dass to quote a higher price to HPH Engineering?*

A: *We do not want HPH to win.*

[137] Response to Question 32 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015. See also response to Question 36 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.
[138] Exhibit marked KAD-050.
[139] 'TEW-023\CCS Docs_Joshua Tan HPH\Email\F1 Tender 15.pdf'. See also responses to Question 38 of Notes of Information/Explanation provided by Tan Ee Wei dated 27 April 2015.
[140] Response to Question 56 of Notes of Information/Explanation provided by Melvin Tan dated 27 April 2015.
[141] Responses to Questions 34 and 35 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.
[142] Responses to Questions 34, 35, 111 and 112 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.

Q35 *Was the intention of giving HPH the suggested price to give Cyclect Electrical a better chance of winning the tender?*

A: *Yes.*

…

Q111 *Is the intention of sending the pricing done by Cyclect Electrical to HPH for HPH to send in a cover bid?*

A: *Our hope is that they will give a price that will not be attractive. I'm not sure if there's anywhere in which we said that "we hope you will put in a cover bid for us to win". We played it to our advantage by giving him a higher quote and as little information as possible. We wanted to win the tender, but internally, our understanding is that even if HPH won the tender by fluke, Cyclect Electrical will still work with HPH on the project.*

Q112: *Was the intention of the cover bid to help Cyclect Electrical to win the tender?*

A: *The simple answer is yes.*

98. On 30 December 2014, an email was sent by an Accounts Executive of HPH, to Tan Ee Wei, requesting Tan Ee Wei to fill up the documents attached in the email.[143] On 2 January 2015, Joshua Tan sent a message via his mobile phone to Tan Ee Wei, asking him to "confirm the total amount for the tender for the f1", as he did not want to "put in the wrong price".[144] Tan Ee Wei then replied to HPH's Accounts Executive's email on the same day advising her on how HPH should fill in the tender documents, including "For the other files, you [i.e. HPH's Accounts Executive] just need to include your [i.e HPH's] company letterhead. E.g. the org chart. (no need to fill in the number of technicians)".[145]

99. Subsequently, on 2 January 2015, HPH submitted a bid of S$[✂] (for the entire 3-year contract), which in terms of pricing was an exact line-for-line replica of the prices set out in the documents prepared by the Cyclect Group.[146] Pak Hong Kong, Managing Director of HPH, commented that the price submitted by HPH, which was prepared by the Cyclect Group, appeared to differ from the unit rate price guide of HPH which was typically used for tenders which HPH participated in.[147]

[143] Exhibit marked SM-004.
[144] Exhibit marked TEW-018.
[145] Exhibit marked TEW-020. See also responses to Question 38 of Notes of Information/Explanation provided by Tan Ee Wei dated 27 April 2015.
[146] See 'AT2-002\Fwd_F1 Tender 2015 2.eml' for prices sent by the Cyclect Group to Joshua Tan, and SM-004 for HPH's submitted bid.
[147] Response to Question 41 of Notes of Information/Explanation provided by Pak Hong Kong dated 14 December 2015.

100. During his interview with CCS on 17 December 2015, Joshua Tan said that he knew that Cyclect was going to participate in the tender as "Mr. Tan Ee Wei told me over the phone that they were going to participate". [148] While Joshua Tan could not recall the precise date of the call, he recalled that the phone call took place before the tender closed.[149]

101. In an interview on 28 July 2015, when first questioned as to the reasons why the Cyclect Group had approached HPH to bid for the F1 Tender, Joshua Tan replied that "I do not know and I do not want to know". [150] On 17 December 2015, he again replied to a similar question asked during his interview, "I really don't know" but proceeded to state that "[m]aybe they are not able to participate in the tender anymore as they have been the incumbents for a long time. Hence they may have wanted me to bid and win the project so that they can be my sub-contractor".[151] Joshua Tan also stated in his interviews on 28 July 2015 and 17 December 2015 that if he managed to win the F1 Tender, he thought that the Cyclect Group would support him by being a sub-contractor.[152] Further, Joshua Tan stated that in relation to the F1 Tender, HPH would not be able to take on the entire project on its own and hence, HPH had to approach Cyclect for assistance regarding the tender clarification questions.[153]

102. On 7 January 2015, under instruction from Joshua Tan, HPH's Accounts Executive forwarded HPH's submitted tender documents, i.e. including HPH's bid prices and tender document details, to Tan Ee Wei.[154] Subsequently on 19 January 2015, F+G sent HPH clarification questions in relation to HPH's technical and price proposals. On the same day, HPH's Assistant Project Manager, forwarded the clarification questions to Tan Ee Wei.[155] On 22 January 2015, Joshua Tan sent Tan Ee Wei a message via his mobile phone that he "need[s] to give me the answer for tender clarification by end today". Tan Ee Wei replied that he was getting the answers from main office and the earliest he could give the answers to HPH was the morning of the following day.[156] The next day, on 23 January 2015, a Business Development Executive of Chemicrete sent a folder containing tender replies and documents for HPH's submission in response to F+G's clarification questions directed to HPH.[157] On 24 January 2015, based on

[148] Responses to Questions 24 and 25 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.
[149] Responses to Questions 24 and 25 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.
[150] Response to Question 75 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[151] Responses to Questions 23 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.
[152] Response to Question 74 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015 and responses to Questions, 32, 37 and 42 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.
[153] Response to Question 36 of Notes of Information/Explanation provided by Joshua Tan, 17 December 2015.
[154] Exhibit marked SM-004.
[155] Exhibit marked SM-005.
[156] Exhibit marked TEW-018.
[157] Exhibit marked SM-005.

the documents sent over by Chemicrete's Business Development Executive, Joshua Tan asked HPH's Accounts Executive to prepare the responses to the tender clarification questions for submission to F+G.[158]

Peak Top

103. Andy Chong, Managing Director of Peak Top, was approached by Lim Poh Beng in late November 2014.[159] As Lim Poh Beng knew [✂] that Peak Top was working on electrical projects in condominiums, he asked Andy Chong if Peak Top would be interested to participate in the F1 Tender.[160] Prior to the F1 Tender, the Cyclect Group had no business relationships with Peak Top.[161] In his interview with CCS, Andy Chong stated that he informed Lim Poh Beng that he was unfamiliar with the scope and pricing for the F1 project, but was told that the Cyclect Group would give Peak Top the pricing information:

Andy Chong's Notes of Information dated 7 April 2016

Q41. Please describe what was discussed in relation to F1?
A: Poh Beng called me and asked me if I was interested to participate in the F1 open tender. But I told him that I am not familiar with the scope and pricing for the F1 project. He told me that he would give me pricing information and said that if I'm interested we can submit. If Peak Top wins the project, we can sub-contract most works to Cyclect and we can do the rest. We put in some mark-ups on top of the price Cyclect gave us.

104. Lim Poh Beng had informed Andy Chong about the F1 Tender during a social meet-up prior to when the tender was called. Recorded in Lim Poh Beng's Notes of Information dated 15 July 2016 are the following responses explaining how he provided this information:

Q10. Could you please explain the process by which F+G conducted the F1 tender?
A: First F+G sent the invitation directly to Cyclect to invite us to participate in the tender for this project because we were the incumbent. When we received the invitation, we knew we were supposed to collect the tender documents. As this is an open tender, the tender was also advertised in the newspapers, and I passed the advertisement to Peak Top. LPB-001 was the advertisement published in the newspapers.

…

[158] Exhibit marked SM-005.
[159] Response to Question 40 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.
[160] Response to Questions 30 and 31 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[161] Response to Question 26 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.

Q23. Did you approach any of the competing companies to take part in the F1 tender, in particular HPH and or Peak Top?
A: I didn't approach HPH. HPH was referred to us by Chemicrete and we passed the name to F+G. For Peak Top, during a coffee session with Andy, MD of Peak Top, I mentioned to him that the F1 tender will open and it was an open tender and he could put in a bid if he was interested.

...

Q25. Do you remember when you met Andy for the coffee session?
A: No I cannot remember, it was before the tender was called.

105. From the outset, it was clear that Peak Top did not have the necessary BCA grading limit to participate in the tender. This was a fact made known by Andy Chong to Lim Poh Beng when Peak Top was first approached to participate in the F1 Tender:[162]

Andy Chong's Notes of Information dated 7 April 2016

Q63. How much is the value for the F1 tender for three years?
A: S$[✂].

Q64. Given Peak Top's BCA grading limit, what would be the maximum value that Peak Top can participate in?
A: S$ 7 million.

Q65. Then how could Cyclect expect Peak Top to qualify for the F1 tender?
A: The F1 tender is a yearly contract with a 2+1 year option.

Q66. But BCA Grading Limit is based on total value of the project?
A: Yes.

Q67. Then why did Cyclect ask Peak Top to participate?
A: They just recommended me to participate.

Lim Poh Beng's Notes of Information dated 15 July 2016

Q24. Did Peak Top meet the requirements for the F1 tender specified by F+G?
A: No. There were 2 requirements, either L1 for ME15 and L4 or L5 for ME05. Andy told me that he did not meet one of the requirements.

106. According to Lim Poh Beng, Andy Chong stated that he needed help from Cyclect Electrical to give him a quote for reference purposes:

[162] Response to Question 24 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.

Lim Poh Beng's Notes of Information dated 15 July 2016

Q37. Did Cyclect intend for Peak Top to submit a bid for the F1 Tender when you approached them?
A: When I approached [Andy Chong] I just wanted to ask if he is interested. He said he might need us to help give him a quote as a reference. If he needed a quote as a reference then we can give him a quote.

107. Thereafter, Lim Poh Beng directed the Deputy Manager of the Cyclect Group (then listed as Project Manager of the Cyclect Group), to prepare price submissions for Peak Top:

Lim Poh Beng's Notes of Information dated 15 July 2016

Q40. If you did not personally prepare the price submissions [which were to be sent to Peak Top], who prepared the price submissions?
A: [The Deputy Manager] prepared them.

Q41. What is [his] position in Cyclect and who does he report to?
A: He is a deputy manager in Cyclect and he reports to me.

108. On 24 December 2014, the Deputy Manager of the Cyclect Group sent an email[163] to Andy Chong containing the details of the F1 Tender and the prices that Lim Poh Beng said that they would provide to Peak Top for submission. The information provided was complete and nothing had to be added on by Peak Top apart from its letterhead prior to submission for the F1 Tender.[164] Andy Chong confirmed that Peak Top did not make any amendments to the prices provided by Peak Top:

Andy Chong's Notes of Information dated 7 April 2016

Q52. Referring to the tender document submitted by Peak Top for the F1 tender, can you confirm that the price Peak Top submitted to SGP Pte Ltd is the same as the quotation Cyclect provided to Peak Top?
A: Yes.

…
Q57. Who were the personnel at Peak Top who were involved in the tender bid? What were each of their roles?
A: [Peak Top's Project Engineer] and myself. [Peak Top's Project Engineer] prepared the documents.

[163] Exhibit marked SK-001.
[164] Responses to Questions 47, 58 and 59 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.

Q58. *But Cyclect had already prepared the documents with the necessary information for Peak Top, so [Peak Top's Project Engineer] did not need to amend or add anything to the documents at all?*

A: *Yes.*

Q59. *So Cyclect prepared a complete set of documents, including pricing information, for Peak Top for the F1 Tender, and Peak Top then submitted these documents wholesale without amendment to SGP Pte Ltd?*

A: *Yes.*

Q60. *Who had responsibility at Peak Top to sign off on the F1 tender?*

A: *Me.*

109. This was corroborated by Peak Top's Project Engineer, who confirmed that he did not make any changes to the rate, quality or prices provided by Cyclect Electrical when preparing Peak Top's submission for the F1 Tender.[165] Peak Top's Project Engineer informed that this submission was quite markedly different from Peak Top's typical tender submission - usually for Peak Top's tender submissions, he would obtain [✂] from the contractors, assess them and come up with Peak Top's quantity and rates before discussing with Andy Chong the prices to be submitted.[166] The F1 Tender was the only time that he had been given the prices and specifications by another company and Andy Chong had instructed him to prepare the submission based on those prices and specifications provided. [167] The tender forms that were eventually submitted to F+G by Peak Top on 26 December 2014, just two calendar days after Peak Top received the prices from the Cyclect Group, contained the same prices as those provided to Peak Top by Cyclect Electrical.[168] Peak Top's total bid for the 3-year contract was S$[✂].[169] This is recorded in the Notes of Information/Explanation dated 7 April 2016 as follows:

Q55. *Did you change anything on the rate, quality or prices listed in schedules B1 and B2 in Peak Top's submission to SGP that would then differ from the submission provided by Cyclect?*

A: *No, it was kept the same.*

[165] Responses to Questions 54, 55 and 56 of Information/Explanation provided by Sathish Kumar dated 7 April 2016.

[166] Response to Question 74 of Information/Explanation provided by Sathish Kumar dated 7 April 2016.

[167] Responses to Questions 57 and 75 of Information/Explanation provided by Sathish Kumar dated 7 April 2016.

[168] See exhibit marked SK-001 for prices sent by Cyclect to Peak Top. See Appendix D.1 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016 for prices submitted by Peak Top to F+G. See exhibit marked SK-006 for cover letter of tender submission by Peak Top to F+G.

[169] Paragraph 3.4 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.

Q56. Apart from changing the letter head, did you change anything else in Peak Top's tender submission to SGP that would differ from the submission provided by Cyclect?

A: No, I did not.

110. CCS notes that Andy Chong's explanation for Peak Top's decision to submit a bid after being invited by Cyclect to do so is one riddled with contradictions and inconsistencies. Andy Chong first said that Peak Top put in "some mark-ups on top of the price Cyclect gave [them]"[170], but later conceded that there was no mark up.

Andy Chong's Notes of Information dated 7 April 2016

Q44. Can you remember how much was the mark-up Peak Top put on top of the prices provided by Cyclect?

A: I cannot remember since it was a year back and I need to look at the document. But generally when we engage sub-contractor, we would incorporate a [✂] mark-up on the basis of total cost, including costs of engaging the sub-contractor. The final amount after adding a mark-up and quoted for the F1 Tender would likely have been the figure indicated in the last column of schedule B.1 – Table B1 Schedule of Rates, S$[✂]. I wish to add that sometimes we may also put in a mark-up on the [✂] – depending on the project. These costs may also vary due to the duration of the project. I have gone through the submission on the tender prices for the F1 project and it does not appear that [✂] are a separate item from the total cost of S$[✂] under the Table B1 Schedule of Rates.

…

Q52. Referring to the tender document submitted by Peak Top for the F1 tender, can you confirm that the price Peak Top submitted to SGP Pte Ltd is the same as the quotation Cyclect provided to Peak Top?

A: Yes.

Q53. So if the prices are the same, then how would Peak Top earn a profit from the costs submitted by Cyclect as a potential sub-contractor?

A: We may be able to save some costs from value engineering after we win the project which would lower our costs. For example, the equipment may use a lower amp when we do up the actual works from what we tendered which would result in cost savings to us.

Q54. Just to confirm, Cyclect quoted the prices to Peak Top as a sub-contractor, so if Peak Top wins the tender, the cost that Cyclect would charge Peak Top is S$[✂] a year?

[170] Response to Question 41 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.

A: *Yes.*

Q55. *And the cost quoted by Cyclect wouldn't change after award by SGP Pte Ltd?*

A: *Yes.*

Q56. *Why did you not mention cost savings that could be had from value engineering when we asked you about the costing earlier?*

A: *Value engineering is a concept that may be applied by us for private projects. For the F1 tender, I do not know if value engineering was intended or not. However, value engineering was not applied as we were disqualified after the stage of submissions for the F1 Tender.*

111. When questioned further on the alleged sub-contractor relationship, Andy Chong provided conflicting statements on the relationship:

Andy Chong's Notes of Information dated 7 April 2016

Q68. *Did Poh Beng explain why he wanted Peak Top to participate in the F1 tender?*

A. *He said that because Peak Top is involved in electrical installation works so he knows we would be able to handle the works.*

Q69. *But does he know Peak Top is smaller than Cyclect? If so, then why do they think Peak Top could be the main contractor to Cyclect?*

A. *He said that we can cooperate as a joint venture or as partner.*

Q70. *Can you explain further? I thought you mentioned earlier that Cyclect wanted to be Peak Top's sub-contractor?*

A. *On paper, if Peak Top won, it would be a sub-contractor relationship. But in reality it's a partnership.*

Q71. *What would the partnership involve? Would it involve profit sharing?*

A. *We did not discuss much what would happen to the actual work or profit sharing. If there's no work confirmed or we did not win the tender, then there would be no partnership.*

Q.72 *Was there any formal agreement to form a joint venture or partnership for the F1 tender?*

A. *Only when there's confirmed work or if we win the tender.*

Q73. *If there's no black and white, how can you ensure that Peak Top would be given a share in the profit sharing arrangement that you mentioned?*

A. *I didn't.*

112. On Cyclect Electrical's part, Lim Poh Beng stated that they had deliberately prepared a price for Peak Top that was higher than Cyclect Electrical's own submission as it was "in Cyclect's interest" to do so:

Lim Poh Beng's Notes of Information dated 15 July 2016

Q42. What were your precise instructions to [the Deputy Manager of the Cyclect Group] regarding Peak Top?
A: I asked [him] to prepare a quote to Peak Top and the price to Peak Top must be higher than our price. We must make sure that if Peak Top lowers their price, ours will still be lower than Peak Top.

Q43. So the point to quote a higher price to Peak Top is to make sure Cyclect's bid is lower than Peak Top's?
A: Since we won't know if Andy happens to lower his price, so it is in Cyclect's interest to quote a higher price to Peak Top. In Cyclect's interest means in a way we have a higher chance to win the tender.

...

Q47. What was the price Cyclect prepared for Peak Top in relation to Cyclect's own submission, i.e. was it higher or lower?
A: It was higher than Cyclect's own quotation for the F1 tender.

113. CCS also notes that Andy Chong had confirmed this was the first project where Peak Top did not place a mark-up on the quotation provided by a "potential sub-contractor":

Andy Chong's Notes of Information dated 7 April 2016

Q76. Have you submitted a project previously where you put in a quotation with no profit margins or mark-ups on the quotation by your potential sub-contractor?
A: No.

Award of F1 Tender by F+G

114. On 23 April 2015, F+G awarded the F1 Tender to Cyclect Electrical who submitted a bid of S$[✂][171] which was the lowest bid received compared to the bid submitted by Peak Top of S$[✂] (prepared by the Cyclect Group),[172] the bid submitted by Chemicrete of $[✂],[173] and the bid submitted by HPH of

[171] Paragraph 3.4 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[172] Paragraph 3.4 of Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017) dated 24 March 2015.
[173] Document 12 provided by the Cyclect Group on 19 June 2015. See also 'AT2-002\Fwd_F1 Tender 2015.eml'.

S$[✂] (prepared by the Cyclect Group).[174] According to F+G's assessment, Cyclect Electrical's bid was not only the cheapest, Cyclect Electrical, as the incumbent, had [✂], which HPH and Chemicrete were not able to demonstrate.[175] Peak Top was not considered after being disqualified due to its failure to meet the requisite BCA grading required for the F1 Tender. Cyclect Electrical's bid was approximately [✂] than the price in 2014, before contra sponsorship was taken into account.[176]

115. F+G fully expected the bids to be independently prepared, even though the contacts came from an employee of Cyclect Electrical.[177] Indeed, F+G required that there be no "consultation, communication, agreement or understanding for the purpose of restricting competition" in its tender forms.[178] Additionally, in submitting a bid, F+G required tenderers to also warrant that the prices have not been disclosed knowingly by the tenderers, either directly or indirectly, to other tenderers or competitors.[179] Throughout the tender evaluation process, F+G did not detect anything suspicious in relation to any of the four submitted bids, i.e. F+G expected the bids to be independent and assessed them on this basis.[180] Further, as set out below, Ervin Koh had stated that he had approached Lim Poh Beng because Lim was an LEW rather than in his capacity as an employee of Cyclect Electrical.

