



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

Notice of Infringement Decision issued by the Commission

**Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services
by Certain Pest Control Operators in Singapore**

9 January 2008

Case number: CCS 600/008/06

Confidential information in the original version of this Decision has been redacted from published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [...].

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SECTION I: THE FACTS

A. The Parties

1. Information received by the Competition Commission of Singapore (“the Commission”) (see paragraph 23) indicated that the following pest control operators (each a Party, together, the Parties) described in more detail in paragraphs 2 to 7 below, engaged in fixing of prices through collusive tendering or bid-rigging in the provision of termite control and treatment services using Agenda, a termiticide, for properties in Singapore:
 - a) Aardwolf Pestkare (S) Pte Ltd (“Aardwolf”);
 - b) Alliance Pest Management Pte Ltd (“Alliance”);
 - c) Elite Pest Management Pte Ltd (“Elite”);
 - d) Killem Pest Pte Ltd (“Killem”);
 - e) PestBusters Pte Ltd (“PestBusters”); and
 - f) Rentokil Initial (S) Pte Ltd (“Rentokil”).

(i) Aardwolf Pestkare (S) Pte Ltd

2. Aardwolf is a private limited company registered in Singapore, providing pest control and management services since 1997. Aardwolf’s registered address is 26 Third Lok Yang Road, Singapore 628015. Aardwolf’s turnover for the financial year ending 31 March 2007 was S\$[...]¹. Mr Patrick Chong, Director of Aardwolf, Ms Law Kum Peng (Jenny), the Sales Manager, Ms Julia Chew, Senior Surveyor and Mr Ryan Peh, Quality Analyst, are referred to in this Decision.

(ii) Alliance Pest Management Pte Ltd

3. Alliance is a private limited company registered in Singapore, providing pest control and management services since 1998. Alliance’s registered address is 48 Toh Guan Road East, #06-148 Enterprise Hub, Singapore 608586. Alliance’s turnover for the financial year ending 31 December 2006 was S\$[...]². Mr Philip Tan and Mr Andrew Chan, Directors of Alliance, are referred to in this Decision.

¹ Information provided by Aardwolf on 8 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

² Information provided by Alliance on 8 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

(iii) Elite Pest Management Pte Ltd

4. Elite is a private limited company registered in Singapore, providing pest control and management services since 1991. Elite's registered address is 80 Playfair Road, #02-06 Kapo Factory Building, Singapore 367998. Elite's estimated turnover for the financial year ending 31 December 2006 was S\$[...]³. Mr Francis Loh, Director and General Manager of Elite, is referred to in this Decision.

(iv) Killem Pest Pte Ltd

5. Killem is a private limited company registered in Singapore, providing pest control and management services since 1995. Killem's registered address is 48 Toh Guan Road East, #04-09 Enterprise Hub, Singapore 608586. Killem's turnover for the financial year ending 31 December 2006 was S\$[...]⁴. Mr Harry Singh and Mr Tan Cheng Hock (William), Directors of Killem, Ms Lee Cheng Mui (Jennifer), a Sales Manager and Ms Vasuki Ramachandran (Padmah), Personal Assistant to Mr Harry Singh, are referred to in this Decision.

(v) PestBusters Pte Ltd

6. PestBusters is a private limited company registered in Singapore, providing pest control services in Singapore since 1991. PestBusters' registered address is 140 Paya Lebar Road, #08-06 A-Z Building, Singapore 409015. PestBusters' estimated turnover for the financial year ending 31 March 2007 was S\$[...]⁵. Mr Peter Fernandis, a Director of PestBusters, is referred to in this Decision.

(vi) Rentokil Initial (S) Pte Ltd

7. Rentokil is a private limited company registered in Singapore, providing pest control services in Singapore since 1964. Rentokil's registered address is 16 & 18 Jalan Mesin, Singapore 368815. Rentokil is a subsidiary of Rentokil Initial PLC, a multi-national company operating in Europe, North America, Asia Pacific and Africa. Rentokil's estimated turnover for the financial year ending 31 December 2006, which includes turnover from

³ Information provided by Elite on 14 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴ Information provided by Killem via letter dated 15 June 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁵ Reports and Financial Statements for financial year ending 31 March 2007 signed by the Directors on 3 December 2007 received from PestBusters on 3 January 2008 pursuant to the section 63 Notice issued by the Commission dated 14 November 2007.

both the provision of pest control and management services (under its Rentokil Pest Control business arm) and the washroom and hygiene services (under its Initial Hygiene business arm) was S\$[...] ⁶. Mr Ong Koong Tak James (Joseph), the former General Manager of the Pest Control Division, Mr Nicck Yeong, the Sales and Technical Manager, Ms Jessie Yeoh, an Assistant Sales Manager, Mr Loe Ching Heng (Dennis), a former Sales Manager, Ms Jacqueline Ng and Mr Dennis Ng, former surveyors, are referred to in this Decision.

(vii) Agenda and Agenda Authorised Applicators

8. Agenda is a termiticide manufactured by Bayer Environmental Science (“Bayer”) and is solely distributed by Bentz Jaz Singapore Pte Ltd (“Bentz Jaz”). Agenda is one of the four termiticides approved for use in Singapore by the National Environment Agency (“NEA”)(see paragraph 20 for more details).
9. The use of Agenda is restricted by Bayer and Bentz Jaz to a selected group of pest control operators (“PCOs”), also known as the Agenda Authorised Applicators (“AAAs”). An AAA’s appointment is renewed yearly, subject to that AAA being able to meet certain pre-determined annual Agenda purchase targets. In addition, the AAAs have to adhere to certain guidelines on Agenda application for termite treatment (“Agenda Treatment”) in return for a 5-year warranty backed by Bayer and Bentz Jaz against re-infestation.
10. Termiticides, including Agenda, are used for pre- and post-construction termite control. Pre-construction termite treatment, or soil treatment, involves the injection of termiticides into the soil at a construction site, before construction works commence, to create a barrier to repel termites or manage the colony. Post-construction termite treatment or corrective treatment involves the treatment of buildings or structures and their surroundings by drilling holes into selected areas in the building or structure and injecting termiticide into the holes to create a barrier to repel termites or manage the colony. Alternatively, the termiticide could be sprayed in and around termite-infested areas without drilling holes.
11. The relationship of the Parties started back in 2002 when they were appointed as AAAs. Of the eight AAAs appointed in 2002, only the Parties’ appointments were renewed and they have been the only six AAAs since. The Parties met regularly with representatives from Bayer and Bentz Jaz on

⁶ Information provided by Rentokil via letter dated 20 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

Agenda-related matters, including but not limited to the minimum pricing of Agenda Treatment provided by the AAAs at S\$12 per square metre for pre-construction treatment and S\$70 per linear metre for post-construction treatment⁷.

12. The minutes of a meeting held on 6 April 2006 recorded the following under the heading “support quote”: “All AAA mutual agreed to have the standard guidance.” The AAAs explained that there was an understanding among the AAAs that if any of the AAAs was providing pest control services to an existing customer who was calling for Agenda Treatment or termite treatment services, that AAA may request that the rest of the AAAs would not compete for that project. The AAA receiving the request may then put in a cover bid or a “support quote” in their parlance above the minimum price of \$70 per linear metre or the price given by the AAA making the request⁸. Some of the AAAs understood this arrangement to also apply where although the potential customer was not an existing customer, the AAA making the request for cover bids was the one who did all the groundwork in recommending the use of Agenda. It would sometimes depend on the customer calling for the tender or quote in respect of a project, whether some or all of the AAAs would be invited to tender or quote, as the case may be.
13. For the purposes of this Decision, the Commission has dealt with the bid-rigging practices of the AAAs and makes no finding on the issue of the minimum price of Agenda Treatment.

⁷ See Answers to Questions 31 to 35 of Steph Chua Yang Peng’s Notes of Information/Explanation provided on 14 February 2007 where he said that the recommended price for Agenda Treatment (at S\$12 per linear metre for pre-construction and S\$70 per linear metre for post-construction) and associated penalties for under-quoting still apply, even though they have been removed from the 2006 Agreement between Bentz Jaz and each AAA.

⁸ See Answers to Questions 47 and 48 of Francis Loh’s Notes of Information/Explanation Provided on 12 January 2007, Answers to Questions 38 to 56 of Andrew Chan’s Notes of Information/Explanation Provided on 9 March 2007, Answers to Questions 117 to 124 of Philip Tan’s Notes of Information/Explanation Provided on 27 February 2007, Answer to Question 13 of Peter Fernandis’ Notes of Information/Explanation Provided on 10 January 2007 and Answer to Question 30 of Peter Fernandis’ Notes of Information/Explanation Provided on 30 May 2007, Answers to Questions 116 to 118 of Patrick Chong’s Notes of Information/Explanation Provided on 30 March 2007, Answer to Question 245 of Harry Singh’s Notes of Information/Explanation Provided on 14 February 2007 and Answers to Questions 172 to 174 of Harry Singh’s Notes of Information/Explanation Provided on 7 March 2007, and Answers to Questions 115 to 120 of Ong Koong Tak, James (Joseph)’s Notes of Information/Explanation Provided on 28 April 2007. In particular, Harry Singh understood that he could also render support by not putting in a quote.

B. Background of Termite Control Industry

(i) Pest Control Services

14. The Parties provide pest control services in Singapore. In practice, pest control services include a wide range of services such as the control of vectors, i.e. mosquitoes, cockroaches, flies, rodents and fleas⁹ and non-vectors such as ants, bees, hornets, wasps, snakes, and termites, etc. Only PCOs providing vector control services are required to be registered with the Environmental Health Department (“EHD”) of the NEA. In addition, the technicians and workers they employ have to be trained and certified by the Director-General of Public Health, NEA¹⁰ and the pesticides and repellents used in the control of the vectors must be registered with the EHD¹¹.
15. According to the Singapore Pest Management Association (“SPMA”) Membership Survey in 2004¹², the results of which were published on 19 May 2005, the estimated value of the pest control industry was S\$70 mil as at the end of 2004, with an estimated labour force of 2,000 people.

(ii) Termite Management and Control

16. Unlike the provision of vector control services, there is no licensing requirement for the provision of termite control services in Singapore. However, certain termiticides are regarded as hazardous substances under the Environmental Pollution Control (Hazardous Substances) Regulations and their import, sale, export, purchase, storage, and/or use are regulated. In addition, the NEA’s Pollution Control Department (“PCD”) regulates the use of certain termiticides for soil treatment in Singapore under the Environmental Pollution Control Act (Cap. 94A), as there are concerns with water pollution control and the introduction of hazardous substances into water catchment areas during the soil treatment process.
17. The options for management and control of termites are the use of termiticides (usually to create a chemical barrier or for colony

⁹ See Section 2 of Control of Vectors and Pesticides Act (“CVPA”)(Cap. 59) for definition of vectors. The National Environment Agency Environmental Health Division has listed the five pests as vectors. See http://app.nea.gov.sg/cms/htdocs/category_sub.asp?cid=92.

¹⁰ See Sections 25 to 28 of the CVPA and <http://app.nea.gov.sg/cms/htdocs/article.asp?pid=950>.

¹¹ See Section 5 of the CVPA and also <http://www.nea.gov.sg/cms/pcd/guidebookcontents.pdf>.

¹² Provided by Andrew Chan to the Commission voluntarily, the receipt of which is duly acknowledged by the Commission on 14 June 2007 and marked as Exhibit AC-1.

management) or physical barriers (installing meshes in the soil to prevent termites from entering an area), dusting and termite baiting. The options may be used exclusively or in combination to achieve a better result, depending on the needs and circumstances.

18. For the purposes of this Decision, the Commission proposes to focus on the provision of termite control services in Singapore using termiticides, in particular Agenda, as the infringements relate to projects in respect of termite control services using termiticides.

(iii) Termite Control using Termiticides

19. Soil and corrective treatments are used extensively for private or public residential, commercial or industrial properties and structures. Some examples of such properties are private landed residential homes, condominiums and apartments, HDB flats, flatted factories, commercial buildings including offices, hotels, shopping complexes and restaurants, as well as government buildings such as hospitals and schools.
20. There are currently four termiticides approved for soil treatment in Singapore by the NEA¹³, namely Chlorpyrifos¹⁴, Imidacloprid (Premise), Fipronil (Agenda) and Fenvalerate (Wazary).
21. The termiticides are usually supplied in a concentrate form, which requires dilution (with water) to a pre-determined concentration level, as recommended by the manufacturers of the termiticides, before application. The dilution level for each termiticide is different; as is the dilution level for soil and corrective treatments using the same termiticide.
22. As in the case of Agenda, the application of Premise is restricted to a selected group of PCOs or authorised applicators (known as the Premise Principal Partners or PPPs for short) selected by the manufacturer and distributor in Singapore.

C. Investigation and Proceedings

23. In late September 2006, the Commission received a complaint that PestBusters, Aardwolf and Rentokil had engaged in collusive tendering or bid-rigging practices for a May 2006 tender for termite treatment at Raffles Hotel. The information indicated that PestBusters had asked Aardwolf and Rentokil to support PestBusters by submitting tender proposals to Raffles

¹³ See <http://app.nea.gov.sg/cms/htdocs/article.asp?pid=1679>.

¹⁴ These are the names of the active chemical ingredients. The names in parenthesis are the termiticides' trade names, containing a pre-determined concentration of the respective active ingredient.

- Hotel, with prices higher than PestBusters'. Before submission of the proposals, Aardwolf and Rentokil agreed to support PestBusters.
24. On 17 October 2006, the Commission decided that there were reasonable grounds for suspecting that PestBusters, Aardwolf and Rentokil had been engaged in collusive tendering or bid-rigging in relation to the provision of termite treatment services in Singapore, in breach of the prohibition under section 34 ("the section 34 prohibition") of the Competition Act (Cap 50B) ("the Act").
 25. The Commission commenced formal investigations under the Act and authorised its officers to enter the premises of PestBusters, Aardwolf and Rentokil under section 64 of the Act. On 23 November 2006, the Commission carried out unannounced visits concurrently at these premises.
 26. Based on information in the documents produced for inspection at the premises of PestBusters, Aardwolf and Rentokil, the Commission further authorised its officers to enter the premises of Alliance and Elite under section 64 of the Act. On 23 November 2006, the Commission conducted unannounced concurrent visits to Alliance and Elite's premises.
 27. Through its investigations, the Commission obtained further information indicative of collusive tendering or bid-rigging arrangements in respect of the provision of termite treatment services in Singapore at the following properties:
 - a) Alexandra Hospital;
 - b) Hawaii Towers Condominium;
 - c) River Place Condominium;
 - d) Temasek Junior College; and
 - e) Dimensions Education Group Campus at the former Serangoon Secondary School site.
 28. On 8 December 2006, the Commission sent notices requesting documents and information under section 63 of the Act to each of the owners of the projects in paragraph 27 to ascertain the number of proposals submitted, the prices and outcome of the proposals. The Commission received the responses between 18 December 2006 and 30 January 2007.
 29. On 17 January 2007, the Commission authorised officers under section 64 of the Act to enter the premises of Killem. On 9 February 2007, the Commission officers carried out an unannounced visit at Killem's premises.

30. On 17 January 2007, the Commission sent a notice requesting documents and information under section 63 of the Act to Bentz Jaz. The Commission received a partial response on 23 January 2007 and the complete response on 2 February 2007. The Commission sent a further notice requesting documents and information under section 63 of the Act to Bentz Jaz on 21 February 2007. The Commission received the response on 2 March 2007.
31. The Commission carried out a number of interviews of the relevant personnel of the Parties and third parties as detailed below under section 63 of the Act:

Name	Company / Position	Date(s) of interviews	In Attendance
Peter Fernandis	PestBusters Director of Sales	8 Jan 2007 10 Jan 2007 30 May 2007 11 Dec 2007	Nil " " "
Catherine Lau Sock Khim	PestBusters Director / General Manager	11 Dec 2007	Nil
Francis Loh Chiew Mong	Elite Director and General Manager	12 Jan 2007 1 June 2007	Mr Dashan S. Purain (Darshan & Teo) Nil
Steph Chua Yang Peng	Bentz Jaz General Manager	7 Feb 2007 14 Feb 2007	Nil "
Harry Singh s/o Luckman Singh	Killem Managing Director	14 Feb 2007 15 Feb 2007 7 Mar 2007 30 May 2007 23 July 2007 26 July 2007	Nil " " " " "
Lee Cheng Mui (Jennifer) (Ms)	Killem Sales Manager	24 July 2007	Nil
Vasuki Ramachandran (Padmah) (Ms)	Killem Personal Assistant to Managing Director	25 July 2007	Nil
Tan Cheng Hock (William)	Killem Operations Director	26 July 2007	Nil

Name	Company Position /	Date(s) of interviews	In Attendance
Tan Chye Heng, Philip	Alliance Director	27 Feb 2007 9 Mar 2007	Nil "
Chan Eng Loo, Andrew	Alliance Director	27 Feb 2007 9 Mar 2007	Nil "
Chong Swee Phin, Patrick	Aardwolf Director	30 Mar 2007 2 Apr 2007	Nil "
John Ho Hwa Hiong	Aardwolf Director	30 Mar 2007 2 Apr 2007	Nil "
Julia Chew (Ms)	Aardwolf Senior Surveyor	2 Apr 2007	Nil
Law Kum Peng (Jenny) (Ms)	Aardwolf Sales Manager	3 Apr 2007	Nil
Ryan Peh Eng Hwa	Aardwolf Quality Analyst	3 Apr 2007	Nil
Ong Koong Tak, James (Joseph)	Rentokil Former General Manager	28 Apr 2007 30 Apr 2007	Mr Mervyn Foo (Lee & Lee) "
Yeong Chee Yao, Nicck	Rentokil Sales and Technical Manager	8 May 2007	Mr Mervyn Foo (Lee & Lee)
Yeoh Yen Hoon, Jessie (Ms)	Rentokil Asst Sales Manager	8 May 2007	Mr. Christopher De Souza (Lee & Lee)
Loe Ching Heng (Dennis)	Rentokil Former Sales Manager	27 Mar 2007	Nil
Jacqueline Ng Lee Mei (Ms)	Rentokil Former Surveyor	15 May 2007	Mr Mervyn Foo (Lee & Lee)
Ng Wai Keong, Dennis	Rentokil Former Surveyor	15 May 2007	Mr Mervyn Foo (Lee & Lee)

32. The Commission sent notices requesting documents and information on turnover under section 63 of the Act to each of the Parties on 3 April 2007. The Commission received the responses between 17 April 2007 and 15 June 2007.

D. The Projects

33. The table below sets out, for each of the infringements specified by the Commission in paragraphs 86 to 346 below, the project in question, the

date the project was put out for a tender or quote, the contractors invited to tender or quote, the contractors who did tender or quote, the infringing parties, and whether the project was awarded. In each case, the Party receiving support from the other Parties in order to secure the project is highlighted in bold in the 'Infringing Parties' column.

Name of Project	Put out for Tender / quote	Contractors Invited to Tender / Quote	Contractors which tendered / put in quotes	Infringing Parties	Award of contract
Raffles Hotel	5 May 2006	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Origin Exterminators Pte Ltd ▪ PestBusters ▪ Rentokil 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Origin Exterminators Pte Ltd ▪ PestBusters ▪ Rentokil 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ PestBusters ▪ Rentokil 	No (Voided and recalled)
Alexandra Hospital	19 May 2006	Public or Open Tender <ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Elite ▪ Killem ▪ PestBusters ▪ Rentokil 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Killem ▪ PestBusters ▪ Rentokil 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Killem ▪ PestBusters ▪ Rentokil 	Yes (Awarded to PestBusters)
Hawaii Tower	Between 6 Jan - 2 Feb 2006	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ PestBusters 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ PestBusters 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Elite ▪ PestBusters ▪ Rentokil 	Yes (Awarded to Alliance)
River Place Condominium	16 May 2006	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Killem ▪ Rentokil 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Killem ▪ Rentokil 	<ul style="list-style-type: none"> ▪ Aardwolf ▪ Alliance ▪ Elite ▪ Killem ▪ PestBusters ▪ Rentokil 	Yes (Awarded to Alliance)

Name of Project	Put out for Tender / quote	Contractors Invited to Tender / Quote	Contractors which tendered / put in quotes	Infringing Parties	Award of contract
Temasek Junior College	Between 22 and 25 Feb 2006	<ul style="list-style-type: none"> ▪ Dynamic Pest Control Pte Ltd ▪ Elite ▪ Killem ▪ PestBusters 	<ul style="list-style-type: none"> ▪ Dynamic Pest Control Pte Ltd ▪ Elite ▪ Killem ▪ PestBusters 	<ul style="list-style-type: none"> ▪ Alliance ▪ Elite ▪ Killem ▪ PestBusters 	Yes (Awarded to Elite)
Dimensions Education Group Campus	Between 1 January 2006 and 22 April 2006	<ul style="list-style-type: none"> ▪ Alliance (invited by PestBusters) ▪ PestBusters 	<ul style="list-style-type: none"> ▪ Alliance ▪ PestBusters 	<ul style="list-style-type: none"> ▪ Alliance ▪ PestBusters 	Yes (Awarded to Jankin Services)

SECTION II: LEGAL AND ECONOMIC ASSESSMENT

A. Structure of this Section

34. This section begins by setting out the economic and legal framework against which the Commission has considered the evidence. The section then sets out, in relation to each infringement, the facts of each project, the evidence of collusion and the Commission's analysis of the evidence on which it relies.

B. The Section 34 Prohibition

35. Section 34 of the Act prohibits any agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.¹⁵

36. Section 34(2) 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 –

- a) directly or indirectly fix purchase or selling prices or any other trading conditions;

¹⁵ The Section 34 prohibition came into force on 1 January 2006.

- b) limit or control production, markets, technical development or investment;
 - c) share markets or sources of supply; ...
37. The section 34 prohibition is modelled after the Chapter I prohibition of the United Kingdom (“UK”) Competition Act 1998 and Article 81 of the European Community Treaty. As competition law is a new area of law in Singapore, cases from these jurisdictions may be persuasive or useful in assisting the Commission in reaching its decision. However, the value of any foreign competition cases will depend very much on the overall context and the extent to which the facts of such cases are applicable to the local context and the facts of the present case.

C. Application of Section 34 Prohibition to Undertakings

38. Section 2 of the Act defines “undertaking” to mean “any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.” The Parties are “undertakings” within the meaning of the Act.

D. Agreements

39. 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 means¹⁶.
40. The fact of agreement may be express or implicit in the participants’ behaviour. In *Viho Europe BV /Toshiba Europa (I.E.) GmbH*¹⁷, the agreements between Toshiba Europa (IE) GmbH (TEG) and its exclusive distributors in some Member States in respect of photocopiers contained an export prohibition clause. The European Commission in its 1991 decision, held that Article 85(1), the predecessor of Article 81(1), applied to such agreements as well as to those where the written agreements did not contain such a clause but where the evidence demonstrated that there was an understanding that such an export prohibition should apply.
41. The mere fact that a party does not abide fully by an agreement that is manifestly anti-competitive does not relieve that party of responsibility for

¹⁶ Paragraph 2.10 of the CCS Guidelines on the Section 34 Prohibition.

¹⁷ OJ 1991 L287/39 at paragraph 22.

it. In *Tréfileurope v European Commission*¹⁸, Tréfileurope admitted participating in meetings, the purpose of which was to fix prices and quotas with a view to limiting imports of welded steel mesh into France. However, it denied participating in or adhering to the price and quota agreements. The Court of First Instance (“CFI”) in its 1995 decision concluded that Tréfileurope had participated in agreements whose object was to fix prices and quotas on the French market and was not exculpated by the fact that it did not respect the prices and quotas¹⁹.

E. Concerted Practices

42. The section 34 prohibition also applies to concerted practices. A concerted practice would be found to exist if parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with cooperation between them²⁰. The concept of a concerted practice must be understood in the light of the principle that each economic operator must determine independently the policy it intends to adopt on the market.
43. The case of *Sukie Unie and others v Commission*²¹ was a case, where major petrochemical producers of polypropylene had, by a series of price initiatives, regularly set target prices and developed a system of annual volume control to share out the available market between them according to agreed percentage or tonnage levels. In that case, the principles, of which are applicable to our present case, the European Court of Justice (“ECJ”) in its decision in 1975 said at ¶ 26, 27, and 173 to 175:

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 effective freedom of

¹⁸ Case T-141/89 [1995] ECR II-791.

¹⁹ Case T-141/89 [1995] ECR II-791 at paragraph 60.

²⁰ Paragraph 2.16 of the CCS Guidelines on the Section 34 Prohibition.

²¹ Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1975] ECR-1 1663.

movement of the products in the common market and of the freedom of consumers to choose their suppliers.

...

173 The criteria of coordination and cooperation laid down by the caselaw 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 whom he makes offers or sells.

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

175 The documents quoted show that the applicants contacted each other and that they in fact pursued the aim of removing in advance any uncertainty as to the future conduct of their competitors.

F. Agreement and/or Concerted Practice

44. It is well established in European Community (“EC”) law that it is not necessary for the purposes of finding an infringement, to characterize conduct as exclusively an agreement or a concerted practice. In *SA Hercules Chemicals v Commission*²², the CFI in its decision in 1991, found that Hercules took part, over a period of years, in an integrated set of schemes constituting a single infringement, which progressively manifested itself in both unlawful agreements and unlawful concerted practices. As such, the European Commission was entitled to characterize that single infringement as “an agreement and a concerted practice” since the infringement involved at one and the same time factual elements to be characterized as “agreements” and factual elements to be characterized as “concerted practices”. The CFI held that the dual characterization by the European Commission of such a complex infringement must be understood not as requiring, simultaneously and cumulatively, proof that each of those factual elements presents the constituent elements both of an agreement and

²² Case T-7/89 [1991] ECR II-711.

of a concerted practice, but rather as referring to a complex whole comprising a number of factual elements some of which were characterized as agreements and others as concerted practices for the purposes of Article 85(1), the predecessor of Article 81(1)²³.

45. Conduct may one and the same be a concerted practice and an agreement. In the case of *The Community v Interbrew NV and others (re the Belgian beer cartel)*²⁴, where there were long term and complex restrictive agreements relating to the Belgian beer market, the European Commission in its decision in 2001, was of the view that it was not necessary, particularly in the context of a complex infringement over a long period, for the Commission to classify the infringement as consisting exclusively of one or the other form of illegal behaviour. The European Commission said,

223 The concepts of “agreement” and “concerted practice” are variable and may overlap. Realistically, it may even be impossible to make such a distinction, since an infringement may simultaneously have the characteristics of both forms of prohibited behaviour, whereas, taken separately, some of its elements may correctly be regarded as one rather than the other form. It would also be artificial from an analytical point of view to split what is clearly a continuous, collective enterprise with a single objective into several forms of infringement. A cartel may for instance constitute an agreement and a concerted practice at the same time.

46. In the UK, the Competition Appeal Tribunal (“CAT”) has taken the position that it is not necessary for the Office of Fair Trading (“OFT”) to characterise an infringement as either an agreement or a concerted practice; it is sufficient that the conduct in question amounts to one or the other. In *JJB Sports plc and Allsports Limited v Office of Fair Trading*²⁵, the CAT held in its decision in 2004, that a supplier and two retailers were parties to the same agreement or concerted practice where the supplier, acting as an intermediary in passing on pricing information, dealt separately with the two retailers. In that case, the parties had either agreed to or confirmed their respective intentions not to discount from a certain price or at the very least knowingly gave an intimation or assurance to that effect²⁶. Similarly, in *Argos Limited and Littlewoods Limited v Office of Fair Trading*²⁷, the CAT in its decision in 2004, found that there had been two bilateral agreements or concerted practices which had operated in parallel.

²³ Case T-7/89 [1991] ECR II-711 at paragraph 264.

²⁴ Case IV/37.614/F3 [2004] CMLR 2.

²⁵ [2004] CAT 17 at paragraph 654.

²⁶ [2004] CAT 17 at paragraph 207.

²⁷ [2004] CAT 24 at paragraph 778.

47. In the *Polypropylene*²⁸ case, where major suppliers of polypropylene were found to have met regularly to share the available market according to agreed tonnage or percentages and to set target prices, the European Commission in its decision in 1986, was of the view that the important distinction to be drawn in such cases is between collusive and non-collusive behaviour:

The importance of the concept of a concerted practice does not thus result so much from the distinction between it and an ‘agreement’ as from the distinction between forms of collusion falling under Article 85(1) [now Article 81(1)] and mere parallel behaviour with no element of concertation.

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

48. Section 34(1) of the Act prohibits “agreements between undertakings ... or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore”. In accordance with its plain reading, “object” and “effect” are alternative and not cumulative requirements.
49. The object of an agreement or concerted practice means not the subjective intention of the parties when entering into the agreement, but the objective meaning and purpose of the agreement considered in the economic context in which it is to be applied. Where an agreement has as its object the restriction of competition, it is unnecessary to prove that the agreement would have an anti-competitive effect in order to find an infringement of section 34.
50. In *Tréfilunion v Commission*²⁹, Tréfilunion SA admitted participating in several meetings concerning the Belgian and Dutch markets at which price agreements were concluded. However, it argued that those agreements had no influence on market shares. In response to such argument, the CFI in its decision in 1995, 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 85(1) of the Treaty, where it appears, as it does in

²⁸ Case 86/398 OJ 1986 L 230/1 at paragraph 87.

²⁹ Case T-148/89 [1995] ECR II-1063.

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

51. Similarly, there can be a concerted practice in the absence of an actual effect on the market. In *P. Hüls AG v. Commission*³⁰, where it was found that a number of polypropylene producers had set target prices and operated a system of volume control to share the available market by an agreed tonnage or percentage, the ECJ in its decision in 1999, held that given that Hüls had participated regularly in meetings the purpose of which was to fix price and sales volume targets, the Commission did not have to adduce evidence that the concerted practice had manifested itself in conduct on the market or that it had had effects restrictive of competition. It followed from the actual text of Article 81(1) that concerted practices were prohibited, regardless of their effect, when they have an anti-competitive object³¹.
52. In *The Community v Interbrew NV and others (re the Belgian beer cartel)*³², four brewers had discussed and exchanged information about customers, volumes and prices with regard to private-label beer in Belgium with the intent that whenever there was a new invitation to tender, there would be no undercutting of prices. The brewer who had the contract would bid his price, and the other would make a higher bid. The European Commission found it clear that the aim of these meetings were “firstly, to prevent a price war and adopt a position on prices and, secondly, to share out customers by not making (real) offers to the customers of other brewers.” The European Commission went on to hold that the aims of the meetings were clearly anti-competitive and that it was not necessary to show that their consequences were also harmful to competition³³.
53. In *Argos Limited and Littlewoods Limited v OFT*, the OFT had sought to support its case that there was a price-fixing agreement and/or concerted practice by drawing attention to the difference in prices in the relevant catalogues before the alleged agreements or concerted practices and the high degree of similarity in the relevant prices thereafter. In response, the CAT said

357. However, the OFT does not in our judgment need to rely on the similarity of prices to prove its case if other evidence shows that relevant agreements or concerted practices came into existence. It is trite law that once it is shown that such agreements or practices

³⁰ Case C-199/92 [1999] ECR I-4287.

³¹ Case C-199/92 [1999] ECR I-4287 at paragraphs 164 to 168.

³² Case IV/37.614/F3 [2004] CMLR 2.

³³ Case IV/37.614/F3 [2004] CMLR 2 at paragraph 254.

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.

54. In respect of the OFT's finding that there was in place an agreement or concerted practice between a manufacturer and retailers directed at maintaining the retailers' selling prices at or near recommended retail prices (RRPs), a retailer argued that the industry had "innocently gravitated" towards RRP's in that it had, itself, moved to RRP's, a move which had been "correctly anticipated" by a competitor retailer. The CAT rejected that argument and said

708. ...If an agreement or concerted practice is established on the facts, the question of what the pricing position might have been in the absence of that agreement or concerted practice is irrelevant to the issue of liability.

The principle in this case, which also involved a vertical pricing arrangement (which is prohibited under the UK Competition Act but permitted under the Singapore Competition Act), is nonetheless applicable.

H. Appreciably Prevent, Restrict or Distort Competition

55. An agreement or concerted practice will fall within the scope of the section 34 prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition within Singapore.
56. The Commission takes the view that an agreement and/or concerted practice will generally have no appreciable adverse effect on competition if the aggregate market share of the parties does not exceed 20% on any of the relevant markets affected by the agreement or concerted practice where the agreement or concerted practice is made between actual or potential competitors on any of the markets. The Commission also takes the view that agreements between small or medium enterprises ("SMEs") are rarely capable of distorting competition appreciably³⁴.
57. However, the Commission 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

³⁴ See paragraph 2.19 and footnote 3 of the CCS Guidelines on the Section 34 Prohibition where SMEs are defined as follows: For manufacturing SMEs, if they have Fixed Assets Investment (FAI) of less than S\$15 million; and for services SMEs, if they have less than 200 workers.

the 20% threshold and even if the parties to such agreements are SMEs³⁵. The Commission notes that this is the view adopted by competition authorities and courts in jurisdictions such as the UK and the EC.

I. Collusive Tendering or Bid-Rigging Arrangements

58. The Commission regards collusive tendering or bid-rigging arrangements as restrictive of competition to an appreciable extent by their very nature³⁶. 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 appreciably³⁷.
59. This is illustrated in the case of *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, where 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. Briggs declined to quote but five contractors submitted bids, including Apex which was eventually awarded the contract. The CAT said this of the nature of the 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 undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.

³⁵ See paragraph 2.20 of the CCS Guidelines on the Section 34 Prohibition.

³⁶ See paragraph 3.2 of the CCS Guidelines on the Section 34 Prohibition.

³⁷ See paragraph 3.8 of the CCS Guidelines on the Section 34 Prohibition.

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. The Tribunal understands that selective tendering is commonly used by local authorities (and others commissioning construction and maintenance work). Selective tendering processes ensure that the workload involved in analyzing 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.
60. The principle in *Apex* was followed by the OFT in a recent case in 2006, in which it had concluded that a number of roofing contractors had colluded in relation to the making of tender bids for flat roof and car park surfacing contracts in England and Scotland³⁸. In the case, the OFT set out the four types of agreements that can result in a pre-selected supplier winning the contract:
- a) Cover bidding or cover pricing occurs when a contractor that is not intending to win the contract, submits a price for it after communicating with the designated winner. The price is decided upon in conjunction with another contractor that wishes to win the contract. Cover pricing gives the impression of competitive bidding but, in reality, contractors agree to submit token bids that are higher than the bid of the contractor that is seeking the cover.
 - b) Bid-suppression, which takes place when contractors agree amongst themselves either to abstain from bidding or to withdraw bids.
 - c) Bid-rotation, which is a process whereby the pre-selected contractor submits the lowest bid on a systematic or rotating basis.
 - d) Market division/sharing when contractors agree amongst themselves not to compete in designated geographic regions or for specific customers.

³⁸ CA 98/01/2006 (Joined Cases CE/3123-03 and CE/3645-03).

61. In the *Apex case*, Apex, the building contractor, had argued that there was an innocent explanation for the submission of a cover bid because if a contractor fails 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 CAT found that such explanation did not absolve Apex of liability and said

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;
- 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.

62. Apex had also argued that the fact that Briggs, another building contractor, did not submit bids as per the figures contained in the fax meant that the conduct could not amount to a concerted practice. In rejecting this argument, the CAT said

224. In our judgment the conduct of Apex and Briggs in Apex providing, and Briggs receiving and considering, a price for this purpose, has as its object the prevention, restriction or distortion of competition. The placing of a bid by Briggs at the price submitted or at all is not in our judgment a necessary ingredient for the conduct of Briggs and Apex to amount to a concerted practice.

