

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

Notice of Infringement Decision issued by CCS

Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand

03 November 2009

Case number: CCS 500/003/08

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SECTION I: THE FACTS

A. The Parties

1. Information received by the Competition Commission of Singapore (“CCS”) (see paragraph 34) indicated that the following undertakings described in more detail in paragraphs 3 to 24 below, in conjunction with the Express Bus Agencies Association (“EBAA”), engaged in the fixing of prices of express bus tickets sold in Singapore for destinations in Malaysia, and/or in the fixing of the fuel and insurance charge (“FIC”).
 - a) Alisan (S) Pte Ltd (“Alisan”);
 - b) Enjoy Holiday Tour Pte Ltd (“Enjoy”);
 - c) Five Stars Tours Pte Ltd (“Five Stars”);
 - d) GR Travel Pte Ltd (“GR Travel”);
 - e) Grassland Express & Tours Pte Ltd (“Grassland”);
 - f) Gunung Raya Travel Pte Ltd (“Gunung Raya”);
 - g) Konsortium Express & Tours Pte Ltd (“Konsortium”);
 - h) Lapan Lapan Travel Pte Ltd (“Lapan Lapan”);
 - i) Luxury Tours & Travel Pte Ltd (“Luxury”);
 - j) Nam Ho Travel Service (Singapore) Pte Ltd (“Nam Ho”);
 - k) Regent Star Travel Pte Ltd (“Regent Star”);
 - l) Sri Maju Tours & Travel (“Sri Maju”);
 - m) T&L Tours Pte Ltd (“T&L”);
 - n) Transtar Travel Pte Ltd (“Transtar”);
 - o) Travelzone Network Services Pte Ltd (“Travelzone”); and
 - p) WTS Travel & Tours Pte Ltd (“WTS”).
2. The undertakings listed above and the EBAA are identified each as a “Party” and together, “the Parties” in this Infringement Decision (“ID”).

(I) Alisan (S) Pte Ltd

3. Alisan is a private limited company registered in Singapore, providing travel services in Singapore since 1977¹. Alisan’s registered address is 5001 Beach Road #08-14 Golden Mile Complex Singapore 199588. Alisan’s estimated turnover for the financial year ending 30 June 2006, was S\$[...]². Leong Sing Kiong, a director and shareholder, is referred to in this ID. Alisan was an ordinary member of the EBAA from sometime in 2005 to 1

¹ See Answer to Question 3 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

² Information provided by Onn Ping Lan & company via letter dated 20 March 2009 pursuant to the section 63 Notice issued by CCS dated 18 March 2009

January 2007³ and its representative, Leong Sing Kiong, was a member of the Executive Committee from sometime in 2005 until 11 October 2006⁴.

(II) Express Bus Agencies Association

4. The Express Bus Agencies Association (“EBAA”) was established in October 2003. Its registered place of business is 5001 Beach Road #03-36 Golden Mile Complex Singapore 199588. The EBAA is made up of 2 classes of membership: ordinary membership and associate membership. According to the Constitution of the EBAA, ordinary membership is open to all express bus companies or appointed agencies registered with and authorised or approved by the Land Transport Authority (“LTA”), Singapore⁵. A background on the role played by the LTA and the Public Transport Council (“PTC”) in the regulation of express bus services can be found at paragraph 28. Associate membership is open to other organisations or companies within or related to the express bus industry. Ordinary members are entitled to one vote and its representatives are eligible to be members of the Executive Committee of EBAA. Associate members have no voting rights and are not eligible to be elected to the Executive Committee⁶.
5. The Executive Committee originally comprised 11 members: a President, a Vice-President, a Secretary, an Assistant Secretary, a Treasurer, an Assistant Treasurer and 5 ordinary members. The Constitution was amended on 11 October 2006 to remove the posts of Assistant Secretary and Assistant Treasurer to reduce the number of Executive Committee members to nine⁷.
6. Clause 21.4 of the EBAA Constitution states:

The Association shall not attempt to restrict or interfere with trade or make directly or indirectly any recommendation to, any arrangement with its Members which has the purpose or is likely to have the effect of fixing or controlling the price or any discount, allowance or rebate relating to any goods or services which adversely affect consumer interests.
7. The undertakings listed in paragraph 1 were, at one time or another, ordinary or associate members of the EBAA. Huang Xiu Qin (“Kim

³ See Paragraph 3 of Minutes of 01/2007 Executive Committee meeting held on 17 January 2007

⁴ See Paragraph 16 of Minutes of 3rd Annual AGM held on 11 October 2006

⁵ See Constitution of the EBAA, referred to in Tan Kah Hin’s Notes of Explanation / Information Provided on 20 August 2008 and marked TKH-1

⁶ See Constitution of the EBAA

⁷ See Paragraph 15 of Minutes of 3rd AGM held on 11 October 2006

Huang”), administrator of the EBAA from April 2005 to January or February 2006, Tan Kah Hin, manager of the EBAA since April 2006, and Katherine Ong, an administrative assistant, are referred to in this ID.

8. The EBAA’s turnover for the financial year ending 31 December 2007 was S\$[...] ⁸.

(III) Enjoy Holiday Tour Pte Ltd

9. Enjoy is a private limited company registered in Singapore, providing travel and tour services in Singapore from July 1994⁹. Enjoy’s registered address was 101 Upper Cross Street #B1-16 People’s Park Centre Singapore 058357. Seng Miang Huat Michael (“Michael Seng”), director and shareholder, is referred to in the ID. Enjoy was a member of the EBAA from its inception in 2003 to on or about 11 July 2007¹⁰ and its representative, Michael Seng was the Assistant Treasurer of the EBAA from September 2003 to 26 April 2006 and the Treasurer from 26 April 2006 to 11 July 2007¹¹.
10. CCS does not have information on Enjoy’s estimated turnover for the period of its participation in the infringing agreements. According to Michael Seng, the estimated annual sales turnover for Enjoy was between S\$[...] on average¹². CCS will take the mean estimated annual turnover figure of S\$[...] to represent Enjoy’s annual turnover.

(IV) Five Stars Tours Pte Ltd

11. Five Stars is a private limited company registered in Singapore, providing travel and tour services¹³ since 1990¹⁴. Five Stars’ registered address is 1 Park Road #05-01 People’s Park Complex Singapore 059108. Five Stars’ turnover for the financial year ending 31 December 2007 was S\$[...] ¹⁵. Lim Cheng Onn Johnny (“Johnny Lim”), shareholder and director, and Tay

⁸ See Appendix 12 of Rajah & Tann’s reply dated 23 December 2008 to section 63 Notice dated 18 December 2008

⁹ See Answer to Question 8 of Michael Seng’s Notes of Information / Explanation Provided on 5 November 2008

¹⁰ See Paragraph 4 of Minutes of 03/2007 Executive Committee meeting held on 11 July 2007

¹¹ See Paragraph 4 of Minutes of 03/2007 Executive Committee meeting held on 11 July 2007

¹² See Answer to Question 24 of Michael Seng’s Notes of Information / Explanation Provided on 5 November 2008

¹³ See Answer to Question 14 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

¹⁴ See Memorandum and Articles of Association of Five Stars Tours Pte Ltd marked JL-008 obtained during section 64 Inspection on 24 June 2008

¹⁵ Information provided by Johnny Lim on 13 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

Seow Hoon Chris (“Chris Tay”), Deputy General Manager, are referred to in this ID. Five Stars has been an ordinary member of the EBAA since its inception in 2003. Its representative, Johnny Lim, was a member of the EBAA’s Executive Committee from its inception in 2003 to 26 April 2006. He was President of the EBAA from 26 April 2006¹⁶ to 12 November 2008 and is currently a member of the Executive Committee¹⁷. Johnny Lim is also a director of Gunung Raya.