Ervin Koh's Notes of Information dated 14 April 2016

Q48. These contacts were obtained from Mr Lim Poh Beng of Cyclect, which was also participating in the F1 tender. Did F+G expect the bids to be independently determined by participants to the ME006 tender after such contact?

A: I expected them to prepare their own independent bids and to then submit these independent bids for the F1 tender. I had approached Mr Lim as an LEW, rather than as an employee of Cyclect.

…

Q57. During the tender process by F+G (including tender opening, site show round, clarification questions and tender evaluation and

[174] 'AT2-002\Fwd_F1 Tender 2015 2.eml' for prices sent by the Cyclect Group to Joshua Tan, and SM-004 for HPH's submitted bid.
[175] Paragraph 8 of Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017) dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[176] Paragraph 6 of Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017) dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[177] Response to Question 48 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[178] See the tender forms prepared by F+G under Section 2.1 "Tender Instructions" at Clause 18 "Tender Warranty" of 'Request for Tender for Package No: ME006 Site Electrical Services 2015 – 2017' of F+G's response to Question 13 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[179] See the tender forms prepared by F+G under Section 2.1 "Tender Instructions" at Clause 18 "Tender Warranty" of 'Request for Tender for Package No: ME006 Site Electrical Services 2015 – 2017' of F+G's response to Question 13 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[180] Responses to Questions 57 and 58 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.

recommendation), did F+G detect anything suspicious in relation to any of the 4 submitted bids and the 4 companies which submitted the bids?

A: *No.*

Q58. *Did F+G believe that the 4 submitted bids were independent, competitive bids when it made its recommendation in the Tender Recommendation Report to Singapore GP?*

A: *Yes.*

(iii) CCS's analysis and conclusions

CCS's analysis of the evidence

116. Based on a review of the evidence received in the course of the investigation, CCS is of the view that the Cyclect Group had entered into an agreement and/or concerted practice with each of HPH and Peak Top to submit tender bids that would assist Cyclect Electrical to win the F1 Tender. The information obtained during the various interviews and the documentary evidence gathered relating to the F1 Tender revealed that the Cyclect Group sought and obtained HPH's and Peak Top's assistance to submit supporting bids in order to help Cyclect Electrical win the F1 Tender. By engineering the bids of HPH and Peak Top, the Cyclect Group, HPH and Peak Top manipulated the tendering process for the F1 Tender and significantly increased Cyclect Electrical's chances for its submission to secure the F1 Tender contract.

117. Further, CCS is of the view that even if F+G requested assistance from the Cyclect Group to provide contacts for potential tenderers, F+G expected and required the bids it received to be fully independent. However, the independence of HPH's and Peak Top's bids were compromised from the time that the Cyclect Group communicated with both HPH and Peak Top and prepared the quotations for these companies to submit to F+G. CCS also notes that the bid submitted by Chemicrete was also prepared and sent by Lim Poh Beng's Deputy Manager and Tan Ee Wei of the Cyclect Group. However, Chemicrete is part of the Cyclect Group and therefore form an SEE (see paragraphs 209 to 210 below). As entities within an SEE, these agreements within the Cyclect Group do not infringe the section 34 prohibition.

118. Given the explicit instructions to tenderers not to communicate for the purpose of restricting competition and the warranty given by the tender bids, there was no expectation on the part of F+G for the Cyclect Group to engineer the prices submitted by HPH and Peak Top to ensure that the Cyclect Group's bid would be the lowest. While F+G may have contacted HPH and Peak Top (and [✂]) in relation to the F1 Tender after obtaining their contacts from Cyclect, F+G fully expected HPH and Peak Top to submit independent bids thereafter and assessed the bids it received on this basis.

119. The importance of having independent bids was underscored by the UK CAT in *Makers*.[181] The UK CAT reaffirmed the principles established in the earlier case of *Apex* that each economic operator must independently determine its pricing policy and this would preclude contact between competing operators:

> "... (iv) 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;
>
> (v) *the requirement of independence strictly precludes 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.]

120. Furthermore, the UK CAT also emphasised, citing its earlier decision in *Apex*, that the nature of a tendering process is the expectation that bids will be independently articulated and that the competitive process could be interfered with if the tenders submitted are not the result of individual economic calculation, but rather, from the knowledge of tenders by competitors: [182]

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

[181] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [103].
[182] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [104].

undertakings leads to conditions of competition which do not correspond to the normal conditions of the market." [Emphasis added.]

121. The present case involves an open tender. As reiterated by the UK CAT above, the importance of the independence of bids cannot be understated. This is also reflected in the *CCS Guidelines on the Section 34 Prohibition 2016*, which highlight that "Tendering procedures are designed to provide competition in areas where it might otherwise be absent. An essential feature of the system is that tenderers prepare and submit bids independently. Any tenders submitted as a result of collusion or co-operation between tenderers will, by their very nature, be regarded as restricting competition appreciably".[183] The provision of pricing information by the Cyclect Group to HPH and Peak Top had significantly reduced any uncertainty of the competitors' conduct and distorted the competitive nature of the tendering process.

122. In its representations to CCS, the Cyclect Group submitted that "rather than restricting competition, Chemicrete's and Cyclect Electrical's conduct in soliciting more bidders for the F1 Tender at the request of F+G had the effect of increasing competition. In the absence of such conduct, there might not have been any other bidders who would have voluntarily participated in the F1 Tender."[184] The Cyclect Group also submitted that F+G had requested Lim Poh Beng "to look for additional bidders"[185] and that "this was not a case of [Lim Poh Beng] or Chemicrete and [Cyclect Electrical] deciding to unilaterally source for bidders for the F1 Tender".[186] The Cyclect Group further submitted that "[i]mportantly, F+G was aware from the very beginning that Chemicrete and [Cyclect Electrical] had asked HPH and Peak Top to participate in the F1 Tender…".[187] Therefore, the Cyclect Group argued that "having responded to a request that had come from the party calling for the tender and having solicited the other bidders in a manner which was above-board and completely transparent to F+G, Chemicrete and [Cyclect Electrical] cannot be held to have engaged in anticompetitive bidding".[188]

123. First, CCS's view is that Cyclect Group's submission is contrary to the evidence. The Cyclect Group took active steps to prepare tender submission documents for both HPH and Peak Top, which meant that the bids submitted by HPH and Peak Top for the F1 Tender had not been prepared independently, i.e. these were not genuinely competitive bids. Ervin Koh from F+G had asked Lim Poh Beng for contacts of potential bidders for the F1 Tender "because he is a licenced electrical worker and he may know people in the industry" and "not because he was from

[183] *CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.8.
[184] Paragraph 4.1.5.4 of Cyclect Group Representations to Proposed Infringement Decision ("**PID**") submitted on 5 May 2017.
[185] Paragraph 4.1.2.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[186] Paragraph 4.1.2.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[187] Paragraph 4.1.2.9 of Cyclect Group Representations to PID submitted on 5 May 2017.
[188] Paragraph 4.1.2.10 of Cyclect Group Representations to PID submitted on 5 May 2017.

Cyclect…".[189] In response to a question on what he did with the contacts provided by Lim Poh Beng (i.e. HPH and [✂]), Ervin Koh replied that: "I passed them to Sharon [Yee]… I believe that she then followed up by referring them to the F1 [T]ender advertisement and asking them to collect the tender documents for the F1 project".[190] Lim Poh Beng stated the same in relation to the purpose of the contacts: "Yes, Ervin Koh approached me and asked me to provide him with 3 names to invite for the F1 [T]ender".[191] The evidence revealed that the purpose of Ervin Koh contacting Lim Poh Beng was not as the Cyclect Group had submitted; on the contrary, Ervin Koh sought to have competitive bids by obtaining contacts of companies for F+G to send out emails to invite these companies to collect the tender documents and put in bids for the F1 Tender. Instead of "increasing competition", the Cyclect Group's actions misled F+G into preparing its recommendation for Singapore GP, on the basis that there were competitive bids for the tender. Ervin Koh of F+G stated that after receiving four bids for the F1 Tender, F+G no longer had any concerns about the number of potential bidders.[192] This denied F+G the opportunity to intensify their efforts to seek further replacement bids or to evaluate the tender submissions with a clear understanding of the real state of competition.

124. Second, and more importantly, as highlighted above, F+G took the bids to be independent. Ervin Koh had also stated that, having sought assistance from Lim Poh Beng *in his capacity as an LEW rather than as an employee of Cyclect*[193] "because he may know people in the industry",[194] and having contacted several other LEWs,[195] F+G had proceeded to receive and evaluate the bids on the presumption that all four bids had been prepared and submitted independently.[196] Rick Hancock, Director – Southeast Asia of F+G, likewise stated that he would expect the bids to have been independently determined by participants to the F1 Tender.[197]

125. Thirdly, even if F+G was aware that the Cyclect Group had asked HPH and Peak Top to participate in the F1 Tender, the ultimate customer in the F1 Tender was Singapore GP. Singapore GP had appointed F+G as the Engineering Project Manager for the Formula 1 Singapore Grand Prix and F+G was acting on behalf

[189] Responses to Questions 34 and 43 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[190] Response to Question 35 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[191] Response to Question 12 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[192] Response to Question 51 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[193] Responses to Question 48 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[194] Responses to Question 34 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[195] Responses to Question 43 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[196] Responses to Questions 48, 57 and 58 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[197] Response to Question 51 of Notes of Information/Explanation provided by Ricky John Hancock dated 15 April 2016.

of Singapore GP in calling for the F1 Tender. CCS also understands that Singapore GP [✂].[198]

126. Given the above reasons, CCS finds that there is no evidence that F+G had requested the Cyclect Group to actively prepare actual bid submissions for other participants of the F1 Tender, nor is there evidence that F+G had knowledge of the non-independence of bids submitted by the Parties.

The Cyclect Group had agreed and/or concerted with HPH and Peak Top to submit cover bids to allow Cyclect Electrical to win the F1 Tender

127. Rather, the evidence reveals that there was an agreement or concerted practice between the Cyclect Group and each of HPH and Peak Top, to engage in the submission of cover bids in order to allow the Cyclect Group to win the F1 Tender. It is well-established in the *CCS Guidelines on the Section 34 Prohibition 2016* and case law that a bid-rigging (collusive tendering) agreement is, by its very nature, regarded as restrictive of competition to an appreciable extent.[199] In this connection, the CAB in *Pang's Motor Trading v CCS* held that:

> 30 The Board agrees with the CCS's submissions. As stated in the *CCS Guidelines on the Section 34 Prohibition* at para 3.2, bid-rigging or collusive tendering is a type of agreement that is, by its very nature, restrictive of competition to an appreciable extent. The reason for this is obvious: bid-rigging involves parties agreeing not to compete against each other at an auction to the extent that they would otherwise have if they had submitted their bids independently. It is a type of agreement that, by definition, has the *object* of restricting or distorting competition. The Board considers that the phrase "object or effect" is disjunctive in nature, and it is not necessary for the CCS to also prove that a bid-rigging agreement had the *effect* of restricting or distorting competition in Singapore. [200]

128. There is therefore no need for CCS to show that it may have an anti-competitive effect or take account of the agreement's actual effects. Further, the *CCS Guidelines on the Section 34 Prohibition 2016* also make it clear that there can be a concerted practice, even if the Parties did not enter into an agreement, so long as it were found that the Parties had knowingly substituted the risks of competition with cooperation between them.[201] The actions of the Cyclect Group together with HPH, and the Cyclect Group together with Peak Top, demonstrate that HPH and Peak Top had each acted in concert with the Cyclect Group to rig the bids for the F1 Tender.

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[198] Responses to Questions 34 and 35 of Notes of Information/Explanation provided by Ricky John Hancock dated 15 April 2016.
[199] *CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.2.
[200] *Re Pang's Motor Trading v Competition Commission of Singapore, Appeal No. 1 of 2013* [2014] SGCAB 1, at [30].
[201] *CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 2.18.

HPH

129. First, it was clear that HPH had submitted a bid at the behest of the Cyclect Group. That HPH had submitted a cover bid to aid the Cyclect Group was demonstrated by how the Cyclect Group prepared HPH's tender documents for submission for the F1 Tender and that HPH made no changes and submitted the tender documents in their entirety as its own bid.[202] Further, there were multiple confirmations by the Cyclect Group that they had provided the prices to HPH and Peak Top in order to facilitate HPH's and Peak Top's submission of "cover bids".[203]

130. Second, it was also clear that the Cyclect Group had supplied the necessary information and pricing for HPH to submit a cover bid. The evidence on this was outlined above at paragraphs 96 to 102. To summarise, when the request was made to HPH, HPH approached the Cyclect Group for assistance on the pricing, and Tan Ee Wei of the Cyclect Group had responded to HPH with the necessary information. At all times, HPH and the Cyclect Group were in constant contact regarding HPH's submission for the F1 Tender.

131. The Cyclect Group knew that HPH would rely on information it provided to HPH as HPH was clearly inexperienced for projects of such scale as the F1 Tender. In this regard, Melvin Tan stated that the Cyclect Group had provided HPH with information on pricing as the latter was "unable to cost the project accurately".[204]

132. Third, it was clear from a review of the evidence outlined above that the purpose was for HPH to aid the Cyclect Group to win the F1 Tender. By its own admission, HPH knew that it could not undertake the entire project even if it had been awarded the F1 Tender. No documents or credible reasons have been provided by HPH to justify its actions, other than unsubstantiated assertions by HPH that it stood a chance in winning the F1 Tender. When questioned, Joshua Tan was not able to articulate any convincing reasons for why HPH stood a chance of winning, despite the fact that he knew Cyclect Electrical was the incumbent and that Cyclect Electrical had submitted a bid.[205] In addition, when asked why the Cyclect Group would help HPH win the bid if the Cyclect Group could do the job on their own, Joshua Tan was likewise not able to give a satisfactory answer:

Joshua Tan's Notes of Information dated 17 December 2015

Q40. If they could do the job themselves, why would they help you?
A: I don't know.

[202] 'AT2-002\Fwd_F1 Tender 2015 2.eml' for prices sent by the Cyclect Group to Joshua Tan, and SM-004 for HPH's submitted bid.
[203] Responses to Questions 27, 31, 151 and 152 of Notes of Information/Explanation provided by Tan Ee Wei dated 29 October 2015. Responses to Questions 33, 34, 35 and 112 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015. Responses to Questions 52, 53 and 54 of Notes of Information/Explanation provided by K. A. Dass dated 28 October 2015.
[204] Response to Question 32 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.
[205] Responses to Questions 23, 24 and 29 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.

133. In CCS's view, the actions of HPH can only be explained by the fact that HPH submitted a cover bid for the Cyclect Group as a form of *quid pro quo* so that it could potentially be awarded more work in future by the Cyclect Group if it helped the Cyclect Group to win the F1 Tender. The evidence revealed that HPH's submission of a cover bid was to generate the appearance of competition, allow the Cyclect Group to win the F1 Tender and in the process, secure the goodwill of the Cyclect Group.

134. The evidence also shows that there was a history of HPH being eager to maintain good relations with the Cyclect Group by way of submitting quotes for tenders which the Cyclect Group was taking part in, whenever they were asked to do so, even if they do not get the projects most of the time. CCS notes that Dass of Chemicrete had often approached HPH to quote for other works in the past. The admission by Joshua Tan about their previous communication is particularly telling:[206]

Joshua Tan's Notes of Information dated 28 July 2015

Q41. Are you always the sub-contractor for Chemicrete?
A: Not all the time. When Dass would ask me to quote and I would quote to him. But I do not get the projects most of the time even after quoting. However, if I do not quote, then he may not give me a chance to quote and to win the business the next time. My philosophy is always to quote no matter how big or small the project is.

Q47. Who do you have contact with and what is generally discussed with your competitor?
A: I have most contact with Dass. My contact with him is mostly about work. For example, we discuss the jobs that he is going to bid for and whether I can support him and quote him. I will ask him "Boss can you give me some jobs to do?" Dass will say "I am bidding, can you quote to me."

Q51. For [✂] and GEMS which he asked you to quote, do you know the prices that he is bidding?
A: No I do not know his prices. For my prices, as Dass sometimes gives me prices to quote, he will roughly know my prices. I will always quote whenever I am asked to quote but I do not ask anything about it.

135. It appears that HPH had known or at the very least, suspected that there was some impropriety as to why it was asked to bid for the F1 Tender:[207]

[206] Responses to Questions 41 and 47 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[207] Response to Question 75 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015. Responses to Questions 30 and 31 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.

Joshua Tan's Notes of Information dated 28 July 2015

Q75. Why did Cyclect ask you to bid?
A: I do not know and I do not want to know.

Joshua Tan's Notes of Information dated 17 December 2015

Q30. You have just said that you had a chance of winning because you thought Cyclect may not have been able to do the job. I am showing you this document marked JT2-003. This is a message exchange between you and Mr K.A. Dass (Chemicrete). On 10 December 2014, you asked Mr. Dass whether he had checked with his MD on the Grand Prix (F1) tender i.e. how his MD wanted to work together with you, or whether they only wanted you to submit a bogus price. What did you think Chemicrete was trying to achieve?
A: I did not know, that was why I asked him the question. I was trying to ask him what they were trying to achieve but they did not answer me.

Q31. Please explain what you meant by submitting a bogus price.
A: I was asking them whether they wanted me to send in a fake price. I did not want to get myself into trouble by submitting a fake price.

136. In CCS's view, HPH's disregard of the potential impropriety relating to the Cyclect Group's request for HPH to bid, even after suspecting so, does not excuse HPH and the Cyclect Group of their participation in bid-rigging. The evidence revealed that HPH's bid for the F1 Tender was not made as a genuine competitor for the F1 Tender; rather, it was to lend support to the Cyclect Group. HPH's behaviour appears to have been for the purpose of maintaining good business relationships with the Cyclect Group as the Cyclect Group had in the past awarded some work to HPH.

Peak Top

137. Likewise, with regard to Peak Top, there existed an understanding to help the Cyclect Group and a clear intent on the Cyclect Group's part to influence Peak Top's bid. The prices provided by the Cyclect Group to Peak Top were comprehensive and provided all price information required for Peak Top to participate in the tender:

Lim Poh Beng's Notes of Information dated 15 July 2016

Q46. Did the price submissions prepared by Cyclect and sent to Peak Top and HPH comprehensively cover all the information required by F+G for a tender submission for the F1 tender?
A: This was submitted according to the itemised tender breakdown. It was comprehensive as we have a figure for the itemised tender breakdown.

138. It is clear, based on Lim Poh Beng's evidence, that both the Cyclect Group and Peak Top knew that Peak Top did not have the expertise to prepare the quotation for the F1 tender and was therefore reliant on the quotation prepared for Peak Top by the Cyclect Group:

Lim Poh Beng's Notes of Information dated 15 July 2016

Q54. You mentioned that Andy said that Peak Top is not familiar with the F1 project, so they requested for a quote. Did he request for the quote as a base from which to prepare their own quotation?
A: They are not familiar with event jobs, so the quote will be a point of reference.

Q55. Did Peak Top know Cyclect is the incumbent and hence familiar with the work requirements and the expected value of the tender breakdown that would be incurred for the F1 project?
A: Yes they knew Cyclect was the incumbent and they would have the impression that Cyclect would know the requirements and expected value of the different items under the tender breakdown since Cyclect was the incumbent.

Q56. From Peak Top's point of view, would Cyclect be in the best position to provide a quotation as a reference point?
A: I can't speak for Peak Top but I would think so.