...

235. ...The principal object of the cooperation between Apex and Briggs was that Briggs would not win the contract. It was not that Briggs would put in a bid. We therefore accept the OFT's

argument that it is immaterial that Briggs did not bid. Furthermore, that conclusion is consistent with the fact that once it is shown that the object of the concerted practice was anti-competitive, it is no longer necessary to show that it had an anti-competitive effect.

236. We accept the submission of the OFT that the concerted practice is made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender. We are satisfied that there was a concerted practice in place between Apex and Briggs to provide non-competitive prices such that Briggs would not win the FHH Contracts. The fact that in relation to the FHH Contracts Briggs did not put in a tender at all is not material to the question whether a concerted practice was in place. Likewise the reason for Briggs not putting in the tender is immaterial.

J. Burden and Standard of Proof

63. The burden of proof rests on the Commission to prove the infringements in question. Infringements of the section 34 prohibition are not classified as criminal offences, in contrast to the criminal offences created under sections 75 to 78 and 81 of the Act. Decisions taken by the Commission under the Act follow a purely administrative procedure. Directions and any penalties imposed are enforceable by civil proceedings under section 85 by registering the directions in a District Court in accordance with the Rules of Court. The structure of the Act points to the conclusion that 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 the balance of probabilities.
64. The Commission is mindful that an allegation of an infringement of the section 34 prohibition is a serious matter which may involve the issue of directions and the imposition of financial penalties. The quality and weight of the evidence must therefore be sufficiently strong before the Commission concludes that the allegation is established on a balance of probabilities. The evidence likely to be sufficiently convincing to prove an infringement will depend on the circumstances and the facts. In *JJB Sports plc and Allsports Limited v OFT*³⁹, the CAT was of the view that given the hidden and secret nature of cartels where little or nothing may be committed in writing, even a single item of evidence, or wholly circumstantial evidence, depending on the particular context and the particular circumstances may be sufficient to meet the required standard.

³⁹ [2004] CAT 17 at paragraph 206.

K. The relevant market

(i) Introduction

65. The Commission recognises that market definition is the first step in a full competition analysis and that market definition can usually help determine if an agreement and/or concerted practice would have an appreciable adverse effect on competition under the section 34 prohibition⁴⁰.
66. However, a distinct market definition is not necessary in this case for the Commission to establish an infringement of the section 34 prohibition. 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 appreciably⁴¹. The present case is such an example as it involves agreements and/or concerted practices involving collusive tendering or bid-rigging.
67. The Commission notes that this is the position taken by the CAT in *Argos Limited & Littlewoods Limited v Office of Fair Trading*⁴², in which it was held:

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.
68. However, the exercise of defining the relevant product and geographic market is relevant for the purpose of assessing the appropriate level of penalties⁴³, by providing a starting point.
69. The process of defining the relevant market starts with the product that is the subject of investigation (“focal product”). The next step is to define all the products that buyers regard as reasonable substitutes for the focal product, and then to identify all the sellers who supply the focal product

⁴⁰ See paragraph 1.6 and 1.7 of the CCS Guidelines on Market Definition.

⁴¹ See paragraph 3.2 of the CCS Guidelines on the Section 34 Prohibition.

⁴² [2005] CAT 13 at paragraphs 178 and 179.

⁴³ See paragraph 2.1 of the CCS Guidelines on the Appropriate Amount of Penalty.

and its substitutes, or could potentially supply them. This exercise of market definition includes defining the geographical reach of the relevant market, which may extend beyond the area under investigation and in which the focal product/service is sold.

70. The relevant market will be identified according to the particular facts of the case in hand and the information available to the Commission.

(ii) The Relevant Product Market

71. As stated in paragraph 18 above, the Commission proposes to focus on the provision of termite control services in Singapore using termiticides in this Decision. In this context, the general observations of the Commission set out in Section I sub-section B "Background of the Termite Control Industry" should be noted.
72. As a starting point for determining the relevant product market, the Commission adopted termite control services using the termiticide Agenda as the focal product given that the agreements and/or concerted practices at hand principally involved the use of Agenda. The issue then is whether the other three termiticides that are approved for use in Singapore by the NEA stated in paragraph 20, namely, Chlorpyrifos, Imidacloprid (Premise) and Fenvalerate (Wazary), may be considered potential substitutes for Agenda.
73. The four termiticides can be divided into two groups – repellent and non-repellent termiticides. Repellent termiticides kill termites in the treated area on contact and act as a repellent barrier preventing termites from re-entering a treated area. Due to soil movement, gaps may appear, breaking the barrier, allowing termites to gain entry through the gaps and leading to recurrence of termite infestations. Chlorpyrifos and Wazary are repellent termiticides.
74. Non-repellent termiticides (also known as colony management termiticides), on the other hand, do not kill or repel termites immediately upon contact. These termiticides have a slower reacting effect and work by allowing termites passing through the treated area to come into contact with the termiticide and return to the termite nest/colony to transfer the termiticide to other termites in the nest/colony before dying, leading to colony elimination. Agenda and Premise are colony management termiticides.

75. The Commission understands from statements given by the relevant personnel of the Parties⁴⁴ that termite control services using repellent termiticides (Chlorpyrifos and Wazary) are significantly cheaper than termite control services using colony management termiticides (Premise and Agenda). On average, termite control services using colony management termiticides cost about twice as much, as compared to using repellent termiticides, on a linear meter basis⁴⁵.
76. The Commission considers that as the two groups of termiticides have different product characteristics, customers will decide which termiticide to use, based on their preferences and circumstances. Specifically, customers will select which termiticide to use for termite treatment based on the nature of the property/structure to be treated and the severity of termite infestation. The Commission understands that colony management termiticides are more effective at controlling severe termite infestations compared with repellent termiticides, given their colony management characteristics, and the lower probability of recurrence⁴⁶. Where the customers are more concerned with the bottomline or are more price-sensitive, they are more likely to use repellent termiticides over colony management termiticides due to the significant price difference between the two. On the other hand, the use of colony management termiticides is popular where cost is less of an issue and effectiveness of treatment is more essential.
77. In addition, the Commission notes that there is a difference in treatment technique using Agenda and Premise. For Agenda, corrective treatment only requires application along the external perimeter of a treatment site. On the other hand, Premise requires application along both the internal and external perimeter of a treatment site and that would mean drilling and

⁴⁴ See Answer to Question 17 of Francis Loh's Notes of Information/Explanation Provided on 12 Jan 2007, Answer to Question 8 of Peter Fernandis' Notes of Information/Explanation Provided on 8 Jan 2007, Answer to Question 42 of Andrew Chan's Notes of Information/Explanation Provided on 27 Feb 2007, and Answer to Question 33 of Patrick Chong's Notes of Information/Explanation Provided on 30 Mar 2007.

⁴⁵ From our investigations, it would appear that there are minimum prices for post-construction Premise and Agenda treatment at \$50 and \$70 per linear meter respectively. There is no minimum price for Chlorpyrifos and Wazary treatment and the average post-construction price charged is probably about \$15-\$20 and \$25-\$35 per linear meter respectively. See Answers to Question 66 and 67 of Francis Loh's Notes of Information/Explanation Provided on 12 Jan 2007, Answer to Question 175 of Harry Singh's Notes of Information/Explanation Provided on 14 February 2007, and Answer to Question 2 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

⁴⁶ See Answer to Question 42 of John Ho's Notes of Information/Explanation Provided on 30 March 2007, Answer to Question 17 of Loe Ching Heng's Notes of Information/Explanation Provided on 27 March 2007, Answer to Question 19 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007, Answer to Question 24 of Harry Singh's Notes of Information/Explanation Provided on 14 February 2007, and Answer to Question 43 and 44 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 28 April 2007.

- coring holes into an existing structure⁴⁷, for example, into the floor of a house, which would result in a lot of inconvenience for the occupants. Agenda Treatment also comes with a longer manufacturer-backed warranty against re-infestation: five years as opposed to three years for Premise. Accordingly, where price is a secondary consideration, customers will opt for Agenda to be spared the inconvenience and for a longer warranty period.
78. From the information stated in paragraphs 73 to 77 above, the Commission considers that repellent termiticides may not be considered good substitutes⁴⁸ for colony management termiticides, given their distinct product characteristics and the different customer segments that they would normally cater to.
79. As far as the use of Agenda for termite treatment and control is concerned, Agenda is distributed exclusively for use by the AAAs in Singapore. Other PCOs are not able to provide Agenda Treatment given that they will not be able to obtain supplies of Agenda from Bentz Jaz, the sole distributor in Singapore. In effect, the only competitors that an AAA may face for Agenda-specified corrective termite treatment projects are other AAAs.
80. The Commission notes that although the use of Agenda is restricted to the AAAs, non-AAA PCOs in Singapore may be able to obtain and use termiticides which contain the same active ingredient as Agenda (i.e. Fipronil), through the parallel import of these termiticides from countries such as Malaysia, Vietnam, China, Australia and the Philippines⁴⁹. These parallel imported termiticides with Fipronil as the active ingredient, are either manufactured by Bayer (the same company which produces Agenda) or are generics containing Fipronil which are imported from China.
81. The Commission notes that while these parallel-imported termiticides with similar chemical characteristics as Agenda, may be considered a substitute

⁴⁷ See Answer to Question 18 and 31 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007, Answer to Question 77 of Jessie Yeoh's Notes of Information/Explanation Provided on 8 May 2007, Answers to Question 33 and 34 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007, and Answer to Question 16 and 17 of Philip Tan's Notes of Information/Explanation Provided on 27 February 2007.

⁴⁸ See Answer to Question 30 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

⁴⁹ See Answer to Question 3 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007, Answer to Question 43 of Harry Singh's Notes of Information/Explanation Provided on 14 February 2007, Answer to Question 33, 34 and 51 of Andrew Chan's Notes of Information/Explanation Provided on 27 February 2007, and Answer to Question 76-81 of Steph Chua's Notes of Information/Explanation Provided on 7 February 2007.

for Agenda⁵⁰, there are several differences between the use of Agenda and the use of parallel imported Fipronil. Specifically, Agenda is an emulsion concentrate (“EC”) termiticide, while parallel imported substitutes are suspended concentrate (“SC”) termiticides. This means that Agenda (EC) used in Singapore is oil-based and is environmentally safer, as it will not leech into the water table near treated areas, while parallel imports (SC) is water-based and may raise water pollution concerns⁵¹. In addition, termite control services using parallel imported generics do not come with a manufacturer-backed 5-year warranty⁵².

82. The Commission also notes that Premise is exclusively distributed in Singapore for use by the PPPs only (the PPP group comprises eight or nine PCOs). Other PCOs are not able to provide Premise treatment, given that they will not be able to obtain supplies of Premise from Agro Technic Pte Ltd, the sole local distributor. Further, out of the eight or nine PPPs, four are AAAs (namely, Elite, Killem, PestBusters and Rentokil) and there is a limited extent as to how much competitive constraint will be posed by Premise as a substitute. In this respect, the Commission understands that some of the PCOs who sell both Agenda and Premise favour using Agenda over Premise in corrective termite treatment. This is because Agenda is more effective and easier to apply, i.e., application along the external perimeter of a treatment site for Agenda compared with application along both the internal and external perimeters of a treatment site for Premise⁵³.
83. The Commission considers that the relevant product market may extend beyond Agenda Treatment to include termite treatment or control using parallel-imported Fipronil or other termiticides. However, as set out earlier, a distinct market definition is not necessary in this case for the Commission to establish an infringement of the section 34 prohibition. The exercise of defining the relevant product market is undertaken purely for the purpose of calculating penalties. In order to avoid any detriment to the Parties, the Commission considers that it is most appropriate in the present case to

⁵⁰ See Answer to Question 82 of Steph Chua’s Notes of Information/Explanation Provided on 7 February 2007, Answer to Question 38, 82 and 85 of Philip Tan’s Notes of Information Explanation Provided on 27 February 2007.

⁵¹ See Answer to Question 82 of Philip Tan’s Notes of Information Explanation Provided on 27 February 2007.

⁵² See Answer to Question 84 of Philip Tan’s Notes of Information/Explanation Provided on 27 February 2007.

⁵³ See Answer to Question 18 and 31 of Jacqueline Ng’s Notes of Information/Explanation Provided on 15 May 2007, Answer to Question 17, 27 and 43 of Ong Koong Tak, James (Joseph)’s Notes of Information/Explanation Provided on 28 April 2007, Answer to Question 15, 24 and 33 of Nicck Yeong’s Notes of Information/Explanation Provided on 8 May 2007, Answer to Question 8 of Peter Fernandis’ Notes of Information/Explanation Provided on 8 January 2007, and Answer to Question 12 of Peter Fernandis’ Notes of Information/Explanation Provided on 30 May 2007.

calculate penalties on the basis of a narrower market (i.e. that of termite control services using Agenda).

(iii) The Relevant Geographic Market

84. For the same reason above, the Commission considers that a distinct geographic market definition is not necessary in this case for the Commission to establish an infringement of the section 34 prohibition. For the purposes of calculating relevant turnover and determining penalties in this case, the Commission considers that the relevant geographic market is Singapore, as a customer for such services would usually choose a supplier in Singapore.

L. The Evidence relating to the Agreements and/or Concerted Practices, the Commission's Analysis of the Evidence and the Commission's Conclusions on the Infringements

85. The structure of analysis of each infringement is as follows:
- a) an outline of the facts and evidence;
 - b) the Commission's analysis of evidence; and
 - c) the Commission's conclusions on the infringement.

(i) Raffles Hotel

The facts and the evidence

86. On 5 May 2006, Hospitalitybex Pte Ltd (“Hospitalitybex”), on behalf of Raffles Hotel Singapore, issued a request for proposal on corrective treatment / slab injection against subterranean termites at Raffles Hotel (“the RH Tender”) to four pest control operators, namely, PestBusters, Rentokil, Aardwolf and Origin Exterminators Pte Ltd⁵⁴.
87. Three pest control operators attended the site visit conducted on 9 May 2006⁵⁵. At the close of the RH Tender on 15 May 2006, all four invited pest control operators had submitted the following proposals:

⁵⁴ See tabulation of the Tender Results dated 2 June 2006 provided by Hospitalitybex to the Commission at a meeting on 26 September 2006 and email from Hospitalitybex to the Commission dated 6 October 2006 at 9.26am. These documents were subsequently marked as Exhibit HB-2 and HB-10 respectively.

⁵⁵ See tabulation of the Tender Results dated 2 June 2006 provided by Hospitalitybex to the Commission at a meeting on 26 September 2006 which showed that Aardwolf's representative did not attend the site visit. The document was subsequently marked as Exhibit HB-2.

Name of pest control operator submitting proposal ⁵⁶	Proposal Price	Date on proposal
PestBusters	S\$114,000 (S\$98,000 for Agenda Treatment and S\$16,000 for installation of Exterra baiting stations)	11 May 2006
Aardwolf	S\$122,000 (Agenda Treatment)	15 May 2006
Origin Exterminators Pte Ltd	S\$126,980 (Exterra Termite Interception & Baiting System)	15 May 2006
Rentokil	S\$128,800 (Agenda Treatment)	No date stated

88. Attached to Aardwolf's tender proposal was an email exchange on 10 May 2006 on the RH tender between Patrick Chong (Aardwolf) and Peter Fernandis (PestBusters) indicative of collusive tendering. Joseph Ong (Rentokil) was also a recipient of the originating email⁵⁷.
89. The RH Tender was voided⁵⁸ and a new tender called on 12 September 2006⁵⁹. Three additional pest control operators, including New Concept Enterprise Pte Ltd ("New Concept Enterprise"), were invited to submit proposals in the new tender.⁶⁰ The project was subsequently awarded to New Concept Enterprise on 3 January 2007⁶¹.
90. During our investigations⁶², we uncovered a number of email exchanges between 9 May and 11 May 2006 involving PestBusters, Aardwolf and Rentokil. They are as follows:

⁵⁶ Proposals provided by Hospitalitybex to the Commission at a meeting on 26 September 2006. These proposals were subsequently marked as Exhibits HB-6, HB-7, HB-8 and HB-9.

⁵⁷ See Aardwolf's proposal provided by Hospitalitybex to the Commission at a meeting on 26 September 2006. The proposal was subsequently marked as Exhibit HB-7.

⁵⁸ See email from Hospitalitybex to the Commission dated 26 September 2006 at 11.35am. The email was subsequently marked as Exhibit HB-4.

⁵⁹ See email from Hospitalitybex to the Commission dated 6 October 2006 at 9.26am. The email was subsequently marked as Exhibit HB-11.

⁶⁰ See tabulation of the Tender Results dated 27 September 2006 provided by Hospitalitybex to the Commission at a meeting on 5 January 2007. The tabulation was subsequently marked as Exhibit HB-14.

⁶¹ See email from Hospitalitybex to the Commission dated 27 December 2006 at 4 pm.

⁶² Email exchanges provided by Peter Fernandis during the Commission's entry into PestBusters' premises on 23 November 2006 respectively pursuant to Section 64 of the Act.

(a) Email from Peter Fernandis to Patrick Chong and Joseph Ong of 9 May 2006:

“From: Peter Fernandis
Date: 05/09/06 17:18:33
To: ‘Joseph Ong – Rentokil\ (Email)’; ‘Patrick Chong\ (Email)’
Subject: Raffles Hotel Termite quote

Hi Guys,

Thanks for your support. I will give you the costing for Agenda and Exterra Baiting by tomorrow.

Cheers

PETER FERNANDIS
PestBusters Pte Ltd
140 Paya Lebar Road
#08-06 A – Z Building
Singapore 409015
Tel: (65) 62882828
Fax: (65) 67487388
Mob: (65) 98563283
E-Mail: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg”

(b) Email response from Patrick Chong to Peter Fernandis of 9 May 2006:

“From: Patrick [Patrick@aardwolfpestkare.com]
Date: Tuesday, May 09, 2006 5:30 PM
To: Peter Fernandis
Cc: Jenny Law; Julia Chew
Subject: Re: Raffles Hotel Termite quote

Peter, sorry we did not turn up today. I confused the sales.

We will call Dickson to notify that we are quoting. Will await your details before quoting.

All the best.

Patrick Chong”

(c) Email from Peter Fernandis to Patrick Chong and Joseph Ong of 10 May 2006:

“From: Peter Fernandis
Date: 05/10/06 12:47:37
To: ‘Patrick Chong\ (Email\)’; ‘Joseph Ong – Rentokil\ (Email\)’
Subject: Raffles Hotel

Hi Pat/Joseph,

Could you quote for corrective treatment with Agenda for entire landscape areas abutting the building and along roadside landscape area along North Bridge Road and Bras Basah Road including crawl space of Blocks C & D above \$120,000.

To install termite baiting station around the planters areas at Palm Garden, Palm Court, the Lawn & Fern Court above \$48k.

Thank you for your support owe you guys.

PETER FERNANDIS
PestBusters Pte Ltd
140 Paya Lebar Road
#08-06 A – Z Building
Singapore 409015
Tel: (65) 62882828
Fax: (65) 67487388
Mob: (65) 98563283
E-Mail: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg”

(d) Email response from Patrick Chong to Peter Fernandis of 10 May 2006:

“From: Patrick [Patrick@aardwolfpestkare.com]
Date: Wednesday, May 10, 2006 3:44 PM
To: Peter Fernandis; Julia Chew; Jenny Law
Subject: Re: Raffles Hotel

Peter, will do. Julia will work on this and will contact you if she needs more info. All the best as always.

Julia – Please work on this. Thanks.

Cheers...
Patrick Chong”

(e) Email response from Joseph Ong to Peter Fernandis of 11 May 2006:

“From: Joseph Ong [josephong@rentokil.com.sg]
Date: Thursday, May 11, 2006 8:10 AM
To: Peter Fernandis
Subject: Re: Raffles Hotel

Peter,

We will not quote for this project, will explain when next time we meet up.

Best of luck for this project.

Joseph Ong
General Manager, Rentokil Pest Control

Rentokil Initial (S) Pte Ltd
16 & 18 Jalan Mesin
Singapore 368815
Tel: 65-63478138
Fax: 65-63478102
www.rentokil-initial.com
Co Reg. No :195900145N”

(f) Second email response from Joseph Ong to Peter Fernandis of 11 May 2006:

“From: Joseph Ong [josephong@rentokil.com.sg]
Date: Thursday, May 11, 2006 8:50 AM
To: Peter Fernandis
Subject: Re: Raffles Hotel

Peter,

Please ignore earlier email. Will quote only \$120K for agenda and not baiting station as we don't have it.

Joseph Ong
General Manager, Rentokil Pest Control

Rentokil Initial (S) Pte Ltd
16 & 18 Jalan Mesin
Singapore 368815
Tel: 65-63478138
Fax: 65-63478102
www.rentokil-initial.com
Co Reg. No :195900145N”

91. In brief, the email exchange started on 9 May 2006 with Peter Fernandis thanking Patrick Chong and Joseph Ong for their support and telling them that he would provide the costing for both Agenda and Exterra baiting stations the next day. Patrick Chong replied on the same day that he would await details from Peter Fernandis before quoting. He copied his reply to Julia Chew (Patrick Chong’s wife), a senior Aardwolf surveyor and Jenny Law, Aardwolf’s sales manager.
92. On 10 May 2006, Peter Fernandis emailed Patrick Chong and Joseph Ong with a request to quote above S\$120,000 for Agenda Treatment and above S\$48,000 for installing termite baiting stations. Patrick Chong emailed “will do” and instructed Julia Chew to follow up.
93. Although Joseph Ong initially emailed Peter Fernandis on 11 May 2006 that Rentokil would not be submitting any proposal for the RH Tender, Joseph Ong sent another email shortly thereafter, agreeing to quote S\$120,000 for Agenda Treatment but not for baiting stations, which Rentokil did not have.
94. Interview of PestBusters personnel⁶³ - Peter Fernandis said that PestBusters had been the existing general pest control contractor for Raffles Hotel and had had a good working relationship with their staff⁶⁴. When he was approached by the Raffles Hotel Chief Engineer in 2005 on how much to set aside for termite control services in 2006, he had advised a sum of S\$120,000⁶⁵.
95. Peter Fernandis said that before sending his email of 9 May 2006, he had spoken to Patrick Chong and Joseph Ong, who confirmed that Aardwolf and Rentokil had been invited to the site show round at Raffles Hotel⁶⁶.

⁶³ See Peter Fernandis’ Notes of Information/Explanation Provided on 8 and 10 January 2007 and 30 May 2007.

⁶⁴ See Answer to Question 43 of Peter Fernandis’ Notes of Information/Explanation Provided on 8 January 2007.

⁶⁵ See Answer to Question 55 of Peter Fernandis’ Notes of Information/Explanation Provided on 8 January 2007.

⁶⁶ See Answer to Question 46 of Peter Fernandis’ Notes of Information/Explanation Provided on 8 January 2007.

When he informed them that PestBusters was the existing pest control contractor for Raffles Hotel, they in turn told him that they would not take this contract away from him.

96. After the site show round on 9 May 2006, Peter Fernandis called Patrick Chong and Joseph Ong to tell them that he would be quoting using Agenda and Exterra Baiting, that he would be giving them the costing and they could support him by quoting above the costing. After they agreed to support him, Peter Fernandis followed up with the 9 May 2006 email referred to in paragraph 90(a) to thank them for their support⁶⁷. The next day, he sent the figures in the email referred to in paragraph 90(c)⁶⁸.
97. When asked how he had arrived at \$120,000 for corrective treatment with Agenda and \$48,000 for the installation of termite baiting stations stated in his 10 May 2006 email to Patrick Chong and Joseph Ong, he stated⁶⁹:
- A: ...It was an estimated costing for Agenda based on my experience with RH, my feel during the showround and based on the minimum price of \$70 per linear meter. I am asking them to quote above the prices and I will quote below the prices. For the baiting system, it is a lump sum figure based on the number of visits to be made by my men.
98. Peter Fernandis understood the email response by Patrick Chong in paragraph 90(d) to be a confirmation that the latter would quote at the figures stated in his email in paragraph 90(c) and the response from Joseph Ong in paragraph 90(f) to be an affirmative reply to his request for support⁷⁰. Peter Fernandis was not aware why Joseph Ong had changed his mind on not submitting a quote.
99. Peter Fernandis also said that he had called Philip Tan (Alliance) and Francis Loh (Elite) to ask if Alliance and Elite had been invited to the site show round at Raffles Hotel⁷¹. When they told him that they had not been invited, he hung up⁷². He did not inform them that he was the resident pest

⁶⁷ See Answer to Question 47 of Peter Fernandis' Notes of Information/Explanation Provided on 8 January 2007.

⁶⁸ See Answer to Question 48 of Peter Fernandis' Notes of Information/Explanation Provided on 8 January 2007.

⁶⁹ See Answer to Question 48 of Peter Fernandis' Notes of Information/Explanation Provided on 8 January 2007.

⁷⁰ See Answers to Questions 49 and 50 of Peter Fernandis' Notes of Information/Explanation Provided on 8 January 2007.

⁷¹ See Answer to Question 46 of Peter Fernandis' Notes of Information/Explanation Provided on 8 January 2007 and Answer to Question 5 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

⁷² See Answer to Question 5 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

- control contractor at Raffles Hotel⁷³. However, he stated that if Alliance and Elite knew he was the resident pest control contractor at Raffles Hotel which, according to him, was well known in the industry, they would know that he was calling to request for a support quote⁷⁴.
100. He stated that he did not call Harry Singh (Killem) on the RH Tender as he did not communicate well with him⁷⁵.
101. Interview of Rentokil personnel⁷⁶ – Joseph Ong said that when Peter Fernandis called to tell him that PestBusters was the general pest contractor for Raffles Hotel and asked Rentokil to provide a support quote⁷⁷, he agreed. Peter Fernandis then sent the email of 9 May 2006 referred to in paragraph 90(a) thanking him and Patrick Chong for verbally agreeing to provide a support quote and promising to revert with the costs for Agenda and Exterra treatment⁷⁸. Joseph Ong also confirmed receiving Peter Fernandis' email the next day asking them to quote above S\$120,000 for termite treatment using Agenda and above S\$48,000 for baiting stations⁷⁹.
102. Joseph Ong said that he had initially emailed on 10 May 2006 to Peter Fernandis that he would not quote for the project because he had found out that his subordinate, Nicck Yeong, had already surveyed Raffles Hotel before Peter Fernandis' call⁸⁰. It would seem that Rentokil had an understanding that it would put in a support quote at a higher price only if requested to do so, before a site show round⁸¹. After his initial email, Peter Fernandis had called for his help in getting Rentokil to put in a quote as Raffles Hotel only wanted proposals from the big companies. Joseph Ong

⁷³ See Answer to Question 7 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

⁷⁴ See Answer to Question 6 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

⁷⁵ See Answer to Question 3 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

⁷⁶ See Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007 and Nicck Yeong's Notes of Information/ Explanation Provided on 8 May 2007.

⁷⁷ See Answers to Questions 2, 9 & 11 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁷⁸ See Answer to Question 11 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁷⁹ See Answer to Question 13 & 14 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁸⁰ See Answer to Question 16 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁸¹ See Answer to Question 69 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

- then agreed to help Peter Fernandis and sent the email referred to in paragraph 90(f) to indicate his change of mind⁸².
103. Joseph Ong said that Rentokil's quote at \$128,800 for Agenda Treatment at Raffles Hotel was in line with his instructions to Nicck Yeong, his subordinate, to quote at about \$128,000 to provide support to Peter Fernandis. Nicck Yeong had intended to quote at S\$106,610 based on S\$70 per linear metre on a measurement of 1523 linear metres for the project, but Joseph Ong told him that they had received a request for a support quote and they had to abide by the agreement to put in a support quote above S\$128,000⁸³. According to Joseph Ong, Rentokil's quote was at \$128,800 as they did not want to quote a round figure⁸⁴. Had he not agreed to provide a support quote, Rentokil would have quoted at about S\$106,000 to S\$107,000, based on S\$70 per linear meter⁸⁵.
104. Nicck Yeong confirmed that he had initially prepared a proposal for S\$106,610 based on his site measurements of 1523 linear meters at S\$70 per linear meter⁸⁶. When he went to see Joseph Ong with the proposal, Joseph Ong told him of the support quote arrangement and to quote a higher price. They eventually agreed to quote at S\$128,000⁸⁷. The support quote arrangement was not new to Nicck Yeong because Joseph Ong had previously told the entire sales team that there was an arrangement with Rentokil's competitors for each AAA to put in a support quote at a higher price if they were requested to do so before the site show round. This would apply to cases where a tender involving Agenda treatment was being called by an existing client of the AAA making the request for support⁸⁸. When Nicck Yeong was shown Peter Fernandis' email of 10 May 2006, which stated the areas for corrective termite treatment using Agenda, he confirmed that Rentokil's proposal was for the same areas priced at \$128,800, higher than the \$120,000 stated in the email⁸⁹. Nicck Yeong said that if Joseph

⁸² See Answer to Question 20 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁸³ See Answer to Question 32 and 33 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁸⁴ See Answer to Question 37 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁸⁵ See Answer to Question 44 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

⁸⁶ See Answer to Question 62 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

⁸⁷ See Answer to Question 80 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

⁸⁸ See Answers to Question 69 to 76 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

⁸⁹ See Answer to Question 102 to 103 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

- Ong had not agreed to put in a support quote, Rentokil's proposal would have been about S\$106,000 based on S\$70 per linear metre⁹⁰.
105. Interview of Aardwolf personnel⁹¹ - Patrick Chong confirmed that Peter Fernandis had called him on the RH tender before he received the latter's email dated 9 May 2006 referred to in paragraph 90(a). He said that he did not know why Peter Fernandis had thanked him. He added, however, that whenever an AAA approached him for support, he would always agree and channel the request to his sales team⁹².
106. He understood Peter Fernandis' email dated 9 May 2006 in paragraph 90(a) as a request by Peter Fernandis for both him and Joseph Ong to support PestBusters by submitting a proposal at a price higher than that specified by Peter Fernandis to help PestBusters get the project⁹³. Patrick Chong said that he copied his reply to Peter Fernandis on 9 May 2006 to Julia Chew, who was supposed to attend the site show round and to Jenny Law, Julia Chew's reporting officer⁹⁴. He also said that while his email response referred to in paragraph 90(d) was an agreement to support Peter Fernandis and quote as he requested, it was his "usual pleasantries" and he was just giving Peter Fernandis the impression that he was going to support him⁹⁵, when in fact, he wanted Aardwolf to compete for the project⁹⁶.
107. Patrick Chong said that he did not give any instructions to Julia Chew or Jenny Law when he channelled Peter Fernandis' request to them⁹⁷. Julia Chew would have used the figures stated in Peter Fernandis' email dated 10 May 2006 to Aardwolf's advantage. Had she not known of the figures, she would have quoted a higher figure than the S\$122,000 stated in Aardwolf's quotation⁹⁸. As such, Aardwolf benefited from knowing the figures given. While Patrick Chong did not know how Julia Chew arrived at Aardwolf's

⁹⁰ See Answer to Question 114 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

⁹¹ See Patrick Chong's Notes of Information / Explanation Provided on 2 April 2007 and Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

⁹² See Answer to Question 9 and 10 of Patrick Chong's Notes of Information / Explanation Provided on 2 April 2007.

⁹³ See Answer to Question 10 to 16 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

⁹⁴ See Answer to Question 18 to 21 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

⁹⁵ See Answer to Question 28 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

⁹⁶ See Answer to Question 11 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

⁹⁷ See Answer to Question 44 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

⁹⁸ See Answer to Question 20, 40 to 42 and 47 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

- proposal of S\$122,000⁹⁹, he believed that Aardwolf's figure was lower than PestBusters' because PestBusters would have quoted a total of \$168,000 (S\$120,000 for Agenda Treatment and \$48,000 for Exterra baiting stations)¹⁰⁰. However, when asked to clarify if Aardwolf's proposal at S\$122,000 was for termite control using mainly Agenda and that this figure was above the S\$120,000 figure for termite treatment using Agenda¹⁰¹ given by Peter Fernandis, he agreed.
108. Julia Chew said that as she did not attend the site show round, she went for a Raffles Hotel site visit on another day and was given a plan with a scale from which she worked out the quote of S\$122,000¹⁰². She was unable to produce any internal working papers to show how she had arrived at S\$122,000, saying that her paperwork was very bad¹⁰³.
109. She was unable to say how many linear metres the project entailed or the price per linear metre she had used for the quote. She said that she had applied a mark-up on the figure of S\$70 per linear metre¹⁰⁴. She had also costed in S\$2,720 for a TermiCam¹⁰⁵ inspection (infrared thermal imaging to detect termites) based on S\$680 per man day for 4 man-days and S\$4,000 to S\$5,000 for a 5-day job for the rodding of trees¹⁰⁶ (injection of termiticide around the base of trees). According to Julia Chew, baiting stations are needed only where there is infestation¹⁰⁷. The quote would have included the installation of termite baiting stations around the planter areas at Palm Garden, Palm Court, The Lawn and Fern Court if termites were found¹⁰⁸.
110. Aardwolf's quotation dated 15 May 2006 states:-

⁹⁹ See Answer to Question 36 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

¹⁰⁰ See Answer to Question 24, 35 and 42 of Patrick Chong's Notes of Information / Explanation Provided on 2 April 2007.

¹⁰¹ See Answer to Question 35 and 43 of Patrick Chong's Notes of Information / Explanation Provided on 2 April 2007.

¹⁰² See Answers to Questions 105 to 107, 204 & 231 of Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

¹⁰³ See Answer to Question 108 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁰⁴ See Answer to Question 117 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁰⁵ Aardwolf holds the franchise in Singapore for TermiCam, the technology of using thermal imaging to detect termite infestations in houses and buildings.

¹⁰⁶ See Answer to Question 85 to 93, 107 & 122 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁰⁷ See Answer to Question 90 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁰⁸ See Answer to Question 113 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

- (a) We will conduct a thorough inspection to determine areas of Subterranean Termite infestation and “smoke” the shelter mud tubes with a Termiticide Dust to effectively eradicate the Termite colony. This Termiticide Dust is non-arsenic and is a special formulation developed by Aardwolf Pestkare.
- (b) We will next use an Electronic Cable Detector to trace the live-electrical supply lines underground so as to prevent damage to them.
- (c) Injection holes of 18 mm diameter each (about the size of a 10-cent coin) are then created at 300 mm intervals and 150 mm distance from the wall, along the concrete external perimeter walls of the building.
- (d) 5 litres of Termiticide solution are pressure-injected into each hole so that a Termiticide Zone is created immediately underneath the building soil structure. Where necessary Trenching will be carried out to reinforce the Treated Zone.
- (e) Each hole is then painstakingly sealed with granite chips (to reinforce the base) and waterproof cement, and finally touched-up with the appropriate surface materials.

According to Julia Chew, items (a) to (e) were standard procedures for Agenda Treatment¹⁰⁹.

111. Julia Chew also said that she should have received the emails Patrick Chong copied to her as referred to in paragraph 90(b) and (d)¹¹⁰. Her response to the email in paragraph 90(b) was to wait and see the costing from Peter Fernandis before doing her costing¹¹¹. Her understanding of the email in paragraph 90(d) was that Patrick Chong had agreed to quote above S\$120,000 for Agenda Treatment and above S\$48,000 for baiting stations and that she was to work out a quote above S\$120,000 based on those figures¹¹². Julia Chew said that Patrick Chong did not speak to her on the emails. She also said that she did not follow Patrick Chong’s instructions in the email. Her interview notes in this respect are reproduced below¹¹³:

¹⁰⁹ See Answer to Question 104 of Julia Chew’s Notes of Information/Explanation Provided on 2 April 2007.