(V) GR Travel Pte Ltd

12. GR Travel is a private limited company registered in Singapore, providing services as a travel agent, including the sale of coach and air packages, in Singapore from 2003¹⁸ until the cessation of its business activities in January 2008¹⁹. GR Travel’s registered address is 5001 Beach Road #03-32A Singapore 199588. GR Travel’s turnover for the financial year ending 31 December 2007 was S\$[...] ²⁰. Lim Cheng Chuan Ken (“Ken Lim”), director and shareholder, and Lim Cheng Hoe Vincent (“Vincent Lim”), Manager, coach division, are referred to in this ID. GR Travel was an ordinary member of the EBAA from its inception in 2003 to 19 February 2008 when it terminated its membership²¹. Ken Lim was the Assistant Secretary of the EBAA from its inception in 2003 to 3 November 2006 and has been a member of the Executive Committee from 3 November 2006. Ken Lim is also a director of Gunung Raya and Five Stars. Ken Lim was uncertain whether he represented GR Travel or Gunung Raya²² for EBAA-related matters. According to Vincent Lim, Ken Lim represented GR Travel and not Gunung Raya²³. The current EBAA website lists Ken Lim as the representative for Gunung Raya²⁴.

(VI) Grassland Express & Tours Pte Ltd

¹⁶ See Minutes of EGM (EGM) 4/2006 held on 26 April 2006

¹⁷ See Answer to Question 1 of Johnny Lim’s Notes of Information / Explanation Provided on 15 January 2009

¹⁸ See Answer to Question 4 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008

¹⁹ See Answer to Question 21 of Johnny Lim’s Notes of Information / Explanation Provided on 15 January 2009

²⁰ Information provided by Ken Lim via letter dated 19 February 2009 pursuant to letter sent by CCS dated 3rd February 2009

²¹ See paragraph 20 of Minutes of 01/2008 Executive Committee meeting held on 19 February 2008

²² See Answer to Question 8 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008

²³ See Answer to Question 14 of Vincent Lim’s Notes of Information / Explanation Provided on 13 August 2008

²⁴ See EBAA website - <http://www.ebaa.sg/committee.html>

13. Grassland is a private limited company registered in Singapore, providing travel and tour services in Singapore since 1989²⁵. Grassland's registered address is 5001 Beach Road #01-26 Golden Mile Complex Singapore 199588. Grassland's turnover for the financial year ending 30 June 2008, was S\$[...] ²⁶. Tan Boon Huat, director and shareholder, and Ling Wang Hock, Operations Manager, are referred to in this ID. Grassland was an ordinary member of the EBAA from its inception in 2003 to on or about 19 January 2007²⁷ and its representative, Tan Boon Huat, was the Vice-President of the EBAA from its inception in 2003 until 19 January 2007²⁸.

(VII) Gunung Raya Travel Pte Ltd

14. Gunung Raya is a private limited company registered in Singapore, providing travel and tour services since 1986²⁹. Gunung Raya's registered address is 5001 Beach Road #01-13 Golden Mile Complex Singapore 199588. Gunung Raya's turnover for the financial year ending 31 December 2007 was S\$[...] ³⁰. Ken Lim, director since 6 April 2006, is referred to in this ID. Gunung Raya has been an ordinary member of the EBAA from its inception in 2003. Prior to 6 April 2006, Leong Lean Pong³¹ represented Gunung Raya on the Executive Committee of the EBAA³². According to Vincent Lim, after 6 April 2006, he represented GR Travel and Gunung Raya interchangeably³³. Vincent Lim was a member of the EBAA's Executive Committee from at least 26 April 2006 till 12 November 2008 (the date of the 4th Annual General meeting ("AGM"))³⁴. Vincent Lim is also Five Stars' coach manager.

(VIII) Konsortium Express & Tours Pte Ltd

²⁵ See Answer to Question 7 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²⁶ Information provided by Tan Boon Huat via letter dated 20 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

²⁷ See Afternote at paragraph 5 of minutes of 01/2007 Executive Committee meeting held on 17 January 2007

²⁸ See Answers to Questions 13 to 15 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²⁹ See Answer to Question 4 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

³⁰ Information provided by Johnny Lim on 19 February 2009 pursuant to letter sent by CCS dated 3 February 2009

³¹ Leong Lean Pong was a director and shareholder in Gunung Raya until 9 January 2006

³² See Minutes of 8th Executive Committee meeting held on 3 November 2004 where Leong Lean Pong is listed as a "Member"

³³ See Answer to Question 13 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

³⁴ See Answer to Question 1 of Johnny Lim's Notes of Information / Explanation Provided on 15 January 2009 and EBAA website - <http://www.ebaa.sg/committee.html>

15. Konsortium is a private limited company registered in Singapore, providing tour and travel services³⁵ since November 2001³⁶. Konsortium's registered address is 6001 Beach Road #01-52B Golden Mile Tower Singapore 199589. Konsortium's turnover for the financial year ending 31 December 2007 was S\$[...] ³⁷. Joe Lim Ching Chwee ("Joe Lim") and Raymond Lim Cheng Tee ("Raymond Lim"), both of whom are directors and shareholders, are referred to in this ID. Konsortium has been an ordinary member of the EBAA since its inception in 2003. Joe Lim was the President of the EBAA from October 2003 to 26 April 2006³⁸ and Raymond Lim was a member of the EBAA's Executive Committee from at least 26 April 2006 until 12 November 2008 and he has been the Treasurer since 12 November 2008³⁹.

(IX) Lapan Lapan Travel Pte Ltd

16. Lapan Lapan is a private limited company registered in Singapore, providing coach services in Singapore since about 1998⁴⁰. Lapan Lapan's registered address is 18 Kitchener Road #01-23 New Park Hotel Singapore 208533. Lapan Lapan's estimated turnover for the financial year ending 31 December 2007, was S\$[...] ⁴¹. Wesley Ng Fung Mun ("Wesley Ng"), director and shareholder, is referred to in this ID. Lapan Lapan joined the EBAA as an ordinary member on 21 September 2007⁴². Wesley Ng has been a member of the EBAA's Executive Committee since 19 February 2008⁴³.

(X) Luxury Tours & Travel Pte Ltd

17. Luxury is a private limited company registered in Singapore, providing international travel and coach chartered service in Singapore since 1985⁴⁴.

³⁵ See Answers to Question 11 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008; and Answers to Question 11 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

³⁶ See Answer to Question 10 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

³⁷ Information provided by Konsortium on 31 December 2008 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

³⁸ See Minutes of the Extraordinary General meeting (EGM) 4/2006

³⁹ See EBAA website - <http://www.ebaa.sg/committee.html>

⁴⁰ See Answer to Question 5 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

⁴¹ Information provided by Wesley Ng via letter dated 29 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

⁴² Information provided by EBAA during section 64 inspection on 24 June 2008, marked TKH-002

⁴³ See Answer to Question 59 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008 and Minutes of 01/2008 Monthly meeting held on 19 February 2008

⁴⁴ See Answers to Questions 11 and 12 of Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

Luxury's registered address is 100 Orchard Road #02-46 Meridien Shopping Centre Singapore 238840. Luxury's turnover for the financial year ending 30 June 2008, was S\$[...] ⁴⁵. Vincent Lee Boon Chai @ Vincent Lee Ah Chai ("Vincent Lee"), director and shareholder, and Wong Chih Chiang ("Rendy Wong"), Manager, are referred to in this ID. Luxury joined the EBAA as an associate member on 7 March 2006⁴⁶ and became an ordinary member sometime between 15 August and 11 October 2006⁴⁷. Vincent Lee was elected as the Vice-President of the EBAA on 21 November 2007⁴⁸.