139. Peak Top therefore took the prices provided by the Cyclect Group and submitted them for the F1 Tender with no mark up. The Cyclect Group, in its representations, submitted that "price examples provided by Chemicrete and Cyclect Electrical were mere guidelines and that HPH and Peak Top were nevertheless free to set, and did in fact exercise independent judgment in setting, their own bid prices".[208] However, the evidence did not reflect that HPH or Peak Top had exercised their respective independent judgments in the bids submitted to F+G. CCS notes that the only change Peak Top made was to replace the letterhead to Peak Top's letterhead, and the submission of the tender was completed in less than two working days from the time when Peak Top received the prices from the Cyclect Group. Not only is the process highly unusual as stated by Peak Top's Project Engineer, the speed of the turnaround is also unusual given that this was a large contract that Peak Top was not familiar with.[209] As in the case of HPH, it was clear that Peak Top was merely doing what they were told by the Cyclect Group, i.e. to submit a cover bid so as to allow the Cyclect Group to win the F1 Tender.

[208] Paragraph 4.1.4.2 of Cyclect Group Representations to PID submitted on 5 May 2017.
[209] Response to Question 74 of Information/Explanation provided by Sathish Kumar dated 7 April 2016.

140. As in the case of HPH, Peak Top also knew that the Cyclect Group had submitted its own bid for the F1 Tender.[210] When questioned about why the Cyclect Group would help Peak Top since the Cyclect Group was bidding for the project itself, Andy Chong referred to a potential partnership with the Cyclect Group.[211]

141. In CCS's view, Andy Chong's explanation is not credible. In the first place, as mentioned above in paragraph 105, Peak Top was aware that its BCA grading did not allow it to qualify for the F1 Tender. On this note, CCS notes that this is in line with the OECD's observation in its "Guidelines for Fighting Bid Rigging in Public Procurement" that such a bid implies suspicious behaviour, as such an action did not make sense and would only serve to benefit other bidders.[212]

142. Further, Andy Chong was also not able to articulate a cogent basis for why Peak Top could possibly win the F1 Tender, apart from an assertion that it could cooperate with the Cyclect Group as a joint venture partner. In this regard, no documents or evidence had been produced by Peak Top to evidence this claim that such a relationship had indeed been in the contemplation of the parties at the time of submitting the bid. Furthermore, the Cyclect Group had no prior business relationships with Peak Top. [213]

143. A comparison of the tender forms forwarded to Peak Top,[214] and the quotes actually submitted to F+G by Peak Top was made.[215] Similar to HPH's submission of quotes also provided by the Cyclect Group for the F1 Tender, Peak Top submitted the exact same prices provided by the Deputy Manager of the Cyclect Group in his email of 24 December 2014 to F+G as its own bid submission.

Conclusion on involvement of the Cyclect Group, HPH and Peak Top in anti-competitive conduct in the F1 Tender

144. The evidence revealed that both HPH and Peak Top were not *bona fide* bidders, and instead, had agreed or concerted with the Cyclect Group to rig the bidding process or collusively tender to assist the Cyclect Group win the F1 Tender.

145. The provision of prices by the Cyclect Group to HPH and Peak Top clearly influenced HPH and Peak Top's bids, and this goes against the principle that all bids must be independently decided by economic operators. The communication by the Cyclect Group, HPH and Peak Top prior to the submission of their respective bids distorted the competitive nature of the tendering process.

[210] Response to Question 61 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.
[211] Response to Question 70 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.
[212] OECD's "Guidelines for fighting bid rigging in public procurement" at part 5.
[213] Response to Question 40 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016; Response to Question 26 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[214] Document 06 submitted by the Cyclect Group on the F1 Tender dated 17 June 2015.
[215] See Appendix D.1 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016 for prices submitted by Peak Top to F+G.

146. In this regard, the UK CAT case of *Makers* involves similar facts and is instructive. In that case, one of two competing parties (for the same tender) provided the other with a set of prices with the intention of influencing the recipient's prices. The recipient, Makers, then used the figures provided to it in its final submitted bid.[216] The UK CAT found that the facts disclosed an anti-competitive agreement or concerted practice:

> 106 In the case of the Elliott House contract the version of events put forward by Makers is that:
>
> (a) Makers contacted Asphaltic to ask for a sub-contract price for the asphalt elements of the works;
>
> (b) In the course of that conversation it became apparent to Makers that Asphaltic were involved in the tendering procedure either as a main contractor or as a sub-contractor and Asphaltic clearly became aware that Makers was a potential main contractor in the project;
>
> (c) Asphaltic sent Makers a set of prices for the whole of the works with the intention that these figures would influence the figures that Makers would use as the basis for its bid;
>
> (d) The figures that Makers did use for its bid were in fact based on the Asphaltic figures.
>
> 107 We are satisfied that those facts do disclose an agreement or concerted practice which contravenes the Chapter I prohibition. At the point when Makers submitted its bid, the figures it included had been influenced by the figures provided to it by Asphaltic. This was therefore conduct of the kind described in Apex at principles (iii) (iv), (v) and, above all, (vii). It is true that Asphaltic could not have been sure, on this version of the facts, that the figures that Makers would submit (if indeed they submitted them at all) would be exactly the same as those it provided – it might have expected that Makers would adjust the figures in some way, or add a small profit margin to the quote or, it was submitted, it might have realised that it was possible that Makers would be prepared to make a loss on the project. *But the obtaining of a quotation by Makers when both parties knew that the other was involved in the bidding process infringed against the principle that each undertaking must determine independently the policy it intends to adopt on the market. Makers took account of the information it had received in the course of its conduct on the market: Asphaltic should not have*

[216] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [106].

> *given the figures to Makers and Makers should not have received and used them.*
>
> 108 *In this case it is clear that Makers in fact submitted a bid which was influenced by the figures provided by Asphaltic.* [217]
>
> [Emphasis added.]

147. It was found that the provision or exchange of price information between competitors influenced the conduct of the parties. The UK CAT elaborated that the influence of the price information should affect a significant proportion of the contract works involved and that the influence of such information on the competitor's bid should be obvious:

> 109 However, it is an essential element of this concerted practice that the items of the contract works included in the figures given by the sub-contractor to the main contractor were a large proportion – in this case in fact the whole – of the items included in the ultimate tender. It must have been obvious that the incorporation of those figures into the Makers bid would influence the overall price at which Makers bid for the contract.

148. The reasoning in *Makers* is equally applicable in the instant case. HPH and Peak Top had simply used the prices given by the Cyclect Group and submitted the bids as if they were their own. There is therefore no denying that HPH and Peak Top had been influenced by the figures provided by the Cyclect Group in submitting their bids. The Cyclect Group, HPH and Peak Top had infringed the principle cited by the UK CAT in *Makers* that each undertaking must determine independently the pricing policy it would adopt in the market.

149. The Cyclect Group, in its representations, submitted that there was no agreement formed as there was no concurrence of wills between Chemicrete and Cyclect Electrical and HPH or Peak Top as to the prices each party should submit for the F1 Tender, which party should be the winner of the F1 Tender, or even to rig the F1 Tender in any manner.[218] CCS has considered this submission and found it to be unmeritorious. It is trite law that there is no need for a formal agreement to be reached on all matters; details about an agreement could be vague or inchoate and there may not be full consensus on all issues.[219] This is evident in the case of *Makers*, where the CAT noted that Asphaltic could not have been sure that the price Makers submitted would be exactly the same as those it provided. The CAT ultimately opined that the obtaining of a quotation by Makers when both parties knew each other was involved in the bidding process infringed the principle that

[217] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [106], [107] and [108].
[218] Paragraph 4.1.1.2 of Cyclect Group Representations to PID submitted on 5 May 2017.
[219] *Pre-Insulated Pipe Cartel* [1999] OJ L24/50, 1999 CMLR 402, at [134].

each undertaking must determine independently the policy it intends to adopt in the market.[220] In this instance, it is therefore irrelevant that the details on which party would have won, or which price was to be submitted, remained ambiguous. The fact that the Cyclect Group provided prices to HPH and Peak Top and that the HPH and Peak Top accepted the same without expressing any reservations or objections when receiving the information[221] is sufficient to establish that there was an agreement and/or concerted practice.

150. The Cyclect Group also submitted in its written representations that there was no concerted practice as neither HPH nor Peak Top was aware that the other party was bidding for the F1 Tender, and Chemicrete and Cyclect Electrical had not disclosed their intended courses of conduct in relation to the F1 Tender to either HPH and Peak Top or vice versa.[222] CCS does not agree with these representations. First, it is clear that a concerted practice can arise even where one competitor discloses to the other an intended course of conduct to the other, and the other competitor accepts it.[223] The same reasoning applies in the instant case, such as where a competitor discloses a set of pricing to the competitor with the intention that the competitor should follow the set of pricing. The point to be highlighted is that this effectively eliminates uncertainty on the market, and substitutes practical cooperation for the risks of competition in the market.[224] Revealing a set of pricing to a competitor is also at odds with the principle that each economic operator must determine its policy independently in the market, as held by the CAT in *Makers*[225] as well as the ECJ in *Suiker Unie*[226] and *Anic*[227], which are cited above at paragraphs 47 and 48, respectively.

151. CCS also notes the Cyclect Group's related argument that Chemicrete and Cyclect Electrical did not know the prices that HPH and/or Peak Top would submit, or vice versa.[228] This argument is factually untrue in relation to HPH as HPH had forwarded its final bid for the F1 Tender to the Cyclect Group.[229] Further, as CCS has noted above at paragraphs 136 and 139, the Parties' behaviour was consistent

[220] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [107].
[221]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].
[222] Paragraph 4.1.1.5 of Cyclect Group Representations to PID submitted on 5 May 2017.
[223] See 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]; *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [103(vii)].

[224] 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, at [26].
[225] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [107].
[226] 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 [26] to [28], [173] to [174].
[227] Case C-42/92P *Commission v Anic Partecipazioni SpA* [1999] ECR I-4125, at [116] to [118].
[228] Paragraph 4.1.1.6 of Cyclect Group Representations to PID submitted on 5 May 2017.
[229] See exhibit marked SM-004.

with an understanding separately between the Cyclect Group and HPH and/or Peak Top to submit bids in order to allow the Cyclect Group to win the bid. Therefore, applying the principles set out in *Suiker Unie*,[230] it did not matter if the parties were not sure of the exact bid prices of the various parties involved. As outlined in the evidence above at paragraphs 99 and 109 above, when HPH and Peak Top received the tender submissions, HPH and Peak Top proceeded to submit the tender documents without making any amendments to the prices given by Cyclect, with the exception of amending the company letterheads. In HPH's case, it was even more telling that Joshua Tan explicitly sought Tan Ee Wei's assistance so that he would not "put in the wrong price" and Tan Ee Wei even advised HPH's Accounts Executive on how to fill in the tender documents.[231] This demonstrates that HPH and Peak Top were expected by Cyclect to use the pricing provided by the Cyclect Group and submit them without making any changes, which in fact both HPH and Peak Top did.

152. The Cyclect Group also submitted in its written representations that the prices provided by Cyclect Group to HPH and Peak Top were template quotations and price examples and that there was a great deal of uncertainty surrounding the course of action each of the bidders were to take.[232] CCS observes that if the prices were meant to be price examples and templates, Cyclect Group could have provided the same documents to both HPH and Peak Top. Instead, CCS notes that different prices were provided to HPH (S$[✂]) and Peak Top (S$[✂]). CCS is of the view that the Cyclect Group deliberately expended additional effort to provide different prices to HPH and Peak Top in order to create the impression of independent competitive bids. It is also telling that the package of tender documents provided by F+G to interested bidders already included templates for the submission of bids. The Cyclect Group could have directed HPH and Peak Top to speak to F+G directly if either of them required assistance in submitting their bids. The Cyclect Group's representation that the prices provided were mere templates and price examples also contradicts the Cyclect Group's representations that there was "indeed a strong and highly likely sub-contracting relationship"[233] as it is difficult to see how the prices submitted could be simultaneously mere price examples and, at the same time, genuine subcontractor quotations.

153. In light of the above, CCS is of the view that through the conduct of the Parties in the F1 Tender, the Cyclect Group was able to submit bids that would not be subject to competitive restraints by competing bids that would otherwise have been present. Instead, the Parties had agreed or acted in concert for HPH and Peak Top to submit cover bids to help the Cyclect Group (i.e. Cyclect Electrical) win the F1 Tender. The Parties' conduct thus constitutes an infringement of section 34 of the Act.

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[230] 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.
[231] Exhibits marked TEW-020 and TEW-018.
[232] Paragraph 4.1.1.7 of Cyclect Group Representations to PID submitted on 5 May 2017.
[233] Paragraph 4.1.3.4 of Cyclect Group Representations to PID submitted on 5 May 2017.

It was inherently unlikely that entities of the Cyclect Group would be a sub-contractor to HPH or Peak Top

154. Further, CCS considers that there is simply no basis to the argument that any of the entities of the Cyclect Group (i.e. Cyclect Electrical or Chemicrete) was a potential sub-contractor to HPH or to Peak Top and the prices provided by the Cyclect Group to HPH or to Peak Top had been in a sub-contracting capacity. This was a point raised by both Joshua Tan and Andy Chong during the interviews: see paragraphs 101 and 103 above.

Industry practice for sub-contracting

155. This explanation, however, does not cohere with the industry practice for sub-contracting arrangements which the Parties themselves identified. CCS was informed that the practice in the industry was for a company that wanted to participate in a tender as the main contractor to apply a mark-up to sub-contractors' quotations before submitting its own bid. For instance, during the interview with Joshua Tan of HPH, he acknowledged that in instances where HPH engaged sub-contractors, a mark-up would be applied to whatever prices that the sub-contractors quoted to HPH.[234] CCS also notes that the Cyclect Group typically applies mark-ups to quotes by subcontractors when determining its own bid.[235]

156. Notwithstanding the above, this industry practice was not applied in the case of the F1 Tender for both HPH and Peak Top. HPH did not apply a mark-up to the Cyclect Group's proposed prices before its submission to F+G. In particular, HPH submitted a bid which was in accordance with the price suggested by the Cyclect Group in the documents which were prepared by the Cyclect Group for HPH: see paragraph 99 above. Melvin Tan, Tan Ee Wei and Dass also confirmed that the purpose of sending prices for the F1 Tender to HPH was for HPH to put in a support bid, i.e. to give the Cyclect Group a better chance of winning the F1 Tender.[236]

157. There is no contemporaneous evidence that there was a sub-contracting relationship intended between the Cyclect Group and Peak Top at the time of submission of their bids for the F1 Tender. In particular, the Cyclect Group had prepared a complete set of documents including pricing information for Peak Top for the F1 Tender, which Peak Top then submitted wholesale without amendment or mark-ups as its own submission for the F1 Tender.[237] Andy Chong of Peak Top

[234] Response to Question 37 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[235] Responses to Questions 39 and 47 of Notes of Information/Explanation provided by K. A. Dass dated 22 April 2015. Response to Question 29 of Notes of Information/Explanation provided by Tan Ee Wei dated 22 April 2015. Response to Question 23 of Notes of Information/Explanation provided by Ong Eng Seng dated 22 April 2015.
[236] Responses to Questions 27, 31, 151 and 152 of Notes of Information/Explanation provided by Tan Ee Wei dated 29 October 2015. Responses to Questions 33, 34, 35 and 112 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015. Responses to Questions 52, 53 and 54 of Notes of Information/Explanation provided by K. A. Dass dated 28 October 2015.
[237] Response to Question 59 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.

admitted that the F1 Tender was the only project where Peak Top submitted a quote with no profit margins or mark-ups on the quote provided by a potential sub-contractor,[238] whereas generally when Peak Top engages a sub-contractor, it would incorporate a [✂] mark-up on the basis of total cost, including the costs of engaging the sub-contractor.[239] CCS further notes that there was no formal agreement between Peak Top and the Cyclect Group in relation to potential sub-contracting, joint venture, partnership or other profit-sharing arrangements prior to Peak Top's submission of its quote for the F1 Tender.[240]

158. On the contrary, the evidence revealed that the Cyclect Group had no intention to be a sub-contractor to HPH or Peak Top. From an interview with Lim Poh Beng, it is clear that the Cyclect Group had intended for their quote to Peak Top to be used in Peak Top's actual submission for the F1 Tender, and which then would have increased Cyclect Electrical's chances of winning the F1 Tender. Lim Poh Beng knew that Peak Top was not familiar with the F1 Tender and hence would have used the quote provided by the Cyclect Group since Peak Top knew that Cyclect Electrical was the incumbent and "would have the impression that Cyclect would know the requirements and expected value of the different items under the tender breakdown since Cyclect was the incumbent".[241] Lim Poh Beng admitted that Cyclect Electrical, Chemicrete, HPH and Peak Top were competitors for the F1 Tender,[242] and that the Cyclect Group had prepared a quote for Peak Top that was higher than Cyclect Electrical's own price to "make sure that if Peak Top lowers their price [in their actual submissions for the F1 Tender], ours will still be lower than Peak Top".[243] Lim Poh Beng explained that "Since we won't know if Andy happens to lower his price, so it is in Cyclect's interest to quote a higher price to Peak Top. In Cyclect's interest means in a way we have a higher chance to win the tender".[244]

159. Further, Lim Poh Beng also acknowledged during the interview that Peak Top had no prior business relationships with the Cyclect Group.[245] The Cyclect Group also knew that Peak Top did not meet the requirements for the F1 Tender specified by F+G. This was a fact made known by Andy Chong to Lim Poh Beng when Peak Top was first approached to participate in the F1 Tender:[246]

Lim Poh Beng's Notes of Information dated 15 July 2016

[238] Response to Question 76 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.
[239] Response to Question 44 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.
[240] Responses to Questions 70 to 72 and 78 of Notes of Information/Explanation provided by Andy Chong dated 7 April 2016.
[241] Responses to Questions 53 to 55 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[242] Response to Question 8 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[243] Response to Question 42 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[244] Response to Question 43 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[245] Response to Question 26 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.
[246] Response to Question 24 of Notes of Information/Explanation provided by Lim Poh Beng dated 15 July 2016.

Q24. Did Peak Top meet the requirements for the F1 tender specified by F+G?
A: No. There were 2 requirements, either L1 for ME15 and L4 or L5 for ME05. Andy told me that he did not meet one of the requirements.

160. Following the initial technical and price evaluation by F+G, Peak Top was disqualified as it did not meet the requirement under the BCA ME05 workhead – Electrical Engineering (with minimum Grade L4) and ME15 workhead – Integrated Building Services (with minimum Grade L1).[247] It is therefore wholly improbable that the Cyclect Group believed that the Cyclect Group could be a sub-contractor if Peak Top had been awarded the F1 Tender.

161. The Cyclect Group, in its representations, also submitted that "there was a great deal of uncertainty surrounding the course of action that each of the bidders for the F1 Tender was going to take". According to the Cyclect Group's representations, they had no knowledge of the final prices that either of them submitted despite having provided template quotations and price examples to HPH and Peak Top.[248] CCS finds this representation clearly erroneous. HPH (as a supposed main contractor) had requested the Cyclect Group to check its prices for fear that it would "put in the wrong price",[249] and had forwarded its submitted bid for the F1 Tender to the Cyclect Group for its information.[250] In addition, this would be contradictory to its submission that "the sample prices provided in the quotes were but examples and not definitive prices"[251] and "the parties could subsequently agree on how to manage the fees to be paid between them if HPH or Peak Top won the F1 Tender".[252] In particular, CCS notes that it would have been disadvantageous to HPH if the Cyclect Group was a genuine potential subcontractor as the Cyclect Group would then know HPH's actual submitted prices (and thus profit margins from the project) which would jeopardise HPH's ability to negotiate with the Cyclect Group.

No evidence of sub-contracting arrangement

162. The Cyclect Group, in its representations, submitted that CCS had "failed to give sufficient weight to potential sub-contractor relationships between Chemicrete and Cyclect Electrical Engineering and the other parties".[253] On the contrary, CCS had not found, and Cyclect Group had not submitted, any documents to support any notion of potential sub-contractor relationships.