¹¹⁰ See Answer to Question 211 of Julia Chew’s Notes of Information/Explanation Provided on 2 April 2007

¹¹¹ See Answer to Question 206 of Julia Chew’s Notes of Information/Explanation Provided on 2 April 2007

¹¹² See Answer to Question 215 to 216 and 218 of Julia Chew’s Notes of Information / Explanation Provided on 2 April 2007.

¹¹³ See Julia Chew’s Notes of Information / Explanation Provided on 2 April 2007.

Q222. How did you use the information in these emails in your quotation of May 2006?

A: I don't remember whether I have worked out the costing based on Peter's figures or whether I did my own costing.

Q223. You can see from JC-3 that AW submitted a quote of \$122,000 for Agenda treatment in May 2006. Are you saying that it is not based on this email?

A: I don't think I have costed based on what Peter said because I did not cost in the baiting stations as Peter wanted me to.

Q224. But you agree that the Agenda quote is higher than Peter's figures?

A: Yes but I wanted to quote to get this project but I did not follow what he told me to do. Assuming he has quoted \$100,000, I will take the extra \$22,000 I quoted to do my anti-termite treatment and rodding.

Q225. Why did you assume that he will quote \$100,000?

A: I don't know. I am just thinking.

Q226. If you know that Peter is asking you to quote above \$120,000 and you want to win the project, why did you not quote below \$120,000?

A: Because I remember that my costing cannot go below \$120,000 because I would have to include Termi-Cam and rodding.

Q227. The difference is just \$2,000 and it is a big project which you want to get. Why did you not go to Jenny or Patrick to ask for permission to go below \$120,000?

A: I don't think it is something I have to ask them.

Q228. Why not?

A: It never occurred to me.

Q229. You said that Patrick did not speak to you about the emails?

A: No, he did not speak to me.

Q230. So in Patrick's mind, you would put in a quote higher than Peter's quote to support him to increase Peter's chances of getting a quote?

A: Yes.

Q231. Did you tell Patrick that you were not going to support Peter?

A: No.

112. When Jenny Law was shown Aardwolf's proposal and asked how the \$122,000 had been worked out, she said that she did not know as she did not do the survey but she presumed that the bulk of it was for Agenda

- treatment at \$70 per linear metre with possibly TermiCam, rodding and 5 years warranty and inspection. No mention was made of the inclusion of baiting stations¹¹⁴.
113. Interview of Alliance personnel¹¹⁵ – Philip Tan said that he had received a request for a support quote from Peter Fernandis for the RH Tender:¹¹⁶
- A: I believed he called me on the phone and he told me that Raffles Hotel is calling for Agenda quote and if invited, to support quote. I think he told me that he is the general pest contractor. If invited, I would quote above \$70 / lm if Peter does not say anything about the price to quote. I think there was going to be a site showround in this case and he would tell me what price to quote if I was invited and turned up there. I agreed to support quote if I was invited.
114. Interview of Elite personnel¹¹⁷ – Francis Loh said that he did not receive any call from Peter Fernandis on the RH Tender and that he first knew about the termite treatment project at Raffles Hotel at the end of 2006 when New Concept Enterprise approached Elite for manpower to carry out termite treatment using Wazary treatment at Raffles Hotel¹¹⁸.
115. Interview of Killem personnel¹¹⁹ – Harry Singh said that he did not receive any call from Peter Fernandis on the RH Tender¹²⁰ and that he first knew about the termite treatment project at Raffles Hotel only when he received a section 63 notice requesting information¹²¹.

The Commission's analysis of the evidence

PestBusters and Rentokil

116. Peter Fernandis admitted calling Joseph Ong and requesting for a cover bid for the RH Tender. Joseph Ong admitted that he had received such a call and that he had agreed to provide a cover bid. The agreement between Peter Fernandis and Joseph Ong for Rentokil to submit a cover bid to

¹¹⁴ See Answer to Question 46 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

¹¹⁵ See Philip Tan's Notes of Information/ Explanation Provided on 9 March 2007.

¹¹⁶ See Question 160 of Philip Tan's Notes of Information/ Explanation Provided on 9 March 2007.

¹¹⁷ See Francis Loh's Notes of Information/ Explanation Provided on 1 June 2007.

¹¹⁸ See Answer to Question 1 of Francis Loh's Notes of Information/ Explanation Provided on 1 June 2007 and Answers to Questions 141 to 142 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

¹¹⁹ See Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

¹²⁰ See Answer to Question 4 of Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

¹²¹ See Answer to Question 3 of Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

increase PestBusters' chances of securing the RH Tender is evidenced by Peter Fernandis' email dated 9 May 2006, in which he thanked Joseph Ong and Patrick Chong for their support. Peter Fernandis then followed up by providing, in his email dated 10 May 2006, the figures for Rentokil's use in its cover bid.

117. After Joseph Ong received Peter Fernandis' email of 10 May 2006 enclosing the cover bid figures, he had emailed Peter Fernandis (see paragraph 90(f)) that he would quote only S\$120,000 for Agenda Treatment and not baiting stations as Rentokil did not have baiting stations. He had then given instructions to Nicck Yeong to prepare a cover bid at S\$128,000. Nicck Yeong confirmed that he had, pursuant to Joseph Ong's instructions, prepared and submitted to Raffles Hotel, Rentokil's proposal at S\$128,800. The Commission considers that Rentokil's proposal, above that requested by PestBusters at S\$120,000 and PestBusters' proposal at S\$114,000, is consistent with an agreement between PestBusters and Rentokil to collude in fixing prices.
118. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call and email exchange from 9 to 11 May 2006 between PestBusters and Rentokil, who were competitors, show that the conduct of PestBusters and Rentokil was not unilateral and that the quotes submitted were subject to collusion. The conduct of PestBusters and Rentokil infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Joseph Ong's conduct in agreeing to provide a cover bid that PestBusters and Rentokil did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Rentokil had as its intention or consequence the disclosure by PestBusters to Rentokil and by Rentokil to PestBusters of the course of action that they were going to adopt or were contemplating adopting in the tendering process i.e. that PestBusters would be likely to submit a quote of less than \$120,000 for Agenda Treatment and less than S\$48,000 for Exterra baiting stations and that Rentokil was likely to submit a quote of S\$120,000 or more for Agenda Treatment and not quote for baiting stations. The disclosure by PestBusters influenced the conduct of Rentokil on the market in that Rentokil took into account the figures provided in Peter Fernandis' 10 May 2006 email, when submitting their proposal. The disclosure by Rentokil must have influenced the conduct of PestBusters on the market in that PestBusters must have taken into account the confirmation it received from Rentokil that it was, as requested, going to submit a bid for Agenda Treatment at S\$120,000. The result was that

PestBusters and Rentokil substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of PestBusters providing, and Rentokil receiving, agreeing to use and using, a price for the purpose of submission to Hospitalitybex, had as its object the prevention, restriction or distortion of competition.

119. The fact that the RH Tender was voided does not affect the Commission's conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between PestBusters and Rentokil to fix prices and for the latter to provide a cover bid for the RH Tender. As the CAT held in *Richard W Price (Roofing Contractors) Limited v OFT*¹²², the fact that the customer decided not to proceed with the project and no contractor was appointed is irrelevant to the question of whether a concerted practice existed in relation to the tendering process.

PestBusters and Aardwolf

120. Peter Fernandis admitted calling Patrick Chong and requesting for a cover bid in respect of the RH Tender. Patrick Chong acceded to his request. The fact that there had been an agreement between Peter Fernandis and Patrick Chong that Aardwolf would submit a cover bid to increase PestBusters' chance of securing the RH Tender is evidenced by Peter Fernandis' email dated 9 May 2006, in which he thanked Joseph Ong and Patrick Chong for their support. Peter Fernandis then followed up by providing, in his email dated 10 May 2006, figures for Aardwolf's use in its cover bid.
121. Patrick Chong confirmed receiving the email dated 9 May 2006 from Peter Fernandis. Although he claimed that he did not know why Peter Fernandis had thanked him, the Commission finds this hard to believe, given his statement that he would always agree whenever an AAA approached him for support. Patrick Chong conceded that he had emailed Peter Fernandis to accede to his request for a cover bid. However, he claimed that this was merely to maintain appearances and that Aardwolf was going to use the figures which Peter Fernandis had provided to its advantage to compete for the project. The Commission notes that Patrick Chong's statement in this regard was not corroborated by Julia Chew who said that she understood Patrick Chong to be telling her to put in a quote higher than PestBusters' request to increase PestBusters' chances of securing the RH Tender.
122. The Commission was unable to accept Patrick Chong's statement that Aardwolf's proposal at S\$122,000 was competitive and lower than Peter

¹²² [2005] CAT 5 see paragraph 53.

Fernandis' request to submit a quote of above S\$168,000. Peter Fernandis had requested a quote of above S\$120,000 for Agenda Treatment and a quote of above S\$48,000 for termite baiting stations. A plain reading of Aardwolf's quotation shows only standard procedures for corrective termite treatment using Agenda and no mention of the provision of any baiting stations. This is in stark contrast to the quotations of PestBusters and Origin, both of which refer to and price for Exterra baiting stations. The Commission also notes that in tabulating the tender proposals, Hospitalitybex had compared Aardwolf's figure of S\$122,000 against PestBusters' figure of S\$98,000 for Agenda Treatment as opposed to PestBusters' combined figure of S\$114,000 for Agenda Treatment and Exterra baiting stations¹²³. This suggests that Hospitalitybex had considered Aardwolf's proposal to be for Agenda Treatment without the provision of baiting stations.

123. The Commission also notes that Julia Chew could not satisfactorily explain how she had arrived at the figure of S\$122,000 for Aardwolf's quotation. She could not produce Aardwolf's quotation for the RH Tender or any of her working papers. Julia Chew was not consistent in her answers as to whether baiting stations were included in Aardwolf's proposal. On one hand, she stated that baiting stations would be included in the proposal if termites were found. On the other, she stated that she did not think she costed based on what Peter Fernandis said because she did not cost in the baiting stations as Peter Fernandis wanted her to. It would also appear from her answers to questions number 224 to 226 highlighted in paragraph 111 that she was under the impression that Aardwolf's quote was higher than PestBusters' quote.
124. In any event, it would not matter if Patrick Chong did not intend to implement or adhere to the agreement to provide a cover bid and wanted to compete for the project. It was clear from Julia Chew's statement that she waited to see Peter Fernandis' costing before doing her own costing that the disclosure by Peter Fernandis that he was likely to quote below S\$120,000 was taken into account by Aardwolf in preparing its proposal.
125. The mere fact that a party does not abide fully by an agreement that is manifestly anti-competitive does not relieve that party of responsibility for it. In *Tréfileurope v European Commission*¹²⁴, the brief facts of which are set out in paragraph 41, Tréfileurope argued that it was offered a quota of 1300 tonnes a month at a meeting on 20 October 1981 but did not accept it. In respect of the Benelux market, Tréfileurope admitted participating in the

¹²³ See tabulation of the Tender Results dated 2 June 2006 marked as Exhibit HB-2.

¹²⁴ Case T-141/89 [1995] ECR II-791.

- meetings at which agreements were concluded on the prices of standard and catalogue mesh but maintained that it attended them only to familiarize itself with market conditions and that it played a purely passive role.
126. The CFI considered that the notes of the meeting on 20 October 1981 indicated that Tréfileurope's representative did not display opposition to the principle of market sharing and made express reference to the latest arrangements and its share. The Court concluded that Tréfileurope had participated in agreements whose object was to fix prices and quotas on the French market and was not exculpated by the fact that it did not respect the prices and quotas¹²⁵. The Court also found that Tréfileurope took an active part in the meetings in respect of the Benelux market. It was always regarded as a habitual participant in the meetings and was perceived by its partners as an undertaking whose opinion should be ascertained in order to establish a common position. In addition, it had chaired some meetings. The Court concluded that Tréfileurope had participated in the agreements on prices concerning the Benelux market and was of the view at ¶ 80 that:
- In any event, even if it is assumed that the applicant refrained, at least in part, from participating actively in the meetings, the Court considers that, having regard to the manifestly anti-competitive nature of the meetings, ..., the applicant, by taking part without publicly distancing itself from what occurred at them, gave the impression to the other participants that it subscribed to the results of the meetings and would act in conformity with them.
127. Similarly, a participant who “cheats” by attempting to gain market share at the expense of other members through acting differently from the cartel's agreed line is not absolved. In *Re Polypropylene*¹²⁶, the European Commission held that the fact that on some occasions producers might not have maintained their initial resolve and gave concessions to customers on price which undermined the price initiatives agreed upon did not preclude an unlawful agreement having been reached.
128. In the circumstances, the Commission considers that an agreement would still be caught under the section 34 prohibition even if it was not the intention of an undertaking so agreeing to implement or adhere to the terms of the agreement.
129. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The email exchange from 9 to 10 May 2006

¹²⁵ Case T-141/89 [1995] ECR II-791 at paragraph 60.

¹²⁶ Case 86/398 OJ 1986 L 230/1 at paragraph 85.

between PestBusters and Aardwolf, who were competitors, shows that the conduct of PestBusters and Aardwolf was not unilateral and that the quotes submitted were subject to collusion. The conduct of PestBusters and Aardwolf infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Patrick Chong's conduct in agreeing to provide a cover bid that PestBusters and Aardwolf did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Aardwolf had as its intention or consequence the disclosure by PestBusters to Aardwolf of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that PestBusters would be likely to submit a quote of less than \$120,000 for Agenda Treatment. Such disclosure by PestBusters influenced the conduct of Aardwolf on the market in that Aardwolf took into account the information it received from PestBusters when submitting its proposal. The result was that PestBusters and Aardwolf substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of PestBusters providing, and Aardwolf receiving and considering, a price for the purpose of submission to Hospitalitybex, had as its object the prevention, restriction or distortion of competition. The fact that the RH Tender was voided does not affect the Commission's conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between PestBusters and Aardwolf to fix prices and for the latter to provide a cover bid for the RH Tender.

PestBusters and Alliance

130. Peter Fernandis admitted that he had called Philip Tan (Alliance) to inform him of the RH Tender and to ask if Alliance had been invited to the site show round. He had hung up when Philip Tan told him that Alliance was not invited to the site showround. While he did not tell Philip Tan that PestBusters was the resident pest control contractor at Raffles Hotel, such fact was well known in the industry. As such, if Philip Tan was aware that PestBusters was the resident pest control contractor at Raffles Hotel, he would have understood Peter Fernandis' call as an implicit request for a support quote.
131. Philip Tan admitted that he had received Peter Fernandis' call. Peter Fernandis had told him that PestBusters was the resident pest control contractor at Raffles Hotel and asked him to put in a support quote for the RH Tender. Philip Tan admitted that he had agreed to provide a cover bid if

Alliance was invited to tender. Although no figure(s) was given to Philip Tan for Alliance to provide a cover bid during the call, Philip Tan's understanding was that if Alliance was invited to tender, Peter Fernandis would provide him with the figure to quote or he would just quote above S\$70 per linear metre. The Commission notes that there is some discrepancy between the version given by Peter Fernandis and that given by Philip Tan as to the contents of their conversation. Peter Fernandis had made a number of phone calls to request for support quotes in respect of the RH Tender. Given that Philip Tan has been frank and forthcoming as to Alliance's involvement in his interviews, as between the party requesting for support and the recipient of the request, the Commission's view is that the version of events put forth by Philip Tan, in that Peter Fernandis had asked him to put in a cover bid in respect of the RH Tender and he agreed, may be more logical. Although Alliance was not invited to submit a proposal for the RH Tender, the Commission considers that such an agreement would still be caught under the section 34 prohibition.

132. As was mentioned earlier in paragraph 43 in connection with the case of *Sukie Unie and others v Commission*, the requirement of independence strictly precludes any direct or indirect contact between economic operators, the intention or consequence of which was to either 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.
133. This principle was developed upon in *P. Hüls AG v. Commission*¹²⁷, when the ECJ added that subject to proof to the contrary, which the economic operators concerned must adduce, the presumption must be that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on the market¹²⁸.
134. In *Cimenteries v Commission*¹²⁹, a case where some cement producers were found to have engaged in anti-competitive practices, the CFI, in its decision in 2000, dealt with the argument that merely letting a competitor know of its intention could not have amounted to a concerted practice in the following fashion:

1849. In that connection, the Court points out that the concept of concerted practice does in fact imply the existence of reciprocal

¹²⁷ Case C-199/92 [1999] ECR I-4287.

¹²⁸ Case C-199/92 [1999] ECR I-4287 at paragraph 162.

¹²⁹ Case T-25/95 [2000] ECR II-491.

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].

135. A similar argument was dealt with in similar fashion in *Tate & Lyle plc v Commission*¹³⁰ which concerned a series of meetings between British Sugar and its competitors, Tate & Lyle and Napier Brown. The CFI in its decision in 2004, held:

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

...

57 In the present case, it is undisputed that there were direct contacts between the three applicants, whereby British Sugar informed its competitors, Tate & Lyle and Napier Brown, of the conduct which it intended to adopt on the sugar market in Great Britain.

58 In Case T-1/89 *Rhone-Poulenc v Commission* 1991 ECT II -867, in which the applicant had been accused of taking part in meetings at which information was exchanged amongst competitors concerning, inter alia, the prices which they intended to adopt on the market, the Court of First Instance held that an undertaking by its participation in a meeting with an anti-competitive purpose, not only pursued the aim of eliminating in advance uncertainty about the future conduct of its competitors but could not fail to take into account, directly or indirectly, the information obtained in the course of those meetings in order to determine the policy which it intended to pursue on the market (*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

¹³⁰ Case T-202/98, T-204/98 and T-207/98 [2001] ECR II-2035 (upheld by the Court of Justice in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission*).

limited to the mere receipt of information concerning the future conduct of their market competitors.

136. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call between PestBusters and Alliance, who were competitors, shows that the conduct of PestBusters and Alliance was not unilateral and that any quotes submitted were subject to collusion. The conduct of PestBusters and Alliance infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Philip Tan's conduct in agreeing to provide a cover bid that PestBusters and Alliance did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Alliance had as its intention or consequence the disclosure by PestBusters to Alliance of a course of action that it was to adopt or was contemplating adopting in the tendering process, i.e. that it was likely to tender at S\$70 per linear metre. Such disclosure by PestBusters would have influenced the conduct of Alliance on the market in that Alliance would have taken into account the information it received from PestBusters if it was invited to tender. The result was that PestBusters and Alliance intended to substitute practical cooperation for the risks of competition. Their cooperation would substantially eliminate the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of PestBusters in providing, and Alliance in receiving and considering, a price for the purpose of submission to Hospitalitybex, had as its object the prevention, restriction or distortion of competition.
137. As set out earlier in *Tréfilunion v Commission* and *P. Hüls AG v. Commission*, there can be an agreement or a concerted practice in the absence of an actual effect on the market. Given that the object of the agreement or concerted practice between PestBusters and Alliance was clearly anti-competitive, it was not necessary to demonstrate that the agreement and/or concerted practice had manifested itself in conduct on the market or that it had had effects restrictive of competition. As the CAT held in *Apex*, a concerted practice is made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender.

PestBusters and Elite

138. Peter Fernandis admitted that he had called Francis Loh to inform him of the RH Tender and to ask him if Elite was invited to the site showround. He had hung up when Francis Loh told him that Elite was not invited to the site show round. While he did not tell Francis Loh that PestBusters was the

resident pest control contractor at Raffles Hotel, such a fact was well-known in the industry. As such, if Francis Loh was aware that PestBusters was the resident pest control contractor at Raffles Hotel, he would have understood Peter Fernandis' call as an implicit request for a support quote.

139. Francis Loh denied receiving any such call or request for a cover bid from Peter Fernandis. He stated that he had first come to know of the RH Tender sometime at the end of 2006 from New Concept Enterprise. The evidence of any contact between Peter Fernandis and Francis Loh given by Peter Fernandis, was not supported by Francis Loh or any other documents and evidence. The Commission also notes that for the rest of the projects, Francis Loh had been frank and forthright on Elite's involvement in his interviews¹³¹. The Commission considers that there is insufficient evidence to show that Elite was party to an agreement and/or concerted practice with PestBusters to provide a cover bid and fix prices for the RH Tender.

PestBusters and Killem

140. Peter Fernandis said that he did not call Harry Singh or request for a cover bid from him. This is consistent with Harry Singh's statements that he did not receive any request and that he did not even know about the RH Tender prior to receiving the Commission's section 63 notice requesting him to provide documents and information. The Commission therefore considers that there is no evidence to show that Killem was a party to an agreement and/or concerted practice with PestBusters to provide a cover bid and fix prices for the RH Tender.

The Commission's conclusions on the infringement

141. The Commission concludes that the totality of the evidence, as set out and analysed at paragraphs 86 to 140 above, establishes that an agreement and/or concerted practice was in place between –
- a) PestBusters and Rentokil;
 - b) PestBusters and Aardwolf; and
 - c) PestBusters and Alliance,
- which had the object of fixing the prices in relation to the proposals submitted for the RH Tender, in breach of the section 34 prohibition.

¹³¹ See Francis Loh's Notes of Information/Explanation Provided on 12 January 2007 and 4 June 2007.

(ii) Alexandra Hospital

The facts and the evidence

142. On 19 May 2006, Alexandra Hospital (“AH”) issued an open tender for the provision of corrective treatment against subterranean termite infestation in Alexandra Hospital (MMD/06028) (“the AH Tender”)¹³². All interested pest control operators had to attend a compulsory site show round on 23 May 2006 and purchase the tender documents for S\$30¹³³.
143. Interested pest control operators were required to make proposals for 2 options¹³⁴:
- a) Option 1 - use of termiticide for all areas to be treated; and
 - b) Option 2 - use of termiticide for some areas to be treated and use of baiting stations for the remaining areas to be treated.
- The tender documents also provided the measurements (in linear meters) of the areas to be treated for both options.
144. The 2 options were necessary as AH had not secured the necessary funding from the Ministry of Health (“MOH”) for total corrective treatment using termiticide at the time of calling the AH Tender¹³⁵.
145. The compulsory site show round on 23 May 2006 was attended by the following¹³⁶:

Name of pest control operator	Representative’s name
Aardwolf	Julia Chew
Alliance	Philip Tan
Killem	William Tan

¹³² See Request to Proposal and information provided by Alexandra Hospital in their letter to the Commission dated 21 Dec 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

¹³³ See Request to Proposal and information provided by Alexandra Hospital in their letter to the Commission dated 21 Dec 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

¹³⁴ See Information and Appendices 1 to 2 of Section 3 provided by Alexandra Hospital in their letter to the Commission dated 21 Dec 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

¹³⁵ See Information provided by Alexandra Hospital in their letter to the Commission dated 21 Dec 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006. Also see Answer to Question 14 of Peter Fernandis’ Notes of Information/Explanation Provided on 10 January 2007.

¹³⁶ See Information and Exhibit C provided by Alexandra Hospital in their letter to the Commission dated 21 Dec 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

Name of pest control operator	Representative's name
PestBusters	Peter Fernandis
Rentokil	Dennis Loe with Desmond Ng

146. At the close of the AH Tender on 2 June 2006, proposals were received from all five pest control operators who attended the compulsory site show round as follows¹³⁷:

Name of pest control operator submitting proposal	Proposal Price for Option 1	Proposal Price for Option 2	Date of submission of Proposal
Aardwolf	S\$513,200	S\$313,500	2 June 2006
Alliance	S\$404,402	S\$258,492	1 June 2006
Killem	S\$393,070	S\$313,140	2 June 2006
PestBusters	S\$359,240	S\$242,745	2 June 2006
Rentokil	S\$359,450	Nil	2 June 2006

147. According to Peter Fernandis (PestBusters), AH requested him to revise his quote and PestBusters revised its proposal prices to S\$349,000 (Option 1) and S\$235,000 (Option 2)¹³⁸. AH awarded the tender to PestBusters under Option 1 at the price of S\$349,000 on 6 March 2007¹³⁹. The job commenced on 6 March 2007 and was completed on 7 April 2007¹⁴⁰.

148. During our investigations¹⁴¹, we uncovered a number of email exchanges between 19 and 22 May 2006:

¹³⁷ See Information and Copy of Tender Information for each pest control operator provided by Alexandra Hospital in their letter to the Commission dated 21 Dec 2006 pursuant to the Commission's section 63 notice to request for information and documents dated 5 December 2006.

¹³⁸ See Answer to Question 37 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007 and see PestBusters' letters of 5 and 10 October 2006 to AH provided by Peter Fernandis during the Commission's entry into PestBusters' premises on 23 November 2006 pursuant to Section 64 of the Act marked PF-17A on 23 November 2006.

¹³⁹ See Purchase Order Number 4530036471 provided by AH to the Commission via telefax on 6 March 2007.

¹⁴⁰ See email from Lynette Goh of AH to the Commission dated 2 June 2007 at 12.24 am.

¹⁴¹ Email exchange provided by Peter Fernandis and Francis Loh during the Commission's entry into PestBusters' and Elite's premises on 23 November 2006 respectively pursuant to Section 64 of the Act.

- (a) 1st Email from Peter Fernandis to Patrick Chong (Aardwolf), Philip Tan (Alliance), Francis Loh (Elite), Harry Singh (Killem) and Joseph Ong (Rentokil) of 19 May 2006

“From: Peter Fernandis
To: Patrick Chong (E-mail); ‘Joseph Ong’; ‘Killem Pest’; Francis Loh (E-mail); ‘Philip Tan (Alliance) (E-mail)’
Sent: Friday, May 19, 2006 6:57 PM
Subject: FW: Alexandra Hospital – Anti-Termite Tender

Dear AAAs,

Kindly note that Alexandra Hospital is calling for the tender and attendance for showaround on Tues 23 May at 10am is compulsory. The chemical is Agenda and the linear meters will be provided.

Thank you very much SIRS and soon institute of Mental Health will also call for the tender and I will keep you posted.

Have a great weekend

PETER FERNANDIS
PestBusters Pte Ltd
140 Paya Lebar Road
#08-06 A – Z Building
Singapore 409015
Tel: (65) 62882828
Fax: (65) 67487388
Mob: (65) 98563283
E-Mail: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg”

- (b) 2nd Email from Peter Fernandis to Patrick Chong, Philip Tan, Francis Loh, Harry Singh and Joseph Ong of 19 May 2006

“From: Peter Fernandis
To: Patrick Chong (E-mail); ‘Killem Pest’; ‘Joseph Ong’; ‘Philip Tan (Alliance) (E-mail)’; Francis Loh (E-mail)’
Sent: Friday, May 19, 2006 7:02 PM
Subject: Tender Fee for AH

Hi guys,

I will reimburse to tender fee to you guys in cash when we meet in person.
We will arrange for a night out once we secure the works OK.

Cheers

PETER FERNANDIS
PestBusters Pte Ltd
140 Paya Lebar Road
#08-06 A – Z Building
Singapore 409015
Tel: (65) 62882828
Fax: (65) 67487388
Mob: (65) 98563283
E-Mail: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg”

- (c) Email response from Patrick Chong to Peter Fernandis, copied to Caroline Lim, Jenny Law, Julia Chew, Lily Lim and Ryan Peh (all of Aardwolf) of 20 May 2006 in reply to email in (a)

“From: Patrick [mailto:Patrick@aardwolfpestkare.com]
Sent: Saturday, May 20, 2006 10:53 AM
To: Peter Fernandis
Cc: Caroline Lim; Jenny Law; Julia Chew; Lily Lim; Ryan Peh
Subject: Re: FW: Alexandra Hospital – Anti-Termite Treatment

Peter, I was told that we need to pay \$30 to collect tender documents fro Alexandra. We will do so and bear the cost in this instance. Want to make sure you get this project and then you can buy me 2 beers at 8am in the morning k.

Haha.. all the best..

Julia – Many Thanks – Please see this through and gv Peter all the support.

Jenny – Take note of Institute of Mental Health. Thanks.”

- (d) Email response from Philip Tan to Peter Fernandis of 20 May 2006 in reply to email in (a)

“From: Philip [mailto:philip@alliancepest.com.sg]
Sent: Saturday, May 20, 2006 11:29 AM

To: Peter Fernandis
Subject: Re: Alexandra Hospital – Anti-Termite Tender

Hi Peter,

Noted. Good Luck!

Regards
Philip Tan”

(e) Email response from Joseph Ong to Peter Fernandis, Patrick Chong, Philip Tan, Francis Loh and Harry Singh of 22 May 2006 in reply to email in (b)

“From: Joseph Ong
To: Peter Fernandis; ‘Patrick Chong (E-mail)’; ‘Killem Pest’; ‘Philip Tan (Alliance) (Email)’; Francis Loh (E-mail)’
Sent: Monday, May 22, 2006 8:53 AM
Subject: Re: Tender Fee for AH

Peter,

No need to reimburse me the tender fee. Best of Luck.

Joseph Ong
General Manager, Rentokil Pest Control

Rentokil Initial (S) Pte Ltd
16 & 18 Jalan Mesin
Singapore 368815
Tel: 65-6347 8138
Fax: 65-6347 8102
www.rentokil-initial.com
Co Reg. No: 195900145N

This message may contain confidential and privileged information. Unless you are the intended addressee, any distribution, copying or disclosure of such information is strictly prohibited. If you have received this message in error, please advise the sender immediately and delete all copies of this message from your system. Although reasonable precautions have been taken to ensure the integrity of this message and that it is virus free, the company cannot be responsible for any change made to this message or the presence of any virus therein without its knowledge and/or consent. You can request a hard copy of this message for verification.”

149. In brief, the email exchange started on 19 May 2007 with Peter Fernandis informing Patrick Chong, Philip Tan, Francis Loh, Harry Singh and Joseph Ong of the AH Tender and thanking them. Peter Fernandis also offered to reimburse the Parties the S\$30 purchase fee for the AH Tender documents when they next met after PestBusters had secured the works. Patrick Chong emailed saying that he would bear the cost of the tender fee, make sure that Peter Fernandis got the project and wished Peter Fernandis all the best. Philip Tan and Joseph Ong also emailed wishing Peter Fernandis luck on the AH Tender.
150. Interview of PestBusters personnel¹⁴² - Peter Fernandis said that PestBusters had been the general pest contractor for AH and had carried out corrective termite treatment on some areas using Agenda. AH had wanted to carry out corrective termite treatment using Agenda for the whole premises but lacked funding. As such, Peter Fernandis carried out the measurements for AH on a block by block basis as some blocks required critical treatment¹⁴³. He sent the email in paragraph 148(a) to the AAAs, most of whom knew that he was the existing pest control service contractor for AH, to inform them of the AH Tender and to request support quotes¹⁴⁴. He did so because he was aware that a minimum of 3 quotes were needed for government tenders¹⁴⁵. He had thanked them in the email because he had assumed that they would accede to the request given the mutual understanding that they would provide support quotes if a request was made in respect of an existing client¹⁴⁶. Although he had offered to reimburse the tender fee to them in his email dated 19 May 2006 referred to in paragraph 148(b), Peter Fernandis said that they did not want to be reimbursed¹⁴⁷.
151. Peter Fernandis confirmed receiving the email responses from Patrick Chong, Philip Tan and Joseph Ong referred to in paragraph 148(c), (d) and (e) respectively. His understanding of their responses was that they had agreed to support him and would quote above S\$70 per linear metre¹⁴⁸.

¹⁴² See Peter Fernandis' Notes of Information / Explanation Provided on 10 January 2007 and 30 May 2007.

¹⁴³ See Answer to Question 14 and 16 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007

¹⁴⁴ See Answer to Question 19 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

¹⁴⁵ See Answer to Question 21 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

¹⁴⁶ See Answer to Question 20 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

¹⁴⁷ See Answer to Question 34 of Peter Fernandis' Notes of Information / Explanation Provided on 10 January 2007.

¹⁴⁸ See Answer to Question 26 to 32 of Peter Fernandis' Notes of Information / Explanation Provided on 10 January 2007.

When asked how he knew that they would quote above S\$70 per linear metre to support him, he stated¹⁴⁹:

- A: This is based on the understanding that we are not to go below the \$70 per linear meter minimum price. If I don't tell them a price to quote, they will know that I will have quote at \$70 per linear meter because that is the minimum price. They can then support quote by quoting at \$70 per linear meter or above that. Even if they quote at \$70 per linear meter, I am the incumbent and the client will be unlikely to use them given that the client would already have had a working relationship with me and also because there is no costs saving.
152. Peter Fernandis also stated that he had called Philip Tan, Patrick Chong, Joseph Ong and Francis Loh to request for support quotes and they had all agreed¹⁵⁰. After his phone call to Francis Loh, Francis Loh had called saying that he could not make it for the compulsory site showround. As such, he was aware that Francis Loh did not submit a proposal for the AH Tender¹⁵¹.
153. Peter Fernandis said he did not call Harry Singh as he was not close to him¹⁵². He was also aware that Harry Singh had made known his position that he would not provide a support quote in respect of public tenders or tenders advertised in the newspapers¹⁵³. When he sent the email to Harry Singh, he was not expecting Harry Singh to provide support; it was more to keep him in the loop¹⁵⁴. Harry Singh did not respond to his emails¹⁵⁵.
154. Interview of Alliance personnel¹⁵⁶ - Philip Tan said that he was informed of the AH Tender by Peter Fernandis either by way of an email or a phone call¹⁵⁷. He said that he should have received the emails from Peter

¹⁴⁹ See Answer to Question 30 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007. Also see Answer to Question 21 of Peter Fernandis' Notes of Information / Explanation Provided on 10 January 2007.

¹⁵⁰ See Answer to Question 19 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

¹⁵¹ See Answer to Question 31 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

¹⁵² See Answer to Question 19 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

¹⁵³ See Answer to Question 28 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

¹⁵⁴ See Answer to Question 19 of Peter Fernandis' Notes of Information / Explanation Provided on 10 January 2007 and Answer to Question 26 and 27 of Peter Fernandis' Notes of Information / Explanation Provided on 30 May 2007.

¹⁵⁵ See Answer to Question 19 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

¹⁵⁶ See Philip Tan's Notes of Information / Explanation Provided on 9 March 2007.

¹⁵⁷ See Answer to Question 2 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

- Fernandis referred to in paragraph 148(a) and (b)¹⁵⁸. He understood that the purpose of the email in paragraph 148(a) was to notify them of the AH Tender and to tell them to attend the compulsory site show round. During the site show round, Peter Fernandis approached him to put in a support quote for the AH Tender and informed him that PestBusters was the general pest contractor for AH¹⁵⁹.
155. When asked for his response to Peter Fernandis' email in paragraph 148(a), Philip Tan said¹⁶⁰:
- A: I am not sure if I replied to him. But as I have stated earlier, I attended the site show round and during the site show round, Peter Fernandis asked for my support. Since I was not very keen in government projects and did not wish to get the project and I also thought I will support Peter, so I quote high.
156. Philip Tan subsequently confirmed that he did respond to Peter Fernandis' email in paragraph 148(a) via his email referred to in paragraph 148(d) to wish Peter Fernandis good luck in respect of getting the job with his support¹⁶¹.
157. Philip Tan also said that the understanding between the AAAs was that if an AAA requesting for a support quote did not state the figure on which the rest should quote in order to render support, then the other AAAs should render support by quoting above \$70 per linear meter, the baseline price¹⁶².
158. He stated that Alliance's proposal for the AH Tender was plucked from nowhere and not justified by any cost calculations; it just had to be a figure above S\$70 per linear meter¹⁶³. As to whether he would have quoted differently had he not agreed to provide support to Peter Fernandis, he stated¹⁶⁴:
- A: I am not sure if it would very different. But I would definitely have given more consideration to all factors and circumstances surrounding the tender in coming up with a quotation so that I can hopefully get the project. When I am asked to support quote, I would just pluck a figure from

¹⁵⁸ See Answer to Question 3 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

¹⁵⁹ See Answer to Question 4 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

¹⁶⁰ See Answer to Question 5 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

¹⁶¹ See Answers to Questions 13 and 14 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

¹⁶² See Answer to Question 11 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

¹⁶³ See Answer to Question 11 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

¹⁶⁴ See Answer to Question 15 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

nowhere or quote the requested figure without any consideration for the surrounding factors or circumstances.