(XI) Nam Ho Travel Service (Singapore) Pte Ltd

18. Nam Ho is a private limited company registered in Singapore, providing travel and tour services in Singapore. Nam Ho's registered address is 100 Eu Tong Sen Street #01-14/16 Pearl's Centre Singapore 059812. Nam Ho's turnover for the financial year ending 30 June 2008 was S\$[...] ⁴⁹. Marshall Ooi Ming Hwee ("Marshall Ooi"), director and shareholder, is referred to in this ID. Nam Ho joined the EBAA as an associate member on 12 July 2006⁵⁰.

(XII) Regent Star Pte Ltd

19. Regent Star is a private limited company registered in Singapore, providing travel and tour services in Singapore since 1996⁵¹. Regent Star's registered address is 5001 Beach Road #04-13 Golden Mile Complex Singapore 199588. Regent Star's turnover for the financial year ending 31 December 2007 was S\$[...] ⁵². Yap Chor Seng ("Sebastian Yap"), Regent Star's representative to the EBAA, is referred to in this ID. Regent Star has been an ordinary member of the EBAA since its inception in 2003 and its representative, Sebastian Yap, has been a member of the EBAA's

⁴⁵ Information provided by Vincent Lee via letter dated 8 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

⁴⁶ See Answer to Question 32 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

⁴⁷ See Minutes of 3/06 meeting on 15 August 2006 where it was recorded that Vincent Lee was "in attendance" and Minutes of 3rd Annual General meeting on 11 October 2006 where it was recorded that Vincent Lee was a "member"

⁴⁸ See paragraph 6 of the Minutes of 4th AGM held on 21 November 2007

⁴⁹ Information provided by Marshall Ooi via letter dated 4 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

⁵⁰ See Answer to Question 31 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008

⁵¹ See Answer to Question 32 of Sebastian Yap's Notes of Information/Explanation Provided on 6 August 2008

⁵² Information provided by Sebastian Yap via letter dated 7 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

Executive Committee since 2004⁵³. Sebastian Yap is also the chairman of the Events and Promotion, Terminal Services subcommittee⁵⁴. Sebastian Yap is also a director and shareholder of Transtar.

(XIII) Sri Maju Tours & Travel Pte Ltd

20. Sri Maju is a private limited company registered in Singapore, providing travel and tour services in Singapore since 2003⁵⁵. Sri Maju's registered address is 5001 Beach Road #01-17 Golden Mile Complex Singapore 199588. Sri Maju's turnover for the financial year ending 31 March 2008, was S\$[...] ⁵⁶. Ng Soh Kiow Susan ("Susan Ng"), director and shareholder, is referred to in this ID. Sri Maju has been an ordinary member of the EBAA since its inception. Susan Ng was the Treasurer from the inception of the EBAA in 2003 until 26 April 2006. She held the appointment of Assistant Treasurer from 26 April 2006 until the post was abolished at the 3rd AGM on 3 November 2006. She was then a member of the EBAA's Executive Committee until 11 July 2007, when she took over the post of Treasurer. She held the post of Treasurer until 12 November 2008⁵⁷. She is currently a member of the Executive Committee⁵⁸.

(XIV) T&L Tours Pte Ltd

21. T&L is a private limited company registered in Singapore, providing travel and tour services in Singapore since sometime in 1987⁵⁹. T&L's registered address is 6001 Beach Road #02-24 Golden Mile Tower Singapore 199589. T&L's turnover for the financial year ending 30 June 2007, was S\$[...] ⁶⁰. Tan Yong Leng, director and shareholder, is referred to in this ID. T&L joined the EBAA as an associate member on 22 June 2006⁶¹. According to the EBAA website T&L is no longer an associate member of the EBAA.

⁵³ See Answer to Question 8 of Sebastian Yap's Notes of Information/Explanation Provided on 6 August 2008

⁵⁴ See Answer to Question 10 of Sebastian Yap's Notes of Information/Explanation Provided on 6 August 2008.

⁵⁵ See Answer to Question 13 of Susan Ng's Notes of Information/Explanation Provided on 11 August 2008.

⁵⁶ Information provided by Susan Ng via letter dated 6 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008.

⁵⁷ See Answer to Question 9 of Susan Ng's Notes of Information/Explanation Provided on 11 August 2008.

⁵⁸ See EBAA website - <http://www.ebaa.sg/committee.html>

⁵⁹ See Answer to Question 2 to 4 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁶⁰ Information provided by Tan Yong Leng via letter dated 6 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008.

⁶¹ See Answer to Question 19 of Tan Yong Leng's Notes of Information/Explanation Provided on 11 September 2008.

(XV) Transtar Travel Pte Ltd

22. Transtar is a private limited company registered in Singapore, providing travel and tour services since 1994⁶². Transtar's registered address is 5001 Beach Road #04-13 Golden Mile Complex Singapore 199588. Transtar's turnover for the financial year ending 31 December 2007 was S\$[...] ⁶³. Yap Chor Hwee Elson ("Elson Yap"), managing director and shareholder, and Sebastian Yap, director and shareholder, are referred to in this ID. Transtar has been an ordinary member of the EBAA since its inception and its representative, Elson Yap, was the Secretary of the EBAA's Executive Committee from its inception in 2003 until October 2008 when he assumed the office of President⁶⁴. Elson Yap is also a shareholder of Regent Star.

(XVI) Travelzone Network Services Pte Ltd

23. Travelzone is a private limited company registered in Singapore, providing travel services since November 2007⁶⁵. Travelzone's registered address is 15 Tanjong Katong Road Lion City Hotel Singapore 436950. Travelzone's turnover for the financial year ending 31 December 2007, was S\$[...] ⁶⁶. Neo Tiam Beng, director and shareholder, and Sim Lee Siang, secretary, are referred to in this ID. Neo Tiam Beng is the sole proprietor of Nier Transport Service which first joined the EBAA as an associate member on 27 June 2006⁶⁷. Subsequently, in December 2007 Travelzone took over Nier Transport Services' membership and Travelzone has been an associate member of the EBAA from December 2007 until at least 3 November 2008⁶⁸. A search of the EBAA's membership directory on its website discloses that Travelzone is no longer a member of the EBAA⁶⁹. However, CCS is unaware of the date when Travelzone left the EBAA.