[247] Paragraph 4 of 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[248] Paragraph 4.1.1.7 of Cyclect Group Representations to PID submitted on 5 May 2017.
[249] Exhibit marked TEW-018.
[250] Exhibit marked SM-004.
[251] Paragraph 4.1.3.5 of Cyclect Group Representations to PID submitted on 5 May 2017.
[252] Paragraph 4.1.3.7 of Cyclect Group Representations to PID submitted on 5 May 2017.
[253] Paragraph 4.1.3 of Cyclect Group Representations to PID submitted on 5 May 2017.

163. CCS notes that in past instances where HPH acted as a subcontractor for the Cyclect Group, formal quotations were always sent by the potential subcontractor, i.e. HPH and written in a business-letter style using language such as "We are pleased to quote you of the above mentioned Project of a total sum of […]",[254] or "Refer to the above, we are please[d] to submit herewith our quotation for your kind consideration […]".[255] These formal subcontractor quotations were of much lower value than those under the F1 Tender. On the other hand, CCS notes the lack of a similarly formal quotation for such a large contract amount in the F1 Tender.

164. Other than bare assertions made by Andy Chong, Joshua Tan and Lim Poh Beng in the notes of information recorded when interviewed by CCS officers, the documentary evidence does not point to a subcontracting arrangement. F+G's tender documents require tenderers to indicate at part 1.4c whether there were any sub-contractors or consultants that would be engaged. In the documents submitted by HPH and Peak Top to F+G, obtained by CCS pursuant to a request under section 63 of the Act, CCS notes that none of the entities within the Cyclect Group were listed as a potential sub-contractor in both HPH's and Peak Top's submissions for the F1 Tender.[256] While Peak Top's list was empty, HPH's list included three subcontractors, one design consultant and five suppliers, none of which were the Cyclect Group entities. It is noted that in the evidence gathered by CCS, the Cyclect Group was the only entity to have provided prices to Peak Top and HPH. In CCS's view, this glaring omission of the Cyclect Group as a potential sub-contractor from the tender documents, when both HPH and Peak Top had acknowledged that they would require Cyclect Group's participation should they win the tender, makes the sub-contracting argument even more implausible. It evidences that even HPH and Peak Top did not contemplate, at the time of submitting the documents, that the Cyclect Group was potentially a sub-contractor. The Cyclect Group, in its representations, submitted that "it was common for bidders to either leave such names blank or insert the names of potential sub-contractors but only finalise them after winning the tender, and hence the fact that HPH and Peak Top left the portion on sub-contractors in the F1 Tender form blank cannot be conclusive of a lack of intention to appoint Chemicrete and Cyclect Electrical as their sub-contractor for the F1 project".[257] However, CCS has evidence that HPH had indicated other subcontractors in its tender submissions, none of which included the Cyclect Group. Having an incumbent, i.e. the Cyclect Group, as its subcontractor would presumably have given F+G the confidence that HPH (or Peak Top for that matter) would be able to carry out the works for the F1 Tender, and thereby increase HPH's (or Peak Top's) chances of winning the F1 Tender. The omission to list the Cyclect Group as a subcontractor is therefore indicative of the implausibility of the Cyclect Group's submission that there was

[254] Exhibit marked AT2-003/IRAS/HPH/IRA Q-12301.pdf.
[255] Exhibit marked AT2-003/IRAS/HPH/Q12611-Chemicrete.pdf.
[256] Response to Question 17 and 1.4c of HPH's and Peak Top's technical submissions for the F1 tender of F+G's response dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[257] Paragraph 4.1.3.13 of Cyclect Group Representations to PID submitted on 5 May 2017.

an "alternative plausible explanation" on the Cyclect Group's interactions with HPH and Peak Top, i.e. that the Cyclect Group was to be a subcontractor to HPH or Peak Top.

165. Accordingly, the sub-contracting argument is an inherently implausible one, as no contemporaneous documents were produced to evidence that there was a genuine subcontracting relationship between the Parties at the time of preparing the bids for the F1.

166. Rather, the evidence demonstrates an absence of any sub-contracting arrangements. In the first place, it was clear that HPH and Peak Top had not made any changes to the prices (including the individual breakdown of prices in the F1 tender documents) supplied by the Cyclect Group. In the case of HPH, it had even sought Cyclect Group's input for fear of putting in a "wrong price". More tellingly, HPH's own F1 Tender submission did not indicate any Cyclect Group entities as a sub-contractor and this likewise applied to Peak Top's submission bid. Lastly, it should be reiterated that no contemporaneous documents (i.e. documents dated at or around the time of submission of bids for F1 Tender) had been provided by Cyclect Group to demonstrate its claim that there was a sub-contracting relationship in place, or in contemplation, at the time of the submission of the bids for F1 Tender.

167. The importance of placing weight on contemporaneous documents, rather than subsequent statements of an exculpatory nature, was highlighted in the case of *Archer Daniels Midland Co v Commission,*[258] where the CFI agreed that the Commission had not erred in attaching greater evidential value to an FBI report which was produced during the administrative procedure in which the Commission had requested for further information from the applicant, rather than to subsequent statements made by the applicant *in tempore suspecto* for the purposes of exculpating itself during the appeal. It is clear that the "evidential value of a document depends on its origin, the circumstances in which it was drawn up, the person to whom it is addressed and its content".[259]

168. Taking all the above factors into account, CCS is therefore of the view that the sub-contracting argument is an inherently implausible one given the circumstances of the case and the evidence before CCS. The submission of bids was done with the purpose of giving the false appearance that there was genuine competition further to the agreement and/or concerted practice the Cyclect Group had with each of HPH and Peak Top to submit bids for the F1 Tender.

Decisions from the UK CAT

[258] Case T-59/02 *Archer Daniels Midland Co v Commission* [2006] ECR II-3627 at [277].
[259] 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 [1053] and [1838].

169. In coming to this conclusion, CCS was guided by the principles established by the UK case of *Makers*, where a similar argument regarding a possible sub-contracting arrangement was dismissed by the UK CAT. In that case, the appellant Makers had acquired figures from Asphaltic and submitted a bid based on those figures without applying a profit margin. Makers had asserted that its aim was to "get to the next stage of the tender procedure" and that its strategy was to "put in a bid that would enable them to get to the table to meet the client" and eventually, for Makers to negotiate alternative specifications that could allow Makers to generate cost savings and thereby realise a profit margin.[260] The question that the UK CAT had to decide upon was whether Makers had used the prices in its own bid believing that they constituted a genuine quotation from Asphaltic for carrying out the work as a sub-contractor for the project.

170. The UK CAT found Makers' reasoning to be unconvincing for several reasons:[261]

(a) First, the UK CAT found that the circumstances in which Makers had come to obtain the so-called sub-contract quotation from Asphaltic was not meritorious. Makers asserted that it identified Asphaltic as a possible alternative supplier from an online portal, Yell.com. The UK CAT found that it was "inherently unlikely" that Makers should have accidentally contacted a company (Asphaltic) which turned out to be another contractor that had been invited by the tendering company to bid;

(b) Secondly, the UK CAT noted that contemporaneous documents in which Asphaltic recorded the requests for quotations it receives made no mention of a request from Makers in relation to the particular tender; and

(c) Thirdly, the UK CAT found that it made no commercial sense for Makers to not have included a profit margin in submitting the bid. Makers asserted that they had wanted to put forth alternative proposals to the client, AKS, directly and to persuade AKS to change the specification of the works so that Makers could realise a profit margin. The UK CAT found that this argument was not supported by the evidence. In particular, the UK CAT found that in a post-tender meeting, Makers had not made any attempt to persuade AKS to use an alternative specification.

171. In *Apex*, the facts of which were outlined above at paragraphs 70 to 71, a building contractor, Apex, had sent another building contractor, Briggs, a fax containing figures for Briggs in respect of two projects with the Birmingham City Council for maintenance and improvement services for flat roofs. Similar to the instant case, Briggs was not a bona fide bidder. Briggs received Apex's quote, but ultimately decided not to submit a bid. The OFT held that it was immaterial that Briggs had not submitted a bid; it considered that the object of the practical cooperation between Apex and Briggs was that Briggs would not win the bid, <u>not</u>

[260] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [33(f)].
[261] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [80] to [92].

that Briggs would submit a bid. The UK CAT also noted that Briggs did not distance itself from Apex's quoted prices, which is similar to the case at hand, where HPH and Peak Top had not similarly distanced themselves from prices quoted by the Cyclect Group despite knowledge that the Cyclect Group would be submitting competing bids for the F1 Tender. In *Apex*, the UK CAT accepted the OFT's submission that it was immaterial whether Briggs had submitted a bid – what mattered was that Apex and Briggs had, through their actions, substituted the risks of competition with practical cooperation.[262]

172. In another more recent decision of *Access Control*, the OFT found four suppliers of access control systems had engaged in collusive tendering in the supply and installation of access control and alarm systems in retirement properties.[263] The OFT found that the arrangement was detrimental to competition by their very nature and that in colluding to submit cover bids, this reduced the number of competitive bids received by depriving the leaseholders of the retirement properties of the opportunity to seek a replacement bid.[264]

173. Whilst the *Access Control* case involved a selective tendering process, the principles cited by the OFT are equally applicable in the instant case. The mere fact that the Parties had colluded to submit cover bids meant that F+G had been deprived of an opportunity to find a replacement bid which would be genuinely competitive.

174. In summary, CCS finds that the principles espoused by the UK CAT and OFT (respectively) in *Makers, Apex* and *Access Control* to be applicable on the facts of the instant case. First, HPH and Peak Top failed to submit an independent bid; rather, each simply submitted their bid based on the prices given to them by the Cyclect Group without making any adjustments whatsoever. Similar to the situation in *Makers*, if there had been a sub-contracting arrangement, HPH and Peak Top would have treated the Cyclect Group's prices as an input cost as a factor in their own respective bids in order to compete with the Cyclect Group. Instead, the evidence revealed that HPH and Peak Top simply submitted their bids wholesale based on the prices given to them by the Cyclect Group for the purpose of HPH and Peak Top's respective cover bids. Secondly, there were no contemporaneous documents evidencing that the Cyclect Group frequently quoted to HPH and Peak Top in its capacity as a potential sub-contractor. Thirdly, the Cyclect Group and Peak Top also did not have a history of prior business dealings. Fourthly, neither HPH nor Peak Top submitted any documents to F+G indicating that a potential sub-contracting arrangement could be in place with the Cyclect Group.

[262] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [236].
[263] CA98/03/2013 *Collusive tendering in the supply and installation of certain access control and alarm systems to retirement properties* (6 December 2013).
[264] CA98/03/2013 *Collusive tendering in the supply and installation of certain access control and alarm systems to retirement properties* (6 December 2013), at [6.13].

Business strategy by the Cyclect Group

175. The Cyclect Group also submitted that HPH and Peak Top had contemplated the possibility that they would win the tender, and that the provision of higher pricing to HPH was a "tactical play by CEE" as a "business strategy" to win the bid.[265] CCS has considered this argument but is of the view that this point is irrelevant. The European courts have stated that an agreement which has an anti-competitive object will not cease to be characterised as such even if other legitimate objectives were also pursued. For instance, in the *Irish Beef* case, the General Court held that "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."[266]

176. In any event, even if a potential sub-contracting relationship between the Cyclect Group, HPH and/or Peak Top was intended, an infringement of section 34 of the Act can exist as long as one of the objectives was anti-competitive in nature. In *Apex*, on appeal before the UK CAT, Apex argued that there was an innocent explanation for the submission of cover bids because if a contractor failed to submit a realistic bid following an invitation, there is a significant risk that the tenderee will not approach it again or invite it to submit on the next occasion that an appropriate contract arises. The UK CAT found that such explanation did not absolve Apex of liability and said:[267]

> "250. …Concertation, the object of which is to deceive the tenderee into thinking that a bid is genuine when it is not, plainly forms part of the mischief which section 2 of the Act is seeking to prevent. The subjective intentions of a party to a concerted practice are immaterial where the obvious consequences of the conduct is to prevent, restrict or distort competition.
>
> 251. We accept the submission of the OFT that submitting a cover-bid in these circumstances has an anti-competitive object or effect:
>
> a) it reduces the number of competitive bids submitted in respect of that particular tender;
> b) it deprives the tenderee of the opportunity of seeking a replacement (competitive) bid;
> c) it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so;

[265] Paragraph 4.1.4.6 of Cyclect Group Representations to PID submitted on 5 May 2017.
[266] Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd* [2008] ECR I-8637; [2009] 4 CMLR 6, at [21].
[267] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [250] to [251]. In the OFT decision, it was stated that Briggs had applied for leniency and the OFT had subsequently decided not to impose any fine on Briggs.

d) it gives the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired."

177. As CCS noted above[268] as well as by the UK CAT in the case of *Apex*, the subjective intention of the parties when entering into an agreement is irrelevant in considering whether a concerted practice is restrictive of competition. It is the objective meaning and purpose of the agreement considered in the economic context in which it is to be applied.[269] Hence, regardless of whether HPH and Peak Top had contemplated the possibility of winning the F1 Tender, this does not derogate from the finding that the agreement and/or concerted practice between the Parties was to engage in collusive tendering or bid-rigging to assist the Cyclect Group in winning the F1 Tender.

178. In turn, the fact that the Cyclect Group had intended to be HPH's and/or Peak Top's sub-contractor should either of them be awarded the F1 Tender would not relieve the Parties from liability for bid-rigging conduct in circumstances where they had exchanged information on prices for submission for the F1 Tender and held themselves as being competing bidders for the F1 Tender. It was clearly the case here that the Cyclect Group had provided prices to influence HPH and Peak Top's individual submissions for the F1 Tender, and the prices that HPH and Peak Top did use for their separate bids were in fact based on the figures provided by the Cyclect Group as competing bidders to Chemicrete and Cyclect Electrical in the F1 Tender. There was thus no independence in the preparation of their competing bids for the same tender. Additionally, as explained above, the Cyclect Group had not provided documentary evidence to support their submission that the Cyclect Group was a genuine subcontractor to HPH and Peak Top.

179. On the basis of all the evidence, CCS concludes that there was simply no rational or commercial justification for HPH and Peak Top to have submitted their bids based on the prices provided by the Cyclect Group, other than to assist the Cyclect Group in its chances of winning the F1 Tender.

CCS's conclusion on the infringement

180. CCS concludes that on the totality of the evidence, as set out and analysed at paragraphs 88 to 179 above, the Cyclect Group, HPH and Peak Top engaged in collusive tendering or bid-rigging, i.e. an agreement and/or at the very least a concerted practice to collude in the submission of bids for the F1 Tender. As stated in the *CCS Guidelines on the Section 34 Prohibition 2016,* any tenders submitted

[268] See paragraph 64 above.
[269] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [173]; C-29/83 and 30/83 *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission* [1984] ECR 1679, [1985] 1 CMLR 688 at [25] – [26].

as a result of collusion or co-operation between tenderers will, by their very nature, be regarded as restricting competition appreciably.[270]

GEMS Tender

(i) Background

181. GEMS World Academy is an international school originating in Dubai[271] which opened its Singapore campus in September 2014. It provides International Baccalaureate programmes to students in pre-kindergarten to Grade 12.[272]

182. The GEMS Tender relates to an invitation to quote ("ITQ") conducted by GEMS World Academy (Singapore) ("GEMS"), which required hardware, software and manpower to generate the barcodes and to tag individual assets, including all IT components and furniture, at GEMS.[273] GEMS obtained quotations from three vendors, Chemicrete, [✂] and HPH,[274] and awarded the GEMS Tender to Chemicrete on 31 March 2015.[275]

(ii) Conduct of the Parties

Evidence relating to the agreement concerning the GEMS Tender

183. On 5 March 2015, Dass received an invitation via telephone call from Emran Supa'at, Manager of School Operations of GEMS to participate in an ITQ for the GEMS Tender. In the same telephone conversation, Emran also requested that Chemicrete recommend additional vendors to participate in the GEMS Tender; [✂].[276] Dass then instructed Tan Kai Seng, Operations Manager of Chemicrete, to search for another company that could provide a quotation for the GEMS Tender. Tan Kai Seng then communicated with Joshua Tan of HPH to extend an invitation for HPH to participate in the GEMS Tender.[277]

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[270] *CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.8.
[271] http://www.gemseducation.com/organisation/about-us/.
[272] New GEMS World Academy Singapore (27 May 2013) URL: https://www.gemslearninggateway.com/News/Pages/NewGEMSWorldAcademy-SingaporewillbecomefirstschoolinSoutEastAsiatojoinexclusiveglobalnetworkofschools.aspx See also GEMS World Academy Singapore Prospectus. URL: http://www.gwa.edu.sg/docs/GWA-Singapore-Prospectus.pdf .
[273] Response to Question 18 of Notes of Information/Explanation provided by Mr Mohamed Emran bin Supa'at dated 15 April 2016.
[274] Response to Question 34 of Notes of Information/Explanation provided by Mr Mohamed Emran bin Supa'at dated 15 April 2016.
[275] Responses to Questions 40 and 41 of Notes of Information/Explanation provided by Mr Mohamed Emran bin Supa'at dated 15 April 2016.
[276] Responses to Questions 22, 23 and 26 of Notes of Information/Explanation provided by Mr Mohamed Emran bin Supa'at dated 15 April 2016. Response to Question 61 of Notes of Information/Explanation provided by K.A. Dass dated 28 October 2015.
[277] Responses to Questions 30 and 31 of Notes of Information/Explanation provided by Tan Kai Seng dated 27 April 2015.

184. On 17 March 2015, quotations to be submitted by HPH for the GEMS Tender were prepared by Tan Kai Seng and sent to Joshua Tan.[278] HPH then submitted the quotation provided by Chemicrete as its own for the purposes of the GEMS Tender.[279]

185. The tender quotes received by GEMS were as follows:

Name of electrical contractor submitting quote	Total quote price before tax
Chemicrete	S$[✂]
HPH	S$[✂]
[✂][280]	S$[✂]

186. Following the approval of GEMS' Chief Financial Officer, Emran Supa'at informed Dass on 8 April 2015 that Chemicrete had been awarded the GEMS Tender, given that, *inter alia*, Chemicrete had submitted the lowest of three quotes.[281] GEMS subsequently sought a discount from Chemicrete, and was able to obtain a discount on the price quoted by Chemicrete. The final award for the GEMS Tender was made to Chemicrete at S$[✂].[282]

187. According to Dass, Emran Supa'at asked for recommendations from Chemicrete regarding other companies that could also quote for the project.[283] Based on previous dealings with HPH, Chemicrete was aware of HPH's qualifications to participate in the GEMS Tender.[284] Chemicrete had previously engaged HPH as a sub-contractor in its capacity as the main contractor for a project involving integrated mechanical and electrical works and building services tendered by [✂],[285] and had also engaged HPH for the supply of technicians in its capacity as managing agent for a separate [✂] project.[286]

188. In the course of communications, Dass and Tan Kai Seng of Chemicrete and Joshua Tan of HPH formed an understanding that HPH was to provide a quote higher than Chemicrete's quote to support Chemicrete in winning the GEMS Tender.[287] The relevant statements from Dass are set out as follows:

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[278] Exhibit marked TKS2-013.
[279] Exhibits marked TKS2-013 and KAD-046.
[280] According to the Notes of Information/Explanation provided by Mr Mohamed Emran bin Supa'at on 15 April 2016, [✂].
[281] Exhibit marked KAD-046. Other considerations for the award were that Emran Supa'at recommended Chemicrete as the contractor for the project, and that Chemicrete had experience working with large clients such as [✂l].
[282] Responses to Questions 45 and 46 of Notes of Information/Explanation provided by Mohamed Emran bin Supa'at dated 15 April 2016.
[283] Response to Question 142 of Notes of Information/Explanation provided by Dass dated 27 April 2015.
[284] Response to Question 61 of Notes of Information/Explanation provided by Dass dated 28 October 2015.
[285] Responses to Questions 45, 46 and 47 of Notes of Information/Explanation provided by Dass dated 27 April 2015.
[286] Response to Question 79 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[287] Responses to Questions 151 to 156 of Notes of Information/Explanation provided by Dass dated 27 April 2015; responses to Questions 52 and 53 of Notes of Information/Explanation provided by Tan Kai Seng dated 27 April 2015.