159. Interview of Rentokil personnel¹⁶⁵ – Joseph Ong confirmed that he had received Peter Fernandis’ emails referred to in paragraph 148(a) and (b). He understood the email in paragraph 148(a) as requesting for support quotes for the AH Tender and other projects¹⁶⁶. He had replied to Peter Fernandis via his email in paragraph 148(e) to refuse reimbursement and to wish Peter Fernandis the best of luck¹⁶⁷.
160. According to Joseph Ong, he had told his subordinate, Dennis Loe, of his agreement to provide support to Peter Fernandis and instructed Dennis Loe to prepare the proposal in accordance with the figures that he would give to Dennis Loe, when he obtained them from Peter Fernandis¹⁶⁸. He stated that Dennis Loe had agreed to follow his instructions to provide support to Peter Fernandis¹⁶⁹. He had chosen Dennis Loe to prepare the proposal because he did not want to waste Nicck Yeong’s time given that it was a support quote and Rentokil would not win the project ultimately. The exposure to big projects would however benefit Dennis Loe, who had been with Rentokil for some time¹⁷⁰. According to Joseph Ong, Nicck Yeong had asked him why he was not selected to do the proposal. Joseph Ong had told Nicck Yeong that Rentokil would be providing a support quote and there was no point in wasting Nicck Yeong’s time¹⁷¹.
161. Joseph Ong said that as he was clearing his leave after he resigned from Rentokil on 24 or 25 May 2006, he was not involved in the preparation of the proposal dated 1 June 2006¹⁷². When showed Rentokil’s proposal at S\$359,450 for Option 1, he said that there was no support given to Peter

¹⁶⁵ See Ong Koong Tak, James (Joseph)’s Notes of Information / Explanation Provided on 28 and 30 April 2007, Nicck Yeong’s Notes of Information / Explanation Provided on 8 May 2007, and Loe Ching Heng (Dennis)’ Notes of Information / Explanation Provided on 27 March 2007.

¹⁶⁶ See Answer to Question 58 and 59 of Ong Koong Tak, James (Joseph)’s Notes of Information/Explanation Provided on 30 April 2007.

¹⁶⁷ See Answer to Question 63 and 64 of Ong Koong Tak, James (Joseph)’s Notes of Information / Explanation Provided on 30 April 2007.

¹⁶⁸ See Answers to Question 66 and 75 to 76 of Ong Koong Tak, James (Joseph)’s Notes of Information / Explanation Provided on 30 April 2007.

¹⁶⁹ See Answer to Question 81 of Ong Koong Tak, James (Joseph)’s Notes of Information / Explanation Provided on 30 April 2007.

¹⁷⁰ See Answer to Question 67 and 68 of Ong Koong Tak, James (Joseph)’s Notes of Information / Explanation Provided on 30 April 2007.

¹⁷¹ See Answer to Question 86 of Ong Koong Tak, James (Joseph)’s Notes of Information/Explanation Provided on 30 April 2007.

¹⁷² See Answer to Question 72 of Ong Koong Tak, James (Joseph)’s Notes of Information/Explanation Provided on 30 April 2007.

- Fernandis as it was based on S\$70 per linear meter¹⁷³. In his view, an AAA requesting for support would provide an indicative figure or percentage, e.g. quote at \$x or at x% above \$y and that it would be a waste of time if an AAA sought support but did not provide any figure¹⁷⁴.
162. Dennis Loe said that he was not aware of any arrangement for the AH Tender¹⁷⁵. He said that Joseph Ong instructed him to attend the compulsory site show round¹⁷⁶ and left Rentokil shortly thereafter¹⁷⁷. As such, Dennis Loe approached Hong Ann, the Financial Controller, and Nicck Yeong for assistance on the pricing. Nicck Yeong gave instructions to price Agenda Treatment at S\$70 per linear metre and the sales administration staff completed the prices in an excel spreadsheet for submission to AH. As for the pricing of the baiting stations, Dennis Loe said that Robin Lee, the Managing Director, gave directions to provide free baiting stations to AH as an incentive. Robin Lee and Hong Ann also made a decision not to proceed with Option 2 because Rentokil was already giving the baiting stations free of charge under Option 1¹⁷⁸. Dennis Loe was asked why item 5 of Option 1 of Rentokil's proposal in respect of Blk 7, Ward 8-14 set out the area to be treated as 415 linear metres when the tender documents stated the area to be 412 linear metres. Dennis Loe was of the view that the discrepancy was a typographical error by the sales administration personnel who prepared the excel spreadsheet¹⁷⁹.
163. Nicck Yeong said that Dennis Loe had found out after the site show round at AH that he was to provide a support quote¹⁸⁰. He said that he thought that when the proposal was being prepared, Robin Lee, the Managing Director, and Yeo Hong Ann, the Finance Director, would have been aware of

¹⁷³ See Answer to Question 73 and 74 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

¹⁷⁴ See Answer to Question 116 to 117 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 28 April 2007.

¹⁷⁵ See Answer to Question 51 of Loe Ching Heng (Dennis)' Notes of Information/Explanation Provided on 27 March 2007.

¹⁷⁶ See Answer to Question 43 of Loe Ching Heng (Dennis)' Notes of Information/Explanation Provided on 27 March 2007.

¹⁷⁷ See Answer to Question 48 of Loe Ching Heng (Dennis)' Notes of Information/Explanation Provided on 27 March 2007.

¹⁷⁸ See Answer to Question 46 and 50 of Loe Ching Heng (Dennis)' Notes of Information/Explanation Provided on 27 March 2007.

¹⁷⁹ See Answer to Question 49 of Loe Ching Heng (Dennis)' Notes of Information/Explanation Provided on 27 March 2007.

¹⁸⁰ See Answer to Questions 158 of Nicck Yeong's Notes of Information/Explanation Provided on 8 May 2007.

Joseph Ong's agreement to provide a support quote in respect of the AH Tender¹⁸¹.

164. He also said that immediately after Joseph Ong's departure from Rentokil, there had been a meeting with Robin Lee who gave instructions for the proposal to be prepared as "per normal"¹⁸². According to Nicck Yeong, Rentokil's proposal for Option 1 of the AH Tender was based on S\$70 per linear meter¹⁸³.
165. Interview of Aardwolf personnel¹⁸⁴ – Patrick Chong said that he was alerted to the AH Tender by Peter Fernandis' email in paragraph 148(a) and he reckoned that Peter Fernandis would be requesting for a support quote¹⁸⁵.
166. As for his response in his email in paragraph 148(c) where he said:

"...Want to make sure you get this project and then you can buy me 2 beers at 8am in the morning k.

Haha.. all the best..

Julia – Many Thanks – Please see this through and gv Peter all the support...”,

he said that basically these were his “normal pleasantry”; he had no intention of doing anything for Peter Fernandis, and he was channelling the request down to Julia Chew for her to attend to and win the project for Aardwolf¹⁸⁶. He also said that he was not sure how he was to render support to Peter Fernandis as Peter Fernandis had not provided him with the figures to quote or the figures that PestBusters would quote, as was usually the case. In his view, Aardwolf would just support by going in to quote¹⁸⁷. Patrick Chong explained that Aardwolf did not quote for baiting stations for Option 2 as they did not believe that baiting stations would work on their own. He believed that even though they were not separately listed, Julia

¹⁸¹ See Answer to Question 174 of Nicck Yeong's Notes of Information / Explanation Provided on 8 May 2007.

¹⁸² See Answer to Question 158 of Nicck Yeong's Notes of Information / Explanation Provided on 8 May 2007.

¹⁸³ See Answer to Question 170 of Nicck Yeong's Notes of Information / Explanation Provided on 8 May 2007.

¹⁸⁴ See Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007, Julia Chew's Notes of Information / Explanation Provided on 2 April 2007, Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007 and Jenny Law's Notes of Information/Explanation Provided on 3 April 2007.

¹⁸⁵ See Answer to Question 72 to 74 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

¹⁸⁶ See Answer to Question 77, 80 and 82 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

¹⁸⁷ See Answer to Question 96 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

Chew would have included the baiting stations into the quote for termiticide at S\$100 per linear metre for both Option 1 and Option 2 because Aardwolf provided a total solution for termite control¹⁸⁸. Julia Chew was expected to attend to it and get the job.

167. Julia Chew said that she could not remember if she received the emails referred to in paragraph 148(a) and (c)¹⁸⁹. Her understanding of Patrick Chong's response in his email in paragraph 148(c) copied to her and the entire Aardwolf's sales team was that he was telling the sales team to quote higher than Peter Fernandis to increase Peter Fernandis' chances of getting the job¹⁹⁰. She also stated that Patrick Chong thanked her in the email as he assumed that she would help¹⁹¹. Patrick Chong did not speak to her on the emails.
168. Julia Chew was not able to produce Aardwolf's proposal as she had thrown the proposal away¹⁹². She said that she came up with the price of S\$100 per linear meter for both Option 1 and Option 2 of Aardwolf's proposal¹⁹³. Aardwolf did not quote for the baiting stations for Option 2 because they did not use baiting stations alone¹⁹⁴.
169. Her answers to questions on how she had arrived at the price in Aardwolf's proposal are shown below¹⁹⁵:

Q174. Why did you decide on the price of \$100 per linear metre?

A: Because I have to cost in the baiting stations and I cannot estimate the numbers so I just marked it up. I have to admit that my chances of getting this project is not very high because the hospital may be moving.

Q175. Do you have internal working papers on how you worked out the figures?

A: No. These are simple calculations of linear metres multiply by 100.

¹⁸⁸ See Answers to Question 89 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

¹⁸⁹ See Answer to Question 239 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁹⁰ See Answers to Question 241 and 247 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁹¹ See Answers to Questions 246 and 247 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁹² See Answers to Questions 159 and 168 of Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

¹⁹³ See Answers to Questions 170 to 173 of Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

¹⁹⁴ See Answer to Question 172 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁹⁵ See Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

Q176. Why do you have working papers for Raffles Hotel and not Alexandra Hospital?

A: I must say that for Raffles Hotel, my chances are high. My chances for this is not so high so I did not put in 100%.

Q177. At \$100 per linear metre, the mark up is about 42%, as opposed to your usual mark up of 20 to 25%. Why did you mark up the project so high?

A: Because we had a low chance of getting the project anyway. In any case, they had constraints such as only working on weekends so unless I get it at a high price, there was no point in getting the project.

Q178. Why bother putting in a bid?

A: It is not so nice not putting in the bid after we have attended the site visit. If we had known that they were calling for the tender just in case, I would not even have attended the site visit.

Q179. Were there any other termite treatment services offered to Alexandra Hospital under this quotation?

A: I cannot remember whether I did. At this rate, even if they want extra services, it can cover the cost of Termi-Cam.

170. Julia Chew also said that she would not say that she was supporting Peter Fernandis although she quoted higher than her normal rates; she did so as the tender might not be awarded because the hospital might be moving¹⁹⁶.

171. She said that Peter Fernandis' request for support quote was advantageous to Aardwolf in assessing how much to quote¹⁹⁷. As far as she was concerned, Aardwolf's prices were higher than PestBusters and if Aardwolf wanted to win the AH Tender, they would have to cost lower¹⁹⁸. She also stated that she would not have quoted differently in the absence of the email exchange in paragraph 148 because AH had operational constraints which made a quote at S\$70 per linear meter impossible¹⁹⁹.

172. Interview of Killem personnel²⁰⁰ - Harry Singh said that he received the emails in paragraph 148(a) and (b) from Peter Fernandis which he considered to be a call for support²⁰¹. He said that he ignored Peter

¹⁹⁶ See Answer to Questions 252 of Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

¹⁹⁷ See Answer to Question 254 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁹⁸ See Answer to Question 253 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

¹⁹⁹ See Answer to Question 255 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

²⁰⁰ See Harry Singh's Notes of Information/Explanation Provided on 7 March and 30 May 2007.

²⁰¹ See Answers to Questions 129 to 133 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007.

- Fernandis and did not bother to respond as Peter Fernandis would know his position of not providing support in respect of public tenders, advertised tenders in the newspapers or where he was invited to tender by customers, which position had been made known to the AAAs at previous AAA meetings²⁰².
173. He said that Killem's quote for Option 1 worked out to \$69 per linear metre, because they had quoted \$23 per hole and AH's tender specifications had required that the holes be 300 mm apart. Harry Singh claimed that this was lower than the minimum price of \$70 per linear metre²⁰³. He added that the email from Peter Fernandis in paragraph 148(a) did not have an impact on his decision²⁰⁴.
174. Interview of Elite personnel²⁰⁵ - Francis Loh said that he had received the emails in paragraph 148(a) and (b) from Peter Fernandis requesting a support quote²⁰⁶ but he did not respond²⁰⁷. He said he could not remember if Peter Fernandis had called him on the request; and said that Peter Fernandis did not have to call him since Peter Fernandis had sent him the emails in paragraph 148(a) and (b)²⁰⁸. He did not turn up for the compulsory site show round at AH as it clashed with another business appointment²⁰⁹ and consequently Elite did not put in any proposal.
175. He said that if he had attended the site show round, he would have submitted a proposal and it would have been above S\$70 per linear meter to support Peter Fernandis²¹⁰.

²⁰² See Answer to Question 18 of Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

²⁰³ See Answer to Question 157 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007

²⁰⁴ See Answer to Question 22 of Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

²⁰⁵ See Francis Loh's Notes of Information/Explanation Provided on 12 January and 1 June 2007.

²⁰⁶ See Answer to Question 92 to 94 and 96 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

²⁰⁷ See Answer to Question 95 and 97 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

²⁰⁸ See Answer to Question 25 and 26 of Francis Loh's Notes of Information/Explanation Provided on 1 June 2007.

²⁰⁹ See Answer to Question 103 and 104 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

²¹⁰ See Answer to Question 28 and 29 of Francis Loh's Notes of Information / Explanation Provided on 1 June 2007.

The Commission's analysis of the evidence

PestBusters and Alliance

176. Peter Fernandis had admitted to sending the email in paragraph 148(a) to Philip Tan and the other AAAs to inform them of the AH Tender and to request support quotes. In his email in paragraph 148(b), he had also offered to reimburse the AH Tender document fee of S\$30 when they next met after PestBusters had secured the project. He confirmed that Philip Tan had responded positively to his request via the email in paragraph 148(d). In addition, he had made a call to Philip Tan to request for a cover bid and Philip Tan had agreed.
177. Philip Tan said that he should have received the emails from Peter Fernandis and confirmed that he had responded positively to the request for a cover bid via his email in paragraph 148(d).
178. Although Peter Fernandis did not follow up with the figures for the cover bid, he said that the AAAs knew that they were to quote at or above S\$70 per linear meter. He knew that as he was the existing pest control contractor for AH, he would be at an advantage as long as none of the AAAs quoted below S\$70 per linear meter. This is because he had a good working relationship with AH; he had recommended the use of Agenda for termite treatment, and carried out the site measurements for them. It was unlikely that AH would consider switching to another pest control operator if there were no costs savings.
179. Philip Tan shared the understanding that he was to quote above S\$70 per liner metre in order to render support. Pursuant to that understanding, he had put in a proposal of S\$404,402 for Option 1 and S\$258,492 for Option 2. The Commission considers that Alliance's proposals, based on S\$78.80 per linear meter for Agenda Treatment, which is higher than the S\$70 per linear meter, is consistent with an agreement between PestBusters and Alliance to collude in fixing prices and for the latter to provide a cover bid.
180. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The email exchange in paragraph 148 between PestBusters and Alliance, who were competitors, shows that the conduct of PestBusters and Alliance was not unilateral and that the quotes submitted were subject to collusion. The conduct of PestBusters and Alliance infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Philip Tan's conduct in agreeing to

provide a cover bid that PestBusters and Alliance did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Alliance had as its intention or consequence the disclosure by PestBusters to Alliance of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that it was likely to submit a proposal at S\$70 per linear meter. Such disclosure by PestBusters influenced the conduct of Alliance on the market in that Alliance took account of the information it received from PestBusters when submitting its proposal by drawing on the understanding between the AAAs in respect of the provision of cover bids. The result was that PestBusters and Alliance substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of PestBusters providing, and Alliance receiving and using, a price for the purpose of submission to AH, had as its object the prevention, restriction or distortion of competition.

PestBusters and Rentokil

181. Peter Fernandis had admitted sending the email in paragraph 148(a) to Joseph Ong and the other AAAs to inform them of the AH Tender and to request support quotes. In his email in paragraph 148(b), he had also offered to reimburse the AH Tender document fee of S\$30 when they next met after PestBusters had secured the project. He confirmed that Joseph Ong had responded positively to his request, declining the reimbursement, via the email in paragraph 148(e). In addition, he had called Joseph Ong for a cover bid and Joseph Ong agreed.
182. Joseph Ong confirmed that he had received Peter Fernandis' emails which he understood as requesting for a support quote for the AH Tender. He confirmed sending an affirmative reply to Peter Fernandis and instructing Dennis Loe to prepare a proposal with the figures to be subsequently obtained from Peter Fernandis. He had also informed Nicck Yeong that he did not want to waste Nicck Yeong's time in preparing a cover bid for a project Rentokil was not going to win.
183. The Commission considers that even though no figures were provided by Peter Fernandis to Joseph Ong for the provision of a cover bid by Rentokil, Joseph Ong knew that S\$70 per linear meter was the lowest price that an AAA could quote for Agenda Treatment²¹¹. Rentokil had been penalized in November 2004 with additional purchases of Agenda because they had

²¹¹ See Answer to Question 75 of Ong Koong Tak, James (Joseph)'s Notes of Information / Explanation Provided on 28 April 2007.

quoted below S\$70 per linear meter²¹². Joseph Ong had also said in respect of the termite treatment projects for Raffles Hotel, Hawaii Tower and River Place that Rentokil would have quoted at S\$70 per linear meter had they not agreed to provide cover bids to PestBusters and Alliance respectively²¹³. Accordingly, the Commission considers that, notwithstanding Joseph Ong's statement that if no figures were provided in a request for a cover bid, it would be a waste of time, Joseph Ong would know that PestBusters would not quote below S\$70 per linear meter. Hence, Joseph Ong could quote above S\$70 per linear metre in his cover bid in implementing the agreement. Peter Fernandis had expressed the view that even if an AAA (Joseph Ong in this case) were to quote at S\$70 per linear metre, he, as an incumbent with a working relationship with the client, would have an advantage as the client would be unlikely to switch where there would no cost savings.

184. It is trite law, in EC²¹⁴ and UK²¹⁵, that the fact that an employee of an undertaking is not authorised to make an infringing agreement does not relieve the undertaking of its liability. Even though Joseph Ong had agreed to provide a cover bid and had left Rentokil by the time the proposal was prepared and submitted, and Peter Fernandis did not follow up with the figures for the cover bid, the Commission notes that Nicck Yeong, who was involved in the pricing of the proposal, was aware that a request for a support quote had been made in respect of the AH Tender and correspondingly that PestBusters, the resident pest control contractor, was likely to submit a proposal based on S\$70 per linear metre, the baseline price. As dealt with earlier, it did not matter whether Rentokil did in fact implement or adhere to the agreement to provide a cover bid or was, on the contrary, competing for the project. Either way, the disclosure by PestBusters was taken into account in preparing for the proposal. An agreement would still be caught under the section 34 prohibition even if it was not the intention of an undertaking so agreeing to implement or adhere to the terms of the agreement.

185. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The email exchange in paragraph 148 between PestBusters and Rentokil, who were competitors, shows that the conduct of PestBusters and Rentokil was not unilateral and that the quotes submitted

²¹² See Answer to Question 95 of Ong Koong Tak, James (Joseph)'s Notes of Information / Explanation Provided on 28 April 2007.

²¹³ See Answer to Question 44, 113 and 131 of Ong Koong Tak, James (Joseph)'s Notes of Information / Explanation Provided on 30 April 2007.

²¹⁴ *SA Musique Diffusion Francaise and Others v Commission* [1983] ECR 1825 at paragraph 97.

²¹⁵ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24 at paragraph 771.

were subject to collusion. Such contact between PestBusters and Rentokil infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Joseph Ong's conduct in agreeing to provide a cover bid that PestBusters and Rentokil did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Rentokil had as its intention or consequence the disclosure by PestBusters to Rentokil of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that it was going to submit a proposal at S\$70 per linear meter. Such disclosure by PestBusters influenced the conduct of Rentokil on the market in that Rentokil took account of the information it received from PestBusters when submitting its proposal by drawing on the understanding between the AAAs in respect of the provision of cover bids. The result was that PestBusters and Rentokil substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which they each faced as to the conduct of the other in the tender process. The conduct of PestBusters providing, and Rentokil receiving and considering, a price for the purpose of submission to AH, had as its object the prevention, restriction or distortion of competition.

PestBusters and Aardwolf

186. Peter Fernandis had admitted sending the email in paragraph 148(a) to Patrick Chong and the other AAAs to inform them of the AH Tender and to request support quotes. In his email in paragraph 148(b), he had also offered to reimburse the AH Tender document fee of S\$30 cash when they next met after PestBusters had secured the project. He confirmed that Patrick Chong had responded positively to his request via the email in paragraph 148(c). In addition, he had called Patrick Chong for a cover bid and Patrick Chong agreed.
187. Patrick Chong confirmed that he had received Peter Fernandis' emails and replied positively. However, he claimed that he was merely giving Peter Fernandis the impression that he was going to provide a cover bid. In actual fact, he wanted Julia Chew to compete and win the AH Tender. In this regard, the Commission notes that Patrick Chong's statement was not corroborated by Julia Chew who understood Patrick Chong's email as telling her to quote higher than Peter Fernandis to increase the latter's chances of winning the tender.
188. The Commission considers that even though no figures were provided by Peter Fernandis to Patrick Chong for the provision of a cover bid by

Aardwolf, Patrick Chong knew that S\$70 per linear meter was the lowest price that an AAA could quote for Agenda Treatment²¹⁶. Patrick Chong was also aware that Rentokil had been penalized in November 2004 with additional purchases of Agenda because they had quoted below S\$70 per linear meter²¹⁷. Accordingly, the Commission considers that, notwithstanding Patrick Chong's statement that he was not sure how to provide a cover bid, Patrick Chong would know that PestBusters could not quote below S\$70 per linear meter. Hence, Patrick Chong could quote above S\$70 per linear meter if he wished to implement the agreement to provide a cover bid.

189. In this regard, the Commission notes that Aardwolf's proposal for Option 1 and 2 was at S\$100 per linear meter, a 42% mark-up as opposed to Julia Chew's usual mark-up of 20 to 25%. Julia Chew cited the following reasons for giving a higher quote –

- a) AH may be moving and therefore the project may not be awarded²¹⁸;
- b) there were operational constraints such as working on weekends only and restrictions on the use of certain equipment for Agenda Treatment so the project may not be worth the while unless she got it at a high price²¹⁹; and
- c) she had to cost in baiting stations and she could not estimate the numbers so she just marked up the price²²⁰.

190. The Commission has difficulty understanding how any impending move of AH and the fact that the project might not be awarded could be a reason for marking up Aardwolf's proposal price. The Commission also notes that she could not explain why she could not estimate the number of baiting stations when she had attended the compulsory site show round at AH. The Commission considers that her explanation in paragraph 189(b) may be logical but notes that she did not explain how such operational constraints would result in a mark up of 42% from the S\$70 per linear meter minimum price instead of her usual mark-up of 20 – 25%. In fact, the Commission notes that she stated that the mark-up was high enough for Aardwolf to

²¹⁶ See Answer to Question 68 of Patrick Chong's Notes of Information / Explanation Provided on 30 March 2007.

²¹⁷ See Answer to Question 75 of Patrick Chong's Notes of Information / Explanation Provided on 30 March 2007.

²¹⁸ See Answer to Question 252 of Julia Chew's Notes of Information / Explanation Provided on 2 April 2007.

²¹⁹ See Answer to Question 167 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

²²⁰ See Answer to Question 174 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

provide extra services like TermiCam if they were required²²¹. Further when asked if she had internal working papers on Aardwolf's proposal for the AH Tender, her answer was ²²²:

A: No. These are simple calculations of linear meters multiply by 100.

191. The Commission notes that during her interview, Julia Chew had repeatedly claimed that Aardwolf had a low chance of succeeding in the AH Tender. She had also stated that Aardwolf's prices were generally higher than PestBusters' prices and if Aardwolf had wanted to win the AH Tender, they would have to quote lower. Given this, the mark-up of 42% in Aardwolf's proposal clearly suggests that Aardwolf did not intend to win the tender.
192. The Commission considers it reasonable to infer that Julia Chew must have considered Patrick Chong's agreement to provide a cover bid to support Peter Fernandis in preparing Aardwolf's proposal. As she considered that Aardwolf had a low chance of succeeding in the AH Tender, she decided that she would not put in 100% of her effort into the preparation of the Aardwolf proposal. She then prepared Aardwolf's proposal using a simple calculation of S\$100 per linear meter.
193. The Commission also considers that Aardwolf's proposal prices for the AH Tender at S\$513,200 for Option 1 and S\$313,500 for Option 2 (at S\$100 per linear meter), which are based on a per linear metre rate higher than the S\$70 per linear meter stated by Peter Fernandis as forming the understanding amongst AAAs in providing cover bids, is consistent with an agreement between PestBusters and Aardwolf to provide a cover bid and fix prices.
194. In any event, it would not matter if Patrick Chong did not intend to implement or adhere to the agreement to provide a cover bid and wanted to compete for the project (i.e. that he had instructed his staff to fight and win the project). The Commission considers that such an agreement would still be caught under the section 34 prohibition even if it was not the intention of an undertaking so agreeing to implement or adhere to the terms of the agreement.
195. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the

²²¹ See Answer to Question 179 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

²²² See Answer to Question 175 of Julia Chew's Notes of Information/Explanation Provided on 2 April 2007.

section 34 prohibition. The email exchange in paragraph 148 between PestBusters and Aardwolf, who were competitors, shows that the conduct of PestBusters and Aardwolf was not unilateral and that the quotes submitted were subject to collusion. The conduct of PestBusters and Aardwolf infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Patrick Chong's conduct in agreeing to provide a cover bid that PestBusters and Aardwolf did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Aardwolf had as its intention or consequence the disclosure by PestBusters to Aardwolf of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that it was going to submit a proposal at S\$70 per linear meter. Such disclosure by PestBusters influenced the conduct of Aardwolf on the market in that Aardwolf took into account the information it received from PestBusters when submitting its proposal by drawing on the understanding between the AAAs in respect of the provision of cover bids. The result was that PestBusters and Aardwolf substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which they each faced as to the conduct of the other in the tender process. The conduct of PestBusters providing, and Aardwolf receiving and using, a price for the purpose of submission to AH, had as its object the prevention, restriction or distortion of competition.

PestBusters and Killem

196. Peter Fernandis had admitted sending an email in paragraph 148(a) to Harry Singh and the other AAAs to inform them of the AH Tender and to request support quotes. In his email in paragraph 148(b), he had also offered to reimburse the AH Tender document fee of S\$30 when they next met after PestBusters had secured the project. He stated that this was to keep Harry Singh in the loop; it was not sent with the intention of seeking a cover bid from Harry Singh nor was he expecting any response from Harry Singh. He also did not call Harry Singh to ask for a cover bid.
197. The Commission has difficulty understanding why there was a need to keep Harry Singh in the loop if there was no intention to seek a cover bid from Killem. The Commission also notes that Killem understood the email to be a request for a support quote and could not fail to have taken it into account in submitting its proposal to AH. In addition, Killem put in a quotation for Option 1 at S\$393,070 which, at a total of 5132 linear metres, worked out to be a rate of S\$76.59 per linear metre. Clearly then, the statement given by Harry Singh that Killem's quote was at S\$69 per linear metre was

incorrect and misleading. Even though no figures were provided by Peter Fernandis for the provision of a cover bid, Harry Singh must have known that S\$70 per linear metre was the lowest price that an AAA could quote for Agenda Treatment and that PestBusters would not quote below this figure. The Commission considers that Killem's proposal, based on S\$76.59 per linear metre, which is higher than S\$70 per linear metre, is consistent with a concerted practice between PestBusters and Killem to collude in the fixing of prices and for the latter to provide a cover bid.

198. As set out earlier in the case of *Sukie Unie and others v Commission*, the requirement of independence precludes any direct or indirect contact between competitors, the object or effect of which was either to influence the conduct on the market of a 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. While Killem may argue that it had received an unsolicited email, it could not argue that it had to act in the way it did as it could have, among other courses of action, reported the matter to the authorities. In *Tréfileurope v European Commission*²²³, the brief facts of which are set out in paragraph 41 and which was referred to earlier in paragraph 125 and 126, the CFI rejected Tréfileurope's argument that it took part in the meetings because it was forced to do so in order to avoid negative reactions, since the French producers brought considerable pressure to bear on it.

58. The Court considers that the applicant cannot rely on the fact that it participated in the meetings against its will. It could have complained to the competent authorities about the pressure brought to bear on it and lodged a complaint with the Commission under Article 3 of Regulation No 17 rather than participating in such meetings (see the judgment of the Court of First Instance in Case T-9/89 *Huels v Commission* [1992] ECR II-499, paragraph 128).

199. In *Huels v Commission*, Huels participated in a series of meetings, the purpose of which was, in particular, to fix target prices and sales volumes. Huels claimed that as a small producer it was obliged to attend the meetings. The argument was rejected by the CFI:

- 123 The applicant cannot claim that as a small producer it could not afford to stay away from the meetings; after all, since it could have reported them to the Commission and asked it to order them to be brought to an end.

²²³ Case T-141/89 [1995] ECR II-791.

200. The Commission considers that the evidence is sufficient to establish the elements of a concerted practice in breach of the section 34 prohibition. The email exchange in paragraph 148, where they involve PestBusters and Killem, who were competitors, shows that the conduct of PestBusters and Killem was not unilateral and that the quotes submitted were subject to collusion. The conduct of PestBusters and Killem infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Harry Singh's conduct in submitting a quote above the minimum price of S\$70 per linear metre that PestBusters and Killem did not determine or intend to determine their proposal prices independently. The conduct of PestBusters and Killem had as its intention or consequence the disclosure by PestBusters to Killem of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that it was going to submit a proposal at S\$70 per linear meter. Such disclosure by PestBusters influenced the conduct of Killem on the market in that Killem took into account the information it received from PestBusters when submitting its proposal by drawing on the understanding between the AAAs in respect of the provision of cover bids. The result was that PestBusters and Killem substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which they each faced as to the conduct of the other in the tender process. The conduct of PestBusters in providing, and Killem in receiving and taking into account information for the purpose of submission to AH, had as its object the prevention, restriction or distortion of competition.

PestBusters and Elite

201. Peter Fernandis had admitted sending an email in paragraph 148(a) to Francis Loh and the other AAAs to inform them of the AH Tender and to request support quotes. In his email in paragraph 148(b), he had also offered to reimburse the AH Tender document fee of S\$30 when they next met after PestBusters had secured the project. In addition, he had made a call to Francis Loh for a cover bid and Francis Loh agreed.
202. Francis Loh said that he could not remember receiving any call from Peter Fernandis for a cover bid for the AH Tender. He stated that there was no need for Peter Fernandis to call him since Peter Fernandis had already emailed. He said that he did not respond to Peter Fernandis' emails or attend the site show round or put in a proposal. Besides the email to which Francis Loh did not respond, the evidence of any other contact between them given by Peter Fernandis was not supported by Francis Loh or any other documents and evidence. Further, no representative from Elite

attended the compulsory site show round and Elite did not submit any proposal for the AH Tender. Given that Francis Loh has been forthcoming on Elite's involvement on other projects during his interviews²²⁴, the Commission considers that there is insufficient evidence to show that Elite was party to an agreement and/or concerted practice with PestBusters to provide a cover bid and fix prices for the AH Tender.

The Commission's conclusions on the infringement

203. The Commission concludes that the totality of the evidence, as set out and analysed at paragraphs 142 to 202 above, establishes that an agreement and/or concerted practice was in place between –
- a) PestBusters and Alliance;
 - b) PestBusters and Rentokil;
 - c) PestBusters and Aardwolf; and
 - d) PestBusters and Killem,
- which had the object of fixing the prices in relation to the proposals for the AH Tender, in breach of the section 34 prohibition.

iii) Hawaii Tower Condominium

The facts and the evidence

204. Sometime between 6 January 2006 and 2 February 2006, Hawaii Tower (Management Corporation Strata Title Plan No 920), at 77 Meyer Road, Singapore 437903 ("Hawaii Tower"), invited Aardwolf, Alliance and PestBusters to submit quotes for termite treatment for the estate²²⁵.

²²⁴ See Francis Loh's Notes of Information/Explanation Provided on 12 January 2007 and 4 June 2007.

²²⁵ See information provided by Hawaii Tower in their letter to the Commission dated 30 January 2007 pursuant to the Commission's section 63 notice to request for information and documents dated 5 December 2006.

205. As at 17 March 2006, three quotes were received by Hawaii Tower as follows²²⁶:

Name of pest control operator submitting quote	Quote price (corrective treatment of common areas)	Quote price (inspection per unit)	Date on Quote
Alliance ²²⁷	S\$44,780	S\$18	2 February 2006
Aardwolf ²²⁸	S\$56,100	S\$50	3 February 2006
PestBusters ²²⁹	S\$62,000	S\$65	2 February 2006

206. According to Hawaii Tower, Alliance, their existing estate pest control maintenance contractor, had included in their quotation, a yearly inspection of the entire common area and installation of 30 termite monitoring stations around the landscape area to monitor termite invasion, while the other quotes did not. Hawaii Tower decided on 17 April 2006 to award the project to Alliance at S\$44,780 for corrective treatment of common areas and for inspection of individual units at \$18 per unit as they provided the lowest quotes²³⁰. Alliance carried out and completed the treatment by 4 July 2006²³¹.

207. During our investigations²³², we uncovered the following email:

“From: Philip [philip@alliancepest.com.sg]
 Sent: Thursday, February 02, 2006 5.38 PM
 To: Peter (PestBuster)
 Subject: Support Quote

²²⁶ See Information and Documents provided by Hawaii Tower in their letter to the Commission dated 30 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²²⁷ Quote was provided by Philip Tan during the Commission’s entry into Alliance’s premises on 23 November 2006 pursuant to Section 64 of the Act. Quote was also provided by Hawaii Tower in their letter to the Commission dated 30 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²²⁸ Quote was provided by Patrick Chong to the Commission on 30 March 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 22 March 2007.

²²⁹ Quote was provided by Peter Fernandis during the Commission’s entry into PestBusters’ premises on 23 November 2006 pursuant to Section 64 of the Act and marked PF10A.

²³⁰ See Minutes of the 3rd Management Council Meeting held on 17 April 2006 and information provided by Hawaii Tower in their letter to the Commission dated 30 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²³¹ See Alliance’s invoices dated 26 May 2007 and 4 July 2007 provided by Hawaii Tower in their letter to the Commission dated 30 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²³² Provided by Peter Fernandis during the Commission’s entry into PestBusters’ premises on 23 November 2006 pursuant to Section 64 of the Act.