(XVII) WTS Travel & Tours Pte Ltd

⁶² See Answer to Question 4 of Elson Yap's Notes of Information / Explanation Provided on 6 August 2008

⁶³ Information provided by Elson Yap via letter dated 7 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

⁶⁴ See Answer to Question 1 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009

⁶⁵ See Answer to Question 4 of Sim Lee Siang's Notes of Information / Explanation Provided on 2 April 2009

⁶⁶ Information provided by Sim Lee Siang by hand on 17 April 2009 pursuant to the section 63 Notice issued by CCS dated 18 March 2009

⁶⁷ See Nier Transport Services' EBAA membership application referred to in Neo Tiam Beng's Notes of Information / Explanation Provided on 3 November 2008 and marked NTB-I-001

⁶⁸ See Answers to Questions 48 & 49 of Neo Tiam Beng's Notes of Information / Explanation Provided on 3 November 2008

⁶⁹ See <http://www.ebaa.sg/member.html>

24. WTS is a private limited company registered in Singapore, providing coach transportation for tourists in Singapore and Malaysia since 1989⁷⁰. WTS' registered address is 1 Jalan Anak Bukit #B1-59 Bukit Timah Plaza Singapore 588996. WTS' turnover for the financial year ending 30 September 2007, was S\$[...] ⁷¹. Voo Wei Keong, director, and Micker Sia, managing director, are referred to in this ID. WTS joined the EBAA as an associate member on 7 March 2006 and became an ordinary member sometime around January or February 2007. Voo Wei Keong was elected as a member of the EBAA's Executive Committee on 21 November 2007⁷². Voo Wei Keong became the Secretary of the Executive Committee from 12 November 2008⁷³.

(XVIII) Relationship between the Parties

25. Ken Lim, Johnny Lim, Raymond Lim, Joe Lim and Vincent Lim are brothers⁷⁴. All five brothers are shareholders of Hoteplex Holding Pte Ltd which is in turn the sole shareholder of Five Stars, GR Travel and Gunung Raya. Elson Yap and Sebastian Yap are brothers. In addition, [...] ⁷⁵.

(XIX) Eltabina Jaya Express Pte Ltd

26. Eltabina is a private limited company registered in Singapore, providing express bus services in Singapore since 1 April 1997 ⁷⁶. Eltabina's registered address is 200 Jalan Sultan #01-25 Textile Centre Singapore 199018. Aznan bin Sharib, director and shareholder, is referred to in this ID. Eltabina was an ordinary member of the EBAA from its inception in 2003 until 17 January 2007 and its representative, Aznan bin Sharib, was a member of the EBAA's Executive Committee member from September 2003 to 3 November 2006⁷⁷. For the avoidance of doubt, Eltabina is not considered a Party for the purposes of this ID.

⁷⁰ See Answer to Questions 7 & 8 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷¹ Information provided by Voo Wei Keong via letter dated 10 January 2009 pursuant to the section 63 Notice issued by CCS dated 18 December 2008

⁷² See paragraph 6 of Minutes of 4th AGM held on 21 November 2007

⁷³ See Answer to Question 1 of Voo Wei Keong's Notes of Information / Explanation Provided on 16 January 2009

⁷⁴ See Answers to Questions 31 to 35 of Johnny Lim's Notes of Information/Explanation Provided on 6 August 2008

⁷⁵ [...]

⁷⁶ See Answer to Question 9 of Aznan bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

⁷⁷ See Paragraph 11 of Minutes of 3rd Annual AGM held on 11 October 2006

B. Background to Bus and Coach Transportation Services, including Coach Package Tours, Industry

(I) Express Bus Services

27. Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Lapan Lapan, Luxury, Regent Star, Sri Maju, Transtar and WTS are or were operating express bus services between Singapore and Malaysia.
28. Before 1 January 2005, the requisite licences were issued by the Public Transport Council (“PTC”) and the licensing conditions required the licensee not to charge passengers fares exceeding the approved fares. This was removed when the LTA took over approval of such licences with effect from 1 January 2005⁷⁸. There was no regulation of the prices of tickets sold in Singapore during the period of infringement⁷⁹. The Parties listed in paragraph 27 above set the price of one-way and two-way express bus tickets sold in Singapore.
29. The remaining Parties, i.e. the EBAA, Nam Ho, T&L and Travelzone did not operate express bus services between Singapore and Malaysia. T&L and Travelzone sell tickets for express bus services between Singapore and Malaysia that are operated by other express bus operators⁸⁰.

(II) Excursion Buses

30. Excursion buses are defined as buses used on unscheduled services. They do not have fixed schedules or stopping places. Malaysian excursion buses ferrying tourists who embarked on the bus in Malaysia are allowed to travel anywhere in Singapore and these tourists can disembark and reembark the excursion buses. However, the Malaysian excursion bus is prohibited from embarking any new passengers in Singapore. Excursion buses that originate in Singapore and that are travelling to Malaysia and Southern Thailand would require a permit from the Malaysian and Thai authorities respectively to travel to those countries.

⁷⁸ See SY080808-002 (Bus Service Licence issued by Public Transport Council) and SY080808-003 (Omnibus Licence issued by the LTA)

⁷⁹ See e.g. Answer to Question 25 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008, Answer to Question 29 of Vincent Lim’s Notes of Information / Explanation Provided on 13 August 2008, Answer to Question 33 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008, Answer to Question 31 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008

⁸⁰ See Answer to Question 10 of Tan Yong Leng’s Notes of Information / Explanation Provided dated 11 September 2008 and Answer to Question 7 of Sim Lee Siang’s Notes of Information / Explanation Provided dated 2 April 2009

(III) Coach Packages

31. Some of the Parties, namely, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Luxury, Nam Ho, Regent Star, Sri Maju, T&L, Transtar, Travelzone and WTS, also provide tour packages to Malaysia and Southern Thailand that include bus transport and accommodation. The bus fares are incorporated into the prices of the package tour. The industry uses either express buses or excursion buses to provide the transport for coach package tours.
32. For the purposes of this ID, CCS will focus on the sale of express bus or excursion bus services between Singapore and Malaysia or Southern Thailand, sold in Singapore, in the form of either standalone bus tickets or as part of coach package tours.

(IV) Industry Figures

33. According to the EBAA website⁸¹, there were close to 10.5 million visitors from Singapore to Malaysia in the year 2007. Of these, close to 3.5 million (33%) travelled to Malaysia by express buses and excursion buses. In addition, an estimated 1.2 million passengers, including workers and tourists on transit, travelled by buses from Malaysia to Singapore. According to a press release issued by the EBAA to Singapore Press Holdings dated 15 October 2007⁸² and an article published on 26 October 2007, the EBAA members, who operate express bus services, commanded a total of 60% market share of the coach traffic between Singapore and Malaysia.

C. Investigation and Proceedings

34. Following publication in the *Lianhe Zaobao* on 6 June 2008 of an article regarding the EBAA's announced increase in the charges for the Fuel and Insurance Charge ("FIC"), CCS decided that there were reasonable grounds for suspecting a breach of the prohibition under section 34 ("the section 34 prohibition") of the Competition Act (Cap 50B) ("the Act"). CCS commenced formal investigations under the Act and authorised its officers to enter the premises of EBAA, Five Stars, Transtar, and Luxury under section 64 of the Act. On 24 June 2008, CCS carried out unannounced visits concurrently at these premises.

⁸¹ <http://www.ebaa.sg/>

⁸² See Document marked TKH-EBAA-004 provided by Tan Kah Hin during Section 63 Interview on 28 August 2008 and Document marked SYCS-30 referred to in Question 114 of Sebastian Yap's Notes of Information / Explanation provided on 8 August 2008.