K.A. Dass' Notes of Information dated 27 April 2015

Q153. Was the understanding that HPH was to provide a quote that is higher than Chemicrete's quote to GEMS?
A: Yes.

Q154. Who communicated this understanding with HPH?
A: Myself, Kai Seng and Joshua.

Q155. Do you know if HPH did indeed provide a higher quote as compared to Chemicrete's quote to GEMS?
A: Yes.

189. Similarly, Tan Kai Seng admitted that there was a coordination of quotation prices through submission by HPH to GEMS of a quotation prepared by Chemicrete. The relevant statements are set out as follows:

Tan Kai Seng's Notes of Information dated 27 April 2015

Q52. Did HPH know that they were to send in the quotation as it is with only the name of the company changed?
A: Yes. The price to be submitted was to be as stated in the quotation.

Q53. Was the quote by HPH intended to support your quotation to win the Gems World Academy project?
A: Yes, the understanding was for HPH to submit a quotation to support us so that Chemicrete can win the quotation.

190. The statements by Dass and Tan Kai Seng are further corroborated by Tan Ee Wei. In his interview, Tan Ee Wei stated that while HPH had been or sought to be a sub-contractor for Chemicrete in previous projects, the intention of sending the quotations to HPH was for HPH to bid as a fellow competitor in the GEMS Tender:[288]

Tan Ee Wei's Notes of Information dated 29 October 2015

Q73. Referring back to documents TKS2-13 and TKS2-019-1, did Tan Kai Seng send over these quotations to HPH in HPH's role as sub-contractor?
A: In my opinion, no. They were clearly sent over for HPH to bid as a fellow competitor.

[288] Responses to Questions 71 to 73 of Notes of Information/Explanation provided by Tan Ee Wei dated 29 October 2015.

191. During an interview on 17 December 2015, Joshua Tan stated that he did not know what Chemicrete's intention was in approaching HPH to bid for the GEMS Tender and for providing HPH with an indicative pricing to be quoted to GEMS:

Joshua Tan's Notes of Information dated 17 December 2015

Q9. You had previously told us on 28 July 2015 that Mr. K.A. Dass or Mr. Tan Kai Seng (both from Chemicrete Enterprises Pte. Ltd. ("Chemicrete") gave you an indicative pricing regarding the GEMS project. Your staff ([HPH's Assistant Project Manager] or [HPH's Accounts Executive]) subsequently sent HPH's quote to GEMS, and HPH's pricing was around the pricing given to you by Chemicrete. Document marked SM-009 shows that Mr. Tan Kai Seng forwarded you the prices and you asked [HPH's Accounts Executive] to prepare the quotation and send it out. What was Chemicrete trying to achieve in approaching HPH to bid for the GEMS tender and giving HPH the indicative pricing?
A: "I don't know Chemicrete's intention. They told me that I had a chance to quote to the owner and hence I just quoted. I do not know what Chemicrete was doing on their side

…

Q15. Why did Chemicrete give you prices to bid at?
A: Maybe they want me to get the job and they can sub-contract from me. Or maybe they have some conflict with the people who called for the tender or maybe they can't do the job. I really don't know and I don't need to know."

192. It is clear from Joshua Tan's interview responses that he viewed Chemicrete as HPH's competitor.[289] The relevant statements from Joshua Tan are set out as follows:

Joshua Tan's Notes of Information dated 28 July 2015

Q44. In relation to the services provided by HPH (mechanical and electrical engineering services), can you tell us who else in the industry in Singapore offers these services?
A: A lot of companies offer such services. For example, [✂], Chemicrete, [✂] also offer these services…

…

Contact with competitors

[289] Responses to Questions 44, 46, 48 and 49 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.

Q46. Do you have any contact with any persons working in the competitor firms that you have identified above?
A: The person I know best is [✂] from Chemicrete. I also know [✂].

...

Q48. Does [✂] also ask you to quote to the client?
A: Yes for ... GEMS he asked me to quote directly to the client. The client emails me and I will quote directly to the client.

Q49. Does [✂] tell you what price to quote?
A: For GEMS, [✂] will tell me an indicative price to quote and I will quote. I cannot remember the price and the subject matter of the project.

(iii) CCS's analysis and conclusions

CCS's analysis of the evidence

193. The information and evidence obtained by CCS relating to the GEMS Tender revealed that Chemicrete had sought HPH's assistance to submit a quote to support Chemicrete in winning the tender. To this end, Chemicrete prepared a quotation for submission by HPH, with the understanding that HPH was to provide a quote higher than Chemicrete's quote, i.e. a "support bid", for the GEMS Tender.[290] By engineering two out of the three quotations for the GEMS Tender, Chemicrete and HPH manipulated the tendering process under the GEMS Tender, thereby significantly increasing Chemicrete's chances for its submission to secure the GEMS contract.

194. The conduct of Chemicrete and HPH led GEMS personnel who were assessing the GEMS Tender to mistakenly believe that they had received independent competitive quotes when considering the award of the tender.[291] Further, as a result of the conduct, GEMS is likely to have received less competitive bids than it would have otherwise received, had there not been bid-rigging involved between Chemicrete and HPH.

195. As emphasised by the UK CAT in *Apex*, the lack of independence in preparation of bids can have great distortionary effects on the competitive conditions of the tendering (in particular, a selective tendering) process: [292]

> "209. … *The competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or*

[290] Responses to Questions 151 to 153 of Notes of Information/Explanation provided by Dass dated 27 April 2015.
[291] Responses to Question 49 of Notes of Information/Explanation provided by Mr Mohamed Emran bin Supa'at dated 15 April 2016. See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [252].
[292] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [209] to [211].

concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.

210. When the tendering process is selective rather than open to all potential bidders, the loss of independence through knowledge of the intentions of other selected bidders can have an even greater distorting effect on the tendering process. In a selective tender process the contractors invited to tender will in general be those considered most likely to have the required specialist skills. … Selective tendering processes ensure that the workload involved in analysing the various bids submitted can be kept within manageable bounds.

211. Accordingly, *since the selective tendering process by its nature has a restricted number of bidders, any interference with the selected bidders' independence can result in significant distortions of competition*." [Emphasis added.]

196. Chemicrete's contact with HPH contravenes the principle against direct or indirect contact between competitors set out in *Suiker Unie*, cited at paragraph 47 above. In particular, the requirement of concertation is met by Chemicrete providing HPH with a price to quote, and HPH's acceptance of the understanding to submit a support bid by submitting the price provided by Chemicrete as its own submission for the GEMS Tender.[293] This contact constituted at least a concerted practice between the parties which had the object or effect of removing or reducing uncertainty as to future conduct on the market.[294]

197. In its representations to CCS, the Cyclect Group submitted that "there was no agreement and/or concerted practice between Chemicrete and HPH to rig the GEMS Tender, given that there was no pre-determined winner and the parties were not aware of the bids that each other would be submitting for the tender."[295] The Cyclect Group's representations are contrary to earlier statements confirming that HPH had supported Chemicrete in the GEMS Tender at Chemicrete's request, by providing a higher quote so that Chemicrete could win the tender.[296] The evidence also shows that Tan Kai Seng of Chemicrete was aware that HPH submitted the quotation provided by Chemicrete to GEMS, and had in fact confirmed that the understanding was for HPH to submit a quotation for the

[293] Response to Question 58 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015; Exhibit marked TKS2-013; Exhibit marked KAD-046.
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 [175]; also see *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [206] and [220].
[295] Paragraph 5.1.1.1 of Cyclect Group Representations to PID submitted on 5 May 2017.
[296] Response to Questions 52 and 56 of Notes of Information/Explanation provided by Dass dated 28 October 2015; Response to Question 23 of Notes of Information/Explanation provided by Tan Kai Seng dated 28 October 2015.

GEMS Tender, which was to be as stated in the quotation that he had prepared and sent to HPH.[297] In addition, as articulated above at paragraphs 149 to 151, it is irrelevant that the actual prices submitted might not have been known; it was the course of action which led to HPH's bid not being independent that mattered. It is clear from the evidence above that HPH was to provide a quote higher than Chemicrete's quote to support Chemicrete in winning the GEMS Tender, and did in fact do so, which is consistent with the history of HPH being eager to maintain good relations with the Cyclect Group as explained at paragraph 136 above.

198. CCS notes that Joshua Tan of HPH had postulated that "they [Chemicrete] want [HPH] to get the job and [Chemicrete] can sub-contract from [HPH]".[298] However, CCS notes that even with sub-contracting, the main contractor would add a mark-up (or a profit element) to prices provided by a sub-contractor, as sub-contractor's prices represent an input cost to the main contractor. This mark-up represents its discretion in setting its own pricing policy. For instance, Joshua Tan stated in an interview that a mark-up is applied to quotes provided by HPH's sub-contractors.[299] In the final submissions reviewed by GEMS, HPH had not applied any mark-up to the quotation provided by Chemicrete, submitting the quote of S$[✂] provided by Tan Kai Seng of Chemicrete for the GEMS Tender.[300] Joshua Tan confirmed that "HPH's pricing was around the pricing given to me [by Chemicrete]".[301] Given that it makes no commercial sense otherwise for HPH to put forward a sub-contractor's quote as its own bid, this seriously undermines HPH's explanation of how it viewed the figures given to it by Chemicrete.[302]

199. HPH's explanation is further undermined by Joshua Tan's admission that Chemicrete was a competitor to HPH[303] and that, in relation to the GEMS Tender, "as Dass sometimes gives me prices to quote, he will roughly know my prices. I will always quote whenever I am asked to quote but I do not ask anything else about it".[304] It would only have made practical commercial sense to have a common understanding of details of a sub-contracting relationship should prices received from Chemicrete have been for Chemicrete to act as a sub-contractor to HPH.

200. In its representations to CCS, the Cyclect Group stated that the price examples given by Chemicrete to HPH were meant to serve as guidelines for HPH to set its

[297] Responses to Questions 37, 42 52 and 53 of Notes of Information/Explanation provided by Tan Kai Seng dated 27 April 2015.
[298] Response to Question 15 of Notes of Information/Explanation provided by Joshua Tan dated 17 December 2015.
[299] Response to Question 37 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[300] Exhibits marked TKS2-013 and KAD-046.
[301] Response to Question 58 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[302] See also *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [92].
[303] Responses to Questions 44, 46, 48 and 49 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.
[304] Response to Question 51 of Notes of Information/Explanation provided by Joshua Tan dated 28 July 2015.

prices, given that HPH was inexperienced in providing asset tagging services.[305] However, it is unclear why HPH needed these "guidelines" to submit a genuine competitive bid given that none of the entities under the Cyclect Group had any experience in asset tagging related projects in 2014 and 2015.[306] It is clear that the approach of Chemicrete and the Cyclect Group in the F1 Tender and the GEMS Tender were similar i.e. tender submission documents were prepared for HPH and HPH did not have to amend the documents save for submitting them under HPH's letterhead.

201. Bearing in mind the principles set out by the UK CAT in *Apex*, in particular the requirements of independent decision-making, even where there is a sub-contracting arrangement between parties, if a bid is submitted based on information provided by a competing bidder (albeit also a potential sub-contracting party to the bidder) for the purpose of influencing the bid, the bid cannot be taken as independent. As also enunciated by the UK CAT in *Makers* at paragraph 107, "*the obtaining of a quotation by Makers when both parties knew that the other was involved in the bidding process* infringed against the principle that *each undertaking must determine independently the policy it intends to adopt on the market*" [Emphasis added.]

202. CCS considers that the conduct of Chemicrete and HPH constitutes an infringement of the section 34 prohibition. The evidence indicates that there was, at the very least, a concerted practice between Chemicrete and HPH. Agreements need not be formally constituted and where "undertakings… knowingly substitute practical cooperation between them for the risks of competition",[307] such conduct falls to be regarded as a concerted practice that has the object or effect of preventing, restricting or distorting competition. It is also not necessary to determine if the conduct in question is exclusively an agreement or a concerted practice.[308] It would be sufficient that the conduct in question amounts to one or the other.[309] The conduct may also be one and the same, i.e. both a concerted practice and an agreement.[310] This was the approach taken by CCS, in a number of its decisions including the *Pest Control Case*[311], *Express Bus Operators case*[312] and the *Electrical Works Case*.[313]

203. The evidence clearly shows that Chemicrete and HPH submitted individual bids for the GEMS Tender to put on an appearance that there was genuine competition,

[305] Paragraph 5.1.3.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[306] Cyclect Group's responses to Questions 17 and 18 dated 27 June 2016 to CCS's s63 Notice dated 6 June 2016.
[307] Case 48/69 *ICI v Commission* [1972] ECR 619, at [64].
[308] Case T-7/89 *SA Hercules Chemicals NV v Commission*, [1991] ECR II-1711, at [264].
[309] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, at [654].
[310] *The Community v Interbrew NV and others (re the Belgian beer cartel),* Case IV/37.614/F3 [2004] CMLR 2, at [223].
[311] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [44] to [47].
[312] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [55] to [58].
[313] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works* [2010] SGCCS 4, at [45] to [47].

that Chemicrete had forwarded quotes to be submitted by HPH, and that HPH had indeed submitted the quote provided by Chemicrete to GEMS. However, in reality, HPH had submitted a bid which was influenced by the figures provided by Chemicrete,[314] and Chemicrete in preparing the price that HPH was to quote for the GEMS Tender would have known or at least been influenced by HPH's future conduct in the market. Chemicrete and HPH's conduct in relation to the GEMS Tender infringes the fundamental principle "relating to competition that *each economic operator must determine independently the policy which he intends to adopt on the common market*" [Emphasis added.][315]

204. In addition, the Cyclect Group also submitted in its written representations that even if there was an agreement and/or concerted practice, there was no anti-competitive effect as Chemicrete and HPH had not reached a consensus on the price to be submitted by HPH, and that there was a third bidder which had submitted a bid which was substantially higher than Chemicrete despite having no contact with Chemicrete.[316]

205. CCS has considered these submissions and found them to be without merit. Firstly, as CCS has observed above at paragraph 149, there is no need for a formal agreement to be reached on all matters; details about an agreement could be vague or inchoate and there may not be full consensus on all issues. Further, it cannot be the case that the mere presence of a third party independent bidder would absolve Chemicrete of all blame. In this respect, CCS notes that in the case of *Makers*, there was likewise a fourth bidder, Dew Pitchmastic Plc., which did not participate in the bid-rigging. Nevertheless, this did not prevent the UK CAT from finding that the parties in *Makers* had engaged in anti-competitive conduct. The rationale for this position was aptly set out in *Apex*, where the CAT observed that even though there was one wholly independent bid in a tender that involved cover bidding, there was still an anti-competitive object or effect as a result of the agreement because: the number of competitive bids submitted was reduced; the tenderee was deprived of the chance to seek a replacement competitive bid; it prevented other contractors wishing to place competitive bids from doing so; and it would give the tenderee a false impression of the nature of competition in the market, leading to the possibility that future tenders would be similarly impaired.[317] Likewise, in the present case, CCS is of the view that the mere presence of the fourth independent bidder does not *ipso facto* mean that there is no impact on competition in relation to the Parties' conduct.

CCS's conclusion on the infringement

[314] See also *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [108].
[315] 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].
[316] Paragraphs 5.1.4.3 and 5.1.4.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[317] *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at [251].

206. CCS concludes that on the totality of the evidence, as set out and analysed at paragraphs 183 to 205 above, Chemicrete and HPH had engaged in an agreement and/or concerted practice to bid-rig in the GEMS Tender. As stated in the *CCS Guidelines on the Section 34 Prohibition 2016*, any tenders submitted as a result of collusion or co-operation between tenderers will, by their very nature, be regarded as restricting competition appreciably.[318]

[318]*CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.8.

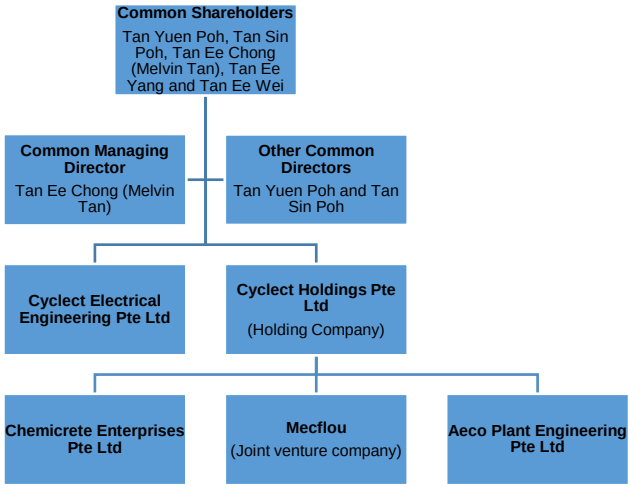
CHAPTER 3: INFRINGEMENT DECISION

A. Addressees of CCS's Infringement Decision

207. In assessing liability for the infringements and the calculation of financial penalties in Chapter 4, it is necessary to identify the undertakings who may be held responsible for each infringement. Set out at paragraphs 6 to 10 are the Parties liable for the infringement in relation to the F1 Tender and GEMS Tender, namely the Cyclect Group, HPH and Peak Top for the F1 Tender, and the Cyclect Group and HPH for the GEMS Tender.

208. In respect of the Cyclect Group, CCS is of the view that given the economic, legal and organisational links between Chemicrete, Cyclect Electrical and Cyclect Holdings, they constitute an SEE for the reasons set out at paragraphs 209 to 210 below.

FIGURE 1: ORGANISATION CHART – CYCLECT GROUP



209. Chemicrete is a wholly-owned subsidiary of Cyclect Holdings.[319] This creates a presumption that Cyclect Holdings actually exerts decisive influence over Chemicrete's conduct and that Cyclect Holdings and Chemicrete constitute a single undertaking. Additionally, Chemicrete and Cyclect Holdings share common directors Tan Yuen Poh, Tan Sin Poh, Melvin Tan, Tan Ee Yang and Tan Ee Wei. They also share a common Managing Director, Melvin Tan.[320]

210. Cyclect Electrical is related to Cyclect Holdings (and ultimately Chemicrete)

[319] Extracted from ACRA records *Business Profile of Chemicrete Enterprises Pte. Ltd.*, and *Business Profile of Cyclect Holdings Pte. Ltd.* (on 05/04/2016). Response to Question 7 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.

[320] Extracted from ACRA records *Business Profile of Chemicrete Enterprises Pte. Ltd.*, *Business Profile of Cyclect Electrical Engineering Pte. Ltd.* and *Business Profile of Cyclect Holdings Pte. Ltd.* (on 05/04/2016). Response to Question 9 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.

through its Managing Director, Melvin Tan. They also have common shareholders, i.e. Tan Yuen Poh, Tan Sin Poh, Melvin Tan, Tan Ee Yang and Tan Ee Wei.[321] CCS understands that Melvin Tan holds the ultimate decision-making power in Chemicrete, Cyclect Electrical and Cyclect Holdings' strategic and commercial decisions.[322] For instance, for high profile projects or projects of the Cyclect Group that are of a significant value (for example, [✂] before such tender proposals are submitted to the relevant customer.[323] [✂][324]

211. CCS notes that the Cyclect Group is not disputing the finding that Cyclect Holdings, Chemicrete and Cyclect Electrical constitute an SEE. In its leniency application to CCS, the Cyclect Group had submitted that the three entities, namely Cyclect Holdings, Chemicrete and Cyclect Electrical, covered under the marker system in relation to the leniency application are "related entities under the Cyclect Group".