Hi Peter,

Gong Xi Fa Cai, Can you support the Agenda quote for Hawaii Tower, our existing Client. Details are below :-

Hawaii Tower – MCST No : 920
77 Meyer Road
#01-01 Management Office
Singapore 437903
Mr Loh

Please exclude Timbograph²³³ for the inspection and please quote above \$55k for the corrective treatment. Consist of 3 Blocks, a Club House, Guard House and BBQ Hut.

For individual units inspection and treatment, please quote above \$50 per unit. They have 135 units.

Once ready Can you give me a call, I will collect it from you.

Thanks a million

Philip Tan”

208. Interview of Alliance personnel²³⁴ - Philip Tan said that Alliance had been the general pest contractor for Hawaii Tower since 1987²³⁵. The development had had termite infestation problems for some time, for which Alliance had submitted proposals for Agenda Treatment. When a new Management Council was appointed, Alliance submitted another proposal for Agenda Treatment and provided a list of the other AAAs whom the Management Council could approach for a quotation for Agenda Treatment²³⁶.
209. Philip Tan said that after he provided the list, he contacted all the AAAs, namely, Peter Fernandis (PestBusters), Joseph Ong (Rentokil), Patrick Chong (Aardwolf), Harry Singh (Killem) and Francis Loh (Elite), either by

²³³ Timbograph is the detection of termites through a hand held device using graphs.

²³⁴ See Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²³⁵ See Answer to Question 73 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²³⁶ See Answer to Question 74 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

- email²³⁷, phone call or text messages (“SMS”)²³⁸, to request support quotes for the Agenda Treatment project at Hawaii Tower²³⁹.
210. Philip Tan said that he spoke with Peter Fernandis, who told him that he was busy and to email him the details on the support quote²⁴⁰. He followed up with the email referred to in paragraph 207 to Peter Fernandis²⁴¹. As Peter Fernandis was busy, Phillip Tan offered to, and did, collect PestBusters’ quote in a sealed envelope for submission to Hawaii Tower²⁴².
211. Philip Tan also said that Alliance’s quote at S\$44,780 for corrective treatment of the common area was based on S\$70 per linear meter with additional costs for 30 termite monitoring stations²⁴³. The price of \$18 for inspection and treatment per unit was a special price as Hawaii Tower has been their client for the longest time²⁴⁴. The market rate was S\$50 per unit for inspection and treatment.
212. When asked how he had arrived at the figure of S\$55,000 for corrective treatment of the common area given to Peter Fernandis to quote to Hawaii Tower in the email referred to in paragraph 207, Philip Tan stated²⁴⁵:
- A: I just plucked out the figure from nowhere; it could be any figure as long as it was higher than the figure I intended to quote for Hawaii Tower.
213. As for the other AAAs, namely, Joseph Ong, Patrick Chong, Harry Singh and Francis Loh, Philip Tan said that he told them to quote higher than Alliance’s quote of S\$44,780 for the corrective treatment of the common area and S\$18 for inspection and treatment of each unit²⁴⁶ and all of them

²³⁷ Philip Tan contacted Peter Fernandis for support quote through email (see email referred to in paragraph 207). See Answer to Question 75 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²³⁸ Philip Tan contacted Joseph Ong, Patrick Chong, Harry Singh and Francis Loh either through phone call or SMS. See Answer to Question 85, 89, 93 and 97 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²³⁹ See Answer to Question 75, 76 & 77, 85 & 86, 89 & 90, 93 & 94 and 97& 98 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴⁰ See Answer to Question 79 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴¹ See Answer to Question 76 and 79 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴² See Answer to Question 79 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴³ See Answer to Question 83 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴⁴ See Answer to Question 83 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴⁵ See Question 80 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁴⁶ See Answer to Question 84, 86, 90, 94 and 98 of Philip Tan’s Notes of Information/Explanation Provided on 9 March 2007.

- agreed to support him²⁴⁷. Philip Tan said that if all the AAAs had decided not to render support, he might have just quoted S\$35,000 for corrective treatment at S\$70 per linear metre without including the cost of the monitoring system to make the quote more competitive. He would then have explained the monitoring system during the presentation and informed the Management Council of the additional costs involved²⁴⁸.
214. Interview of PestBusters personnel²⁴⁹ - Peter Fernandis said that he received the email (referred to in paragraph 207) requesting a support quote from Philip Tan for the Agenda Treatment project at Hawaii Tower²⁵⁰. Although he did not respond to the email, he said that he should have called Philip Tan to tell him that he would support Philip Tan's quote²⁵¹.
215. When asked how he arrived at PestBusters' quote of S\$62,000 for corrective treatment of the common area and S\$65 for inspection and treatment of each unit, Peter Fernandis stated²⁵²:
- A: This was arbitrarily decided. I just quoted higher to support him. It could be any other figure that is higher. I do not have the measurements but I can guess from his email.
216. Peter Fernandis also said that he would have quoted differently had he not received a request for support quote from Philip Tan. He would have gone down to Hawaii Towers to take measurements and would probably have quoted at S\$75 - S\$80 per linear meter²⁵³.
217. Interview of Aardwolf personnel²⁵⁴ - Patrick Chong said that he received a request (through a SMS or phone call) from either Philip Tan or Andrew Chan from Alliance for a support quote for the Agenda Treatment project at Hawaii Tower²⁵⁵. The request was channelled to Jenny Law²⁵⁶.

²⁴⁷ See Answer to Question 87, 91, 95 and 99 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

²⁴⁸ See Answer to Question 101 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

²⁴⁹ See Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

²⁵⁰ See Answer to Question 55 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

²⁵¹ See Answer to Question 58 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

²⁵² See Question 62 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

²⁵³ See Answer to Question 64 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

²⁵⁴ See Patrick Chong's Notes of Information/Explanation Provided on 30 March 2007 and 2 April 2007 and Jenny Law's Notes of Information/Explanation Provided on 3 April 2007.

²⁵⁵ See Answer to Question 167 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

218. On what had transpired with Alliance, Patrick Chong said²⁵⁷:
- A: He told me how much he was going to quote for the project and how we should quote for the project to support him. I agreed to support quote and I channeled the request down to sales and told them to quote according to what Alliance tell us to do. In this case, I cannot remember exactly what he said he was quoting or how much we should quote. But I am pretty sure that the quote that we gave to Hawaii Tower will be higher than what he is quoting and above his request.
219. Patrick Chong said that he was sure that Aardwolf's quote at S\$56,100 for Agenda Treatment of the common area and S\$50 for inspection and treatment of each unit at Hawaii Tower was above what Alliance had instructed him to quote as Aardwolf would have supported Alliance²⁵⁸.
220. He said that Aardwolf supported Alliance as Alliance had given Aardwolf a lot of TermiCam jobs over the years and the sales staff benefited from the commission for such jobs. If Alliance got the project and TermiCam was used, then Alliance might give them the TermiCam job and benefit the sales staff²⁵⁹. In addition, Patrick Chong stated that the chance of Aardwolf getting the termite treatment jobs at condominiums was slim as Aardwolf was considered expensive²⁶⁰.
221. When asked if Jenny Law would have considered Alliance's request for support quote in coming to Aardwolf's proposal, Patrick Chong stated²⁶¹:
- A: Yes, she would have taken that in consideration. In the normal circumstances, she would have gone down to the site for an inspection and then quote based on a marked-up price. As to what is the amount of mark-up, that will really depend on each sales person. In fact, you can tell from the quotations submitted by us for Hawaii Towers and Riverplace that they are very simple and straight forward, unlike those where we really want to get the project where there will lots of literature on the benefits of using us, etc.

²⁵⁶ See Answer to Question 173 and 174 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

²⁵⁷ See Question 168 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

²⁵⁸ See Answer to Question 172 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

²⁵⁹ See Answer to Question 174 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

²⁶⁰ See Answer to Question 174 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

²⁶¹ See Questions 175 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

222. Patrick Chong said that Aardwolf's proposal would have been different and the price probably lower if he had not agreed to provide support to Alliance²⁶².
223. In her interview, Jenny Law said that Philip Tan had told her how much Alliance was quoting and she then quoted a higher price based on her costing to support Alliance. Alliance was Aardwolf's client, for whom the latter had carried out TermiCam jobs. If Alliance were to get the project, Aardwolf might be given the TermiCam job²⁶³. She also said that Patrick Chong had instructed, and the sales team also understood, that they were to support Alliance, who was both a friendly competitor and a client²⁶⁴.
224. When asked why Aardwolf would support Alliance in getting the project, she stated²⁶⁵:
- A: We get the sales commission for the supply of TermiCam service. Small component is better than zero component. Some clients require 3 quotes; that is their policy. For Hawaii Towers, Alliance is the existing pest contractor and they have certain advantages. We will be unlikely to get the treatment project and that is why it is better to get a small component, meaning the TermiCam service, than nothing. That is why I send a simple proposal; I did not put much effort in this proposal. But if the client invites me to do a presentation, then I will go and do so and if we get the project at a higher price, then so be it and then it's a bonus! We have always gotten projects at higher prices.
225. Jenny Law said however that there would be no difference in Aardwolf's prices even if they were not supporting Alliance as Aardwolf's prices would have been higher than Alliance's in any case. This was because they included TermiCam and baiting stations as a total termite solution²⁶⁶.
226. When asked if Alliance had used TermiCam for Hawaii Towers, she stated²⁶⁷:
- A: No, sad to say. I cannot control whether Alliance give us the TermiCam service. I am grateful when they do. There is no written agreement that

²⁶² See Answer to Question 176 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

²⁶³ See Answers to Questions 132 and 134 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

²⁶⁴ See Answers to Questions 135 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

²⁶⁵ See Question 136 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

²⁶⁶ See Answer to Question 139 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

²⁶⁷ See Question 143 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

Alliance will give us the TermiCam job but just an understanding that they would. Riverplace is one of those that which they give us their TermiCam after we have provided a quote based on the relevant costing.

227. Interview of Rentokil personnel²⁶⁸ - Joseph Ong said that the Agenda Treatment project at Hawaii Tower sounded familiar but he could not remember or recall what actually happened²⁶⁹.
228. When informed that Philip Tan had admitted calling him to tell him that Alliance was the existing pest control operator at Hawaii Tower and had asked for a support quote for Agenda Treatment at Hawaii Tower, Joseph Ong said²⁷⁰:
- A: I should think that if Philip says so, then it is correct. Where is this project by the way?
- Q123. Hawaii Tower is at Meyer Road.
- A: Ok, it sounds familiar. I think it is correct.
229. Joseph Ong said that if Philip Tan had called him with a request for a support quote, Philip Tan would have given him the amount to quote²⁷¹. He said that he would have agreed to support Philip Tan²⁷² and would, if invited by Hawaii Tower, have quoted as requested by Philip Tan to support Alliance²⁷³. But for Philip Tan's request for a support quote, Rentokil would have quoted differently at \$70 per linear meter if they had been invited to quote by Hawaii Tower²⁷⁴.
230. Interview of Elite personnel²⁷⁵ – Francis Loh said that the name “Hawaii Tower” was familiar but he could not recall the details of the Agenda Treatment project at Hawaii Tower²⁷⁶.

²⁶⁸ See Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁶⁹ See Answer to Question 121 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁷⁰ See Question 122 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁷¹ See Answer to Question 125 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁷² See Answer to Question 126 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁷³ See Answer to Question 130 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁷⁴ See Answer to Question 131 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007.

²⁷⁵ See Francis Loh's Notes of Information/ Explanation Provided on 1 June 2007.

²⁷⁶ See Answer to Question 14 of Francis Loh's Notes of Information/ Explanation Provided on 1 June 2007.

231. When informed that Philip Tan had admitted calling him to say that Alliance was the existing pest control operator at Hawaii Tower and to ask for a support quote for Agenda Treatment at Hawaii Tower, Francis Loh said²⁷⁷:

A: I cannot remember but if Philip said that he did call me, then it is highly likely that he called me. If he had called me, then that will definitely be what he would have told me.

232. He also said that he would have agreed to support Philip²⁷⁸.

233. Interview of Killeem personnel²⁷⁹ – Harry Singh said that he was not aware of the Agenda Treatment project at Hawaii Tower, he was not invited to quote and did not receive any request for support from Alliance for the project²⁸⁰. He said that he did not talk much to Alliance or for that matter, any of the AAAs except for Francis Loh²⁸¹.

The Commission's analysis of the evidence

Alliance and PestBusters

234. Philip Tan admitted that he had asked for a cover bid from Peter Fernandis for the termite treatment project at Hawaii Tower by a phone call or SMS. Peter Fernandis was busy and asked for an email on the details. Philip Tan then emailed Peter Fernandis (see paragraph 207), to quote above S\$55,000 for corrective treatment of the common area and S\$50 for inspection and treatment of each individual unit. Philip Tan had also offered in the email to collect and did in fact collect PestBusters' quote to submit to Hawaii Tower. He believed that Peter Fernandis would have put in a cover bid.

235. Peter Fernandis admitted receiving Philip Tan's email and said that he would have responded positively to Philip Tan by agreeing to provide a cover bid, via a phone call. PestBusters then submitted a quote at S\$62,000 for corrective treatment of the common area and S\$65 for inspection and treatment of each individual unit. The Commission considers that PestBusters' quote of \$62,000 for corrective treatment of the common area and \$65 for inspection and treatment of each unit, which was higher than

²⁷⁷ See Question 15 of Francis Loh's Notes of Information/ Explanation Provided on 1 June 2007.

²⁷⁸ See Answer to Question 16 of Francis Loh's Notes of Information/ Explanation Provided on 1 June 2007.

²⁷⁹ See Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

²⁸⁰ See Answer to Question 10 and 11 of Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

²⁸¹ See Answer to Question 12 of Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

Philip Tan's figures of \$55,000 and \$50 per unit as stated in the latter's email and Alliance's quote of S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment for each unit, is also consistent with an agreement between Alliance and PestBusters for the latter to provide a cover bid and collude in fixing prices.

236. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The email of 2 February 2006 in paragraph 207 between Alliance and PestBusters, who were competitors, shows that the conduct of Alliance and PestBusters was not unilateral and that the quotes submitted were subject to collusion. The conduct of Alliance and PestBusters infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Philip Tan's conduct in seeking a cover bid and Peter Fernandis in agreeing to provide a cover bid that Alliance and PestBusters did not determine or intend to determine their quote prices independently. The conduct of Alliance and PestBusters had as its intention or consequence the disclosure by Alliance to PestBusters of a course of action that it was to adopt or was contemplating adopting in the tendering process, i.e. that it was intending to submit a quote of less than S\$55,000 for corrective treatment of the common area and S\$50 for inspection and treatment of each individual unit. Such disclosure by Alliance influenced the conduct of PestBusters on the market in that PestBusters took into account the information it received from Alliance when submitting its quote by considering the figure provided in Philip Tan's 2 February 2006 email. The result was that Alliance and PestBusters substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which they each faced as to the conduct of the other in the tender process. The conduct of Alliance providing, and PestBusters receiving and considering, a price for the purpose of submission to Hawaii Tower, had as its object the prevention, restriction or distortion of competition.

Alliance and Aardwolf

237. Philip Tan admitted that he had requested a cover bid from Patrick Chong for the Agenda Treatment project at Hawaii Tower by a phone call or SMS and informed him of Alliance's intended quote at S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment of each unit. He said that Patrick Chong had agreed to provide a cover bid.
238. Philip Tan's statement was corroborated by Patrick Chong who admitted receiving a request from Alliance for a cover bid for the Agenda Treatment

project at Hawaii Tower. According to Patrick Chong, Philip Tan had given him information on how much he was quoting and how Aardwolf could support him. Patrick Chong admitted that he agreed to and Aardwolf did provide a cover bid at S\$56,100 for corrective treatment of the common area and S\$50 for inspection and treatment of each unit. The Commission considers that Aardwolf's quote of \$56,100 for corrective treatment of the common areas and \$50 for inspection and treatment of each unit, which is higher than Alliance's quote of S\$44,780 and S\$18 respectively, is consistent with an agreement between Alliance and Aardwolf to fix prices and for the latter to provide a cover bid.

239. The Commission notes that Patrick Chong had alluded to a prior sub-contracting relationship between Alliance and Aardwolf, where Alliance had appointed Aardwolf to carry out a number of TermiCam jobs over the years. Patrick Chong said that he had agreed to provide a cover bid for Alliance, their client, partly because Aardwolf hoped that if Alliance were to get the project and use TermiCam, Alliance might give Aardwolf the TermiCam job.
240. The investigations show that the Parties did not appear to contemplate or discuss the provision of TermiCam service prior to the award of the Agenda Treatment project at Hawaii Tower to Alliance. In fact, no TermiCam was used for the project at Hawaii Tower. The communications between Alliance and Aardwolf were not therefore for the purpose of discussing a possible TermiCam subcontract. The Commission considers that even if Alliance and Aardwolf were communicating on a possible TermiCam subcontract, the communications would centre around the issues or details of such a subcontract and not the price of the Agenda Treatment project for Hawaii Tower.
241. There was no reason for Alliance to provide Aardwolf with their intended quote unless Alliance wanted Aardwolf to put in a higher quote. If Aardwolf were to submit a quote higher than Alliance's in the hope of getting a TermiCam sub-contract from Alliance, this would still amount to the provision of a cover bid.
242. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The phone call or SMS between Alliance and Aardwolf, who were competitors, shows that the conduct of Alliance and Aardwolf was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Aardwolf infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Philip Tan's conduct in seeking a cover

bid and Patrick Chong's conduct in agreeing to provide a cover bid that Alliance and Aardwolf did not determine or intend to determine their quote prices independently. The conduct of Alliance and Aardwolf had as its intention or consequence the disclosure by Alliance to Aardwolf of a course of action that it was to adopt or was contemplating adopting in the tendering process, i.e. that it was intending to submit a quote of S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment of each individual unit. Such disclosure by Alliance influenced the conduct of Aardwolf on the market in that Aardwolf took into account the information it received from Alliance in submitting its proposal to Hawaii Tower. The result was that Alliance and Aardwolf substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which they each face as to the conduct of the other in the tender process. The conduct of Alliance providing, and Aardwolf in receiving and using, a price for the purpose of submission to Hawaii Tower, had as its object the prevention, restriction or distortion of competition.

Alliance and Rentokil

243. Philip Tan admitted that he had requested a cover bid from Joseph Ong for the Agenda Treatment project at Hawaii Tower by a phone call or SMS and informed him of Alliance's intended quote at S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment of each unit. He said that Joseph Ong had agreed to provide a cover bid.
244. Philip Tan's statement was corroborated by Joseph Ong who, on being informed that Philip Tan had said that he, Joseph Ong, had agreed to render support when Philip Tan had called him to request a support quote for the Hawaii Tower project and informed him of the amount that Alliance would quote, was prepared to accept Philip Tan's word and confirm the latter's account of the events.
245. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call between Alliance and Rentokil, who were competitors, shows that the conduct of Alliance and Rentokil was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Rentokil infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Philip Tan's conduct in seeking a cover bid and Joseph Ong's conduct in agreeing to provide a cover bid that Alliance and Rentokil did not determine or intend to determine their quote prices

independently. The conduct of Alliance and Rentokil had as its intention or consequence the disclosure by Alliance to Rentokil of a course of conduct that it was to adopt or was contemplating adopting in the tendering process, i.e., that it was intending to submit a quote of S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment of each unit. Such disclosure by Alliance would have influenced the conduct of Rentokil on the market in that Rentokil would have taken into account the information it received from Alliance if it was invited to tender. The result was that Alliance and Rentokil intended to substitute practical cooperation for the risks of competition. Their cooperation would substantially eliminate the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Alliance in providing, and Rentokil in receiving and considering, a price for the purpose of submission to Hawaii Tower, had as its object the prevention, restriction or distortion of competition.

246. Although Rentokil was not invited to quote for the Agenda Treatment project at Hawaii Tower, the Commission considers that the agreement or concerted practice between Alliance and Rentokil would still be caught under the section 34 prohibition. As set out earlier in *Tréfilunion v Commission* and *P. Hüls AG v. Commission*, there can be an agreement or concerted practice in the absence of an actual effect on the market. As the object of the agreement or concerted practice between Alliance and Rentokil was clearly anti-competitive, it is not necessary to demonstrate that the agreement and/or concerted practice had manifested itself in conduct on the market or that it had had effects restrictive of competition. As the CAT held in *Apex*, a concerted practice is made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender.

Alliance and Elite

247. Philip Tan admitted that he had requested a cover bid from Francis Loh for the Agenda Treatment project at Hawaii Tower by a phone call or SMS and informed him of Alliance's intended quote at S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment of each unit. He said that Francis Loh had agreed to provide a cover bid.
248. On being informed that Philip Tan had said that he, Francis Loh, had agreed to render support when Philip Tan had called him to request a support quote for the Hawaii Tower project and informed him of the amount that Alliance would quote, Francis Loh was prepared to accept Philip Tan's word and confirm the latter's account of the events.

249. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call between Alliance and Elite, who were competitors, shows that the conduct of Alliance and Elite was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Elite infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Philip Tan's conduct in seeking a cover bid and Francis Loh's conduct in agreeing to provide a cover bid that Alliance and Elite did not determine or intend to determine their quote prices independently. The conduct of Alliance and Elite had as its intention or consequence the disclosure by Alliance to Elite of a course of conduct that it was to adopt or was contemplating adopting in the tendering process, i.e. that it was intending to submit a quote of S\$44,780 for corrective treatment of the common area and S\$18 for inspection and treatment of each unit. Such disclosure by Alliance would have influenced the conduct of Elite on the market in that Elite would have taken into account the information it received from Alliance if it was invited to tender. The result was that Alliance and Elite intended to substitute practical cooperation for the risks of competition. Their cooperation will substantially eliminate the uncertainty which they each face as to the conduct of the other in the tender process. The conduct of Alliance in providing, and Elite in receiving and considering, a price for the purpose of submission to Hawaii Tower, had as its object the prevention, restriction or distortion of competition.
250. Although Elite was not invited to quote for the Agenda Treatment project at Hawaii Tower, the Commission considers that the agreement or concerted practice between Alliance and Elite would still be caught under the section 34 prohibition. As set out earlier in *Tréfilunion v Commission* and *P. Hüls AG v. Commission*, there can be an agreement or concerted practice in the absence of an actual effect on the market. As the object of the agreement or concerted practice between Alliance and Elite was clearly anti-competitive, it is not necessary to demonstrate that the agreement and/or concerted practice had manifested itself in conduct on the market or that it had had effects restrictive of competition. As the CAT held in *Apex*, a concerted practice is made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender.

Alliance and Killem

251. Philip Tan admitted that he had requested a cover bid from Harry Singh for the Agenda Treatment project at Hawaii Tower by a phone call or SMS and informed him of Alliance's intended quote at S\$44,780 for corrective

treatment of the common area and S\$18 for inspection and treatment of each unit. He said that Harry Singh had agreed to provide a cover bid.

252. Harry Singh denied receiving any request for a cover bid from Philip Tan. The evidence of any contact between Philip Tan and Harry Singh given by Philip Tan was not supported by Harry Singh or any other documents and evidence. Further, the Commission gathers from the interviews with Peter Fernandis²⁸², Francis Loh²⁸³, Joseph Ong²⁸⁴ and Patrick Chong²⁸⁵ that Harry Singh did not appear to be close to the rest of the AAAs and did not appear to be as involved in the support quote arrangement. This is consistent with Harry Singh's statement that he does not talk much to Alliance or for that matter, any of the AAAs, except for Francis Loh. The Commission therefore considers that there is insufficient evidence to show that Killlem was party to an agreement and/or concerted practice with Alliance to provide a cover bid and fix prices for termite treatment at Hawaii Tower.

The Commission's conclusions on the infringement

253. The Commission concludes that the totality of the evidence, as set out and analysed at paragraphs 204 to 252 above, establishes that an agreement and/or concerted practice was in place between –
- a) Alliance and PestBusters;
 - b) Alliance and Aardwolf;
 - c) Alliance and Rentokil; and
 - d) Alliance and Elite,
- which had the object of fixing the prices in relation to the quotes submitted for termite treatment at Hawaii Tower, in breach of the section 34 prohibition.

²⁸² See Answer to Question 24 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

²⁸³ See Answer to Question 164 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

²⁸⁴ See Answers to Questions 136 to 137 of Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 28 April 2007.

²⁸⁵ See Answers to Questions 120 of Patrick Chong's Notes of Information/Explanation Provided on 30 March 2007.

iv) River Place Condominium

The facts and the evidence

254. On or about 16 May 2006, River Place Condominium (Management Corporation Strata Title Plan No 2543) at 60 Havelock Road, Singapore 169658 (“River Place”), invited Alliance, Aardwolf and Rentokil to submit quotes for termite treatment. In an email dated 19 May 2006 obtained from River Place, the then condominium manager, one Mr Andrew Pek, had said that he had also invited quotes from PestBusters, Elite and Killem²⁸⁶.
255. By 19 May 2006, River Place had received the following three quotes²⁸⁷:

Name of pest control operator submitting quote	Quote price	Date on Quote
Alliance	S\$120,000	17 May 2006
Rentokil	S\$168,000	19 May 2006
Aardwolf	S\$172,000	19 May 2006

256. It would seem from another email dated 20 May 2006 obtained from River Place, that Dr Gong Ing San, Chairman of the Management Council and some other members of the Management Council had met with representatives of Alliance on the night of 19 May 2006. After negotiation, Alliance agreed to reduce their proposal price and the project was awarded to Alliance at S\$102,000²⁸⁸. Alliance completed the Agenda Treatment by end June 2006²⁸⁹.
257. The Commission received²⁹⁰ from Killem a copy of its quotation dated 19 May 2006 at S\$153,000 which Killem said it had sent to River Place by fax on 19 May 2006. River Place, however, did not appear to have received it.
258. During our investigations²⁹¹, we uncovered the following email:

²⁸⁶ See email from Andrew Pek to Dr Gong Ing San sent on 19 May 2006, 2.31pm provided by River Place in their letter to the Commission dated 20 December 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²⁸⁷ Quotes provided by River Place in their letter to the Commission dated 20 December 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²⁸⁸ See email from Kit Blewitt to Andrew Pek, Anthony Lim and cc to Dr Gong Ing San, Raymond Ang, Jeofery Yeo; James Tan, Eric Wee and Bernard Yang sent on 20 May 2006, 9.55 am provided by River Place in their letter to the Commission dated 20 December 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006. See also revised quote dated 20 May 2006 from Alliance provided by River Place under the same letter.

²⁸⁹ Information provided by River Place in their letter to the Commission dated 20 December 2006 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006.

²⁹⁰ Pursuant to the section 63 Notice issued by the Commission dated 24 May 2007.

“From: Peter Fernandis
To: ‘Philip Tan (Alliance) (E-mail)’
Sent: Saturday, May 20, 2006 11:05 AM
Subject: Re: Alexandra Hospital – Anti Termite Tender

Andrew called me with regards to Riverplace Condo but I have not heard from them as yet but will render support sir.

Cheers

PETER FERNANDIS
PestBusters Pte Ltd
140 Paya Lebar Road
#08-06 A – Z Building
Singapore 409015
Tel: (65) 62882828
Fax: (65) 67487388
Mob: (65) 98563283
E-Mail: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg”

259. Interview of Alliance personnel²⁹² – Andrew Chan said that Alliance had been the general pest control contractor for River Place since February 2006. There was a termite infestation problem at River Place and Alliance had recommended corrective treatment using Agenda²⁹³. Andrew Chan informed River Place that there were only 6 authorised Agenda applicators and asked River Place to refer to the Agenda website for their contact details²⁹⁴.
260. Andrew Chan said that he had contacted all the AAAs through SMS to inform them that River Place was Alliance’s existing customer and to request support quotes²⁹⁵. All of them agreed²⁹⁶ and he told them of

²⁹¹ Provided by Peter Fernandis during the Commission’s entry into PestBusters’ premises on 23 November 2006 pursuant to Section 64 of the Act.

²⁹² See Andrew Chan’s Notes of Information/ Explanation Provided on 9 March 2007.

²⁹³ See Answer to Question 147 to 154 of Andrew Chan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁹⁴ See Answer to Question 158 of Andrew Chan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁹⁵ See Answer to Question 156 and 157 of Andrew Chan’s Notes of Information/Explanation Provided on 9 March 2007.

²⁹⁶ See Answer to Question 161 to 162 of Andrew Chan’s Notes of Information/ Explanation Provided on 9 March 2007.

- Alliance's intended quote at about S\$120,000²⁹⁷. Andrew Chan recalled that someone from one of the AAAs had asked the price at which to submit the cover bid and he had told that person to quote at S\$145,000. Andrew Chan could not remember who that person was²⁹⁸.
261. When asked whether "Andrew" in the body of the email referred to in paragraph 258, was a reference to him, he said²⁹⁹:
- A: I think it is referring to me, I cannot remember if I sent out an email, but I might have made a call to Peter.
262. Andrew Chan said he had called Peter Fernandis to inform him that River Place might approach PestBusters for a quotation³⁰⁰. Peter Fernandis agreed to support Alliance³⁰¹.
263. Philip Tan confirmed receiving the email referred to in paragraph 258. His understanding of the email was that Peter Fernandis had received a call from Andrew Chan on a request for a support quote for River Place. Peter Fernandis would render support but had yet to hear from River Place³⁰².
264. Interview of Aardwolf personnel³⁰³ - Patrick Chong said that he received a request (through an SMS or phone call) from either Philip Tan or Andrew Chan of Alliance for a support quote for the Agenda Treatment project at River Place³⁰⁴.
265. When asked if Alliance had informed him of anything else, Patrick Chong said³⁰⁵:
- A: He told me how much he was going to quote for the project and how we should quote for the project to support him. I agreed to support quote and I channeled request down to sales and told them to quote according to what

²⁹⁷ See Answer to Question 163 and 166 of Andrew Chan's Notes of Information/Explanation Provided on 9 March 2007.

²⁹⁸ See Answer to Question 168 of Andrew Chan's Notes of Information/Explanation Provided on 9 March 2007.

²⁹⁹ See Question 159 of Andrew Chan's Notes of Information/Explanation Provided on 9 March 2007.

³⁰⁰ See Answer to Question 158 of Andrew Chan's Notes of Information/Explanation Provided on 9 March 2007.

³⁰¹ See Answer to Question 160 of Andrew Chan's Notes of Information/Explanation Provided on 9 March 2007.

³⁰² See Answer to Question 110 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

³⁰³ See Patrick Chong's Notes of Information/ Explanation Provided on 30 March 2007 and 2 April 2007 and Jenny Law's as well as Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³⁰⁴ See Answer to Question 180 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

³⁰⁵ See Question 181 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

Alliance tell us to do. In this case, I cannot remember exactly what he said he was quoting or how much we should quote. But I am pretty sure that the quote that we gave to Riverplace will be higher than what he is quoting and above his request.

The request was channeled to Jenny Law and Ryan Peh³⁰⁶.

266. Patrick Chong said that he was sure that Aardwolf's quote at S\$172,000 for Agenda Treatment at River Place was above what Alliance had instructed him to quote as Aardwolf would have supported Alliance³⁰⁷.
267. He also said that Aardwolf supported Alliance as Alliance had given Aardwolf a lot of TermiCam jobs over the years and the sales staff benefited from the commission for such jobs. If Alliance were to get the project and TermiCam was used, then Alliance might give Aardwolf the TermiCam job and the sales staff would benefit. Patrick Chong also said that Aardwolf's chances of getting termite treatment jobs at condominiums were slim as Aardwolf was considered expensive³⁰⁸. Patrick Chong said that the sales staff would have taken Alliance's request for a support quote into consideration when working out Aardwolf's proposal, but the mark-up would depend on each sales person. The support proposal would be simple and straightforward, unlike those submitted in circumstances where there was no request for support quotes, which would contain literature on the benefits of using Aardwolf³⁰⁹. Patrick Chong said that Aardwolf's proposal would have been different and the price probably lower if he had not agreed to provide support to Alliance³¹⁰.
268. In her interview, Jenny Law said that Philip Tan had told her how much Alliance was quoting and she then quoted a higher price to support Alliance. Alliance was Aardwolf's client, for whom the latter had carried out TermiCam jobs. If Alliance were to get the project, Aardwolf might be given the TermiCam job³¹¹.

³⁰⁶ See Answer to Question 186 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007 and Answer to Question 145 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007..

³⁰⁷ See Answer to Question 185 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

³⁰⁸ See Answer to Question 187 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

³⁰⁹ See Answer to Question 188 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

³¹⁰ See Answer to Question 189 of Patrick Chong's Notes of Information/Explanation Provided on 2 April 2007.

³¹¹ See Answer to Question 145 and 146 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

269. Jenny Law said that Ryan Peh went down to survey River Place and she prepared the proposal, which she asked him to sign as River Place was in the area under his purview. She prepared the proposal because she had a standard simple format for such proposals. They did not spend too much effort on such proposals or put in much effort as they were supporting Alliance.
270. Jenny Law said that there would be no difference in Aardwolf's prices even if they were not supporting Alliance³¹² as Aardwolf's prices would have been higher than Alliance in any case as they included TermiCam and baiting stations for a total termite solution³¹³.
271. In his interview, Ryan Peh said that, prior to surveying River Place, Patrick Chong and Jenny Law told him that Aardwolf would not be competing against Alliance for the project³¹⁴. If Aardwolf was trying to win a project, Ryan Peh would usually try to look out for areas of termite infestation and take measurements. He did not do any of these things during his site visit to River Place and he merely collected the floor plans³¹⁵. He also said that Jenny Law offered to use her standard format to help him prepare the proposal³¹⁶ as Aardwolf was not going to get the project and there was no need to waste time preparing the proposal³¹⁷. Ryan found the standard template quite simple when compared with quotes for projects they were trying to win where he would include photographs of termite infestation and survey findings and some write-up on TermiCam³¹⁸. Jenny Law had come up with the price for Aardwolf's proposal when she prepared the proposal.³¹⁹ Ryan Peh said he did not know how Jenny Law came up with the price³²⁰. He had signed off on the proposal because he had done the survey and River Place was in his area³²¹.
272. Ryan Peh also said that when he went down to survey River Place, he was unaware that Aardwolf would be engaged to provide TermiCam services

³¹² See Answer to Question 149 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

³¹³ See Answer to Question 148 of Law Kum Peng's Notes of Information/Explanation Provided on 3 April 2007.

³¹⁴ See Answer to Question 93 to 95, 115 to 116, 124 to 125 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³¹⁵ See Answer to Question 100 to 102 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³¹⁶ See Answer to Question 88 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³¹⁷ See Answer to Question 90 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³¹⁸ See Answer to Question 131 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³¹⁹ See Answer to Question 122 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³²⁰ See Answer to Question 123 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³²¹ See Answer to Question 128 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

- for Alliance for the project³²². He only knew about this after Aardwolf had submitted its proposal and after River Place had awarded the project to Alliance³²³. Aardwolf was then approached by Alliance to provide TermiCam services at a price of S\$5,600³²⁴.
273. Interview of Rentokil personnel³²⁵ - Joseph Ong confirmed that he received a call or SMS from either Andrew Chan or Philip Tan of Alliance on a request for a support quote for the Agenda Treatment project at River Place. Andrew Chan had also told him how to support Alliance's quote³²⁶. Joseph Ong agreed to provide support³²⁷. Joseph Ong said that he must have told his subordinate, Jacqueline Ng, that this was a support quote and given her the figure to use in preparing the proposal to provide support³²⁸.
274. When asked if he was aware how Jacqueline Ng arrived at the figure of S\$168,000 on Rentokil's quote, he said³²⁹:
- A: Most probably, it is the figure I told her to put which I have obtained from Alliance.
275. Joseph Ong also said that Rentokil's quote at S\$168,000 would be consistent with instructions given by Alliance in their request for a support quote³³⁰. Rentokil's quote would have been different and the price would have been based on S\$70 per linear meter had he not agreed to provide support to Alliance³³¹.
276. In her interview, Jacqueline Ng said that although she was aware of the support quote arrangement where Joseph Ong would tell her to quote at a certain price or above a certain price³³², she could not recall being told by

³²² See Answer to Question 98 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³²³ See Answer to Question 99 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³²⁴ See Answer to Question 136 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³²⁵ See Ong Koong Tak, James (Joseph)'s Notes of Information/Explanation Provided on 30 April 2007 and Jacqueline Ng's Notes of Information/ Explanation Provided on 15 May 2007.