35. Through its investigations, CCS obtained further information indicative of price-fixing arrangements between the following Parties in respect of the sale of express bus or excursion bus services between Singapore and Malaysia or Southern Thailand, sold in Singapore, in the form of either standalone bus tickets or as part of coach package tours, namely:
- a) Alisan (S) Pte Ltd (“Alisan”);
 - b) Express Bus Agencies Association (“EBAA”);
 - c) Enjoy Holiday Tour Pte Ltd (“Enjoy”);
 - d) Five Stars Tours Pte Ltd (“Five Stars”);
 - e) GR Travel Pte Ltd (“GR Travel”);
 - f) Grassland Express & Tours Pte Ltd (“Grassland”);
 - g) Gunung Raya Travel Pte Ltd (“Gunung Raya”);
 - h) Konsortium Express & Tours Pte Ltd (“Konsortium”);
 - i) Lapan Lapan Travel Pte Ltd (“Lapan Lapan”);
 - j) Luxury Tours & Travel Pte Ltd (“Luxury”);
 - k) Nam Ho Travel Service (Singapore) Pte Ltd (“Nam Ho”);
 - l) Regent Star Travel Pte Ltd (“Regent Star”);
 - m) Sri Maju Tours & Travel (“Sri Maju”);
 - n) T&L Tours Pte Ltd (“T&L”);
 - o) Transtar Travel Pte Ltd (“Transtar”);
 - p) Travelzone Network Services Pte Ltd; and
 - q) WTS Travel & Tours Pte Ltd (“WTS”).
36. Details of the section 63 notices issued to the Parties and details of when they responded as well as details pertaining to the interviews of the relevant personnel of the Parties and third parties, can be found in **Annex 1** to this ID.

D. The Infringements: Minimum Selling Price and Fuel Insurance Charge

37. The table below sets out, for the infringements specified by CCS in paragraphs 181 and 434 to 435 below, the infringing parties and their periods of infringement.

Infringing Parties	Period of Infringement	
	MSP Agreement	FIC Agreement
EBAA	N/A	1 January 2006 to 24 July 2008

	Period of Infringement	
Alisan	1 January 2006 to 1 January 2007	1 January 2006 to 1 January 2007
Enjoy	1 January 2006 to 11 July 2007	1 January 2006 to 11 July 2007
Five Stars	1 January 2006 to 24 July 2008	1 January 2006 to 24 July 2008
GR Travel	1 January 2006 to 31 December 2007	1 January 2006 to 31 December 2007
Grassland	1 January 2006 to 19 January 2007	1 January 2006 to 19 January 2007
Gunung Raya	1 January 2006 to 31 December 2007	1 January 2006 to 31 December 2007
Konsortium	1 January 2006 to 24 July 2008	1 January 2006 to 24 July 2008
Lapan Lapan	N/A	18 October 2007 to 24 July 2008
Luxury	N/A	2 October 2007 to 24 July 2008
Nam Ho	N/A	18 October 2007 to 24 July 2008
Regent Star	1 January 2006 to 24 July 2008	1 January 2006 to 24 July 2008
Sri Maju	1 January 2006 to 24 July 2008	1 January 2006 to 24 July 2008
T&L	N/A	18 October 2007 to 5 June 2008
Transtar	1 January 2006 to 24 July 2008	1 January 2006 to 24 July 2008

	Period of Infringement	
Travelzone	N/A	21 November 2007 to 24 July 2008
WTS	N/A	2 October 2007 to 24 July 2008

SECTION II: LEGAL AND ECONOMIC ASSESSMENT

A. Structure of this Section

38. This section begins by setting out the economic and legal framework against which CCS has considered the evidence. The section then sets out, in relation to the infringements, the facts, the evidence of collusion and CCS' analysis of the evidence on which it relies.

B. The Section 34 Prohibition

39. 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.⁸³
40. 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;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply; ...

41. In *Collusive Tendering (Bid-rigging) for Termite Treatment/Control Services by Certain Pest-Control Operators in Singapore* (the “*Pest Control Case*”)⁸⁴, CCS stated:

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

⁸³ The Section 34 prohibition came into force on 1 January 2006

⁸⁴ CCS/600/008/06 dated 9 January 2008, paragraph 37

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

42. 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.” According to CCS’ Guidelines, undertakings include individuals operating as sole proprietors, co-operatives, societies, business chambers, trade associations and non profit-making organisations⁸⁵. In this regard, EBAA and its members (both ordinary and associate) are “undertakings” within the meaning of the Act.

D. Agreements

43. CCS ’ Guidelines state:

Agreement has a wide meaning and includes both legally enforceable and non-enforceable agreements, whether written or oral; it includes so-called gentlemen’s agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means. All that is required is that parties arrive at a consensus on the actions each party will, or will not, take⁸⁶.

44. An agreement may be found where it is implicit in the participants’ behaviour, as was the case in *Viho Europe BV /Toshiba Europa (I.E.) Gmbh*⁸⁷. In this case the infringing parties had entered into agreements with their exclusive distributors in some Member States and these agreements contained an export prohibition clause in relation to photocopiers. The European Commission (“EC”) held that Article 85(1)⁸⁸ would apply to both written agreements containing an export prohibition clause as well as agreements where the clause was not included but where the evidence demonstrated that there was an understanding that the export prohibition should apply.

⁸⁵ Paragraph 2.5 of CCS Guidelines on the Section 34 Prohibition

⁸⁶ Paragraph 2.10 of CCS Guidelines on the Section 34 Prohibition

⁸⁷ OJ 1991 L287/39 at paragraph 22

⁸⁸ Which is the predecessor of Article 81(1) and the equivalent of section 34(1) of the Act

45. It is also established law that a party who participated in an anti-competitive agreement is not relieved of responsibility for it because it did not implement or fully abide by the agreement. This was the case in *Tréfileurope v European Commission*⁸⁹, where the appellant had admitted participating in meetings the purpose of which was to fix prices and quotas in order to limit imports of welded mesh into France. The Court of First Instance (“CFI”) held that the fact of the appellant’s failure to abide by the agreement would not absolve it of its liability for the infringement.
46. A similar situation arose in the *Pest Control Case*, where one of the infringing parties, Aardwolf, had claimed that it had never intended to abide by the agreement/concerted practice to submit cover bids in support of the designated winner. Aardwolf claimed that it gave the other parties the impression that it was participating in the agreement/concerted practice so that it could use the information on the tenders that it received from the other pest-control operators to gain a competitive advantage over them. CCS found:
- ...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 agreement⁹⁰.
47. An agreement made by members of an association constitutes an agreement between undertakings. The fact that the members meet under the aegis of a trade association does not remove their agreement from the scope of the section 34 prohibition. This scenario is addressed in CCS Guidelines, which state that “*undertakings participating in such associations may in some instances collude and co-ordinate their actions which could infringe the section 34 prohibition*”⁹¹.
48. In *Bureau national interprofessionnel du cognac v Guy Clair*⁹², the Court of First Instance (“CFI”) held in its 1985 decision that an agreement made by two groups of traders, such as wine-growers and dealers, must be regarded as an agreement between undertakings or associations of undertakings. The fact that the groups meet within an organisation such as the National Inter-Trade Board for Cognac which was set up by an order of the Minister for Agriculture did not remove their agreement from the scope of Article 85. In *Papiers peints de Belgique*⁹³, the Groupement des Fabricants de papiers peints de Belgique comprised four undertakings. The

⁸⁹ Case T-141/89 [1995] ECR II-791

⁹⁰ Pest Control Case, paragraphs 120 to 128

⁹¹ Paragraph 2.13 of CCS Guidelines on the Section 34 Prohibition

⁹² Case 123/83, [1985] ECR 391

⁹³ OJ L 237

operations of the group were governed by the Reglement d'ordre interieur, the relevant provisions of which provide for the fixing of price ranges, the prohibition on cash discounts and the standardization of conditions of sale. The EC found that the Reglement was an agreement between the four members of the Groupement and therefore an agreement between undertakings within the meaning of Article 85(1).