B. CCS's Infringement Decision

212. CCS is satisfied that there is sufficient evidence to find that the respective Parties to the F1 Tender and the GEMS Tender infringed the section 34 prohibition by entering into an agreement and/or concerted practice with the object of restricting, preventing or distorting competition in the market for (i) the provision of site electrical services for temporary events for the F1 Tender; and (ii) the provision of asset and inventory tagging services for the GEMS Tender.

213. CCS therefore makes an infringement decision that the respective Parties to the F1 Tender and the GEMS Tender have infringed the section 34 prohibition. CCS further imposes on the relevant Parties the penalties listed at paragraph 329 below in respect of participation in the infringing conduct.

[321] Extracted from ACRA records *Business Profile of Cyclect Electrical Engineering Pte. Ltd.* and *Business Profile of Cyclect Holdings Pte. Ltd.* (on 05/04/2016). Response to Question 8 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.
[322] Responses to Questions 2, 4 and 6 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.
[323] Response to Question 6 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.
[324] Responses to Questions 4 and 6 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.

CHAPTER 4: CCS'S ACTION

A. Financial Penalties - General Points

214. Under section 69(2)(d) of the Act, CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty. Any financial penalty imposed by CCS 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.[325]

215. Before exercising the power to impose a financial penalty, CCS must be satisfied, as a threshold condition, that the infringement has been committed intentionally or negligently.[326] This is similar to the position in the EU and the UK. In this respect, CCS notes that in determining whether this threshold condition is met, both the European Commission and the Competition and Markets Authority ("CMA") 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.[327]

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

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

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

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

217. The CAB in *Express Bus Operators Appeals Nos. 1 and 2*., has also established that the threshold conditions under section 69(3) of the Act would be satisfied if the undertaking must have been aware, or could not have been unaware, or ought

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[325] Section 69(4) of the Act.
[326] Section 69(3) of the Act and *CCS Guidelines on Enforcement 2016*, paragraphs 4.3 to 4.11.
[327] 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].
[328] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [355].
[329] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [445].
[330] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [282].
[331] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore*, at [635] to [636].

to have known that its conduct had the object or would have the effect of restricting competition:[332]

> "141 The Act is silent on how the phrase "intentionally or negligently" in section 69(3) of the Act ought to be construed. In the case of *(1) Argos Limited and (2) Littlewoods Limited v The Office of Fair Trading* [2005] ACT 13 ("*Argos*") at paragraph 221, the Competition Appeal Tribunal said:
>
> > "221. The Tribunal has previously held that an infringement is committed intentionally for the purpose of section 36(3) of the Act [i.e. the English Competition Act 1998, which in substance is similar to section 69(3) of our Act] if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition."
>
> 142 In the case *Luxembourg Brewers*[333], the Commission of EC said at paragraph 89:
>
> > "(89) An infringement of the Community competition rules is regarded as being committed intentionally if the parties are aware that the object or effect of the act in question is to restrict competition. It is not essential that they should also be aware that they are infringing a provision of the Treaty."
>
> 143 The Board is alive to the fact that the MSP Agreement was entered into in or around June 2005, and that at that time there was no competition law in force in Singapore. However, as the evidence has shown, the MSP Agreement continued to have effect beyond 30 June 2006, which was the last day of the transitional period. Turning to the facts in this case, the Board finds that the parties, who participated in the MSP and the FIC Agreements must have been aware, or could not have been unaware, that the agreements had the object or would have the effect of restricting competition. At the very least, the parties ought to have known that such would be the case. The Board finds that the MSP and FIC Agreements were entered into intentionally or negligently."

218. Ignorance or a mistake of law is no bar to a finding of infringement under the Act.

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[332] *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 [141] to [143].

[333] Case COMP/37800, [2002] OJ 253.

219. In their representations, the Cyclect Group had submitted that "[b]ased on all the facts that have been provided, there are clearly alternative plausible explanations that can be clearly established, which shows categorically that none of Chemicrete or [Cyclect Electrical] had any intention or acted negligently in this matter".[334] The Cyclect Group did not make clear what these "alternative plausible explanations" referred to in its representations, although the Cyclect Group made an earlier submission that "[Cyclect Electrical] and Chemicrete [had] simply [sought] to share the fact of the existence of the tender and their draft tenders that had been put together to guide on format and not on any anti-competitive aspects".[335] Based on the evidence, CCS has found that the Cyclect Group had gone beyond providing a "guide on format", and had provided an individual breakdown of prices in schedules for submission by HPH and Peak Top in the respective Tenders. CCS thus considers that the Cyclect Group, in sending out itemised quotations to the other Parties for their submission as individual competing bids for the F1 and GEMS Tenders, must have known or at the least ought to have known that this would result in a prevention, restriction or distortion of competition. The other Parties which submitted the quotations given by the Cyclect Group knowing the Cyclect Group was also participating in the same tender, also must have known or at the least ought to have known that their actions to support the Cyclect Group's bid would result in a prevention, restriction or distortion of competition in the F1 and GEMS Tenders. In addition, as stated at paragraph 168 above, CCS has considered and is of the view that the sub-contracting argument is an inherently implausible one. The further representation that the prices provided were mere templates and price examples also contradicts the Cyclect Group's representations that there was "indeed a strong and highly likely sub-contracting relationship"[336] as it is difficult to see how the prices submitted could be simultaneously mere price examples and, at the same time, genuine subcontractor quotations. Based on the evidence, CCS is satisfied that, as a threshold condition, the infringement has been committed intentionally or at the very least, negligently.

220. The Cyclect Group has further submitted in its representations that "CCS can impose such other directions apart from a financial penalty" and "urges the CCS to impose no more than a direction that the parties take such steps as to ensure complete compliance with the Act, failing which a penalty can be imposed in the future", which can take the form of commitments or undertakings being provided by Chemicrete and Cyclect Electrical.[337]

221. As stated under paragraph 4.2 of the *CCS Guidelines on Enforcement 2016*, CCS will exercise its discretion under section 69(2)(d) of the Act to impose penalties on infringing undertakings to reflect the seriousness of the infringement and to

[334] Paragraph 6.1.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[335] Paragraph 6.1.2 of Cyclect Group Representations to PID submitted on 5 May 2017.
[336] Paragraph 4.1.3.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[337] Paragraphs 6.2 and 6.2.1 of Cyclect Group Representations to PID submitted on 5 May 2017.

serve as an effective deterrent.

222. CCS considers that the agreement and/or concerted practice regarding the bid-rigging conduct in the F1 Tender and the GEMS Tender had as their object the prevention, restriction and distortion of competition and are by their very nature, serious infringements of the Act. This conduct therefore necessitates deterrence through the imposition of financial penalties.

223. In addition, directions are made in circumstances where it is appropriate to bring an infringement to an end, and where necessary to require persons to take such action to remedy, mitigate or eliminate any adverse effects of such infringement.[338] In the current circumstances, and more generally, in cases involving bid-rigging, the infringing conduct relating to collusion and submission of bids in the F1 Tender and the GEMS Tender had ended by the time of the award of the relevant contracts, such that directions other than financial penalties would not be a sufficient measure to either bring the infringement to an end, or to remedy any harm done as a result of the collusive conduct. Therefore, contrary to the Cyclect Group's representations, financial penalties would be appropriate to underscore the importance of independent bid submission by the Parties[339], and to deter collusion or co-operation in future tenders.

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

B. Calculation of Penalties

225. The *CCS Guidelines on the Appropriate Amount of Penalty 2016* provide that the two objectives in imposing any financial penalty are to reflect the seriousness of the infringement, and to deter undertakings from engaging in anti-competitive practices.[340] A financial penalty to be imposed by CCS 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 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*[341], the *Express Bus Operators Case*[342], the *Electrical Works Case*[343] and the *Freight*

[338] Section 69(1) of the Act.
[339] See also the *CCS Guidelines on the Section 34 Prohibition 2016*, paragraph 3.8.
[340] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 1.7.
[341] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [360].
[342] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [452].
[343] *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works Case* [2010] SGCCS 4, at [296].

Forwarding Case.[344]

226. CCS notes that the European Commission and the CMA[345] adopt similar methodologies in the calculation of penalties. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations.

(i) Seriousness of the Infringements and Relevant Turnover

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

Relevant turnover

228. Applying the relevant market definitions above, the relevant turnover for the two separate infringements would be the turnover from the provision of site electrical services for temporary events and the turnover from the provision of asset and inventory tagging services respectively.

229. Where an undertaking is unable or unwilling to provide information to determine its relevant turnover, or is suspected of providing CCS with incomplete or very low relevant turnover, CCS may attribute a relevant turnover to that undertaking with a view to impose a penalty that will reflect the seriousness of the infringement and with a view to deterring the undertaking as well as other undertakings from engaging in similar practices.[346] This will similarly apply where an undertaking's relevant turnover is zero.

230. 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.[347] The "last business year" is the financial year preceding the date when the infringement ended.[348]

231. For Parties which have [✂] relevant turnover figures in the last business year, CCS considers that in this case, it is appropriate to determine a proxy relevant turnover as a [✂] relevant turnover figure would not reflect the seriousness of the

[344] *CCS Decision of 11 December 2014 in relation to freight forwarding services from Japan to Singapore*, at [648].
[345] The CMA acquired its powers on 1 April 2014 when it took over many of the functions of the Competition Commission and the Office of Fair Trading ("OFT"), see https://www.gov.uk/government/organisations/competition-and-markets-authority/about.
[346] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 1.7.
[347] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.5.
[348] Competition (Financial Penalties) Order 2007, paragraph 3 and *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.5.

infringement nor act as a sufficient deterrence. CCS has applied a proxy relevant turnover by using other Parties' percentage of relevant turnover over total turnover figures, where available, and applying it to the Parties' (with [✂] relevant turnover figures) own total turnover figures for the purpose of calculating penalties. This method of determining penalties based on a proxy relevant turnover figure has been applied by CCS in the *Motor Vehicle Traders*[349] case, and in the OFT's *Makers*[350] decision which was subsequently approved by the UK CAT.

232. In *Makers*, the OFT arrived at the uplift based on the assessment of a "minimum deterrence threshold" ("MDT"), which was derived by assuming that the undertaking's turnover in the relevant market represented at least 15% of its total worldwide turnover, and applied this method of calculating the MDT to all the parties to the decision in order to determine whether there should be an uplift.[351] The OFT considered that if the undertaking's turnover in the relevant market was less than 15% of its total turnover, then the figure arrived at Step 1 of the penalties calculation process would not act as a sufficient deterrent.[352] The UK CAT held that the adoption of the MDT was an appropriate way in which to ensure that the overall figure of the penalty met the objective of deterrence and rejected Maker's assertion that the uplift of £520,000 was arbitrary or unjustified. [353]

233. Where there is no reasonable point of reference to determine a proxy relevant turnover for instance, where all Parties' relevant turnover figures are [✂], CCS considers it appropriate to uplift the penalties at Step 4, i.e. Adjustment for Other Relevant Factors (see below) to achieve the aim of specific and general deterrence.

Seriousness

234. As set out in paragraph 2.3 of the *CCS Guidelines on the Appropriate Amount of Penalty 2016,* CCS 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, CCS will consider a number of factors, including the nature of the product, the structure and condition of the market, the market share(s) of the undertaking(s) involved in the infringement, entry conditions and the effect on competitors and third parties. The impact and effect of the infringement on the market, direct or indirect, will also be an important consideration. The assessment will be made on a case-by-case basis for all types of infringements, taking into account all of the circumstances of the case.[354]

[349] *Re CCS Imposes Penalties on 12 Motor Vehicle Traders for Engaging in Bid-Rigging Activities at Public Auctions* [2013] SGCCS 6, at [260].
[350] OFT's Decision No. CA98/01/2006 ; *Makers UK Limited v Office of Fair Trading* [2007] CAT 11.
[351] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11.
[352] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [132].
[353] *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, at [134].
[354] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.4.

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

236. CCS considers that the agreement and/or concerted practice regarding the bid-rigging conduct in the F1 Tender and the GEMS Tender had as their object the prevention, restriction and distortion of competition and are by their very nature, serious infringements of the Act. As stated in the *Express Bus Operators Case*[355] and the *Motor Vehicles Case*[356], CCS considers that cartel cases involving price-fixing, bid-rigging, market sharing and limiting or controlling production or investment are especially serious infringements and should normally attract a starting percentage of the relevant turnover that is on the higher end.

237. CCS notes that the Cyclect Group relied on the UK CAT's decision in *Kier Group plc v Office of Fair Trading* ("*Kier*")[357] in its representations to submit that cover pricing is less serious than bid-rigging. CCS disagrees with this Cyclect Group representation for the following reasons.

238. Firstly, whilst the UK CAT stated in *Kier* that a lower starting point was warranted for "simple cover pricing" on the facts of that case[358], it attributed this to the UK OFT giving insufficient consideration to the practice of "simple cover pricing". This practice of "simple cover pricing" involved a bilateral arrangement in the context of a multi-partite tendering exercise to identify a price which the client will *not* be willing to pay.[359] At the same time, the UK CAT noted the UK OFT's acceptance that such practice was motivated by a genuine and widespread perception that if a company did not participate in a tender process when invited to do so it ran the risk of exclusion from tender lists, and that in certain cases this risk had materialized.[360] The UK CAT also noted the UK OFT's implied acceptance that this practice was aimed at saving otherwise wasted costs of preparing tenders for work which is not wanted.[361] It is also pertinent that the UK CAT stated that in reaching its conclusion that a starting point of 3.5% for "simple" cover pricing was warranted, it had taken into account the mitigating effect of the general uncertainty and ambivalence as to the legitimacy of the practice in the industry, which admittedly existed from at least 2000 to 2004[362], through training materials widely used in the training of industry participants.[363] The CAT emphasised that if cover pricing were to occur at a time when that

[355] *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand* [2009] SGCCS 2, at [457].
[356] *Re CCS Imposes Penalties on 12 Motor Vehicle Traders for Engaging in Bid-Rigging Activities at Public Auctions* [2013] SGCCS 6, at [252].
[357] *Kier Group plc and Kier Regional Limited v OFT*, [2011] CAT 3.
[358] *Kier Group plc and Kier Regional Limited v OFT*, [2011] CAT 3 , at [114].
[359] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [100].
[360] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [103].
[361] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [103].
[362] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [115].
[363] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [104].

mitigation was clearly no longer applicable, a higher starting point might well be appropriate.[364] The UK CAT also stated that the practice of "simple cover pricing" was materially distinct from that of bid-rigging, the latter involving an agreement or arrangement which determines, or assists in the determination of, the price which will actually be charged to the purchaser.[365] Based on the evidence in the present case, the conduct by the Parties clearly involved submission of prices that would actually be charged to Singapore GP should any of them win the F1 Tender and/or GEMS Tender i.e. bid-rigging, and the collusive conduct was hardly made for the purpose of "preparing tenders for work which is not wanted".[366]

239. Secondly, in *Kier*, the UK CAT had considered that in none of the "simple" cover pricing infringements in the *Construction Appeals* cases, and indeed in none of infringements of that kind in the UK OFT's decision, had there been a case where the price paid by the customer was found, or even alleged, to have been directly affected by the infringement. In contrast, and as will be dealt with in greater detail below at paragraphs 245 to 247, CCS has found that in relation to the contracted prices for the F1 Tender in 2011 (for the 2011 – 2014 Formula 1 Singapore Grand Prix) and 2015 (for the 2015 – 2017 Formula 1 Singapore Grand Prix), there was an increase in the price by [✂]%[367], with little evidence that this was attributable to the percentage increase in actual costs.

240. Thirdly, agreements and/or concerted practices involving collusive tendering or bid-rigging as set out in past CCS decisions are by their very nature injurious to competition. CCS regards agreements or concerted practices involving price-fixing, bid-rigging, market-sharing or output limitations as always having an appreciable adverse effect on competition, notwithstanding that the aggregate market share of the parties falls below the 20% threshold and even if the parties to such agreements are SMEs".[368]

241. Nature of the products – The relevant markets in this case are: (i) the provision of site electrical services for temporary events; and (ii) the provision of asset and inventory tagging services.

242. Structure of the markets and market shares of the Parties – In relation to the F1 Tender, CCS notes that there are a number of players in the market for the provision of electrical services. According to the BCA, there are at least 880 electrical contractors which are registered under the work-head for electrical engineering i.e. ME05 and are licensed to provide electrical services. These contractors are further categorised into different grades ranging from L1 to L6 where there are prescribed tendering limits under each grading and are normally used in public sector projects to sieve out contractors that may not have sufficient

[364] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [115].
[365] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [94].
[366] *Kier Group plc and Kier Regional Limited v OFT* [2011] CAT 3, at [103].
[367] Taking into account contra sponsorship in the contracted price for 2015.
[368] See Paragraph 3.2 of the *CCS Guidelines on the Section 34 Prohibition* and *Re Collusive Tendering (Bid-Rigging) in Electrical and Building Works* [2010] SGCCS 4, at [54].

financial capabilities to undertake the project. CCS notes that even at grade L4, which is the minimum requirement for the F1 Tender, there are at least 83 electrical contractors registered under this grading of the work-head together with 178 more electrical contractors which are registered under the grades L5 and L6 that can similarly provide electrical services.

243. In relation to asset and inventory tagging services in respect of the GEMS Tender, while CCS is unable to obtain official figures in relation to the number of players which can provide asset and inventory tagging services, CCS is of the view that due to the nature of the work involved, there should be a multitude of market players which can provide similar services. As such, CCS is of the view that there are likely to be many competing entities that can provide similar services, such that it is unlikely that the Cyclect Group and HPH would have significant market share in the market for the provision of asset and inventory tagging services.

244. Effect on customers, competitors and third parties – CCS considers that it is difficult to quantify the exact amount of any loss caused by the agreements in both infringements due to the unavailability of information on the actual prices paid by the customers under the "counterfactual" scenario.[369] However, CCS considers that the infringements created the false impression that the winning bids were actually the result of a fair and competitive tender process when it was not.[370] As a result, it was not possible for those customers to ascertain whether the tenders received were based on competitive prices or other factors. It also meant that customers were deprived of the possibility of replacing those companies with other service providers that might have been keen to submit a genuinely-competitive bid.

245. In relation to the effects of the infringement on customers, the Cyclect Group submitted that its bids for both the F1 and GEMS Tenders were "legitimate, justified and genuinely competitive in nature"[371]. In particular, with regard to the F1 Tender, the Cyclect Group submitted that "although [Cyclect Electrical's] bid for the F1 Tender was approximately [✂]% higher than its price in 2014, this must be viewed in light of the circumstances - the 2014 price was fixed in accordance with the bid submitted by CEE for the previous F1 Tender in 2011, and had not been changed for 4 years. As such, CEE's bid for the F1 Tender in 2015 had to be fairly increased, to take into account various factors including inflation, an increase of approximately [✂] from 2010 to 2016, an increase of approximately [✂] from 2010 to 2016, and a considerably increased scope of work (which carried with it a correspondingly greater risk that high penalties would be imposed, due to the nature of the F1 project). Additionally, the increased

[369] The counterfactual scenario is one where the infringing conduct did not occur, i.e., a scenario in which the Parties did not have an agreement and/or a concerted practice regarding the bid-rigging of the F1 and GEMS tenders. In particular, it is to be noted that all the bids submitted for the F1 Tender were linked to the Cyclect Group.
[370] Response to Question 58 of Notes of Information/Explanation provided by Ervin Koh dated 14 April 2016.
[371] Paragraph 6.3.8 of Cyclect Group Representations to PID submitted on 5 May 2017.

work scope as required by the F1 Tender resulted in a considerable increase in the cost of materials and the cost of manpower involved"[372].