³²⁶ See Answer to Question 94 to 96 of Ong Koong Tak, James (Joseph)'s Notes of Information/ Explanation Provided on 30 April 2007.

³²⁷ See Answer to Question 97 of Ong Koong Tak, James (Joseph)'s Notes of Information/ Explanation Provided on 30 April 2007.

³²⁸ See Answer to Question 103 of Ong Koong Tak, James (Joseph)'s Notes of Information/ Explanation Provided on 30 April 2007.

³²⁹ See Question 107 of Ong Koong Tak, James (Joseph)'s Notes of Information/ Explanation Provided on 30 April 2007.

³³⁰ See Answer to Question 110 of Ong Koong Tak, James (Joseph)'s Notes of Information/ Explanation Provided on 30 April 2007.

³³¹ See Answer to Question 113 of Ong Koong Tak, James (Joseph)'s Notes of Information/ Explanation Provided on 30 April 2007.

³³² See Answer to Question 55 to 59 of Jacqueline Ng's Notes of Information/ Explanation Provided on 15 May 2007.

- Joseph Ong that the Agenda Treatment tender for River Place was a support quote³³³. She said that she had prepared the proposal³³⁴ but could not recall being given any instructions by Joseph Ong on how to prepare the proposal for termite treatment at River Place³³⁵.
277. She could not remember the proposal price³³⁶ until she was shown a copy of Rentokil's quote; neither could she remember how she arrived at the proposal price of S\$168,000³³⁷. However, she remembered that she had spoken with Joseph Ong or Dennis Ng that she was preparing Rentokil's quote based on S\$70 per linear meter and he approved it³³⁸.
278. She agreed that if Rentokil's quote at S\$168,000 was based on S\$70 per linear meter price, the measured length for Agenda Treatment at River Place would have to be 2,400 linear meters³³⁹.
279. Interview of Killem personnel³⁴⁰ – William Tan stated that he had received a call from Andrew Chan telling him that River Place was serviced by Alliance and that they were calling for quotes for Agenda Treatment. He was also informed that Killem may be invited to quote³⁴¹. He understood the call as a request by Alliance for a support quote from Killem³⁴².
280. William Tan said he had acceded to Andrew Chan's request to provide a support quote³⁴³ and had either told Andrew Chan to call Jennifer Lee or told Jennifer Lee to call Andrew Chan to get the details on the price for the support quote³⁴⁴. He confirmed that Killem had put in a quotation at

³³³ See Answer to Question 54 and 72 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³³⁴ See Answer to Question 46 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³³⁵ See Answer to Question 53 and 62 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³³⁶ See Answer to Question 48 to 49 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³³⁷ See Answer to Question 50 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³³⁸ See Answer to Question 46 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³³⁹ See Answer to Question 52 of Jacqueline Ng's Notes of Information/Explanation Provided on 15 May 2007.

³⁴⁰ See Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

³⁴¹ See Answer to Question 23 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

³⁴² See Answer to Question 20 and 24 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

³⁴³ See Answer to Question 22 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

³⁴⁴ See Answer to Question 19, 25 and 30 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

- \$153,000³⁴⁵, but did not remember providing Jennifer Lee with the figure of S\$153,000 figure for the quotation³⁴⁶. He was not aware how she had arrived at the figure of S\$153,000 for Killem's quotation³⁴⁷.
281. Jennifer Lee said that she had received a call from Andrew Chan telling her that River Place was maintained by Alliance and that they were calling for quotes for corrective termite treatment³⁴⁸. He also informed her that Killem may be invited to quote. She understood the call as a request by Alliance for Killem to put in a support quote³⁴⁹.
282. Jennifer Lee then received a call on either 17 or 18 May 2006 from one Andrew from the Managing Agent of River Place inviting Killem to submit a quote. Jennifer said that she had called William Tan, the Operations Director, to inform him of both calls that she had received³⁵⁰. William Tan had then called her back to ask her to prepare a quotation for River Place at S\$153,000. She prepared the quotation accordingly and faxed over Killem's quotation to River Place at 11 a.m. on 19 May 2006³⁵¹.
283. Jennifer Lee had found out from Andrew Chan that the River Place project involved 1,380 linear metres. At S\$70 per linear metre, the basic cost worked out to be \$96,600. In order to reach the figure of S\$153,000, she had factored in Termatrac at S\$80 per unit for 509 units, even though this was not required by River Place, and \$15,680 for treatment of trees and planter boxes³⁵². She stated that Killem's quotation to River Place at S\$153,000 was a positive act of providing support to Alliance pursuant to Andrew Chan's request³⁵³.

³⁴⁵ See Answer to Question 26 and 27 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

³⁴⁶ See Answer to Question 35 and 36 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

³⁴⁷ See Answer to Question 28 of William Tan's Notes of Information/Explanation Provided on 26 July 2007.

³⁴⁸ See Answer to Question 14 of Jennifer Lee's Notes of Information/Explanation Provided on 24 July 2007.

³⁴⁹ See Answer to Question 15 and 25 of Jennifer Lee's Notes of Information/Explanation Provided on 24 July 2007.

³⁵⁰ See Answer to Question 14 of Jennifer Lee's Notes of Information/Explanation Provided on 24 July 2007.

³⁵¹ See Answer to Question 17 of Jennifer Lee's Notes of Information/Explanation Provided on 24 July 2007.

³⁵² See Answer to Question 23 of Jennifer Lee's Notes of Information/Explanation Provided on 24 July 2007.

³⁵³ See Answer to Question 26 of Jennifer Lee's Notes of Information/Explanation Provided on 24 July 2007.

284. Interview of PestBusters personnel³⁵⁴ – Peter Fernandis said that he had received a call from Andrew Chan who told him that River Place might call PestBusters to give a quote on corrective termite treatment. Peter Fernandis agreed to quote above the minimum S\$70 per linear metre to render support if PestBusters was invited to quote³⁵⁵. He said that he did not remember Andrew Chan telling him that Alliance was going to quote at about S\$120,000 and that he would have contacted Andrew Chan for the figure to render support if PestBusters was invited to quote by River Place³⁵⁶. Peter Fernandis said that he was referring to Andrew Chan from Alliance in his email referred to in paragraph 258 and that he had yet to hear from River Place. Peter Fernandis could not remember receiving any call from River Place and could not locate any related correspondence³⁵⁷.
285. Interview of Elite personnel³⁵⁸ – Francis Loh said that Andrew Chan had called to tell him that Alliance was the existing pest control contractor for River Place and that River Place might call Elite to quote for Agenda Treatment³⁵⁹. Andrew Chan had asked that Elite provide a support quote if invited to quote³⁶⁰. Francis Loh said that he agreed to provide support if Elite was invited to quote but Elite was not invited³⁶¹.

The Commission's analysis of the evidence

Alliance and Aardwolf

286. Andrew Chan admitted that he had requested cover bids from each of the AAAs for the Agenda Treatment project at River Place. He had provided each of them with information on Alliance's intended quote at S\$120,000 through SMS, so that the AAAs could provide cover bids of a higher value to River Place if invited to quote.

³⁵⁴ See Peter Fernandis' Notes of Information/Explanation Provided on 10 Jan 2007 and 30 May 2007.

³⁵⁵ See Answer to Question 18 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007. See also Answer to Question 89 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

³⁵⁶ See Answer to Question 19 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

³⁵⁷ See Answer to Question 88 of Peter Fernandis' Notes of Information/Explanation Provided on 10 Jan 2007.

³⁵⁸ See Francis Loh's Notes of Information/Explanation Provided on 1 June 2007.

³⁵⁹ See Answer to Question 18 to 19 of Francis Loh's Notes of Information/Explanation Provided on 1 June 2007.

³⁶⁰ See Answer to Question 19 of Francis Loh's Notes of Information/Explanation Provided on 1 June 2007.

³⁶¹ See Answer to Question 20 and 21 of Francis Loh's Notes of Information/Explanation Provided on 1 June 2007 and Answer to Question 125 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

287. Andrew Chan's statement was corroborated by Patrick Chong who admitted that he had received a request from Alliance for a cover bid for the Agenda Treatment project at River Place and that he was also given information on the figure that Alliance was going to quote as well as how to price the cover bid. He admitted that he had agreed to the request and Aardwolf provided a cover bid at S\$172,000. The Commission considers that Aardwolf's quote, which was higher than Alliance's quote of S\$120,000, is consistent with an agreement between Alliance and Aardwolf to provide a cover bid and collude in fixing prices.
288. The Commission notes that Patrick Chong had alluded to a prior sub-contracting relationship between Alliance and Aardwolf, where Alliance had appointed Aardwolf to carry out a number of TermiCam jobs over the years. Patrick Chong said that he had agreed to provide a cover bid for Alliance, their client, partly because Aardwolf hoped that if Alliance were to get the project and use TermiCam, Alliance might give Aardwolf the TermiCam job.
289. The investigations show that the Parties did not appear to contemplate or discuss the provision of TermiCam service prior to the award of the termite treatment project at River Place to Alliance. The Commission considers that this is evident from Ryan Peh's interview when he said that he did not know that Aardwolf was providing TermiCam services for Alliance in River Place until a few weeks after Aardwolf submitted its proposal³⁶². Jenny Law had also said that it was her assumption that if Alliance got the project, Aardwolf would get to provide the TermiCam services³⁶³.
290. The communications between Alliance and Aardwolf were not therefore for the purpose of discussing a possible TermiCam subcontract. The Commission considers that even if Alliance and Aardwolf were communicating on a possible TermiCam subcontract, the communications would centre around the issues or details of such a subcontract and not the price of the Agenda Treatment project for River Place.
291. There was no reason for Alliance to provide Aardwolf with their intended quote unless Alliance wanted Aardwolf to put in a higher quote. If Aardwolf were to submit a quote higher than Alliance's in the hope of getting a TermiCam sub-contract from Alliance, this would still amount to the provision of a cover bid.

³⁶² See Answer to Question 99 of Ryan Peh's Notes of Information/Explanation Provided on 3 April 2007.

³⁶³ See Answer to Question 146 of Law Kum Peng's Notes of Information/ Explanation Provided on 3 April 2007.

292. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The communications between Alliance and Aardwolf, who were competitors, shows that the conduct of Alliance and Aardwolf was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Aardwolf infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Andrew Chan's conduct in seeking a cover bid and Patrick Chong's conduct in agreeing to provide a cover bid that Alliance and Aardwolf did not determine or intend to determine their quote prices independently. The conduct of Alliance and Aardwolf had as its intention or consequence the disclosure by Alliance to Aardwolf of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that it was intending to submit a quote of \$120,000. Such disclosure by Alliance influenced the conduct of Aardwolf on the market in that Aardwolf took into account the information it received from Alliance in submitting its quote by using the information given by Alliance. The result was that Alliance and Aardwolf substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Alliance providing, and Aardwolf in receiving and considering, a price for the purpose of submission to River Place, had as its object the prevention, restriction or distortion of competition.

Alliance and Rentokil

293. Andrew Chan admitted that he had requested cover bids from each of the AAAs for the Agenda Treatment project at River Place. He had provided each of them with information on Alliance's intended quote at S\$120,000 through SMS, so that the AAAs could provide cover bids of a higher value to River Place if invited to quote.
294. Andrew Chan's statement was corroborated by Joseph Ong who admitted that he had received a request from Alliance for a cover bid for the Agenda Treatment project at River Place and that he was given information on how to provide support. He had then given instructions to his subordinate, Jacqueline Ng, to prepare the cover bid. The Commission considers that Rentokil's quote at S\$168,000 for Agenda Treatment, which is higher than Alliance's quote at S\$120,000, is consistent with an agreement between Alliance and Rentokil for the latter to provide a cover bid and collude in fixing prices.

295. The Commission notes that, although Jacqueline Ng had said that she could not remember being instructed by Joseph Ong on the preparation of a cover bid for termite treatment at River Place, she was unable to explain how she arrived at Rentokil's quote at S\$168,000, which is higher than Alliance's quote. Her explanation that the quote was based on S\$70 per linear meter would mean that the area of Agenda Treatment in River Place was 2,400 linear meters. This figure differs significantly from the figure of 1,100 linear metres, a figure which was provided on the project by Alliance to Bentz Jaz in an Agenda Soil Registration Form ("SR Form")³⁶⁴. Such a form stating the length of the area treated by Agenda is filed with Bentz Jaz by an AAA on or about the time of the Agenda treatment to enable that AAA to claim the benefits of a 5-year warranty backed by Bayer and Bentz Jaz against re-infestation. In other words, Bayer or Bentz Jaz would provide free Agenda for re-application in the event of a recurrence of termite infestation after Agenda Treatment. The AAAs were obliged to file a SR Form to allow Bayer or Bentz Jaz to verify any misapplication or fraudulent claims. The SR Form would detail the date of treatment, the address of the place treated, the quantity of Agenda used and the measurement of the place for the purposes of carrying out Agenda Treatment.
296. The Commission considers that there is no reason for Alliance to under-declare the area of Agenda Treatment in the SR Form by 1,300 linear meters, as it would be to Alliance's disadvantage if they were to lay a claim on the warranty for free Agenda for re-application in the event of a recurrence of termite infestation. As such, as between the statement of Joseph Ong and that of Jacqueline Ng, the Commission prefers the version of events given by Joseph Ong, that is, that he had told her that the quote was a support quote and that he had given her the figure of \$168,000 to use in the proposal.
297. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The communication between Alliance and Rentokil, who were competitors, shows that the conduct of Alliance and Rentokil was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Rentokil infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Andrew Chan's conduct in seeking a cover bid and Joseph Ong's conduct in agreeing to provide a cover bid that Alliance and Rentokil did not determine or intend to determine their quote prices

³⁶⁴ SR Form provided by Bentz Jaz in their undated letter to the Commission received on 24 January 2007 pursuant to the Commission's section 63 notice to request for information and documents dated 17 January 2007.

independently. The conduct of Alliance and Rentokil had as its intention or consequence the disclosure by Alliance to Rentokil of a course of conduct that it was to adopt or was contemplating adopting in the tendering process i.e. that it was intending to submit a quote of \$120,000. Such disclosure by Alliance influenced the conduct of Rentokil on the market in that Rentokil took into account the information it received from Alliance in submitting its quote by using the information given by Alliance. The result was that Alliance and Rentokil substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Alliance providing, and Rentokil in receiving and considering, a price for the purpose of submission to River Place, had as its object the prevention, restriction or distortion of competition.

Alliance and Killem

298. Andrew Chan admitted that he had requested cover bids from each of the AAAs in respect of Agenda Treatment at River Place and that he had provided each of them with information on Alliance's intended quote at S\$120,000 through SMS, so that the AAAs could provide cover bids of a higher value to River Place if invited to quote.
299. Andrew Chan's statement was corroborated by Jennifer Lee and William Tan, both of whom had received calls from Andrew Chan which they understood as requesting for a cover bid in respect of Agenda Treatment at River Place. William Tan agreed to provide a cover bid and instructed Jennifer Lee to prepare a cover bid. She did so and submitted Killem's cover bid at S\$153,000, in support of Alliance, to River Place on 19 May 2006 by fax.
300. The Commission notes that Jennifer Lee had stated that she obtained the figure of S\$153,000 for Killem's quote from William Tan although William Tan had stated that he did not remember this. The Commission considers that the slight discrepancy does not alter the complexion of the matter, as it was clear from Jennifer Lee's workings that the figure of S\$153,000 was an inflated figure for the provision of a cover bid. Killem's quote at S\$153,000 for Agenda Treatment, which is higher than Alliance's quote at S\$120,000, is consistent with an agreement between Alliance and Killem for the latter to provide a cover bid and collude in fixing prices.
301. Although River Place Condominium had not provided us with Killem's S\$153,000 quote dated 19 May 2006 as one of those received and considered by them, the Commission nevertheless considers that there is no

reason for Killem to fabricate and produce to the Commission a quote that was not in existence.

302. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The phone calls between Alliance and Killem, who were competitors, show that the conduct of Alliance and Killem was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Killem infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Andrew Chan's conduct in seeking a cover bid and William Tan's conduct in agreeing to provide a cover bid that Alliance and Killem did not determine or intend to determine their quote prices independently. The conduct of Alliance and Killem had as its intention or consequence the disclosure by Alliance to Killem of a course of action that it was to adopt or was contemplating adopting in the tendering process i.e. that it was likely to submit a quote of S\$120,000. Such disclosure by Alliance influenced the conduct of Killem on the market in that Killem took into account the information it received from Alliance in submitting its quote by using the information given by Alliance. The result was that Alliance and Killem substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Alliance providing, and Killem in receiving and considering, a price for the purpose of submission to River Place, had as its object the prevention, restriction or distortion of competition.

Alliance and PestBusters

303. Andrew Chan admitted that he had requested cover bids from each of the AAAs for the Agenda Treatment project at River Place. He had provided each of them with information of Alliance's intended quote at S\$120,000 through SMS, so that the AAAs could provide cover bids of a higher value to River Place if invited to quote. In relation to PestBusters, Andrew Chan said he had called to inform Peter Fernandis that River Place might approach PestBusters for a quotation and Peter Fernandis had said he would support Alliance.
304. The statement of Andrew Chan was corroborated by Peter Fernandis who admitted that he had received a call from Andrew Chan requesting for a cover bid for the Agenda Treatment project at River Place and that he had agreed to provide a cover bid if PestBusters was invited by River Place to quote as evidenced by his email to Philip Tan in paragraph 258.

305. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call and email between Alliance and PestBusters, who were competitors, show that the conduct of Alliance and PestBusters was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and PestBusters infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Andrew Chan's conduct in seeking a cover bid and Peter Fernandis' conduct in agreeing to provide a cover bid that Alliance and PestBusters did not determine or intend to determine their quote prices independently. The conduct of Alliance and PestBusters had, as its intention or consequence, the disclosure by Alliance and PestBusters of a course of conduct that it was to adopt or was contemplating adopting in the tendering process i.e. that it was intending to submit a quote of \$120,000. Such disclosure by Alliance would have influenced the conduct of PestBusters on the market in that PestBusters would have taken into account the information it received from Alliance if PestBusters was invited to quote. The result was that Alliance and PestBusters intended to substitute practical cooperation for the risks of competition. Their cooperation would substantially eliminate the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Alliance providing, and PestBusters in receiving and considering, a price for the purpose of submission to River Place, had as its object the prevention, restriction or distortion of competition.
306. It did not matter whether PestBusters was invited by River Place to quote for Agenda Treatment. The Commission considers that the agreement or concerted practice between Alliance and PestBusters would still be caught under the section 34 prohibition. As set out earlier in *Tréfilunion v Commission* and *P. Hüls AG v. Commission*, there can be an agreement or concerted practice in the absence of an actual effect on the market. As the object of the agreement or concerted practice between Alliance and PestBusters was clearly anti-competitive, it was not necessary to demonstrate that the agreement and/or concerted practice had manifested itself in conduct on the market or that it had had effects restrictive of competition. As the CAT held in *Apex*, a concerted practice was made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender.

Alliance and Elite

307. Andrew Chan admitted that he had requested cover bids from each of the AAAs for the Agenda Treatment project at River Place. He had provided

- each of them with information of Alliance's intended quote at S\$120,000 through SMS, so that the AAAs could provide cover bids of a higher value to River Place if invited to quote.
308. Andrew Chan's statement was corroborated by Francis Loh who admitted that he had received a call from Andrew Chan requesting for a cover bid in respect of Agenda Treatment at River Place and that he had agreed to provide a cover bid if Elite was invited by River Place to quote for Agenda Treatment.
309. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call between Alliance and Elite, who were competitors, shows that the conduct of Alliance and Elite was not unilateral and that any quotes submitted were subject to collusion. The conduct of Alliance and Elite infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Andrew Chan's conduct in seeking a cover bid and Francis Loh's conduct in agreeing to provide a cover bid that Alliance and Elite did not determine or intend to determine their quote prices independently. The conduct of Alliance and Elite had as its intention or consequence the disclosure by Alliance to Elite of a course of conduct that it was to adopt or was contemplating adopting in the tendering process i.e. that it was likely to submit a quote of S\$120,000. Such disclosure by Alliance would have influenced the conduct of Elite on the market in that Elite would have taken into account the information it received from Alliance if Elite was invited to quote. The result was that Alliance and Elite intended to substitute practical cooperation for the risks of competition. Their cooperation would substantially eliminate the uncertainty which they each faced as to the conduct of the other in the tender process. The conduct of Alliance providing, and Elite in receiving and considering, a price for the purpose of submission to River Place, had as its object the prevention, restriction or distortion of competition.
310. It did not matter whether Elite was not invited by River Place to quote for Agenda Treatment. The Commission considers that the agreement or concerted practice between Alliance and Elite would still be caught under the section 34 prohibition. As set out earlier in *Tréfilunion v Commission* and *P. Hüls AG v. Commission*, there can be an agreement or concerted practice in the absence of an actual effect on the market. As the object of the agreement or concerted practice between Alliance and Elite was clearly anti-competitive, it was not necessary to demonstrate that the agreement and/or concerted practice had manifested itself in conduct on the market or

that it had had effects restrictive of competition. As the CAT held in *Apex*, a concerted practice was made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender.

The Commission's conclusions on the infringement

311. The Commission concludes that the totality of the evidence, as set out and analysed at paragraphs 254 to 310 above, establishes that an agreement and/or concerted practice was in place between –
- a) Alliance and Aardwolf;
 - b) Alliance and Rentokil;
 - c) Alliance and Killem;
 - d) Alliance and PestBusters; and
 - e) Alliance and Elite,
- which had the object of fixing the prices in relation to the quotes submitted for termite treatment at River Place, in breach of the section 34 prohibition.

v) Temasek Junior College

The facts and the evidence

312. Between 22 and 25 February 2006, one Ms Chua Yee Yin of CPG Facilities Management Pte Ltd (“CPGFM”) invited four pest control operators, namely, Elite, Killem, PestBusters and Dynamic Pest Control Pte Ltd (“Dynamic”), to submit quotes for corrective termite treatment at the squash court and sub-station building of Temasek Junior College (“TJC”)³⁶⁵. According to CPGFM, Ms Chua had done so because the work was urgent. Their general pest contractor, New Concept Enterprise, had submitted a quotation dated 23 February 2006 for corrective termite treatment using chlorpyrifos at \$7,000 but did not include the substation next to the squash court in the proposed work scope³⁶⁶. New Concept Enterprise was requested to include the substation in their revised quotation.

³⁶⁵ See information {in particular, at A2a and A2(d)(i)} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

³⁶⁶ See information {in particular, at A2a and Attachment # 02} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

313. On 1 March 2006, CPGFM received feedback that the quotation from New Concept Enterprise was not satisfactory. By then, CPGFM had received the following quotations for Agenda Treatment³⁶⁷:

Name of pest control operator submitting quote	Quote price	Date of Submission of Proposal
Elite	S\$14,950	27 February 2006
PestBusters	S\$19,500	27 February 2006
Killem	S\$18,000	28 February 2006

314. As CPGFM had yet to receive the revised quotation from New Concept Enterprise, they proceeded to submit these three quotations for consideration by the Ministry of Education (“MOE”)³⁶⁸. As the quotes for termite treatment at TJC were supposed to be called by New Concept Enterprise as the general pest contractor for TJC, these three quotations were subsequently referred to New Concept Enterprise for follow-up and coordination³⁶⁹. CPGFM also received a revised quotation from Killem at S\$15,500 and a quotation from Dynamic at S\$17,800, both dated 13 March 2006, after the closing date of the tender³⁷⁰. These two quotations were not recommended to MOE for their consideration.
315. Elite’s submission at S\$14,950 was considered and a works order dated 20 April 2006 was issued by MOE to New Concept Enterprise for the sum of S\$15,698 {S\$14,950 plus S747.50 (5% of \$14,950) for attendant fee and rounded up to the nearest dollar} for the termite treatment works at TJC³⁷¹.

³⁶⁷ Documents {see Attachment A, B and E} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

³⁶⁸ See information {in particular, at A2a and Attachment #03} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

³⁶⁹ See information {in particular, at A2a} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

³⁷⁰ See information {in particular, at A2d(iii) and A2h} and documents {see Attachments C and D} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

³⁷¹ See information {in particular, at A2d(iv) and Attachments # 04 and 05} provided by CPGFM in their letter to the Commission dated 10 January 2007 pursuant to the Commission’s section 63 notice to request for information and documents dated 5 December 2006 and follow-up letter of 21 December 2006.

316. During our investigations³⁷², we uncovered the following email exchange between Peter Fernandis (PestBusters) and Francis Loh (Elite):

(a) Email from Francis Loh to Peter Fernandis of 24 February 2006

”From: eliteloh [mailto:eliteloh@pacific.net.sg]
Sent: Friday, February 24, 2006 5:29 PM
To: ‘Peter Fernandis’
Subject:

Hi Peter, Please support Agenda quote and fax to CPGFM by Monday.

CPGFM PTE LTD
140 Paya Lebar Road
#05-11A A-Z Building
Singapore 4509015

Attn: Ms Chua Yee Yin, Fax:67434979

Corrective Treatment at Temasek Junior College’s Squash Court and Sub-Station Building. Please quote above \$18k.

Thanks
Francis”

(b) Email from Peter Fernandis to Francis Loh of 24 February 2006

“From: Peter Fernandis [peterfernandis@pestbusters.com.sg]
Sent: Friday, February 24, 2006 6:12 PM
To: eliteloh
Subject: RE: Temasek JC

Hi Francis,

I will submit it to them by Monday, will go in at \$19,500.00

Thanks

Peter Fernandis
PestBusters Pte Ltd

³⁷² Provided both by Peter Fernandis and Francis Loh during the Commission’s entry into PestBusters’ and Elite’s premises respectively on 23 November 2006 pursuant to Section 64 of the Act.

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Email: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg

317. Interview of Elite personnel³⁷³ - Francis Loh said that TJC's squash court contractor (TCB Sports Pte Ltd) referred him to CPGFM as the squash courts had a bad termite infestation. Francis Loh met with Ms Chua Yee Yin of CPGFM on site to assess the infestation and take measurements. Francis Loh then recommended the use of Agenda for corrective termite treatment and gave Ms Chua the names of the other five AAAs³⁷⁴.
318. Francis Loh confirmed that he sent the email dated 24 February 2006 in paragraph 316(a) to Peter Fernandis requesting for a support quote for the Agenda Treatment project at TJC³⁷⁵. He had arrived at the figure of S\$18,000 for PestBusters to use as it was higher than Elite's quote at \$14,950 and it was, he considered, a fair figure given that PestBusters was a more reputable company and had more staff and baiting systems³⁷⁶. Francis Loh confirmed that Peter Fernandis agreed to provide a support quote, as evidenced by his email referred to in paragraph 316(b)³⁷⁷.
319. In his first interview on 12 January 2007, Francis Loh could not remember if he had contacted anyone else from the other AAAs, besides Peter Fernandis³⁷⁸. He was not sure if he had called Harry Singh of Killem as he was not close to him³⁷⁹. However, he was of the view that if he had contacted Harry Singh, he would have told Killem to put in a support quote at S\$18,000³⁸⁰. In Francis Loh's second interview on 1 June 2006, he was

³⁷³ Francis Loh's Notes of Information/Explanation Provided on 12 January 2007 and 1 June 2006.

³⁷⁴ See Answer to Question 69 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

³⁷⁵ See Answer to Question 85 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

³⁷⁶ See Answer to Question 86 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007

³⁷⁷ See Answer to Question 87 and 88 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007 and email response in paragraph 316(b).

³⁷⁸ See Answer to Question 83 and 84 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

³⁷⁹ See Answer to Question 84 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

³⁸⁰ See Answer to Question 86 of Francis Loh's Notes of Information/Explanation Provided on 12 January 2007.

informed that Harry Singh (Killem)³⁸¹ and Philip Tan (Alliance)³⁸² had said that they had received a call from him for termite treatment at TJC. Francis Loh could not remember if he had called Harry Singh or Philip Tan but said that it was highly likely that he did call them if they said so. Francis Loh could not remember what he told them but surmised that he must have told them to put in a support quote above \$14,950 if invited to quote. He could not remember if they acceded to his request but said that most of the AAAs would agree to a request for support³⁸³.

320. Interview of PestBusters personnel³⁸⁴ – Peter Fernandis confirmed that he received the email dated 24 February 2006 set out in paragraph 316(a) from Francis Loh requesting for a support quote above S\$18,000 for the Agenda Treatment project at TJC and that he agreed to provide a support quote at \$19,500³⁸⁵. Peter Fernandis then went on to submit a quote to CPGFM at S\$19,500³⁸⁶. When asked how he had arrived at the figure of \$19,500, Peter Fernandis replied that as he did not have any measurements, he had arbitrarily picked a figure higher than Francis Loh's figure to support him³⁸⁷.
321. Interview of Killem personnel³⁸⁸ - Harry Singh said that he received a call from Francis Loh informing him that Elite was going to quote for termite treatment at TJC and that CPGFM would be calling the other AAAs to quote³⁸⁹. Francis Loh told him that there was a chance that Killem would be invited to quote as many of Killem's clients were schools³⁹⁰. Although it was not made explicit to him, Harry Singh felt that Francis Loh was telling him that if Killem was invited to quote, Harry Singh should not quote his

³⁸¹ See Answer to Question 111 to 119 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007 and Answer to Question 6 to 9 of Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

³⁸² See Answer to Question 154 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

³⁸³ See Answer to Question 2 to 13 of Francis Loh's Notes of Information/Explanation Provided on 1 June 2007.

³⁸⁴ See Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

³⁸⁵ See Answer to Question 41 and 42 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

³⁸⁶ See Answer to Question 43 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

³⁸⁷ See Answer to Question 46 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

³⁸⁸ See Harry Singh's Notes of Information/Explanation Provided on 14 and 15 February 2007, 7 March 2007 and 30 May 2007.

³⁸⁹ See Answer to Question 111 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007 and Answer to Question 6 of Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

³⁹⁰ See Answer to Question 7 of Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

- best price but the highest price possible; otherwise Francis Loh would not have called him³⁹¹.
322. Harry Singh stated that he had not given his best price for Killem's quotation dated 28 February 2006 at S\$18,000. Instead, he had included free items such as Termatrac³⁹² in his quotation given the mark-up in his price³⁹³. He had done so in order to not to take away Francis Loh's client as he had assumed that Elite was the term contractor for TJC³⁹⁴. He regretted his decision to support Elite when he found out later that Elite was not the term contractor for TJC³⁹⁵.
323. Harry Singh was asked how Killem had arrived at the figure of S\$18,000 in the quotation dated 28 February 2006. Harry Singh said that Killem personnel did not go for a site visit as they knew the area involved over the phone. They downloaded the map of TJC over the internet and extrapolated the measurements. He conceded that it was a mistake to do so and they should have gone to the site to check the extent of infestation³⁹⁶. At a subsequent interview, Harry Singh conceded that he had agreed to Francis Loh's request for a support quote and had quoted at S\$18,000 because he was told by Francis Loh not to go below S\$18,000³⁹⁷.
324. Interview of Alliance personnel – Philip Tan said that Francis Loh had requested Alliance to submit a support quote for termite treatment at TJC and he agreed to do so³⁹⁸. However, Alliance was not invited to quote³⁹⁹. When asked to elaborate on Francis Loh's request to support quote, he said⁴⁰⁰:

³⁹¹ See Answer to Question 115 of Harry Singh's Notes of Information/ Explanation Provided on 7 March 2007 and Answer to Question 8 of Harry Singh's Notes of Information/ Explanation Provided on 30 May 2007.

³⁹² TermaTrac is the detection of termites using a hand held device working on radar-similar technology.

³⁹³ See Answer to Question 116 to 117 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007.

³⁹⁴ See Answer to Question 118 to 119 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007.

³⁹⁵ See Answer to Question 8 of Harry Singh's Notes of Information/Explanation Provided on 30 May 2007.

³⁹⁶ See Answer to Question 77 to 82 and Questions 98 to 105 of Harry Singh's Notes of Information/Explanation Provided on 7 March 2007.

³⁹⁷ See Answer to Question 14 and 15 of Harry Singh's Notes of Information/Explanation Provided on 26 July 2007.

³⁹⁸ See Answer to Question 154 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

³⁹⁹ See Answer to Question 154 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

⁴⁰⁰ See Question 161 of Philip Tan's Notes of Information/ Explanation Provided on 9 March 2007.

- A: I cannot remember if he called me personally to support quote in the Temasek JC case or he called Andrew on the same and then Andrew told me. It would have been the same, we would have supported quote if we were invited to quote by Temasek JC.

The Commission's analysis of the evidence

Elite and PestBusters

325. Francis Loh admitted to requesting a cover bid from Peter Fernandis for termite treatment at TJC via his 24 February 2006 email referred to in paragraph 316(a). He confirmed that Peter Fernandis had emailed on the same day, acceding to his request to quote above S\$18,000 in the cover bid at S\$19,500.
326. Peter Fernandis admitted that he received Francis Loh's 24 February 2006 email referred to in paragraph 316(a) requesting for a cover bid and that he responded via the email referred to in paragraph 316(b), agreeing to the request saying that he would quote at S\$19,500. Peter Fernandis then submitted a quote for Agenda Treatment at S\$19,500, as set out in his email. This was higher than Elite's quote at S\$14,950.
327. The Commission considers that the evidence above makes out the elements of an agreement and/or a concerted practice to fix tender prices in breach of the section 34 prohibition. The contact between Elite and PestBusters, who were competitors, by way of the email exchange on 24 February 2006, shows that the conduct of Elite and PestBusters was not unilateral and that the quotes submitted were subject to collusion. Such contact between Elite and PestBusters infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Francis Loh's conduct in seeking a cover bid and Peter Fernandis' conduct in agreeing to provide a cover bid that Elite and PestBusters did not determine or intend to determine their quote prices independently. The contact between Elite and PestBusters had as its intention or consequence the disclosure by Elite to PestBusters of a course of conduct that it was to adopt or was contemplating adopting in the tendering process, i.e., that it was likely to submit a quote of less than \$18,000. Such disclosure by Elite influenced the conduct of PestBusters on the market in that PestBusters took into account the information it received from Elite when submitting its quote by using the figure provided in Francis Loh's 24 February 2006 email. The result was that Elite and PestBusters substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Elite

providing, and PestBusters receiving and using, a price for the purpose of submission to CPGFM, had as its object the prevention, restriction or distortion of competition.