E. Concerted Practices

49. The section 34 prohibition also applies to concerted practices. CCS' Guidelines explain the difference between an agreement and a concerted practice as follows:

The key difference between a concerted practice and an agreement is that a concerted practice may exist where there is informal co-operation, without any formal agreement or decision⁹⁴.

50. As CCS stated in the *Pest Control Case*:

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 market⁹⁵.

51. CCS was guided in its concept of a concerted practice by the European Court of Justice's ("ECJ") decision in the case of *Suiker Unie and others v Commission*⁹⁶. This case involved a number of sugar producers who had taken part in concerted practices to protect two Dutch Producers. The producers claimed that they had not worked out any plan. The ECJ found that it was not necessary to prove that there was a plan and it held at ¶¶ 26, 27, and 173 to 175 that:

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.

⁹⁴ Paragraph 2.16 of CCS Guidelines on the Section 34 Prohibition

⁹⁵ Pest Control Case, paragraph 42

⁹⁶ Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1975] ECR-I 1663, [1976] 1 CMLR 295

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 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.** (Emphasis added)

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.

52. Further guidance on the concept of a concerted practice was given in *P. Hüls AG v. Commission*⁹⁷. In this case, 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 1999 decision, held:

161 It follows, first, that the concept of a concerted practice, as it results from the actual terms of Article 81(1) EC, implies, besides undertakings' concerting with each other, subsequent conduct on the market, and a relationship of cause and effect between the two.

162 However, **subject to proof to the contrary, which the economic operators concerned must adduce, the presumption must be that the undertakings taking part in the concerted action and**

⁹⁷ Case C-199/92 [1999] ECR I-4287.

remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. That is all the more true where the undertakings concert together on a regular basis over a long period, as was the case here, according to the findings of the Court of First Instance.

[Emphasis added]

53. In the case of *Cimenteries v Commission*⁹⁸, the appellants had argued that merely letting a competitor know of its intention could not have amounted to a concerted practice. In rejecting this argument, the CFI said in its 2000 decision:

1849. In that connection, the Court points out that the concept of concerted practice does in fact imply the existence of reciprocal contacts (Opinion of Advocate General Darmon in *Woodpulp II*, cited at paragraph 697 above, points 170 to 175). That condition is met where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it ...

...

1852 ...In order to prove that there has been a concerted practice, **it is not therefore necessary to show that the competitor in question has formally undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have colluded over their future conduct on the market. It is sufficient that, by its statement of intention, the competitor should have eliminated, or at the very least, substantially reduced uncertainty as to the conduct** [on the market to be expected on his part].
(Emphasis added)

54. Finally the CFI, in *Tate & Lyle plc v Commission*⁹⁹, a case which concerned a series of meetings between British Sugar and its competitors, Tate & Lyle and Napier Brown, 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

⁹⁸ Case T-25/95 [2000] ECR II-491

⁹⁹ 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*)

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

F. Agreement and/or Concerted Practice

55. It has been established in EC law that it is not necessary to characterise conduct as exclusively an agreement or a concerted practice, in order to find an infringement. This principle was enunciated in *SA Hercules Chemicals v Commission*¹⁰⁰. The appellant had been involved, over a number of years, in an integrated set of schemes that made up a single infringement. The infringement was manifested by both anti-competitive agreements as well as concerted practices. As the infringement had elements of both agreements and concerted practices, the EC had characterised the infringement as “an agreement and a concerted practice”. In upholding this characterisation, the CFI held:

- 264 The Commission was also 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”. Given such a complex infringement, the dual characterization by Commission in Article 1 of the Decision 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 of a concerted practice, **but rather as referring to a complex**

¹⁰⁰ Case T-7/89 [1991] ECR II-711

whole comprising a number of factual elements some of which were characterized as agreement and other as concerted practices ...¹⁰¹.

(Emphasis added)

56. Just as an infringing scheme may be defined as both an agreement and a concerted practice, conduct by an infringing party may also be at the same time a concerted practice and an agreement. Such a situation was found in *The Community v Interbrew NV and others (re the Belgian beer cartel)*¹⁰². It was found in this case that there were long term and complex restrictive agreements relating to the Belgian beer market. In finding that it did not have to classify an infringement as being exclusively an agreement or a concerted practice, the EC said that:

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.

57. Similarly, in the UK, the Office of Fair Trading (“OFT”) is not required to characterise an infringement as either an agreement or a concerted practice provided that the conduct in question amounts to one or the other. In *JJB Sports plc and Allsports Limited v Office of Fair Trading*¹⁰³ 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. The Competition Appeal Tribunal (“CAT”) put it succinctly when it stated:

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

¹⁰¹ Ibid at paragraph 264

¹⁰² Case IV/37.614/F3 [2004] CMLR 2

¹⁰³ [2004] CAT 17 at paragraph 654

58. Correspondingly, the EC in the *Polypropylene*¹⁰⁴ case, was of the view that the important distinction to be drawn in such cases is between collusive and non-collusive behaviour:

87. ...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 concertation¹⁰⁵.

G. Association of Undertakings

59. The section 34 prohibition also covers decisions by associations of undertakings. A decision by an association may include the constitution or rules of an association of undertakings or its recommendations. In the day to day conduct of the business of an association, resolutions of the management committee or of the full membership in general meetings, binding decisions of the management or executive committee of the association, or rulings of its chief executive, may all be decisions of the association. The key consideration is whether the object or effect of the decision, whatever form it takes, is to influence the conduct or co-ordinate activities of the members in some commercial matter. An association's coordination of its members' conduct in accordance with its constitution may also be a decision even if its recommendations are not binding on its members, and may not have been fully complied with. It will be a question of fact in each case whether an association of undertakings is itself a party to an agreement¹⁰⁶.
60. Where there has been an infringement of the section 34 prohibition, a financial penalty may be imposed on the individual members of the association if membership coincides with participation in the agreement. Further, it is also the case that where there has been a decision by the association, the association may be penalised independently¹⁰⁷.
61. The *Felt Roofing* case¹⁰⁸ concerned the Cooperative Association of Belgian Asphalters (Belasco) and seven business undertakings who were members of Belasco and producers of roofing felt. The decision related to an agreement between the members which contained several provisions, including the adoption of a common price list and minimum selling prices

¹⁰⁴ Case 86/398 OJ [1986] L 230/1

¹⁰⁵ Ibid, at paragraph 87

¹⁰⁶ Paragraph 2.13 of CCS Guidelines on the Section 34 Prohibition

¹⁰⁷ Paragraph 2.14 of CCS Guidelines on the Section 34 Prohibition

¹⁰⁸ Case 86/399/EEC OJ [1986] L 232/15

for roofing felt supplied in Belgium, the setting of quotas for sale on the Belgian market and penalties for breaches of the agreement. The agreement provided for the members to hold general meetings, at which each would be represented, to administer the agreement. Throughout the relevant period, membership of the association, which accounted for 58% of the market for roofing felt in Belgium, coincided in practice with participation in the agreement. To facilitate monitoring of quotas, members were required to make monthly returns to an accountant employed and paid by Belasco. The accountant also administered the arrangements for penalizing those who exceeded their quotas and acted as secretary to the general meetings.