246. Whilst CCS notes that whether costs had increased would not be a reason to justify a reduction in the starting percentage, the submission made by the Cyclect Group that overall costs in providing work for the F1 Tender have increased in 2015 from the previous tender in 2011, thereby necessitating an increase in the tender price has not been borne out in light of the evidence. CCS notes that in relation to the contracted prices for the F1 Tender in 2011 (for the 2011 – 2014 Formula 1 Singapore Grand Prix) and 2015 (for the 2015 – 2017 Formula 1 Singapore Grand Prix), there was an increase in the price by [✂]%, from an average per year price of S$[✂] for the 2011 – 2014 Formula 1 Singapore Grand Prix to an average per year final contracted price of S$[✂] for the 2015 – 2017 Formula 1 Singapore Grand Prix, inclusive of contra sponsorship for the latter contract.[373]

247. However, the average per year costs actually incurred by the Cyclect Group only increased by 4.87% for the same period of comparison. The difference in the increase between the contracted prices and the costs is significant. Even if CCS were to take as face value the Cyclect Group's submission that the increase in bid prices was only [✂]%, the increase is still quite significant compared to the percentage increase in actual costs. More tellingly, the average gross profits earned by the Cyclect Group for the 2015 and 2016 Formula 1 Singapore Grand Prix were 305.17% more than the profits earned for the 2011 – 2014 Formula 1 Singapore Grand Prix.[374]

248. CCS is unable to accept the Cyclect Group's mitigations for a lower starting point for penalty calculations.

249. Having regard to the nature of the product, the structure of the market, the likely market shares of the Parties, the potential effect of the infringements on customers, competitors and third parties and that bid-rigging is one of the more serious infringements of the Act, CCS considers it appropriate to fix the starting point at [✂]% of relevant turnover for each of the Parties' involvement, where relevant, in the agreement and/or concerted practice related to the F1 Tender and/or GEMS Tender, respectively.

(ii) Duration of the Infringements

[372] Paragraph 6.3.8(a) of Cyclect Group Representations to PID submitted on 5 May 2017.
[373] Based on the information provided by the Cyclect Group to Question 1 dated 16 March 2017 pursuant to the email by CCS dated 28 February 2017 and see the executive summary of the 'Tender Recommendation Report for ME006 Site Electrical Services (2015 – 2017)' dated 24 March 2015 of F+G's response to Question 15 dated 18 March 2016 to CCS's s63 Notice dated 8 March 2016.
[374] Based on the information provided by the Cyclect Group to Question 1 dated 16 March 2017 pursuant to the email by CCS dated 28 February 2017 and taking into consideration the final price with contra sponsorship for the 2015 and 2016 Singapore Grand Prix.

250. After calculating the base penalty sum, CCS will next consider whether this sum should be adjusted to take into account the duration of the infringements. CCS considers that an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement.[375]

251. While CCS notes that the agreement and/or concerted practice for the collusive tendering or bid-rigging took place during the period of the respective tenders from at least 10 December 2014 to 23 April 2015 for the F1 Tender, and at least 17 March 2015 to 8 April 2015 for the GEMS Tender, CCS considers that the effects of bid-rigging are generally irreversible, cannot be easily rectified, and continue to be felt long after the duration where the infringing conduct occurred.[376] Therefore, CCS will generally not set a duration of infringement that is less than one year in cases of bid-rigging infringements.[377]

252. CCS further notes that the duration of an infringement in a section 34 case is of importance in so far as it may have an impact on the penalty that may be imposed for that infringement.[378] Given the infringement had a longer-lasting impact, notwithstanding its short duration, CCS is of the view that the duration for the purpose of calculating penalties in this case should be a full year.

(iii) Aggravating and Mitigating Factors

253. At this stage, CCS will consider the presence of aggravating and mitigating factors and make adjustments when assessing the amount of financial penalty,[379] i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors.

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

(iv) Other Relevant Factors

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

256. CCS considers that if the financial penalty imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of deterrence, CCS will adjust the penalty to meet the objectives of deterrence. In determining whether to impose an uplift, CCS may take into account other considerations, including, but not limited to, an objective estimate of any

[375] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.10.
[376] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.12.
[377] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.12.
[378] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraphs 2.1, 2.10 and 2.12.
[379] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.13.

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.[380] CCS considers that bid-rigging is one of the most serious infringements of the Act and as such, penalties imposed should be sufficient to deter undertakings from engaging in this conduct.[381]

257. CCS notes that this practice is in line with the position in other competition regimes. For instance, in the UK, the CMA refers to "*The OFT's Guidance as to the Appropriate Amount of Penalty*" which adopts a similar approach.[382]

(v) Maximum Statutory Penalty

258. Section 69(4) of the Act provides that the maximum financial penalty shall not exceed 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

(vi) Adjustments for Leniency Reductions

259. 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 *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016*. CCS 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.[383]

C. Penalty for the Cyclect Group

260. The Cyclect Group was involved in bid-rigging for both the F1 and GEMS Tenders with the object of preventing, restricting or distorting competition in the markets for the provision of site electrical services for temporary events and for the provision of asset and inventory tagging services respectively.

261. Given that there are two separate infringements, CCS will consider the penalties calculation separately for the Cyclect Group as well as the other Parties, where relevant.

(i) F1 Tender

[380] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.18.
[381] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.3. See also *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [378].
[382] 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.
[383] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.21.

262. Starting point: The Cyclect Group's financial year commences on 1 January and ends on 31 December. As the infringement ended in April 2015 for the F1 Tender, the relevant last business year is financial year 2014, i.e. 1 January 2014 to 31 December 2014. The Cyclect Group's relevant turnover figure for the financial year 2014 was S$[✂].

263. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 234 to 240 above and fixed the starting point at [✂]% of relevant turnover. The starting amount for the Cyclect Group is therefore S$[✂].

264. In its representations to CCS, the Cyclect Group submitted that the starting point for the calculation of penalties should be lowered. The Cyclect Group cited *Kier* as reflecting the position that cover pricing was less serious than bid rigging, and that the starting point should be substantially lower.[384] CCS reiterates that, as stated at paragraphs 238 to 240 above, the conduct in this case was of cover bidding as a form of bid-rigging, conduct that is materially distinct from that of the practice of "simple cover pricing" seen in *Kier* relied upon by the Cyclect Group. Furthermore, the UK OFT in its decision leading up to the Construction Appeals cases had confined itself narrowly in its Guidance to a starting range of 0% to 10%, such that whilst the CAT agreed that it is common ground that hard-core bid rigging warrants penalties set at the upper end of the range (i.e. nearing 10%), the OFT had settled on the middle ground of the range, namely 5%, in view of the particular characteristics of the conduct in question.[385] CCS notes that there are no similar confines in the *CCS Guidelines on the Appropriate Amount of Penalty 2016* or in any laws within which CCS can set the starting percentage for purposes of calculating financial penalties. In addition, the conduct in this case involves cover bidding as a form of bid rigging, which as noted by the UK CAT in *Kier* warrants a higher starting percentage. A starting point given the nature of the infringement at [✂]% of relevant turnover is therefore warranted in this case.

265. The Cyclect Group had also submitted that the alleged infringements did not have any material impact or effect on the customers, competitors or third parties.[386] CCS highlights that under the *CCS Guidelines on the Appropriate Amount of Penalty 2016*, bid-rigging and collusive tendering are serious infringements of the section 34 prohibition.[387] CCS notes that the Cyclect Group's conduct created the illusion of competition in the F1 Tender, such that F+G did not to continue its search for more competitive bids prior to the award of the F1 Tender to the Cyclect Group. Specifically, on the Cyclect Group's representation that there was no material effect on customers or third parties, as noted at paragraphs 246 and 247 above, the infringing conduct resulted in a significant increase in the awarded tender price charged to the ultimate customer, Singapore GP. This was despite the

[384] Paragraph 6.3.4 to 6.3.5 of Cyclect Group Representations to PID submitted on 5 May 2017.
[385] See for example, *Kier Group plc and Kier Regional Limited v OFT*, [2011] CAT 3, at [93].
[386] Paragraphs 6.3.11 of Cyclect Group Representations to PID submitted on 5 May 2017.
[387] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.3.

absence of evidence of a correspondingly significant increase in the costs of providing site electrical services for the Formula 1 Singapore Grand Prix in 2015 and 2016. CCS is thus of the view that there was harm to the customer contrary to what the Cyclect Group has claimed.

266. In light of the above, CCS will not be making any changes to the penalties at this stage of penalty calculation.

267. Adjustment for duration: In accordance with paragraphs 250 to 252 above, the duration multiplier is one year.

268. Adjustment for aggravating and mitigating factors: CCS considers that the Cyclect Group co-operated with CCS during the course of the investigations. As this was a condition of it being granted leniency, no extra mitigation is given for the same.

269. However, given the fact that, as seen in this ID, there have been multiple infringements, i.e. in relation to the F1 Tender and the GEMS Tender, by the same undertaking within the same group (namely Chemicrete),[388] CCS considers it appropriate to increase the penalty imposed on the Cyclect Group by [✂]%.

270. In its representations to CCS, the Cyclect Group submitted that, following commencement of this matter, it has engaged and worked with external counsel to introduce and implement a competition compliance programme for the businesses of Chemicrete and Cyclect Electrical, in order to spread a robust understanding and awareness of competition law among its employees and to ensure that all staff are in compliance.[389]

271. Having considered the Cyclect Group's representations, CCS notes that Chemicrete and Cyclect Electrical's compliance programme were implemented after investigations started. The Cyclect Group is therefore not eligible for a further mitigating discount.

272. The penalty is accordingly increased by [✂] to S$[✂].

273. Adjustment for other factors: CCS notes that for the F1 Tender, the contract was awarded on 23 April 2015 to the Cyclect Group for a period of three years from 2015 to 2017, with the amount to be paid out in three separate tranches for each year of services rendered for the F1 Tender. In this regard, given that the relevant turnover used for the purpose of penalties calculation is limited to the undertakings' past one business year i.e. FY2014, this relevant turnover does not capture the full contract value of the F1 Tender. Consequently, CCS is of the view that penalties imposed using this relevant turnover figure would severely underestimate the actual benefits that the Cyclect Group would have obtained as a result of their infringing conduct in the F1 Tender. This would not achieve the

[388] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.14.
[389] Paragraphs 6.8.2 to 6.8.4 of Cyclect Group Representations to PID submitted on 5 May 2017.

goal of specific deterrence to the infringing undertaking and may have adverse policy consequences in relation to the incentives of undertakings who engage in similar anti-competitive conduct. This is highly undesirable in relation to the aim of achieving general deterrence.

274. In its representations to CCS, the Cyclect Group submitted that the deterrence multiplier of two times imposed by CCS is "excessive, disproportionate and unfair in nature" and argued that the objective of deterrence would already have been satisfied without the imposition of the deterrence multiplier, given the limited seriousness and effect of the alleged infringements. In particular, the Cyclect Group submitted that "cover pricing is materially distinct from, and less serious than, bid-rigging as an infringement of the section 34 prohibition. As such, the importance of deterrence as a factor in calculating the financial penalty should also correspondingly be less". It also submitted that "the effect of the alleged infringements in this case was minimal, with limited competition harm to the relevant markets.[390] Similarly, the importance of deterrence as a factor in calculating the financial penalty should hence be less".

275. CCS reiterates the reasons for imposing the deterrence multiplier for the F1 Tender. Effectively, the relevant turnover for penalties calculation is limited to the Cyclect Group's last business year. Given that the contract awarded for the F1 Tender was for a three-year period, the penalties calculated at this stage, based on a one year relevant turnover i.e. S$[✂], in CCS's view would not be sufficient as a specific deterrence to the Cyclect Group. In fact, CCS is of the view that this would severely underestimate the benefits obtained by the Cyclect Group and correspondingly the harm to Singapore GP as a result of the infringing conduct in the F1 Tender.

276. Whilst CCS notes that a deterrence multiplier of three times may be warranted as the F1 Tender was for a three-year contract for services rendered from 2015 to 2017, CCS considers it appropriate in this case to impose a deterrence multiplier of two times the calculated penalty at this stage when considering the benefits in this case, i.e. approximately two years that the Cyclect Group would have obtained from the F1 Tender until the date of the Proposed Infringement Decision. CCS notes that the application of a deterrence multiplier to achieve the policy objectives of specific and general deterrence has been utilised by the European Commission[391] and endorsed by the European Courts.[392] In *Musique Diffusion*

[390] Paragraph 6.5.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[391] Paragraph 30 of the EC Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of the Regulation 23(2) No 1/2003 states "The Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect; to that end, it may increase the fine to be imposed on undertakings which have a particularly large turnover beyond the sales of goods and services to which the infringement relates".
[392] Case C-289/04 P *Showa Denko v Commission* [2006] ECR I-5859; Joined Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 *ThyssenKrupp Liften Ascenseurs NV v Commission* [2011] ECR II-5129.

Francaise v Commission[393] ("Musique"), the ECJ held that in assessing the gravity of an infringement, regard may be had to large number of factors which may "include the volume and value of the goods in respect of which the infringement was committed and the size and economic power of the undertaking and, consequently, the influence which the undertaking was able to exert on the market."[394] The ECJ also noted that it was appropriate, in fixing a fine, to have regard to the "total turnover of the undertaking, which gives an indication, albeit approximate and imperfect, of the size of the undertaking and of its economic power, and to the proportion of that turnover accounted for by the goods in respect of which the infringement was committed, which gives an indication of the scale of the infringement", so long as neither factor was given a disproportionate importance.[395] Subsequently, in the case of *Showa Denko v Commission*[396], which cited *Musique* with approval[397], the ECJ held that "the fine imposed on an undertaking may be calculated by including a deterrence factor and that factor is assessed by taking into account a large number of factors and not merely the particular situation of the undertaking concerned."[398]

277. The approach of the courts in Europe and UK have been captured in the EC and OFT's respective guidelines to setting penalties. In the EC's 2006 *Guidelines on the method of setting fines pursuant to Art 23(2)(a) of Regulation No 1 of 2003*[399], it was stated that the EC could raise the fine for deterrence by taking into account "the need to increase the fine in order to exceed the amount of gains improperly made as a result of the infringement where it is possible to estimate that amount."[400] Likewise, the UK OFT's Penalty Guidance states that the OFT may take into account, *inter alia*, the economic or financial benefit that the entity will make over and above the penalty reached at the end of step 3. In assessing whether the penalty is disproportionate, the OFT may have regard to the undertaking's size and financial position, the nature of the infringement, the role of the undertaking in the infringement and the impact of the undertaking's activity on the role of competition.[401]

278. In addition, as stated at paragraphs 238 to 240 above, the conduct in this case was of cover bidding as a form of bid-rigging, conduct that is materially distinct from that of the practice of "simple cover pricing" relied upon by the Cyclect Group in its submission that cover pricing constitutes a less serious form of infringement than bid-rigging.

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[393] Cases 100-103/80 *Musique Diffusion Francaise v Commission* [1983] ECR 1825.
[394] Cases 100-103/80 *Musique Diffusion Francaise v Commission*, at [120].
[395] Cases 100-103/80 *Musique Diffusion Francaise v Commission*, at [121].
[396] Case C-289/04 P *Showa Denko v Commission* [2006] ECR I-5859.
[397] Case C-289/04 P *Showa Denko v Commission*, at [29].
[398] Case C-289/04 P *Showa Denko v Commission*, at [23].
[399] 2006/C210/02.
[400] *EC Guidelines on the method of setting fines pursuant to Art 23(2)(a) of Regulation No 1 of 2003*, 2006/C210/02 at [30].
[401] UK OFT's Penalty Guidance at [2.17] to [2.20].

279. In relation to the Cyclect Group's representations that the effect of the infringing conduct was minimal,[402] as noted at paragraph 265 above, it is stated under the *CCS Guidelines on the Appropriate Amount of Penalty 2016* that bid-rigging and collusive tendering are serious infringements of the section 34 prohibition.[403] CCS also notes that the infringing conduct resulted in a significant increase in the awarded tender price charged to the ultimate customer, Singapore GP.

280. In its representations to CCS, the Cyclect Group also submitted that the PID has caused Chemicrete and Cyclect Electrical to suffer existing losses and also potentially a loss of profits in the future, as customers may pull out from existing deals and/or disbar Chemicrete and Cyclect Electrical from participating in future deals or tenders, and that CCS should take this into account in the calculation of its financial penalties.[404]

281. CCS does not consider any reputational damage caused by negative publicity arising from the infringement to be a mitigating factor.[405] In addition, while the financial position of the Parties is a relevant consideration in determining whether the penalty imposed will be sufficiently deterrent, the mere finding of an adverse or loss-making financial situation does not necessarily merit a reduction in the financial penalty.[406] In this case, the Cyclect Group has not furnished information and documentation that the Cyclect Group is presently facing economic difficulties. CCS is thus of the view that the Cyclect Group's submission that it faces existing losses and also potentially a loss of profits in the future does not warrant a further reduction in the level of financial penalties.

282. In light of the above, CCS will not be making any changes to the penalties at this stage of penalty calculation.

283. Given the above, and in view of the gains accruing to the Cyclect Group as a result of the F1 contract which are not captured in the penalty, CCS thus adjusts the penalty at this stage to S$[✂].

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

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[402] Paragraph 6.5.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[403] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.3.
[404] Paragraphs 6.7.2 to 6.7.5 of Cyclect Group Representations to PID submitted on 5 May 2017.
[405] *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1, at [418] to [419].
[406] *Achilles Paper Group Limited v OFT* [2006] CAT 24 at [56], citing *Tokai Carbon Co Ltd and others v European Commission* [2004] ECR II-1181, [2004] 5 CMLR 28. See also *Collusive Tendering (Bid-rigging) in Electrical and Building Works*, CCS 500/001/09, at [316].
[407] Under section 69(2)(d) of the Act, CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.

285. Adjustment for leniency: In respect of the F1 Tender, the Cyclect Group applied for leniency on 27 April 2015 after CCS commenced its investigation and conducted two rounds of section 64 inspections.

286. Based on the evidence, CCS found that the Cyclect Group had initiated the bid-rigging arrangement and therefore, according to the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016*¸ the Cyclect Group can only benefit from a reduction in the financial penalty of up to 50% i.e. not be eligible for total immunity or receive a reduction in the financial penalty of up to 100%.[408]

287. In its representations to CCS, the Cyclect Group submitted that it did not initiate the bid-rigging arrangements in the F1 Tender.[409] It was also submitted that Chemicrete and Cyclect Electrical had always maintained continuous and full cooperation with CCS[410] as required under the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016*.[411] For these reasons, the Cyclect Group submitted that it should be eligible for a leniency discount of up to 100% of the financial penalty.[412]

288. CCS has considered the Cyclect Group's submissions that are referred to in the preceding paragraph and maintains that the Cyclect Group initiated the infringing conduct in the F1 Tender. In this regard, CCS highlights that the evidence set out and analysed in this ID, including but not limited to the Notes of Information from the relevant personnel of the Parties, clearly shows that the Cyclect Group approached HPH and Peak Top to submit bids, prepared different quotations for each which were then submitted by HPH and Peak Top respectively, for the purpose of helping Cyclect Electrical win the F1 Tender.[413]

289. CCS has also reviewed the Cyclect Group's claim that Chemicrete and Cyclect Electrical had fully cooperated with CCS and is of the view that it is unmeritorious. On the requirement for "continuous and complete co-operation throughout the investigation and until the conclusion of any action by CCS" under the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016*[414], guidance can be obtained from European jurisprudence. In the case of *Deltafina SpA v Commission* ("Deltafina")[415], the General Court took the view that a reduction of the fine under the European

[408] *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraph 2.4.
[409] Paragraphs 6.6.4 to 6.6.7 of Cyclect Group Representations to PID submitted on 5 May 2017.
[410] Paragraph 6.6.3 of Cyclect Group Representations to PID submitted on 5 May 2017.
[411] *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraph 2.2.
[412] Paragraph 6.6.7 of Cyclect Group Representations to PID submitted on 5 May 2017.
[413] See above at [94] to [180].
[414] *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraph 2.2.
[415] Case T-12/06 *Deltafina SpA v Commission* [2011] ECR II-000.