Elite and Killem

328. Harry Singh admitted receiving a call from Francis Loh informing him that Elite was going to quote in respect of TJC and that there was a chance that Killem might be invited to quote. Harry Singh perceived this to be an implicit request for a cover bid as Francis Loh would not have called him otherwise. This is consistent with Francis Loh's statement that they were not close. In this regard, the Commission notes that Francis Loh was prepared to concede that it was highly likely that he had called Harry Singh and that he must have requested Harry Singh to put in a support quote above S\$14,950 if Killem was invited to quote. The Commission also notes Harry Singh's statement that Francis Loh had told him not to quote below S\$18,000 and that the quotation dated 28 February 2006 at S\$18,000 put in by Killem corresponded with the figure Francis Loh said he would have given Killem if he had contacted Harry Singh. In the circumstances, the Commission accepts Harry Singh's statement that Francis Loh had requested Killem to put in a cover bid at S\$18,000 and he had agreed.
329. Harry Singh subsequently put in a quotation dated 28 February 2006 at S\$18,000, which is higher than Elite's quotation at S\$14,950. Harry Singh admitted that the quotation dated 28 February 2006 at S\$18,000 was not his best price and that he had done so in order not to poach Elite's client. Although he stated that he had included free items such as Termatrac in his quotation, the Commission was unable to find any reference to these items in the quotation. These, and the lack of care taken in arriving at the figure stated in the quotation, point to the quotation being a cover bid.
330. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call between Elite and Killem, who were competitors, shows that the conduct of Elite and Killem was not unilateral and that the quotes submitted were subject to collusion. The conduct of Elite and Killem infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Francis Loh's conduct in seeking a cover bid and Harry Singh's conduct in acceding to the request and providing a cover bid at S\$18,000 that Elite and Killem did not determine or intend to determine their quote prices independently. The conduct of Elite and Killem had as its intention or consequence the disclosure by Elite to Killem of a course of

conduct that it was to adopt or was contemplating adopting in the tendering process i.e. that it was likely to submit a quote below S\$18,000. Such disclosure by Elite influenced the conduct of Killem on the market in that Killem took into account the information it received from Elite when submitting its quote by using the information given by Francis Loh. The result was that Elite and Killem substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of Elite providing, and Killem receiving and using, figures for the purpose of submission to CPGFM, had as its object the prevention, restriction or distortion of competition.

Elite and Alliance

331. Philip Tan stated that Francis Loh had requested Alliance to put in a support quote for termite treatment at TJC and he had agreed. Although Francis Loh could not remember if he had called Philip Tan, he was prepared to concede that it was highly likely that he had called Philip Tan and that he must have requested Philip Tan to put in a support quote above S\$14,950 if Alliance was invited to quote. While he could not remember if Philip Tan acceded to his request, he said that most of the AAAs would agree to a request for support.
332. The Commission considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The telephone call between Elite and Alliance, who were competitors, shows that the conduct of Elite and Alliance was not unilateral and that any quotes submitted were subject to collusion. The conduct of Elite and Alliance infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Francis Loh's conduct in seeking a cover bid and Philip Tan's conduct in agreeing to provide a cover bid that Elite and Alliance did not determine or intend to determine their quote prices independently. The conduct of Elite and Alliance had as its intention or consequence the disclosure by Elite to Alliance of a course of conduct that it was to adopt or was contemplating adopting in the tendering process, i.e. that it was likely to submit a quote at \$14,950. Such disclosure by Elite would influence the conduct of Alliance on the market in that Alliance would have taken into account the information it received from Elite if it was invited to submit a quote by using the information given by Francis Loh. The result was that Elite and Alliance intended to substitute practical cooperation for the risks of competition. Their cooperation would substantially eliminate the uncertainty which each faced as to the conduct of the other in the tender

process. The conduct of Elite providing, and Alliance in receiving and considering, a price for the purpose of submission to CPGFM, had as its object the prevention, restriction or distortion of competition.

333. Although Alliance was not invited by CPGFM to submit a quote for termite treatment at TJC, the Commission considers that the agreement and/or concerted practice between Elite and Alliance would nevertheless be caught under the section 34 prohibition. As set out in *Tréfilunion v Commission* and *P. Hüls AG v. Commission v Commission*, there can be an agreement or concerted practice in the absence of an actual effect on the market. As the object of the agreement or concerted practice between Elite and Alliance was clearly anti-competitive, it was not necessary to demonstrate that the agreement and/or concerted practice had manifested itself in conduct in the market or that it had effects restrictive of competition. As the CAT held in *Apex*, a concerted practice was made out at a stage prior to consideration of whether the person receiving the price actually puts in a tender.

The Commission's conclusions on the infringement

334. The Commission concludes that the totality of the evidence, as set out and analysed at paragraphs 312 to 333 above, establishes that an agreement and/or concerted practice was in place between –
- a) Elite and PestBusters;
 - b) Elite and Killem; and
 - c) Elite and Alliance,
- which had the object of fixing the prices in relation to the quotes submitted for termite treatment at TJC, in breach of the section 34 prohibition.

vi) Dimensions Education Group Campus at the Former Serangoon Secondary School Site

The facts and the evidence

335. Between 1 January 2006 and 22 April 2006, Calligraphia Advertising & Engineering Pte Ltd (“Calligraphia”), contractors for Dimensions Education Group (“Dimensions”), contacted PestBusters to obtain a quote for corrective termite treatment at the Former Serangoon Secondary School (“FSSS”) site at No. 58 Lowland Road Singapore 547453 which was to be Dimensions’ campus. According to Peter Fernandis (PestBusters), one Mr B S Tan from Calligraphia informed him that they required two quotes for

submission to Dimensions⁴⁰¹, consequent upon which Peter Fernandis approached Philip Tan (Alliance) to submit a quote to Calligraphia.

336. Our investigations show that both PestBusters and Alliance submitted quotes for Agenda Treatment to Calligraphia as follows:

Name of pest control operator submitting quote	Quote price	Date on Quote
PestBusters ⁴⁰²	S\$68,040	22 April 2006
Alliance ⁴⁰³	S\$92,340	24 April 2006

337. According to Dimensions, Calligraphia had only forwarded the quote received from PestBusters to them. As Dimensions had no previous business relationship with PestBusters and had no knowledge or information about their background, Dimensions decided not to accept the quote from PestBusters. Subsequently, Dimensions accepted a quote dated 6 November 2006 by Jankin Services, another pest control operator, for inspection and spot treatment with termite powder at S\$450.

338. During our investigations⁴⁰⁴, we uncovered the following email:

“From: Peter Fernandis [peterfernandis@pestbusters.com.sg]
Sent: Monday, April 24, 2006 9:36 AM
To: ‘philip’
Subject: Serangoon Secondary School
Importance: High

Good Morning Philip,

Could you please assist in supporting the above quote?

Project: Former Serangoon Secondary School
Linear Meter: 972 linear meters
Quote: \$92,340.00 @ \$95.00 per linear meter

⁴⁰¹ See Answer to Question 76 of Peter Fernandis’ Notes of Information/Explanation Provided on 10 January 2007.

⁴⁰² PestBusters’ quote to Calligraphia dated 22 April 2006 provided by Peter Fernandis during the Commission’s inspection of PestBusters’ premises on 23 November 2006 pursuant to Section 64 of the Act.

⁴⁰³ Alliance’s quote to Calligraphia dated 24 April 2006 provided by Philip Tan during the Commission’s inspection of Alliance’s premises on 23 November 2006 pursuant to Section 64 of the Act.

⁴⁰⁴ Provided both by Peter Fernandis and Philip Tan during the Commission’s entry into PestBusters’ and Alliance’s premises respectively on 23 November 2006 pursuant to Section 64 of the Act.

M/s Calligraphia Advertising & Engineering Pte Ltd
Blk 1013 Geylang East Ave 3
#03-170 Singapore 389728
Fax 67485286
Attn: Mr B S Tan

Thanks brother

PETER FERNANDIS
PestBusters Pte Ltd
140 Paya Lebar Road
#08-06 A – Z Building
Singapore 409015
Tel: (65) 62882828
Fax: (65) 67487388
Mob: (65) 98563283
E-Mail: peterfernandis@pestbusters.com.sg
Website: www.pestbusters.com.sg”

339. Interview of PestBusters personnel⁴⁰⁵ - Peter Fernandis said that he received an unsolicited call from Mr B S Tan of Calligraphia on corrective termite treatment on the FSSS site⁴⁰⁶ and he attended on site to take measurements⁴⁰⁷. He confirmed that he sent the 24 April 2006 email to request Philip Tan to submit a quote of S\$92,340 at S\$95 per linear metre. He said that he had only requested support⁴⁰⁸ from Alliance as Calligraphia only required one other quote for submission to Dimensions⁴⁰⁹.
340. Peter Fernandis stated that he had requested that Alliance quote at S\$95 per linear meter as there was bad termite infestation⁴¹⁰. However, PestBusters quoted at the minimum price of S\$70 per linear meter as Mr B S Tan of Calligraphia had told Peter Fernandis that the school did not have a big budget⁴¹¹. Peter Fernandis was not sure if Philip Tan responded to his email

⁴⁰⁵ See Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

⁴⁰⁶ See Answer to Question 69 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

⁴⁰⁷ See Answer to Question 73 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

⁴⁰⁸ By way of the email in paragraph 338.

⁴⁰⁹ See Answer to Question 76 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

⁴¹⁰ See Answer to Question 74 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

⁴¹¹ See Answer to Question 79 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007.

- or if Alliance had submitted a quote⁴¹². However, he was subsequently informed that Dimensions would not be accepting his quote⁴¹³.
341. Interview of Alliance personnel⁴¹⁴ – Philip Tan confirmed that he received Peter Fernandis' email⁴¹⁵ and although he was not sure if he had responded to that email⁴¹⁶, he supported Peter Fernandis by quoting as requested by Peter Fernandis at S\$92,340 and did not make any calculations of his own⁴¹⁷. Philip Tan surmised that the quote by PestBusters would be at a figure below \$92,340⁴¹⁸.
342. When asked if he would have quoted differently but for the fact that he agreed to render support⁴¹⁹, his answer was as follows:
- A: I am not sure if it would very different. But I would definitely have given more consideration to all factors and circumstances surrounding the tender in coming up with a quotation so that I can hopefully get the project. When I am asked to support quote, I would just pluck a figure from nowhere or quote the requested figure without any consideration for the surrounding factors or circumstances.

The Commission's analysis of the evidence

343. In relation to PestBusters, Peter Fernandis admitted to requesting a cover bid from Philip Tan for termite treatment at the FSSS site via the 24 April 2006 email referred to in paragraph 338. Peter Fernandis had provided in his email a figure for Alliance's cover bid and provided the address and fax number of Calligraphia so that Alliance could submit the cover bid.
344. In relation to Alliance, Philip Tan admitted that he received Peter Fernandis' 24 April 2006 email requesting for a cover bid and pursuant thereto, he had submitted a quote at S\$92,340 without making any calculations of his own.

⁴¹² See Answer to Question 75 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007

⁴¹³ See Answer to Question 80 of Peter Fernandis' Notes of Information/Explanation Provided on 10 January 2007

⁴¹⁴ See Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

⁴¹⁵ See Answer to Question 22 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

⁴¹⁶ See Answer to Question 27 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

⁴¹⁷ See Answer to Question 29 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007.

⁴¹⁸ See Answer to Question 30 of Philip Tan's Notes of Information/Explanation on 9 March 2007

⁴¹⁹ See Question 31 of Philip Tan's Notes of Information/Explanation Provided on 9 March 2007

345. The Commission considers that the evidence above makes out the elements of a concerted practice in breach of the section 34 prohibition. The 24 April 2006 email between PestBusters and Alliance, who were competitors, shows that the conduct of PestBusters and Alliance was not unilateral and that the quotes submitted were subject to collusion. The conduct of PestBusters and Alliance infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Peter Fernandis' conduct in seeking a cover bid and Philip Tan's conduct in preparing a quote in the exact terms specified by Peter Fernandis in his email that PestBusters and Alliance did not determine or intend to determine their quote prices independently. The conduct of PestBusters and Alliance had as its intention or consequence the disclosure by PestBusters to Alliance of a course of action that it was to adopt or was contemplating adopting in the tendering process, i.e. that it was likely to submit a quote at a figure less than \$92,340. Such disclosure by PestBusters influenced the conduct of Alliance on the market in that Alliance took account of the information it received from PestBusters when submitting its quote by using the figure provided in Peter Fernandis' 24 April 2006 email. The result was that PestBusters and Alliance substituted practical cooperation for the risks of competition. Their cooperation substantially eliminated the uncertainty which each faced as to the conduct of the other in the tender process. The conduct of PestBusters providing, and Alliance receiving and using, a price for the purpose of submission to Dimensions, had as its object the prevention, restriction or distortion of competition. The fact that the project was not awarded to either party is not a necessary ingredient for the finding of an infringement of the section 34 prohibition.

The Commission's conclusions on the infringement

346. The Commission concludes that the totality of the evidence, as set out and analysed at paragraphs 335 to 345 above, establishes that a concerted practice was in place between PestBusters and Alliance, which had the object of fixing the prices in relation to the quotes submitted by each undertaking for termite treatment at the FSSS site, in breach of the section 34 prohibition.

SECTION III: DECISION OF INFRINGEMENT

347. The Commission is satisfied that there is sufficient evidence in paragraphs 86 to 346 above to find that the Parties listed at paragraph 1 above, infringed the section 34 prohibition by entering into agreements and/or concerted practices to fix prices through collusive tendering or bid-rigging in respect of the separate projects listed in paragraphs 86 to 346 above. On 2 October 2007, the Commission issued its proposed infringement decision to the Parties listed in paragraph 1. The Parties were informed that if they wished to make representations for the Commission's consideration, they should do so by 13 November 2007. The representations received from the Parties did not challenge the Commission's decision on the infringements in respect of the separate projects listed in paragraphs 86 to 346 above. The Commission therefore finds that the Parties have infringed the section 34 prohibition and imposes penalties on the Parties listed at paragraph 1 above in respect of projects in which each Party is found to have participated in collusive tendering or bid-rigging arrangements as specified in paragraphs 86 to 346.
348. On the basis of the evidence set out at paragraphs 86 to 346 above, the Commission has considered the relevant duration for each of the infringements. The Commission considers that the duration of infringements of this nature is at least from the date of initial contact between the Parties, with one party alerting the others to a project, stating his interest in winning the project and requesting the help of the others in ensuring that they would not win the project, to the date when the final bid was received for the respective project. The nature of the initial contacts, some of which were oral, coupled with the fact that tender documentation was not always retained beyond the end of the tender process mean that the Commission does not always have precise information as to the dates of each infringement. In relation to any of the infringements particularised in Section II of this Decision, the Commission is not aware of any evidence that suggests that the period between initial contact and submission of tender bids, and correspondingly the duration of infringement, was greater than one year.
349. Having said that, the Commission is mindful that the effects of the infringements were not restricted to the actual, usually very short, period during which the collusion took place. Once a project had been awarded following an anti-competitive tender, the anti-competitive effect was irreversible in relation to that tender and the infringements may have a potential continuing impact on further tendering processes by the same

tenderees in that a contractor who wins the tender pursuant to collusion gains the advantage of incumbency⁴²⁰.

350. The duration of an infringement in a cartel case is of importance in so far as it may have an impact on the penalty that may be imposed for that infringement.⁴²¹ For that purpose, the Commission considers that each project which was the subject of collusive tendering or bid-rigging amounts to a separate infringement and that none of the discrete incidents of collusive tendering or bid-rigging spanned more than a year, although all the Parties were implicated in more than one of the incidents.

SECTION IV: THE COMMISSION'S ACTION

351. This section sets out the Commission's action and its reasons

A. Directions

352. Section 69(1) of the Act provides that where the Commission has made a decision that an agreement has infringed the section 34 prohibition, it may give to such person as it thinks appropriate such directions as it considers appropriate to bring the infringement to an end. As the Commission considers that the infringements have already ended, it is not necessary to issue any directions for the parties to terminate the agreements.

B. Financial penalties - general points

353. Under section 69(2)(d) of the Act, the Commission 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 3 years.
354. Before exercising the power to impose a financial penalty, the Commission must be satisfied, as a threshold condition, that the infringement has been committed intentionally or negligently⁴²². This is similar to the position in the EC and the UK. In this respect, the Commission notes that in determining whether this threshold condition is met, both the European Commission and the OFT are not required to decide whether the infringement was committed intentionally or negligently, so long as they are satisfied that the infringement was either intentional or negligent: see *Vereniging van Samenwerkende Prijsregelende Organisaties in de*

⁴²⁰ See paragraph 278 of *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4.

⁴²¹ See the CCS Guidelines on the Appropriate Amount of Penalty, at paragraphs 2.1, 2.7 and 2.8.

⁴²² See section 69(3) of the Act and paragraphs 4.3 to 4.11 of the CCS Guidelines on Enforcement.

*Bouwnijverheid (SPO) and Others v Commission of the European Communities*⁴²³ and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading*⁴²⁴.

355. The circumstances in which the Commission might find that an infringement has been committed intentionally include the following:
- a) the agreement has as its object the restriction of competition;
 - b) the undertaking in question is aware that its action will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or
 - c) the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. The Commission is likely to find that an infringement of the section 34 prohibition has been committed negligently where an undertaking ought to have known that its agreement or conduct would result in a restriction or distortion of competition⁴²⁵.

356. The Commission considers that collusive tendering or bid-rigging arrangements, as in this case, are serious infringements of the section 34 prohibition, which have as their object the restriction of competition, and are likely to have been, by their very nature, committed intentionally.
357. Further, the Commission considers that the Parties would, in all likelihood, have submitted tender proposals or quotes before those projects specified at paragraphs 86 to 346 of this Decision and either would have, or ought to have known that the purpose of conducting tenders is to ensure competition in the award of projects.
358. The Commission considers that, by reason of the very nature of the agreements and/or concerted practices involving collusive tendering or bid-rigging, each of the Parties must have been aware that the agreements and/or concerted practices in which they participated had the object of preventing, restricting or distorting competition. The Commission is therefore satisfied that each of the Parties intentionally or negligently infringed the section 34 prohibition.
359. The Commission imposes a penalty on the Parties listed at paragraph 1 above in relation to the infringements considered at paragraphs 86 to 346

⁴²³ (Case C-137/95P) [1996] ECR I-1611.

⁴²⁴ See [2002] CAT 1, [2002] Comp AR 13, at paragraphs 452 to 458.

⁴²⁵ See paragraphs 4.7 to 4.10 of the CCS Guidelines on Enforcement.

above in respect of which each Party is found to have participated in collusive tendering arrangements. The representations received from the Parties did not challenge the Commission's decision to impose the penalty.

C. Calculation of penalties

360. The *CCS Guidelines on the Appropriate Amount of Penalty* provides that in calculating the amount of penalty to be imposed, the Commission will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement (“the relevant turnover”) in the undertaking's last business year, the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors.
361. Similar considerations are taken into account by the European Commission in the calculation of fines imposed pursuant to Article 23(2)(a) of Regulation No. 1/2003 and by the OFT in calculating the level of financial penalty imposed under section 36 of the Competition Act 1998. The European Commission determines the fine by first working out the basic amount of the fine. This is done by looking at the value of sales (turnover) and taking a percentage thereof, which percentage would depend on the degree of gravity of the infringement. This base amount would then be multiplied by the number of years of infringement. In deciding on whether the percentage of the value of sales should be at the lower or higher end, the European Commission will have regard to the nature of the infringement, the combined market share of the undertakings concerned, the geographic scope of the infringement and whether or not the infringement was implemented. The European Commission will then make adjustments to the basic amount bearing in mind aggravating or mitigating circumstances and the need for deterrence⁴²⁶.
362. The OFT adopts a similar methodology. First, it calculates the starting point or the base amount for the financial penalty, having regard to the seriousness of the infringement and the relevant turnover of the undertaking. The starting point is then adjusted taking into account the duration of the infringement, the need for specific or general deterrence, and any aggravating or mitigating factors⁴²⁷.
363. Common to both approaches is the principle of starting with a base figure, which is worked out by taking a percentage or proportion of the relevant

⁴²⁶ See Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

⁴²⁷ See OFT's guidance as to the appropriate amount of a penalty (December 2004).

sales or turnover, applying a multiplier for the duration of infringement and then adjusting that figure to take into account similar factors such as deterrence and aggravating and mitigating considerations. The Commission adopts a similar approach.

(i) Seriousness of the Infringements and Relevant Turnover

364. The Commission considers that the seriousness of the infringement and the relevant turnover of each undertaking would be taken into account by setting the starting point for calculating the base penalty amount as a percentage rate of each undertaking's relevant turnover. The actual percentage rate used will depend on the seriousness of the infringement. The relevant turnover in this case would be the turnover for services within Singapore using Agenda Treatment.
365. In assessing the seriousness of the infringement, the Commission will consider a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement and the effect on competitors and third parties. The impact and effect of the infringement on the market, direct or indirect, will also be an important consideration⁴²⁸.
366. The relevant turnover in the last business year will be considered when the Commission assesses the impact and effect of the infringement on the market⁴²⁹. The “last business year” is the business year preceding the date on which the decision of the Commission is taken, or if figures are not available for that business year, the one immediately preceding it⁴³⁰.
367. The seriousness of the infringement may also depend on the nature of the infringement. The Commission considers that the collusive tendering or bid-rigging arrangements in this case, set out at paragraphs 86 to 346 above, are serious infringements.
368. Nature of the product - As Agenda Treatment is the main subject matter of the collusive tendering or bid-rigging arrangements in this case among the Parties, the Commission considers it appropriate to adopt a narrow product market definition as that for Agenda Treatment. To this end, turnover attributable to other forms of termite treatment or control will not be considered when calculating the appropriate amount of penalty. Having said that, the Commission notes that two (out of six) of the projects listed in

⁴²⁸ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.3.

⁴²⁹ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.4.

⁴³⁰ See Competition (Financial Penalties) Order 2007, paragraph 3 and CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.5.

- paragraphs 86 to 346 above were ultimately awarded to PCOs using other termiticides or methods of termite control or treatment⁴³¹. The relevant geographic market for Agenda Treatment is Singapore.
369. The value of the projects listed in paragraphs 86 to 346 above, the subject matter of this Decision, range from approximately S\$14,950 to S\$349,000. The size of a project can be a relevant factor when assessing the seriousness of the infringement. As set out earlier, two (out of six) of the projects listed in paragraphs 86 to 346 above were awarded to PCOs using other termiticides or methods of termite control or treatment. Two of the four projects awarded to the Parties, were the subject of further negotiations between the customer and the winner of the tender, leading to a reduction of the initial proposed sums⁴³².
370. Structure of the market - The pest control industry is highly fragmented and polarised in terms of size, with the large PCOs accounting for a large proportion of total industry turnover. As at 2004, 17 PCOs had an average annual turnover of above S\$1m. They accounted for more than half of the total industry turnover (S\$70m), with the remaining 163 PCOs (at that time) accounting for the remainder⁴³³.
371. Termite control and treatment is but one aspect of pest control. From the evidence obtained during the interviews and the turnover data made available to the Commission, termite control and treatment ranged from 4% to 34% of the total turnover of the Parties for the last business year. Agenda treatment ranged from 2.6% to 21.9% of the total turnover of the Parties for the last business year.
372. The Commission notes that there may be entry barriers to the Agenda Treatment market since the use of Agenda is restricted by Bayer and Bentz Jaz to a selected group of PCOs, i.e. the AAAs (also the Parties). However, the Commission also notes that there may be substitutes in the form of parallel imports or other termiticides⁴³⁴.
373. Market share of the Parties – The Parties have the entire market share in the Agenda Treatment market, but less if other substitutes are taken into account. Although detailed statistical data specifically for the Agenda treatment market is unavailable, the Commission considers from the

⁴³¹ See RH Tender and termite treatment at the Dimensions Education Group Campus at the FSSS site, at paragraphs 89 and 337 respectively.

⁴³² See AH Tender and termite treatment at River Place at paragraphs 147 and 256 respectively.

⁴³³ See Singapore Pest Management Association Membership Survey 2004, the results of which were published on 19 May 2005. The Survey reported that there were 180 PCOs in Singapore. The estimated value of the industry was S\$70m as at the end of 2004 with an estimated labour force of 2,000 people.

⁴³⁴ See paragraphs 80 to 83.

relevant turnover, that Rentokil and Aardwolf are the bigger players, followed by Alliance and PestBusters in the middle, with Killem and Elite being the smaller players.

374. Effect on customers, competitors and third parties - It is not possible for the Commission to quantify the amount of any loss caused to customers because of the collusive tendering. However, the Commission considers that the Parties' infringements gave customers seeking termite control and treatment services the impression that there was more competition in the tender process relating to a specific project than there actually was⁴³⁵. 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 that did not wish to win the project with other third-party companies that might have been keen to submit a genuinely-competitive bid (using another termiticide or termite control or treatment method).
375. Having regard to the nature of the product, the size of the projects, the structure of the market, the market shares of the Parties, the effect of the infringements on customers, competitors and third parties and that collusive tendering/bid-rigging is one of the more serious infringements of the Competition Act, the Commission considers it will be appropriate to fix the starting point at [...] % of relevant turnover for each of the Parties.

(ii) Duration of the Infringements

376. The Commission considers it appropriate, at this stage, after calculating a base penalty sum, to see if this sum should be adjusted to take into account the duration of the infringement. As noted at paragraph 348 above, the Commission has concluded that the duration of each of the infringements in this Decision was not greater than one year. Even though the actual collusive tendering or bid-rigging arrangements lasted for significantly less than one year, the Commission does not consider that there should be any downward adjustment as the anti-competitive effects are irreversible in respect of that tender and may affect future tendering processes by the same tenderers if an infringing party wins and gains the advantage of incumbency⁴³⁶. The Commission considers that there should be no adjustments for duration in this case to any penalties to be imposed.

⁴³⁵ See the view of the CAT in *Apex*, at paragraph 250.

⁴³⁶ See the view of the CAT in *Apex*, at paragraph 278.

(iii) Other Relevant Factors

377. Moving on to consider other relevant factors, the penalty may be adjusted as appropriate to achieve policy objectives, particularly to deter undertakings (including non-infringing undertakings) from engaging in anti-competitive practices, such as collusive tendering. The Commission intends through its decision to raise awareness of competition issues in the procurement sector.
378. The Commission considers that collusive tendering is one of the most serious infringements of the Act, a cartel activity⁴³⁷, which, by its secret nature, makes it difficult to detect and prove. Accordingly, it is necessary to effectively deter undertakings from engaging in collusive tendering by imposing an adequately-deterrent penalty that will send the appropriate message.
379. Another factor is whether the financial penalty calculated after adjustment for the duration of infringement represents a relatively low proportion of an undertaking's total turnover, for example, where that undertaking has significant operations in other markets. In such a case, the Commission may consider it necessary to increase the undertaking's penalty at this stage to arrive at a sum that represents, for that undertaking, a significant amount that will act as a sufficient deterrent, having regard to the seriousness of the infringement(s) and the undertaking's total turnover. These points are considered in the detailed assessment in relation to each Party.
380. Other considerations that the Commission may consider at this stage include its estimate of any economic or financial benefit derived by the infringing undertakings from the infringement(s), and the special characteristics of the case, including the size and financial position of the undertakings in question⁴³⁸.
381. The Parties say in their interviews that when they charge at the price of S\$70 per linear meter for a post-construction Agenda Treatment job, they would make at least a 20% profit⁴³⁹ although there are differing profit

⁴³⁷ See the CCS Guidelines on the Appropriate Amount of Penalty, paragraph 1.7.

⁴³⁸ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.9.

⁴³⁹ From our interviews, five out of the six Parties have stated that they would make at least 20% profit. See Answer to Question 106 of John Ho's Notes of Information Explanation Provided on 30 March 2007, Answer to Question 85 of Ong Koong Tak, James (Joseph)'s Notes of Information Explanation Provided on 28 April 2007, Answer to Question 31 of Harry Singh's Notes of Information Explanation Provided on 30 May 2007, Answer to Question 34 of Francis Loh's Notes of Information Explanation Provided on 1 June 2007 and Answer to Question 36 of Peter Fernandis' Notes of Information Explanation Provided on 30 May 2007. Alliance did not wish to commit to any figure, saying that they will make a small profit. See Answers to Questions 63 to 64 of Philip Tan's Notes of Information Explanation Provided on 27 February

margins. The Commission also notes that the price of S\$70 per linear meter is the minimum price. The Commission is of the view that it would be difficult to estimate any gain that the Parties may have achieved through their collusive actions in relation to the projects, the subject matter of the infringements. Potential gains may be derived not only from the projects in question (through higher margins), but also from changes in the ongoing relationships with customers. Moreover, the arithmetical calculation of gain should not form the sole or even the main means of assessing the seriousness of an infringement, except in the clearest cases⁴⁴⁰.

382. As for the size of the undertakings in question, the Commission considers that this would have been taken into consideration when applying a percentage rate to each undertaking's relevant turnover as a starting point. The Commission recognises that some Parties are larger than others and where a Party's relevant turnover constitutes a relatively small percentage of its total turnover, the Commission may consider adjustments to ensure that the financial penalties will represent a significant sum and act as an adequate deterrent for such a Party, having regard to the seriousness of the infringement(s) and the total turnover. As such, the Commission considers that no downward adjustment for smaller Parties would be appropriate at this stage.
383. The Commission notes that the financial position of the Parties is a relevant consideration in determining whether the penalty imposed will be sufficiently deterrent, not only in relation to the Party in question but also in relation to like-minded undertakings which may consider engaging in anti-competitive activities.
384. In this regard, the Commission notes that the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 set out the position in Europe:

F. Ability to pay

35. In exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in these Guidelines would

2007 and Answers to Questions 224 – 245 of Andrew Chan's Notes of Information Explanation Provided on 27 February 2007.

⁴⁴⁰ *Napp Pharmaceutical Holdings Limited and subsidiaries v Director General of Fair Trading* [2002] CAT 1, at paragraph 511.

irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value.

385. In *Tokai Carbon Co Ltd and others v European Commission*⁴⁴¹, the Court of First Instance in its decision in 2005, held that cartelists could not pray in aid their economic difficulties and those of the market in seeking a reduction in the fine imposed by the Commission. The Court stated:

369 ... cartels come into being, in particular, at a time when a sector is experiencing difficulties. If that circumstance did not justify the grant of an attenuating circumstance (see paragraph 345 above), it cannot justify a reduction in the fine in the present context either.

370 ... According to settled case law, the Commission is not required when determining the amount of the fine to take account of an undertaking's financial losses since recognition of such an obligation would have the effect of conferring an unfair competitive advantage on the undertakings least well adapted to the conditions of the market ...

386. The Court also considered the potential insolvency of one of the cartelists and held as follows:

372 Furthermore, the fact that a measure taken by a Community authority leads to the insolvency or liquidation of a given undertaking is not prohibited as such by Community law...Although the liquidation of an undertaking in its existing legal form may adversely affect the financial interests of the owners, investors or shareholders, it does not mean that the personal, tangible and intangible elements represented by the undertaking would also lose their value.

387. In the UK, the OFT would take into account any financial hardship considerations which are advanced at the time the penalty is being assessed when assessing the amount of the penalty⁴⁴². In *Achilles Paper Group Limited v OFT*⁴⁴³, Achilles had recorded a net loss after the deduction of salaries, pensions, rents and other administrative costs and expressed the concern that a substantial fine would result in it becoming insolvent. The CAT in its decision in 2006, adopted the principle in *Tokai Carbon* set out in paragraph 385 above and affirmed the OFT's decision not to reduce the fine which in their view was well within the OFT's margin of appreciation.

⁴⁴¹ [2004] ECR II-1181, [2004] 5 CMLR 28.

⁴⁴² See *Richard W Price (Roofing Contractors) Limited v OFT* [2005] CAT 5 at paragraphs 60 and 64

⁴⁴³ [2006] CAT 24 see paragraph 56.

388. In *Sepia Logistics Limited (formerly known as Double Quick SupplyLine Limited) and Precision Concepts Limited v OFT*⁴⁴⁴, the CAT held:

100. ...The financial position of the undertaking in question is not something that the OFT must consider in all cases, but rather is something that the OFT may consider, upon the application of the undertaking. In making such an application, it seems to us that the onus must be on the applicant to provide the regulator with all information and/or documentation it wishes to have taken into account. A parallel can be drawn between this type of application and an application under Part 3 of the Guidance for lenient treatment for undertakings coming forward with information. In both cases, the undertaking is seeking more lenient treatment than would otherwise be the case because of special circumstances. When invoking these provisions, the usual evidential burden is reversed. It is for the applicant to satisfy the OFT that they are eligible for a reduction in penalty, and not for the OFT to disprove that application.

(iv) Aggravating and Mitigating Factors

389. At this next stage, the Commission will consider the presence of aggravating or mitigating factors and make adjustments when assessing the amount of financial penalty⁴⁴⁵, i.e. increasing the penalty where there are aggravating factors and reducing the penalty where there are mitigating factors. These points are considered in relation to each of the Parties.
390. The Commission considers the involvement of directors or senior management as an aggravating factor⁴⁴⁶. The amount of the penalty will be adjusted upwards to reflect their direct involvement in or knowledge of any decision leading to the infringement, or failure to take the necessary steps to avoid an infringement.
391. The Commission notes that the role of an undertaking as a leader in, or an instigator of, an infringement may be an aggravating factor⁴⁴⁷. As to whether it may be regarded as a mitigating factor if an undertaking was not a leader in or an instigator of an infringement, the Commission considers that a merely passive or follower role in an infringement is not sufficient to justify a reduction in the penalty. This is in line with the example given in the *CCS Guidelines on the Appropriate Amount of Penalty* which makes reference to an undertaking having to show that the infringement was committed under severe duress or pressure for it to have any mitigating

⁴⁴⁴ [2007] CAT 13.

⁴⁴⁵ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.10.

⁴⁴⁶ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11.

⁴⁴⁷ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11.

effect⁴⁴⁸. The Commission also notes that a similar position is taken by the Office of Fair Trading⁴⁴⁹ and by the European Commission which requires that an undertaking “actually avoided applying” the offending agreement “by adopting competitive conduct in the market”⁴⁵⁰.

392. The Commission considers repeated infringements to be an aggravating factor⁴⁵¹. The amount of the penalty will be adjusted upwards to reflect the number of infringements for each Party. In deciding on the appropriate increase in amount for multiple infringements, the Commission is mindful that any adjustment should be fair and proportionate as between all participants. The Commission will consider the number of infringements by each Party, the relative number of infringements as between the Parties and significant qualitative differences of the infringements.
393. In the present case, the Commission considers that it is appropriate to increase the penalties by multiples of 10% where a Party has committed 2 or more infringements, as set out in the table below. In this respect, the Commission notes that the OFT adopted a similar approach in a series of collusive tendering cases where there were similar discrete collusive tendering or bid-rigging infringements to fix prices⁴⁵².

Number of infringements	Increase in Penalties
1	None
2	10%
3	20%
4	30%
5	40%
6	50%
7	60%
8	70%
9	80%
10	90%
11	100%

⁴⁴⁸ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.12.

⁴⁴⁹ See *Price fixing and market sharing in stock check pads* (CA98/03/2006, Case CE/3861-04) where the Office of Fair Trading did not consider as a mitigating factor the fact that Achilles Paper Group Limited was neither a leader nor instigator of the infringement. Achilles Paper subsequently appealed to the Competition Appeal Tribunal but did not raise this as a ground of appeal.

⁴⁵⁰ See paragraph 29 of EC Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C 210/2).

⁴⁵¹ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11.

⁴⁵² CA98/01/2006 (Joined Cases CE/3123-03 and CE/3645-03), CA 98/01/2005 (Case CE/1925-02), CA98/02/2005 (Case CE/1777-02), CA98/04/2005 (Case CE/3344-03), CA98/1/2004 (Case CP/0001-02).