62. The EC, in its 1986 decision, held that the agreement, together with the measures taken by the members and by Belasco under it to give effect to and supplement the agreement, formed a set of agreements and/or decisions by an association of undertakings which had the object and/or effect of restricting competition¹⁰⁹. In deciding to impose fines on Belasco and its members, the EC found that the members had intended to restrict competition by their operation of the cartel and that Belasco intended to aid them in doing so by participating in the operation of the agreement¹¹⁰. In dealing with Belasco, the EC acknowledged that while Belasco was not involved in all aspects of the cartel's operation, it was involved in one of its most serious aspects, namely the system of quotas. The participation of a trade association in a cartel, even if only to a limited extent, was more serious where the association was fully aware of the extent and gravity of the restrictions of competition caused by the cartel. Although Belasco's members were also the members of the cartel, it was held that Belasco itself must be held responsible, independently of its members, for its involvement in operating the cartel¹¹¹. Belasco's appeal to the ECJ (*SC Belasco and others v Commission of the European Communities*¹¹²) was dismissed.
63. Similarly, the *Cement* decision¹¹³ in 1994 was addressed to the European Cement Association (Cembureau) and its members comprising both national cement associations and undertakings. The EC found that Cembureau and its members had acceded to a market sharing agreement under which each producer sold only on its national market or, in the event of sales on another market, complied with the prices and terms and conditions of sale applied by local producers. In dealing with the

¹⁰⁹ Ibid, at paragraph 72

¹¹⁰ Ibid, at paragraph 103

¹¹¹ See paragraphs 114 to 115

¹¹² [1989] ECR-I-2117

¹¹³ Case IV/33.126 and 33.322 (94/815/EC) OJ [1994] L 343/I

applicability of Article 85 to associations of undertakings, the EC made the following remarks at ¶ 44(4):

... Where an association comprises several members, it is quite natural that some bodies, such as the General Assembly, should include all the members and that others should include a more restricted number of persons elected by the General Assembly. These differences in the composition of the bodies does not necessarily mean that the decisions and/or agreements reached within a restricted body do not apply to the members not represented on it. The important point is that the members of such bodies are designated by all the members of the association and that the undertakings consider themselves all concerned by the results of discussions within such bodies. Such decisions and/or agreements apply to all the members of the association.

The fact that members who were entitled to attend the meetings of the bodies did not do so does not mean that the decisions and/or agreements reached within such bodies do not apply to or do not have to be applied by such absent members.

As a general rule, belonging to an association means accepting its rules and conduct and implies awareness that the association and/or organization acts through the direct or indirect contribution of each member and relies on each member's consent and support. Unless dissent is expressed, this applies not only to the activities provided for in the articles of the association, but also to its de facto activities.

64. When the case went on appeal to the CFI in *Cimenteries CBR and Others v Commission of the European Communities*¹¹⁴, it was contended that the infringement should be characterised as a decision of an association and not as an agreement between undertakings. In rejecting this argument, the Court held in its 2000 decision that in order to find that an association and its members had participated in one and the same infringement, the Commission must establish conduct on the part of the association which is separate from that of its members¹¹⁵. Cembureau's separate role consisted of it taking the initiative for the meetings of the Head Delegates during which the Cembureau agreement was concluded and then confirmed, and in preparing those meetings. The separate role of the national associations that were members of Cembureau consisted of concluding, then confirming the Cembureau agreement with Cembureau. The indirect members of

¹¹⁴ Case T-25/95 [2000] ECR II-491

¹¹⁵ Ibid, at paragraph 1325

Cembureau acceded to the agreement through measures implementing that agreement¹¹⁶.

65. In the *Organic Peroxides* case¹¹⁷, the EC held that the infringing party which facilitated the workings of the cartel (“AC-Treuhand AG”) participated in the agreement as an undertaking and/or took decisions as an association of undertakings. In reaching its decision, the EC found that it was unnecessary to specify in which role (undertaking or association of undertakings) the infringement was based on. It regarded AC Treuhand AG both as an association of undertakings and as an undertaking in its own right. At the appeal, the CFI did not find it necessary to give a ruling on the question whether the EC could also have legitimately based the applicant’s liability on the notion of a decision by an association of undertakings given the EC’s main approach based on the notions of a cartel and undertaking. The CFI found that the notions of a cartel and of an undertaking which is the perpetrator of an infringement are conceptually independent of any distinction based on the sector or the market on which the undertakings concerned are active and the test was whether AC Treuhand had actively contributed to the implementation of that cartel.¹¹⁸
66. In *Papiers peints de Belgique*¹¹⁹, the Groupement des Fabricants de papiers peints de Belgique comprised four undertakings: S. C. Usines Peters Lacroix S.A., Les Papeteries de Genval S.A., Etablissements Vanderborcht Freres S.A, and Les Papiers peints Brepols S.A.. An independent Brussels wallpaper dealer, Mr Jean-Marie Pex, purchased wallpaper from certain members of the Groupement which he resold to G.B. Entreprises S.A. which then displayed the goods at discounted prices. This was contrary to the general conditions of sale imposed on the members’ customers requiring them to apply and display the prices fixed and prohibiting them against displaying lower prices or announcing price reductions. In response, Papiers peints de Brepols S.A. took individual action by sending a circular to all its customers, in which it stated that, on account of price undercutting by G.B. Entreprises S.A. of between 10 and 15%, it had severed business connections with a wholesaler. This was followed by a circular from the Groupement to all its customers, in which it reminded them in connection with the Pex case of their obligation under the general conditions of sale to impose compliance with the fixed prices on their customers. The members of the Groupement then refused to supply Mr Pex or the Brussels-based firm International Décor working with him.

¹¹⁶ Ibid, at paragraph 1326

¹¹⁷ Commission Decision of 10 December 2003, Case COMP/E-2/37.857.

¹¹⁸ Case T-99/04 in 2008/C 209/72.

¹¹⁹ OJ L [1974] L 23/3

67. The EC held in its 1974 decision that the decision to cease supplying Pex and International Décor taken by the Groupement was a decision by an association of undertakings within the meaning of Article 85(1). In respect of the collective boycott, individual fines of between one million and six million Belgian francs were imposed on the members.
68. The case of *Stichting Certificatie Kraanverhuurbedrijf (SCK) and Federatie van Nederlandse Kraanbedrijven (FNK) v Commission of the European Communities*¹²⁰ concerned the mobile crane-hire sector in the Netherlands. FNK was the sector-based organisation which brings together crane-hire firms in the Netherlands. FNK members account for approximately half of the cranes available for hire in the Netherlands. FNK's members were required, under Article 3(b) of its internal rules, to charge "reasonable" prices and Article 10(1)(d) of the statutes provides that members may be expelled if they infringe the internal rules. To this end, FNK published cost calculations, and recommended rates based on them, in the handbook it issued. In addition, internal rates applicable to hirings between FNK members were set at regular meetings of crane-hire firms. The EC found in its 1995 decision that FNK had infringed Article 85(1) by applying a system of recommended and internal rates which had enabled its members to predict each other's pricing policy and imposed a fine of ECU 11.5 m.
69. FNK appealed and one of the grounds was that it could not be held responsible for the formulation of the internal rates as its role in setting them never went beyond ancillary secretarial duties. In rejecting this argument, the CFI found in its 1997 decision that the internal rates were set in meetings at which all the FNK members which used such cranes were represented. These meetings were generally held at FNK's headquarters, in the presence of its director Mr De Blank, and the minutes were drafted on FNK headed paper¹²¹. In addition, on a number of occasions during regional meetings, Mr De Blank informed the members of the region concerned of the internal rates laid down in other regions¹²². As such, the Court found that FNK was actively involved in the formulation of internal rates. Even though FNK as an association did not set the rates unilaterally but recorded the internal rates agreed between the crane-hire firms at their meetings, the laying down of internal rates within a region or at a national level nonetheless corresponded to FNK's resolve to coordinate the conduct of its members on the market¹²³. In upholding the fine imposed on FNK

¹²⁰ European Court reports 1997 Page II-01739

¹²¹ Ibid, at paragraph 165

¹²² Ibid, at paragraph 169

¹²³ Ibid, at paragraph 170

which was set by taking account of the turnover of the members, the Court said that the influence which an association of undertakings has been able to exert on the market does not depend on its own “turnover” which discloses neither its size nor its economic power, but rather on the turnover of its members, which constitutes an indication of its size and economic power¹²⁴.