Commission's leniency programme, which is similar to the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016* in requiring an undertaking to cooperate "fully, on a continuous basis and expeditiously",[416] required the undertaking concerned to demonstrate a "spirit of genuine cooperation" on its part throughout the entirety of the administrative procedure by the Commission.[417] CCS notes that this requirement of a "spirit of cooperation" was also applied in the cases of *Dansk Rorindustri and Others v Commission,*[418] *Commission v SGL Carbon AG,*[419] and *Erste Group Bank and Others v Commission.*[420] In the present case, the Cyclect Group's conduct does not reflect a "spirit of genuine cooperation" by virtue of its persistent and categorical denials of liability in its representations for initiating the bid-rigging in the F1 Tender and the allegations it has made against CCS, in contrast to the admissions made in its leniency application on 27 April 2015.[421] Some of the inconsistencies between the information provided by the Cyclect Group in its leniency application and its representations are as follows:

(i) In its leniency application, the Cyclect Group stated that on 27 April 2015, Melvin Tan volunteered information relating to CEE to CCS in good faith even though this was beyond the scope of the notice issued to him in his capacity as a director of Cyclect Holdings.[422] However, in its representations to CCS, the Cyclect Group argued that CCS should not have pursued an investigation against CEE and penalised it without first issuing a formal notice to CEE under the Act, and that CEE did not admit to violating the Act.[423]

(ii) In its leniency application, the Cyclect Group stated that Chemicrete had forwarded a tender form for the F1 Tender to HPH with a suggested price included therein, and that this provided some certainty that CEE's bid price would be competitive as the Cyclect Group would know the estimate price range that HPH would submit to F+G.[424] Similarly, in Melvin Tan's interview with CCS, he stated that he instructed Dass to quote a higher price to HPH so that HPH would send in an unattractive bid for the F1 Tender, in order to help CEE win the said tender.[425] However, in the Cyclect Group's representations, it was argued that there was a "great deal of uncertainty

[416] Case T-12/06 *Deltafina SpA v Commission* [2011] ECR II-000, at [124].
[417] Case T-12/06 *Deltafina SpA v Commission* [2011] ECR II-000, at [127] to [128] and [133].
[418] Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rorindustri and Others v Commission* [2005] ECR I-5425, at [395].
[419] Case C-301/04 P *Commission v SGLCarbon* [2006] ECR I-5915, at [68].
[420] Joined Cases C-125/07 P, C-133/07 P, C-135/07 P and C-137/07 P *Erste Group Bank and Others v Commission* [2009] ECR I-8681, at [281].
[421] Paragraphs 3.1 to 6.1.6 of Cyclect Group Representations to PID submitted on 5 May 2017.
[422] Leniency application of the Cyclect Group, at [1.3.1].
[423] Paragraph 3.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[424] Leniency application of the Cyclect Group, at [6.14.1] and [6.15]
[425] Response to Question 111 of Notes of Information/Explanation provided by Melvin Tan dated 30 October 2015.

surrounding the course of action that each of the bidders for the F1 Tender was going to take" and that the parties "continued to be exposed to the risks of competition".[426]

290. In addition, in the Cyclect Group's representations, it was stated that the Cyclect Group denies any infringement or violation of the Act[427], and that there were no anti-competitive agreements / concerted practices in relation to the F1 Tender and the GEMS Tender.[428] This is at odds with the requirement in the *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information in Cartel Activity 2016* that an undertaking applying for leniency must unconditionally admit to the conduct for which leniency is sought and details the extent to which this prevented, restricted or distorted competition in Singapore.[429]

291. In determining the leniency discount, CCS has taken into consideration all the facts and circumstances of this case, including the stage at which the Cyclect Group came forward, the evidence already in CCS's possession, and the quality of the information and level of cooperation provided by the Cyclect Group (including the Cyclect Group's representations submitted in response to the PID). It bears highlighting that the voluntary provision of full and frank disclosure of all information relating to the conduct in its leniency application was specified as a condition of leniency in CCS's grant of a marker and conditional leniency.[430]

292. On a consideration of the above and in particular the totality of cooperation rendered, including representations that are inconsistent with what the Cyclect Group had submitted further to its leniency application to CCS, CCS will grant a leniency discount of [✂]%. The Cyclect Group's financial penalty is therefore S$[✂].

293. Accordingly, CCS concludes that a financial penalty of S$559,297.00 is to be imposed on the Cyclect Group for its involvement in bid-rigging in the F1 Tender.

(ii) GEMS Tender

294. Starting point: The Cyclect Group's financial year commences on 1 January and ends on 31 December. As the infringement ended in April 2015 for the GEMS

[426] Paragraph 4.1.1.7 of Cyclect Group Representations to PID submitted on 5 May 2017.
[427] Paragraphs 1.2.1(f) and 6.3.11 of Cyclect Group Representations to PID submitted on 5 May 2017.
[428] Paragraphs 4.1.1 and 5.1.1 of Cyclect Group Representations to PID submitted on 5 May 2017.
[429] *CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity 2016*, paragraph 2.2.
[430] Paragraph 2 of the CCS Letter granting first marker to the Cyclect Group, dated 2 June 2015; paragraph 5(a) of the CCS Letter granting conditional leniency to the Cyclect Group, dated 23 February 2017; paragraph 7 of the CCS Notice of Proposed Decision on Infringement of the Section 34 Prohibition to Cyclect Holdings, dated 21 March 2017; paragraph 7 of the CCS Notice of Proposed Decision on Infringement of the Section 34 Prohibition to Cyclect Electrical, dated 21 March 2017; and paragraph 7 of the CCS Notice of Proposed Decision on Infringement of the Section 34 Prohibition to Chemicrete, dated 21 March 2017. See also Case T-12/06 *Deltafina SpA v Commission* [2011] ECR II-000.

Tender, the relevant last business year is financial year 2014, i.e. 1 January 2014 to 31 December 2014. The Cyclect Group submitted that the relevant turnover figure for the financial year 2014 was S$[✂].

295. Adjustment for mitigating factors: As noted at paragraph 270 above, in its representations to CCS, the Cyclect Group submitted that it has introduced and implemented a competition compliance programme for the businesses of Chemicrete and Cyclect Electrical.[431] CCS notes that Chemicrete's and Cyclect Electrical's compliance programmes were implemented after investigations started. The Cyclect Group is therefore not eligible for a further mitigating discount.

296. Adjustment for other factors: Having considered the specific involvement of the Cyclect Group in the infringing conduct, the size of the Cyclect Group, the value of the rigged GEMS Tender, as well as to ensure that the penalty is sufficient to act as an effective deterrent to the Cyclect Group and to other undertakings which may consider engaging in bid-rigging arrangements, CCS will impose a penalty of S$[✂] on the Cyclect Group at this stage of penalty calculation.

297. In relation to the Cyclect Group's submission that the effect of the infringing conduct was minimal[432], it is stated under the *CCS Guidelines on the Appropriate Amount of Penalty 2016* that bid-rigging and collusive tendering are serious infringements of the section 34 prohibition.[433] In addition, CCS notes that as a result of the conduct initiated by the Cyclect Group, GEMS did not continue its search for more competitive bids prior to the award of the GEMS Tender.

298. As noted under paragraph 279 above, in its representations to CCS, the Cyclect Group also submitted that the PID has caused Chemicrete and Cyclect Electrical to suffer existing losses and also potentially a loss of profits in the future, as customers may pull out from existing deals and/or disbar Chemicrete and Cyclect Electrical from participating in future deals or tenders, and that CCS should take this into account in the calculation of its financial penalties.[434]

299. For the reasons stated at paragraph 281 above, CCS is of the view that the Cyclect Group's submission does not warrant a further reduction in the level of financial penalties.

300. In light of the above, CCS will not be making any changes to the penalties at this stage of penalty calculation.

[431] Paragraphs 6.8.2 to 6.8.4 of Cyclect Group Representations to PID submitted on 5 May 2017.
[432] Paragraphs 6.3.8 and 6.3.9 of Cyclect Group Representations to PID submitted on 5 May 2017.
[433] *CCS Guidelines on the Appropriate Amount of Penalty 2016*, paragraph 2.3.
[434] Paragraphs 6.7.2 to 6.7.5 of Cyclect Group Representations to PID submitted on 5 May 2017.

301. Adjustment to prevent maximum penalty being exceeded:[435] The financial penalty of S$[✂] does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S$[✂].

302. Adjustment for leniency: In respect of the GEMS Tender, the Cyclect Group applied for leniency on 29 April 2015 after CCS commenced investigations and conducted two rounds of section 64 inspections.

303. Based on the evidence, CCS found that the Cyclect Group initiated the bid-rigging arrangement. As highlighted above, the Cyclect Group will only be eligible for a reduction in penalties of up to 50%. CCS notes the Cyclect Group has made representations to the effect that it did not initiate the bid-rigging arrangement in respect of the GEMS Tender and that it had fully cooperated with CCS.[436] Having reviewed these representations, CCS highlights that the evidence set out and analysed in this ID clearly shows that Chemicrete forwarded a quote for the GEMS Tender to HPH, which was submitted by HPH to GEMS as a "support bid".[437] Furthermore, the Cyclect Group's persistent and categorical denials of liability in its representations in relation to the GEMS Tender are contrary to its statements in its leniency application on 29 April 2015, and fall short of amounting to a "spirit of genuine cooperation", which is discussed above.[438] In particular, the Cyclect Group had stated in its leniency application that while there was no express agreement as to the relevant costing calculations in the quotation for the GEMS Tender, it was reasonable for Chemicrete to assume that HPH would not vary the prices set out in the template that was sent to HPH by Chemicrete and that this understanding involved the engineering of two out of three quotations submitted for the GEMS Tender.[439] Dass and Tan Kai Seng also stated in their interviews that there was an understanding that HPH would provide a quote that was higher than Chemicrete's so that Chemicrete could win the GEMS Tender.[440] Tan Kai Seng also confirmed that the price to be submitted was to be as stated in the quotation that he had prepared and sent to HPH.[441] However, in its representations, the Cyclect Group submitted that the price examples provided by Chemicrete to HPH were merely to serve as guidelines for HPH as the latter was inexperienced in providing asset tagging services, and that HPH was free to set its own prices for the GEMS Tender, which meant that CCS erred in finding that HPH's bid was a cover bid to allow Chemicrete to win the GEMS Tender.[442] In view of the Cyclect

[435] Under section 69(2)(d) of the Act, CCS may, where it has made a decision that an agreement has infringed the section 34 prohibition, impose on any party to that infringing agreement a financial penalty not exceeding 10% of the turnover of the business of such party in Singapore for each year of infringement, up to a maximum of three years.
[436] See above, at [289].
[437] See above, at [183] to [206].
[438] See above, at [289].
[439] Leniency application of the Cyclect Group, at [5.9] to [5.10].
[440] Responses to Questions 153 to 155 of Notes of Information/Explanation provided by Dass dated 27 April 2015 and responses to Questions 52 to 53 of Notes of Information/Explanation provided by Tan Kai Seng dated 27 April 2015.
[441] Responses to Questions 37, 42 52 and 53 of Notes of Information/Explanation provided by Tan Kai Seng dated 27 April 2015.
[442] Paragraphs 5.1.3.2 and 5.1.3.4 of Cyclect Group Representations to PID submitted on 5 May 2017.

Group's significant change in its position, CCS does not accept the submission that it has fully co-operated nor does CCS accept that it did not initiate the conduct.

304. Having taken into consideration all the facts and circumstances of this case, including the stage at which the undertaking comes forward, the evidence already in CCS's possession, and the quality of the information and level of cooperation provided by the Cyclect Group, including representations that are inconsistent with what the Cyclect Group had submitted further to its leniency application to CCS, CCS will similarly grant a leniency discount of [✂]%. The Cyclect Group's financial penalty is therefore S$[✂].

305. Accordingly, CCS concludes that a financial penalty of S$12,000.00 is to be imposed on the Cyclect Group for its involvement in bid-rigging in the GEMS Tender.

D. Penalty for HPH

306. HPH was involved in bid-rigging for both the F1 and GEMS Tenders with the object of preventing, restricting or distorting competition in the markets for the provision of site electrical services for temporary events and for the provision of asset and inventory tagging services respectively.

(i) F1 Tender

307. Starting point: HPH's financial year commences on 1 January and ends on 31 December. As the infringement ended in April 2015 for the F1 Tender, the relevant last business year is financial year 2014, i.e. 1 January 2014 to 31 December 2014. HPH submitted that the relevant turnover figure in relation to the provision of site electrical services for temporary events for the financial year 2014 was S$[✂]. As highlighted at paragraph 231 above, it is appropriate in this case for CCS to determine a proxy relevant turnover by taking reference from other Parties' percentage of relevant turnover over total turnover figures, where available, and determine a suitable percentage to be applied to HPH's own total turnover figures which is S$[✂] in financial year 2014.

308. In this regard, CCS considers it appropriate in this case to use [✂]% as a proxy which was derived by taking into account the other Parties' relevant turnover as a proportion of their respective total turnover figures to derive a percentage figure. This proxy has then been applied to HPH's total turnover figures to determine an appropriate relevant turnover to be used for HPH's penalties calculation. The relevant turnover figure is therefore S$[✂].

309. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 234 to 240 above and fixed the starting point at [✂]% of relevant turnover. The starting amount for HPH is therefore S$[✂].

310. Adjustment for duration: In accordance with paragraphs 250 to 252 above, the

duration multiplier is one year.

311. Adjustment for aggravating and mitigating factors: CCS considers that HPH co-operated with CCS during the course of the investigations. CCS therefore reduces the penalty by [✂]%.

312. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

313. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to HPH and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

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

315. Accordingly, CCS concludes that a financial penalty of S$28,128.00 is to be imposed on HPH for its involvement in bid-rigging in the F1 Tender.

(ii) GEMS Tender

316. HPH's financial year commences on 1 January and ends on 31 December. As the infringement ended in April 2015 for the GEMS Tender, the relevant last business year is financial year 2014, i.e. 1 January 2014 to 31 December 2014. Similar to the Cyclect Group, HPH submitted that the relevant turnover figure for the financial year 2014 was S$[✂].

317. Adjustment for other factors: Having considered the specific involvement of HPH in the infringing conduct, the size of HPH, the value of the rigged GEMS Tender, as well as to ensure that the penalty is sufficient to act as an effective deterrent to HPH and to other undertakings which may consider engaging in bid-rigging arrangements, CCS will impose a penalty of S$[✂] on HPH.

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

319. Accordingly, CCS concludes that a financial penalty of S$5,000.00 is to be imposed on HPH for its involvement in bid-rigging in the GEMS Tender.

E. Penalty for Peak Top

(i) F1 Tender

320. Starting point: Peak Top's financial year commences on 1 January and ends on 31 December. As the infringement ended in April 2015 for the F1 Tender, the relevant last business year is financial year 2014, i.e. 1 January 2014 to 31 December 2014. [✂]. As highlighted at paragraph 231 above and similarly applied to the penalties calculation of HPH for the F1 Tender, it is appropriate in this case for CCS to determine a proxy relevant turnover by taking reference from other Parties' percentage of relevant turnover over total turnover figures, where available, and determine a suitable percentage to be applied to Peak Top's own total turnover figures, which is S$[✂] in financial year 2014.

321. In this regard, CCS considers it appropriate to use [✂]% of Peak Top's total turnover figures as the proxy which was derived by taking into account the other Parties' relevant turnover as a proportion of their respective total turnover figures to derive a percentage figure. This proxy has then been applied to Peak Top's total turnover figures to determine an appropriate relevant turnover to be used for Peak Top's penalties calculation. The relevant turnover figure is therefore S$[✂].

322. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 234 to 240 above and fixed the starting point at [✂]% of relevant turnover. The starting amount for Peak Top is therefore S$[✂].

323. Adjustment for duration: In accordance with paragraphs 250 to 252 above, the duration multiplier is one year.

324. Adjustment for aggravating and mitigating factors: CCS considers that Peak Top co-operated with CCS during the course of the investigations. CCS therefore reduces the penalty by [✂]%.

325. Having taken into consideration all the facts and circumstances of this case, and after taking into account the aggravating and mitigating factors, the penalty is adjusted to S$[✂].

326. Adjustment for other factors: CCS considers that the figure of S$[✂] is sufficient to act as an effective deterrent to Peak Top and to other undertakings which may consider engaging in price-fixing arrangements and will not be making adjustments to the penalty at this stage.

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

328. Accordingly, CCS concludes that a financial penalty of S$21,693.00 is to be imposed on Peak Top for its involvement in bid-rigging in the F1 Tender.

F. Conclusion on Penalties

329. In conclusion, pursuant to section 69(2)(d) of the Act, CCS imposes the following

financial penalties on the Parties for each of the infringements:

Party	Financial Penalty for F1 Tender
The Cyclect Group	S$559,297.00
HPH	S$28,128.00
Peak Top	S$21,693.00
Total	**S$609,118.00**

Party	Financial Penalty for GEMS Tender
The Cyclect Group	S$12,000.00
HPH	S$5,000.00
Total	**S$17,000.00**

Toh Han Li
Chief Executive
Competition Commission of Singapore

ANNEX A: INTERVIEWS CONDUCTED BY CCS FOR THE PURPOSES OF THE INFRINGEMENTS UNDER THIS ID

Company	Key Personnel Interviewed	Dates of Interview	Designation
Chemicrete Enterprises Pte. Ltd., Cyclect Electrical Engineering Pte. Ltd, and Cyclect Holdings Pte. Ltd.	Melvin Tan Ee Chong	22 April 2015 27 April 2015 30 October 2015	Managing Director
Chemicrete Enterprises Pte. Ltd. and Cyclect Holdings Pte. Ltd.	Tan Ee Wei	22 April 2015 27 April 2015 29 October 2015	Director
Chemicrete Enterprises Pte. Ltd.	Dass s/o Arunasalam	22 April 2015 27 April 2015 28 October 2015 4 November 2015	General Manager
	Thum Kwang Wooi (Alex Thum)	22 April 2015 30 April 2015 28 October 2015	Ex-Business Development Manager
	Tan Kai Seng	22 April 2015 27 April 2015 28 October 2015	Operations Manager
	Ong Eng Seng	22 April 2015 27 April 2015 29 October 2015	Operations Manager
Cyclect Electrical Engineering Pte. Ltd.	Lim Poh Beng	15 July 2016	Head, Special Projects
HPH Engineering Pte. Ltd.	Pak Hong Kong	28 July 2015 14 December 2015	Managing Director
	Joshua Tan Keng Hong (Chen Qingfeng)	28 July 2015 17 December 2015	Director
	Sivanesan Magesh	28 July 2015	Assistant Project Manager
	Alice Kok Wai Peng	28 July 2015	Accounts Executive

Peak Top Engineering Pte. Ltd.	Andy Chong Kim Whey	7 April 2016	Managing Director
	Low Chou Yee	7 April 2016	Director
	Low Sok Yee	7 April 2016	Human Resource Administrator
	Palanisamy Sathish Kumar	7 April 2016	Project Engineer
Faithful+Gould Project Management Pte. Ltd.	Ricky John Hancock	15 April 2016	Director
	Ervin Koh Chuan Kwee	14 April 2016	Power & Comms. Manager
GEMS World Academy (Singapore) Pte. Ltd.	Mohamed Emran bin Supa'at	15 April 2016	Manager, School Operations
	Donil Jojo Manjali	15 April 2016	Manager, Finance