Number of infringements	Increase in Penalties
12, etc	110%, etc

D. Penalty for Aardwolf

394. Starting point: Aardwolf, one of the key players in the Agenda Treatment market, was involved in four infringements:
- a) collusive tendering or bid-rigging in connection with the RH Tender, which the Commission considers came to an end in May 2006;
 - b) collusive tendering or bid-rigging in connection with the AH Tender, which the Commission considers came to an end in June 2006;
 - c) collusive tendering or bid-rigging in connection with the Hawaii Tower quotations, which the Commission considers came to an end in February 2006; and
 - d) collusive tendering or bid-rigging in connection with the River Place quotations, which the Commission considers came to an end in May 2006.
395. Aardwolf's financial year is 1 April to 31 March. Aardwolf's relevant turnover for services involving Agenda treatment in the last business year was S\$[...]⁴⁵³.
396. The Commission has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 364 to 375 above and fixed the starting point for Aardwolf at [...] % of relevant turnover. The starting point for Aardwolf is therefore S\$[...].
397. Adjustment for duration: In view of paragraph 376 above, the Commission does not make any adjustment for duration.
398. Adjustment for other factors: The Commission notes that Aardwolf is one of the bigger players in the Agenda Treatment market as well as the general pest control market. It made a net profit of S\$[...]⁴⁵⁴ for the last business year. The Commission is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. The Commission is of the view that the figure reached after adjustment for duration is a significant sum in relation to Aardwolf because both the figure and the relevant turnover taken into account for the starting point represent an adequate proportion of Aardwolf's total turnover for the

⁴⁵³ Information provided by Aardwolf via letter dated 17 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴⁵⁴ Information provided by Aardwolf on 8 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

- year ending 31 March 2007. Accordingly, the Commission considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Aardwolf and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.
399. Adjustment for aggravating and mitigating factors: As stated at paragraphs 392 to 393 above, the Commission will treat multiple infringements as an aggravating factor. As Aardwolf was involved in collusive tendering or bid-rigging in connection with four infringements, the Commission increases the penalty by 30%.
400. The Commission considers the involvement on the part of at least a Director and the Sales Manager of Aardwolf in the infringements as an aggravating factor and increases the penalty by [...]%.
401. Although the Commission considers that Aardwolf has cooperated with the Commission during the course of the investigation, the Commission notes that Aardwolf did not produce any email correspondence evidencing the infringements despite the fact that the email exchange on 10 May 2006 in paragraph 90(c) and (d) was attached to its tender proposal submitted to Hospitalitybex. In fact, Aardwolf was unable to produce some of its quotes or working papers despite many requests. The Commission acknowledges that the relevant personnel of Aardwolf had admitted that Aardwolf had agreed to provide cover bids for Alliance in respect of the infringements for Hawaii Tower and River Place but notes that Aardwolf had sought to justify such involvement on the ground that they were hoping to gain sub-contracts from Alliance. The Commission was also of the view that the Aardwolf personnel interviewed were less than forthcoming on Aardwolf's involvement and at times, gave inconsistent accounts. An example of this would be the inconsistent accounts of Patrick Chong and Julia Chew as to whether she was expected to put in a cover bid or to try to win the respective projects. Accordingly, the Commission reduces the penalty by [...]% for co-operation.
402. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
403. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that the Commission can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$53,173.59.

404. Representations by Aardwolf in respect of quantum of penalty⁴⁵⁵: Aardwolf sought a reduction in the penalty to be imposed on the following grounds:
- a) Aardwolf did not moot the idea of the provision of cover bids. In a bid to support the implementation of the minimum pricing for Agenda treatment so that there would be no price war, it was unfortunate that they were involved in the provision of cover bids and carried on with them even after the Act came into force. It was a gross oversight and a truly inadvertent breach; it was never meant to deliberately undermine the law;
 - b) Aardwolf had not derived any financial benefit from the infringements;
 - c) Aardwolf has taken action to prevent a repeat of the infringements, including desisting from participating in support quotes, not quoting for a project where they will be sub-contracted works for Termicam and keeping proper documentation on jobs so that they can explain how prices are derived;
 - d) Aardwolf has been a responsible corporate citizen and has participated actively in community work in building up the image of the industry;
 - e) Aardwolf's reputation has suffered crippling damage following the Commission's investigation and press reports so much so that they have terminated their foray into Malaysia; and
 - f) Aardwolf is in the midst of constructing a mezzanine floor to their Jurong factory and the payment of 13th month bonus to their staff will mean a huge cash outflow for the company.
405. The Commission does not consider that these representations constitute mitigating factors or add any additional mitigating value for the purposes of calculating a financial penalty. As set out in paragraph 391, a passive or follower role in an infringement is not sufficient to justify a reduction in the penalty. Aardwolf has not shown that its infringements were committed under severe duress or pressure. The Commission considers that the issue of financial gains or benefit has already been addressed in paragraph 381 above. The lack of any financial benefit from the infringements does not diminish the seriousness of the infringements or constitute a mitigating factor. In any event, the value of the contracts in respect of the Projects above, where they were awarded to any of the Parties, has been taken into consideration either at the starting point⁴⁵⁶ for determining the amount of

⁴⁵⁵ Written representations by Aardwolf dated 24 October 2007.

⁴⁵⁶ For Alliance in respect of the award for the projects at Hawaii Tower and River Place, and Elite in respect of the award for the project at TJC, the value of such contracts awarded were taken into account at the starting point of determining the amount of penalty.

financial penalty or under the stage for Adjustment for other factors⁴⁵⁷. As for the action taken to prevent a repeat of the infringements, the Commission notes that paragraph 2.11 of the *CCS Guidelines on the Appropriate Amount of Penalty* sets out as a mitigating factor the taking of adequate steps to ensure compliance with the section 34 and/or 47 prohibition e.g. the existence of any compliance programme. In considering the mitigating value to be accorded to the existence of any compliance programme, the Commission will consider the following: (a) whether there are appropriate compliance policies and procedures in place; (b) whether the programme has been actively implemented; (c) whether it has the support of, and is observed by, senior management; (d) whether there is active and ongoing training for employees at all levels who may be involved in activities that are touched by competition law; and (e) whether the programme is evaluated and reviewed at regular intervals. The Commission considers that Aardwolf has failed to show that it has taken adequate steps to ensure compliance with the section 34 prohibition. As regards Aardwolf's representations on its cash outflow, the issue of the financial position of the Parties has been addressed in paragraphs 384 to 388 and the Commission does not consider the representations in this regard to be a mitigating factor.

406. Accordingly, the Commission does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$53,173.59 on Aardwolf.

E. Penalty for Alliance

407. Starting point: Alliance was involved in six infringements:
- a) collusive tendering or bid-rigging in connection with the RH Tender, which the Commission considers came to an end in May 2006;
 - b) collusive tendering or bid-rigging in connection with the AH Tender, which the Commission considers came to an end in June 2006;
 - c) collusive tendering or bid-rigging in connection with the Hawaii Tower quotations, which the Commission considers came to an end in February 2006;
 - d) collusive tendering or bid-rigging in connection with the River Place quotations, which the Commission considers came to an end in May 2006;
 - e) collusive tendering or bid-rigging in connection with the TJC quotations, which the Commission considers came to an end in February 2006; and

⁴⁵⁷ For PestBusters in respect of the award for the project at AH, the value of the contract awarded was taken into account at the stage for Adjustment for other factors.

- f) collusive tendering or bid-rigging in connection with the FSSS quotations, which the Commission considers came to an end in April 2006.
408. Alliance's financial year is 1 January to 31 December. Alliance's relevant turnover for services involving Agenda treatment in the last business year was S\$[...]⁴⁵⁸.
409. The Commission has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 364 to 375 above and fixed the starting point for Alliance at [...] % of relevant turnover. The starting point for Alliance is therefore S\$[...].
410. Adjustment for duration: In view of paragraph 376 above, the Commission does not make any adjustment for duration.
411. Adjustment for other factors: The Commission notes that Alliance was awarded two of the projects: Hawaii Tower⁴⁵⁹ and River Place⁴⁶⁰, as a result of its collusive actions. The total value of these two projects was S\$146,780. As the value of these projects has been included in the relevant as well as total turnover of Alliance and taken into account in arriving at the starting point, the Commission will not be making any adjustments to the penalty.
412. The Commission also notes that Alliance is a mid-sized player in the Agenda Treatment market and made a net profit of S\$[...]⁴⁶¹ for the last business year. The Commission is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. The Commission is of the view that the figure reached after adjustment for duration is a significant sum in relation to Alliance because both the figure and the relevant turnover taken into account for the starting point represent an adequate proportion of Alliance's total turnover for the year ending 31 December 2006. Accordingly, the Commission considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Alliance and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.

⁴⁵⁸ Information provided by Alliance on 24 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴⁵⁹ The Hawaii Tower project was awarded to Alliance at \$44,780 (as per Alliance's quotation).

⁴⁶⁰ The River Place project was awarded to Alliance at \$102,000 (reduced from the sum of \$120,000 quoted by Alliance after further negotiations).

⁴⁶¹ Information provided by Alliance on 8 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

413. Adjustment for aggravating and mitigating factors: As stated in paragraphs 392 to 393 above, the Commission will treat multiple infringements as an aggravating factor. As Alliance was involved in collusive tendering or bid-rigging in connection with six infringements, the Commission the Commission increases the penalty by 50%.
414. The Commission considers the involvement on the part of the Directors of Alliance in the infringements as an aggravating factor and increases the penalty by [...]%.
415. The Commission considers that Alliance has cooperated with the Commission during the course of the investigation. In this respect, the Commission notes that Alliance had, during the section 64 entry of their premises, produced to the Commission the email correspondence between them and PestBusters in relation to the FSSS quotations referred to in paragraph 338 and admitted its involvement in the infringement. During the Commission's interviews of Philip Tan and Andrew Chan pursuant to section 63 notices, they had also admitted to their involvement in the infringements in connection with the AH Tender and volunteered information on their participation in the infringements in connection with the RH Tender and TJC quotations readily. They were also upfront about soliciting support quotes and the involvement of the other AAAs in respect of Hawaii Tower and River Place quotations. The Commission considers that Andrew Chan and Philip Tan have been forthcoming in providing information. Accordingly, the Commission reduces the penalty by [...]% for co-operation.
416. As a result of the consideration of the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
417. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that the Commission can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$36,553.45 .
418. Representations by Alliance⁴⁶² in respect of quantum of penalty: Alliance sought a reduction in the penalty to be imposed on the following grounds:
- a) The negative publicity generated from media coverage is likely to affect Alliance's business. There is also the likelihood of possible third party damage claims; and

⁴⁶² Written representations by Messrs Lim Ang John & Tan LLC on behalf of Alliance dated 7 November 2007.

- b) Genuine co-operation by Alliance in providing accurate and complete information as well as a willingness to co-operate with the Commission in bringing further awareness of competition law to the pest control industry.
419. The Commission does not consider that these representations constitute mitigating factors or add any additional mitigating value for the purposes of calculating a financial penalty. The issue of the financial position of the Parties has already been addressed in paragraphs 384 to 388. In addition, the Commission considers that Alliance's co-operation has already been addressed in paragraph 415 above; Alliance had not in its representations raised any new issues for consideration under that head warranting the Commission to increase the percentage of reduction attributable for co-operation.
420. Accordingly, the Commission does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$36,553.45 on Alliance.

F. Penalty for Elite

421. Starting point: Elite was involved in three infringements:
- a) collusive tendering or bid-rigging in connection with the Hawaii Tower quotations, which the Commission considers came to an end in February 2006;
 - b) collusive tendering or bid-rigging in connection with the River Place quotations, which the Commission considers came to an end in May 2006; and
 - c) collusive tendering or bid-rigging in connection with the TJC quotations, which the Commission considers came to an end in February 2006.
422. Elite's financial year is 1 January to 31 December. Elite's relevant turnover for services involving Agenda treatment in the last business year was S\$[...]⁴⁶³.
423. The Commission has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 364 to 375 above and fixed the starting point for Elite at [...] % of relevant turnover. The starting point for Elite is therefore S\$[...].

⁴⁶³ Information provided by Elite on 17 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

424. Adjustment for duration: In view of paragraph 376 above, the Commission does not make any adjustment for duration.
425. Adjustment for other factors: The Commission notes that Elite was awarded the project at TJC⁴⁶⁴ as a result of its collusive actions. The total contract sum was S\$14,950. As the project was awarded in April 2006, the value of this project would have been included in the relevant as well as total turnover of Elite and taken into account in arriving at the starting point. As such, the Commission will not be making any adjustments to the penalty.
426. The Commission notes that Elite is a smaller player in the Agenda Treatment market and made a net profit of S\$[...]⁴⁶⁵ for the last business year. The Commission is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. In this instance, the Commission is of the view that the figure reached after adjustment for duration is a significant sum in relation to Elite because both the figure and the relevant turnover taken into account for the starting point each represent an adequate proportion of Elite's total turnover for the year ending 31 December 2006. Accordingly, the Commission considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Elite and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.
427. Adjustment for aggravating and mitigating factors: As stated in paragraphs 392 to 393 above, the Commission will treat multiple infringements as an aggravating factor. As Elite was involved in collusive tendering or bid-rigging in connection with three infringements, the Commission increases the penalty by 20%.
428. The Commission considers the involvement on the part of Elite's Director/General Manager in the infringements as an aggravating factor and increases the penalty by [...]%.
429. The Commission considers that Elite has cooperated with the Commission during the course of the investigation. In this respect, the Commission notes that Elite had, during the section 64 entry into its premises, produced to the Commission the email correspondence between them and PestBusters in connection with the AH Tender at paragraph 148(a), (b) and (e). During the Commission's interviews of Francis Loh pursuant to section 63 notices, he admitted to his involvement in the infringements in connection with the

⁴⁶⁴ The TJC project was awarded to Elite at S\$14,950 (as per Elite's quotation).

⁴⁶⁵ Information provided by Elite on 14 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

Hawaii Tower, River Place and TJC quotations. The Commission considers that overall, Francis Loh has been forthcoming in providing information. Accordingly, the Commission reduces the penalty by [...] % for co-operation.

430. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...] % to S\$[...].
431. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that the Commission can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$4,332.28.
432. Representations by Elite in respect of quantum of penalty⁴⁶⁶: Elite sought a reduction in the penalty to be imposed on the ground that it is a small company and a small player in the situation. The Commission does not consider that these representations constitute mitigating factors or add any additional mitigating value for the purposes of calculating a financial penalty. The Commission considers that these have already been addressed in paragraph 426 above and notes that Elite was awarded the project at TJC⁴⁶⁷ as a result of its collusive actions.
433. Accordingly, the Commission does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$4,332.28 on Elite.

G. Penalty for Killem

434. Starting point: Killem was involved in three infringements:
- a) collusive tendering or bid-rigging in connection with the AH Tender, which the Commission considers came to an end in June 2006;
 - b) collusive tendering or bid-rigging in connection with the River Place quotations, which the Commission considers came to an end in May 2006; and
 - c) collusive tendering or bid-rigging in connection with the TJC quotations, which the Commission considers came to an end in February 2006.

⁴⁶⁶ Written representations by Elite dated 17 October 2007.

⁴⁶⁷ The TJC project was awarded to Elite at S\$14,950 (as per Elite's quotation).

435. Killem's financial year is 1 January to 31 December. Killem's relevant turnover for services involving Agenda treatment in the last business year was S\$[...]⁴⁶⁸.
436. The Commission has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 364 to 375 above and fixed the starting point for Killem at [...] % of relevant turnover. The starting point for Killem is therefore S\$[...].
437. Adjustment for duration: In accordance with paragraph 376 above, the Commission does not make any adjustment for duration.
438. Adjustment for other factors: The Commission notes that although Killem is a small player in the Agenda Treatment market, it is nonetheless a big market player in the general pest control market, and made a net profit of S\$[...]⁴⁶⁹ for the last business year. The Commission is mindful that the financial penalty to be imposed should commensurate with the size and financial position of the undertaking. In this instance, the Commission is of the view that the figure reached after adjustment for duration is not a significant sum in relation to Killem because both the figure and the relevant turnover taken into account for the starting point represent an inadequate proportion of Killem's total turnover for the year ending 31 December 2006. In accordance with paragraph 379, in order to achieve the objectives described in paragraph 377, the Commission considers that it is necessary to increase the penalty figure reached after the adjustment to the duration to give a figure that represents a significant sum to Killem.
439. It is noted that on appeal in *Makers UK Limited v OFT*⁴⁷⁰, the CAT, in February 2007, approved the approach taken by the OFT to increase the penalty by £520,000 to act as an effective deterrent to Makers and to other undertakings that might consider engaging in collusive tendering. The OFT explained that it had arrived at the uplift based on the assessment of a "minimum deterrence threshold" ("MDT") applied to all the parties to the decision in order to determine whether there should be an uplift⁴⁷¹.

132. The MDT depended on comparing the undertaking's turnover in the relevant market (used in the calculation of the starting figure at Step 1) with the undertaking's total turnover. The OFT considers that if the undertaking's turnover in the relevant market is less than

⁴⁶⁸ Information provided by Killem via letter dated 15 June 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴⁶⁹ Information provided by Killem via letter dated 15 June 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴⁷⁰ OFT's Decision No. CA98/01/2006; the CAT appeal can be found in [2007] CAT 11.

⁴⁷¹ [2007] CAT 11.

15 per cent of its total turnover, then the figure arrived at by Step 1 will not act as a sufficient deterrent. In such a case therefore the OFT calculates what the figure arrived at by Steps 1 and 2 would have been, if the undertaking concerned had derived 15 per cent of its total turnover on the relevant market. An amount is then added at Step 3 to bring the overall figure up, broadly speaking, to that threshold figure.

133. The OFT calculated that Makers was in a position where its Step 1 figure was insufficient to act as a deterrent in that its relevant turnover was much less than one per cent of its total turnover. If 15 per cent of Makers' total turnover of £69,678,000 had been derived from the relevant market then the figure resulting from the application of Steps 1 and 2 would have been £522,585. This figure is 0.75 per cent of the total turnover, which is the same as 5 per cent (which was the starting percentage used by the OFT at Step 1 for Makers) of 15 percent of the total turnover (on that basis £520,000 was added to the actual Step 1 figure of £6,500 in order to bring the total penalty at Step 3 up to the MDT).
440. The 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.
441. In the present case, the penalty figure reached after adjustment to the duration was insufficient to act as a deterrent as Killem's relevant turnover was less than 3% of its total turnover. In comparison, the proportion of relevant turnover to total turnover of the other Parties ranged from 5.0% - 21.9%. In assessing the appropriate amount of penalty, the Commission will consider the particular circumstances of each case in its assessment of the MDT. The MDT will vary from case to case. In the present case, the Commission considers that if an undertaking's relevant turnover is less than 5% of its total turnover, the figure arrived at by this stage will not act as a sufficient deterrent. In arriving at the 5% MDT for the present case, the Commission notes that the section 34 prohibition came into effect on 1 January 2006 and competition law is still in its infancy in Singapore. Assuming that approximately 5% of Killem's turnover of S\$[...] had been derived from the relevant market, then the figure reached at this stage would have been S\$[...]. Taking into consideration the level of penalties that the Commission imposes on the other Parties and noting that an increase in the financial penalty at this stage for Killem is appropriate in view of the factors stated in paragraph 438, the Commission considers that an increase of S\$[...] is appropriate to act as an effective deterrent to

Killem and to other undertakings which may consider engaging in collusive tendering. The financial penalty at the end of this stage is therefore S\$[...].

442. Adjustment for aggravating and mitigating factors: As stated in paragraphs 392 to 393 above, the Commission will treat multiple infringements as an aggravating factor. As Killem was involved in collusive tendering or bid-rigging in connection with three infringements, the Commission increases the penalty by 20%.
443. The Commission considers the involvement on the part of the Directors of Killem in the infringement as an aggravating factor and increases the penalty by [...]%.
444. The Commission considers that Killem has cooperated with the Commission during the course of the investigation. In this respect, the Commission notes that Killem had, during the section 64 entry of their premises, produced to the Commission the email correspondence between them and PestBusters in relation to the infringements in connection with the AH Tender at paragraph 148(a). The Commission notes from the interviews of Harry Singh pursuant to section 63 notices, that he rarely gave straight answers but he nevertheless admitted to his involvement in the infringement in connection with the TJC quotations. Harry Singh had initially denied any involvement in the River Place quotations. Pursuant to a section 63 notice requesting for documents and information on turnover, Killem subsequently produced a quotation to River Place. Killem's other personnel, William Tan and Jennifer Lee, admitted to their involvement in the infringement in connection with the River Place quotations. Given the limited role played by Harry Singh in the infringement in connection with the River Place quotations, the Commission considers that overall, the personnel of Killem have been frank and forthright with the Commission. Accordingly, the Commission reduces the penalty by [...]% for co-operation.
445. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
446. Adjustment to prevent maximum penalty being exceeded: The financial penalty as at this stage, i.e. S\$[...] does not exceed the maximum financial penalty that the Commission can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$18,872.88.

447. Representations by Killem in respect of quantum of penalty⁴⁷²: Killem sought a reduction in the penalty to be imposed on the ground that it will be hit hard as it would also be giving out annual bonuses to its staff for the major festive seasons. The Commission does not consider that these representations constitute mitigating factors or add any additional mitigating value for the purposes of calculating a financial penalty. The issue of the financial position of the Parties has been addressed in paragraphs 384 to 388.
448. Accordingly, the Commission does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$18,872.88 on Killem.

H. Penalty for PestBusters

449. Starting point: PestBusters was involved in six infringements:
- a) collusive tendering or bid-rigging in connection with the RH Tender, which the Commission considers came to an end in May 2006;
 - b) collusive tendering or bid-rigging in connection with the AH Tender, which the Commission considers came to an end in June 2006;
 - c) collusive tendering or bid-rigging in connection with the Hawaii Tower quotations, which the Commission considers came to an end in February 2006;
 - d) collusive tendering or bid-rigging in connection with the River Place quotations, which the Commission considers ended in May 2006;
 - e) collusive tendering or bid-rigging in connection with the TJC quotations, which the Commission considers came to an end in February 2006; and
 - f) collusive tendering or bid-rigging in connection with the FSSS quotations, which the Commission considers came to an end in April 2006.
450. PestBusters' financial year is 1 April to 31 March. PestBusters' relevant turnover for services involving Agenda treatment in the last business year was S\$[...]⁴⁷³.
451. The Commission has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 364 to 375 above and fixed the

⁴⁷² Written representations by Killem dated 4 October 2007.

⁴⁷³ Information provided by PestBusters via letter dated 12 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

- starting point for PestBusters at [...] % of relevant turnover. The starting point for PestBusters is therefore S\$[...].
452. Adjustment for duration: In view of paragraph 376 above, the Commission does not make any adjustment for duration.
453. Adjustment for other factors: The Commission notes that PestBusters was awarded the contract for the AH Tender⁴⁷⁴ as a result of its collusive action. The total contract sum was S\$349,000. As the project was completed after the last business year, the value of this project would not have been included in the relevant as well as total turnover of PestBusters and hence would not have been taken into account in arriving at the starting point. If this had been taken into consideration, the starting point would have been S\$[...]. As such, the Commission will be increasing the penalty at this stage by the amount of S\$[...].
454. The Commission is of the view that the figure reached thus far, is a significant sum in relation to PestBusters because both the figure and the relevant turnover taken into account for the starting point each represent an adequate proportion of PestBusters' total turnover for the year ending 31 March 2007. Accordingly, the Commission considers that the figure of S\$[...] is sufficient to act as an effective deterrent to PestBusters and to other undertakings which may consider engaging in collusive tendering.
455. The Commission also notes that PestBusters is a mid-sized player in the Agenda Treatment market and [...] for the business year ending 31 March 2007⁴⁷⁵. The Commission is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking.
456. In this instance, the Commission notes that PestBusters has a turnover of S\$[...]. The Commission also notes that [...] ⁴⁷⁶. In the circumstances, the Commission does not consider that PestBusters' financial position warrants a reduction of the penalty at this stage, having regard to the seriousness of the infringement and the need for deterrence.

⁴⁷⁴ The AH Tender was awarded to PestBusters at S\$349,000 (reduced from the sum of \$359,240 proposed by PestBusters after further negotiations).

⁴⁷⁵ Reports and Financial Statements for financial year ending 31 March 2007 signed by the Directors on 3 December 2007 received from PestBusters on 3 January 2008 pursuant to the section 63 Notice issued by the Commission dated 14 November 2007. The Commission also notes from information provided by PestBusters via letter dated 12 April 2007 pursuant to a section 63 Notice issued by the Commission dated 3 April 2007 that PestBusters [...] for the business year ending 31 March 2006.

⁴⁷⁶ See Answers to Questions 46 & 47 of Peter Fernandis' Notes of Information/Explanation Provided on 30 May 2007.

457. Adjustment for aggravating and mitigating factors: As stated in paragraphs 392 to 393 above, the Commission will treat multiple infringements as an aggravating factor. As PestBusters was involved in collusive tendering or bid-rigging in connection with six infringements, the Commission increases the penalty by 50%.
458. The Commission considers the involvement on the part of a Director of PestBusters in the infringements as an aggravating factor and increases the penalty by [...]%.
459. The Commission considers that PestBusters has cooperated with the Commission during the course of the investigation. In this respect, the Commission notes that PestBusters had, during the section 64 entry of its premises, produced to the Commission the email correspondence between the Parties in relation to the infringements in connection with the:
- a) RH Tender at paragraph 90(a) – (f);
 - b) AH Tender at paragraph 148(a) – (e);
 - c) Hawaii Tower quotations at paragraph 207;
 - d) River Place quotation at paragraph 258;
 - e) TJC quotations at paragraph 316(a) – (b); and
 - f) FSSS quotations at paragraph 338.
460. During the Commission’s interviews of Peter Fernandis pursuant to section 63 notices, he admitted to his involvement in all of the infringements above readily and volunteered information to the Commission on the details of the infringements, including the other AAAs’ involvement in the infringements, where the Commission had, then, no evidence of the Parties’ participation. The Commission considers that he has been forthcoming in providing information. Accordingly, the Commission reduces the penalty by [...]% for co-operation.
461. After taking into consideration the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
462. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that the Commission can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$57,192.96.
463. Representations by PestBusters in respect of quantum of penalty⁴⁷⁷: PestBusters sought a reduction in the penalty to be imposed on the following grounds:

⁴⁷⁷ Written representations by PestBusters dated 7 November 2007.

- a) The decision to increase the penalty by S\$[...] on account of the contract for the AH Tender was unjustified as the said contract would have been awarded to them even in the absence of collusion as they were the current pest control contractors and had provided good services to AH; and their profit in respect of the contract for the AH Tender was only S\$[]; and
 - b) Their [...] should be taken into account in coming to the penalty as [...].
464. The Commission does not consider that the decision to increase the penalty by S\$[...] on account of the contract for the AH Tender was unjustified. The representation in paragraph 463(a) is without merit. If PestBusters was as confident as it had claimed of winning the contract for the AH Tender, there would have been no need for Peter Fernandis to solicit cover bids from the other AAAs and to even offer to reimburse them the tender fee. In any event, the Commission notes that the uplift of \$[...] did not even deprive PestBusters of their profit for the said contract. With regard to the representations in paragraph 463(b), the Commission has already considered the financial position of PestBusters in paragraph 455. Even if the Commission accepts that [...], the Commission is of the view that PestBusters had not shown any information or documentation that they are eligible for a reduction in the penalty based on their financial position⁴⁷⁸. In this regard, the Commission notes from the Reports and Financial Statements for the financial year ending 31 March 2007 signed by the Directors on 3 December 2007⁴⁷⁹, that there is a statement by the Directors that [...] ⁴⁸⁰. There is also an additional statement that [...] ⁴⁸¹.
465. Accordingly, the Commission does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$57,192.96 on PestBusters.

I. Penalty for Rentokil

466. Starting point: Rentokil was involved in four infringements:
- a) collusive tendering or bid-rigging in connection with the RH Tender, which the Commission considers came to an end in May 2006;

⁴⁷⁸ See paragraphs 384 to 388 above.

⁴⁷⁹ Reports and Financial Statements for financial year ending 31 March 2007 signed by the Directors on 3 December 2007 received from PestBusters on 3 January 2008 pursuant to the section 63 Notice issued by the Commission dated 14 November 2007. Our proposed infringement decision with the proposed financial penalties was issued to the Parties on 2 October 2007.

⁴⁸⁰ [...]

⁴⁸¹ [...]

- b) collusive tendering or bid-rigging in connection with the AH Tender, which the Commission considers came to an end in June 2006;
 - c) collusive tendering or bid-rigging in connection with the Hawaii Tower quotations, which the Commission considers came to an end in February 2006; and
 - d) collusive tendering or bid-rigging in connection with the River Place quotations, which the Commission considers came to an end in May 2006.
467. Rentokil's financial year is 1 January to 31 December. Rentokil's relevant turnover in the last business year was S\$[...]⁴⁸². In this respect, the Commission notes that Rentokil has informed the Commission that it does not have exact turnover figures attributable to Agenda Treatment for the financial year ending 31 December 2006 and that it is only able to provide a rough estimate of the relevant turnover based on the amount of Agenda purchased for the financial year ending 31 December 2006. The amount of Agenda purchased is multiplied by a factor of 80 to arrive at the total volume of diluted Agenda. Taking into account an estimated wastage/spillage of about [...], the number of linear metres that can be treated using the volume of diluted Agenda is then multiplied by the "recommended selling price per linear metre – S\$70.00" to arrive at the estimated relevant turnover⁴⁸³.
468. The Commission has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 364 to 375 above and fixed the starting point for Rentokil at [...]% of relevant turnover. The starting point for Rentokil is therefore S\$[...].
469. Adjustment for duration: In view of paragraph 376 above, the Commission does not make any adjustment for duration.
470. Adjustment for other factors: The Commission notes that Rentokil is one of the bigger players in the Agenda Treatment market as well as the general pest control market. It made a net profit of S\$[...]⁴⁸⁴ for the last business year. The Commission is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. In this instance, the Commission is of the view that the figure

⁴⁸² Information provided by Rentokil via statement of Wee Hwee Lin affirmed on 29 August 2007 enclosed with letter dated 29 August 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴⁸³ Information provided by Rentokil via letter dated 20 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

⁴⁸⁴ Information provided by Rentokil via letter dated 20 April 2007 pursuant to the section 63 Notice issued by the Commission dated 3 April 2007.

reached after adjustment for duration is a significant sum in relation to Rentokil because both the figure and the relevant turnover taken into account for the starting point represent an adequate proportion of Rentokil's total turnover for the year ending 31 December 2006. Accordingly, the Commission considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Rentokil and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.

471. Adjustment for aggravating and mitigating factors: As stated in paragraphs 392 to 393 above, the Commission will treat multiple infringements as an aggravating factor. As Rentokil was involved in collusive tendering or bid-rigging in connection with four infringements, the Commission increases the penalty by 30%.
472. The Commission considers the involvement on the part of the General Manager of Rentokil in the infringements as an aggravating factor and increases the penalty by [...]%.
473. Although the Commission considers that Rentokil has cooperated with the Commission during the course of the investigation, the Commission notes that Rentokil had not produced to the Commission any of the email correspondence between them and the Parties in relation to any of the infringements whether during the section 64 entry of their premises or otherwise. The Commission, however, gives due consideration that Rentokil arranged for Joseph Ong, who is presently working for Rentokil Initial (Thailand) Ltd in Bangkok, to attend at the CCS for interviews and notes that he admitted to his involvement in the infringements in connection with the RH Tender, AH Tender, Hawaii Tower and River Place quotations rather readily. The Commission considers that he has been forthcoming in providing information. On the other hand, the Commission does not find the rest of Rentokil's current personnel interviewed pursuant to the Commission's section 63 notices, including Nicck Yeong and Yeoh Yen Hoon (Jessie), to be as forthcoming. Accordingly, the Commission reduces the penalty by [...]% for co-operation.
474. As a result of the consideration of the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
475. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that the Commission can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$92,634.50.

476. Representations by Rentokil in respect of quantum of penalty⁴⁸⁵: Rentokil sought a reduction in the penalty to be imposed from S\$92,634.50 to \$74,107.60 on the following grounds:
- a) The negative publicity generated from media coverage is likely to affect Rentokil's business and the penalty should be reduced by 10% for this factor;
 - b) Rentokil did not obtain any economic or financial benefit from the infringing projects and the penalty should be reduced by 10% for this factor; and
 - c) Rentokil asked that the penalty be reduced by another 5% for its co-operation as it has incurred substantial expenses of \$3,000 to arrange for Joseph Ong to return to Singapore for interviews. Rentokil also aided the Commission in contacting their ex-employees, Dennis Ng and Jacqueline Ng for interviews. Rentokil stated that it had no influence or control over its current or ex-employees and should not be penalised if they were not forthcoming in their interviews.
477. The Commission does not consider that these representations constitute mitigating factors or add any additional mitigating value for the purposes of calculating a financial penalty. The issue of the financial position of the Parties has been addressed in paragraphs 384 to 388. The Commission also considers that the issue of financial gains or benefit has already been addressed in paragraph 381 above. The lack of any financial benefit from the infringements does not diminish the seriousness of the infringements or constitute a mitigating factor. As for the issue of Rentokil's co-operation, this has already been addressed in paragraph 473 above. The Commission had already taken into consideration the time and expense of procuring Joseph Ong's attendance at its interviews when it looked at the issue of co-operation rendered by Rentokil. As for the contention that Rentokil has aided the Commission to contact Jacqueline Ng and Dennis Ng for its interviews, the Commission notes that it had obtained the information of Jacqueline Ng's current employer from its interviews and contacted Jacqueline Ng directly for its interviews. The Commission obtained Dennis Ng's contact particulars from Jacqueline Ng and contacted him directly for its interviews. While the Commission appreciates that Rentokil may not have any influence or control over its ex-employees in terms of their co-operation with the Commission, the fact remained that with the exception of Joseph Ong, the rest of Rentokil's current personnel, including Nicck Yeong and Yeoh Yen Hoon (Jessie) were less than forthcoming. As such, Rentokil had not shown how the evidence given by Nicck Yeong and Yeoh Yen Hoon had enabled "the enforcement process to be concluded more

⁴⁸⁵ Written representations by Messrs Lee & Lee on behalf of Rentokil dated 12 November 2007.

effectively and/or speedily". In all, the Commission does not consider that Rentokil had raised any new issues in their representations for consideration under the co-operation head or any other heads warranting the Commission to increase the percentage of reduction attributable under such heads.

478. Accordingly, the Commission does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$92,634.50 on Rentokil.

J. Conclusion on penalties

479. In conclusion, the Commission has, pursuant to section 69(2)(d) of the Act, imposed the following financial penalties on the Parties as summarised in the table below:

Party	Financial Penalty to be paid
Aardwolf Pestkare (S) Pte Ltd	S\$53,173.59
Alliance Pest Management Pte Ltd	S\$36,553.45
Elite Pest Management Pte Ltd	S\$4,332.28
Killem Pest Pte Ltd	S\$18,872.88
PestBusters Pte Ltd	S\$57,192.96
Rentokil Initial (S) Pte Ltd	S\$92,634.50
Total	S\$262,759.66

480. All Parties must pay their respective penalties to the Commission by no later than 5 p.m. on 10 March 2008. If any of the Parties fail to pay the penalty within the deadline specified above, and no appeal against the imposition, or the amount, of a financial penalty has been brought or such appeal has been unsuccessful, the Commission may apply to register the direction to pay the penalty in a District Court. Upon registration, the direction shall have the same force and effect as an order originally obtained in a District Court and can be executed and enforced accordingly.



Teo Eng Cheong
Chief Executive
Competition Commission of Singapore