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

70. Section 34(1) of the Act prohibits “agreements between undertakings ... or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore”. In this context the requirement to prove “object” and “effect” are disjunctive and as such CCS needs only prove that the agreement or concerted practice had either as its object or its effect the restriction of competition.
71. CCS found in the *Pest Control Case*¹²⁵ that the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into the agreement, but rather on:

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

(Emphasis added)

72. European jurisprudence has established that there can be an infringement even if an agreement does not have an effect on the market. In *Tréfilunion v Commission*¹²⁶, the CFI said:

79 ... It must be stated that non-observance of the agreed prices does not change the fact that the object of those meetings was anti-competitive and that, therefore the applicant participated in the agreements: at most, it might indicate that the applicant did not implement the agreements in question. There is no need to take account of the concrete effects of an agreement, for the purposes of applying Article 85(1) of the Treaty, where it appears, as it does in the case of the agreements referred to in the Decision, that the

¹²⁴ Ibid, at paragraph 252

¹²⁵ 600/008/06 at paragraph 49

¹²⁶ Case T-148/89 [1995] ECR II-1063

object pursued is to prevent, restrict or distort competition within the Common Market

73. Similarly, the ECJ has held that there can be a concerted practice even if there is no actual effect on the market. In *P. Hüls AG v. Commission*¹²⁷, the appellant had regularly participated in meetings where prices were fixed and sales volume targets were set. The ECJ held that the Commission did not have to adduce evidence that the concerted practice had manifested itself in conduct on the market or that it had effects restrictive of competition. It followed from the actual text of Article 81(1) that concerted practices were prohibited, regardless of their effect, when they have an anti-competitive object¹²⁸. In *The Community v Interbrew NV and others (re the Belgian beer cartel)*¹²⁹, the EC held that provided it could be shown that the aim of meetings between the infringing parties was clearly anti-competitive, there was no corresponding need to show that the consequences of the meetings were harmful to competition¹³⁰.
74. This is also the position taken in the UK, where in *Argos Limited and Littlewoods Limited v OFT*¹³¹, 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 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.

I. Appreciably Prevent, Restrict or Distort Competition

75. 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.
76. CCS notes that in the current case the agreements and/or concerted practices in question involve price-fixing. With regard to such agreements and/or concerted practices the Guidelines state:

¹²⁷ Case C-199/92 [1999] ECR I-4287

¹²⁸ Case C-199/92 [1999] ECR I-4287 at paragraphs 164 to 168

¹²⁹ Case IV/37.614/F3 [2004] CMLR 2

¹³⁰ Case IV/37.614/F3 [2004] CMLR 2 at paragraph 254

¹³¹ [2004] CAT 24

An agreement involving price-fixing, bid-rigging, market-sharing or output limitation **will always have an appreciable adverse effect on competition**¹³².

(Emphasis added)

J. Price-Fixing Arrangements

77. CCS regards price-fixing arrangements by their very nature to be restrictive of competition to an appreciable extent¹³³. There are many ways in which prices can be fixed. It may involve fixing either the price itself or the components of a price. In *Ferry operators – Currency surcharges*¹³⁴, five ferry operators had an arrangement to bring about the imposition of a common currency surcharge on freight to be transported on United Kingdom-Continent routes following the devaluation of the pound sterling in September 1992. Identical surcharges were announced, with a common introduction date and common method of calculation. The EC found that the arrangement between the ferry operators amounted to a concerted practice to introduce a uniform increase in price notwithstanding that the surcharges were not implemented at all or that they were only partially implemented¹³⁵.
78. The case of *VOTOB*¹³⁶ involved an association of six undertakings offering tank storage facilities in Amsterdam, Dordrecht and Rotterdam who decided to increase prices charged to their customers by a uniform, fixed amount. This uniform “environmental charge” was to cover the costs of investment required to reduce vapour emissions from members’ storage tanks. The EC took objection to the charge as being incompatible with Article 85 for the following reasons:

181. When a price or an element of it is fixed, competition on that price element is excluded. By fixing the charge and thus a source of recovery members have less incentive to make investments as cheaply and efficiently as possible. This has a knock-on effect on the market for undertakings providing reconstruction and improvement services. There will be less incentive for members to contract with those undertakings which can achieve the best results for the least expenditure or effort.

182. Uniform adoption of the charge ignores differences in each individual member’s circumstances.....members employ different

¹³² See paragraph 2.20 of CCS Guidelines on the Section 34 Prohibition

¹³³ See paragraph 3.2 of CCS Guidelines on the Section 34 Prohibition

¹³⁴ Commission Decision (97/84/EC), OJ [1997] L 26/23

¹³⁵ Ibid, at paragraph 59 and 65

¹³⁶ *Report on Competition Policy 1992* (Vol XXII) 177-186

techniques to reduce emissions, and do not expend investment costs simultaneously. The charge ignores this. In addition, all VOTOB members retain the proceeds of the charge individually.

183. The Commission maintains that had there been no horizontal fixing of this particular cost element, individual members could have calculated the cost of necessary investment, decided whether to meet it from their own profit or to pass it on to their customers, and, if they decided to pass it on to their customers, determined by how much to increase their prices. This would have been done by the companies independently, having regard to prevailing market conditions and according to their own competitive position.

K. Burden and Standard of Proof

79. The burden of proof that an infringement has been committed rests with CCS. The standard of proof to be applied would be the civil standard, commonly known as the balance of probabilities. This follows from the structure of the Act, for instance that decisions by CCS follow a purely administrative procedure and directions and penalties are enforceable by way of civil proceedings.
80. CCS is mindful that a finding of an infringement of the section 34 prohibition is a serious matter which may involve the issuance of directions and the imposition of financial penalties. As such, CCS considers that the quality and weight of the evidence must be sufficiently strong before CCS concludes that the allegation is established on a balance of probabilities. CCS adopted the same approach in the *Pest Control Case*¹³⁷.
81. CCS acknowledges that the evidence that is likely to be sufficient to prove an infringement on the balance of probabilities will also depend on the facts and circumstances of the case. Even in circumstances where there is a dearth of evidence, CCS may find an infringement. Support for this contention can be found in *JJB Sports plc and Allsports Limited v OFT*¹³⁸, where 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.

L. The relevant market

¹³⁷ See 600/008/06 paragraph 63

¹³⁸ [2004] CAT 17 at paragraph 206

(I) Introduction

82. In the context of the section 34 prohibition, market definition typically serves two purposes. First, it is usually the first step in a full competition analysis to help determine if an agreement and/or concerted practice would have an appreciable adverse effect on competition¹³⁹. Second, where liability is established, market definition can help determine the turnover of the business of the undertaking in Singapore for the relevant product and relevant geographic markets affected by the infringement and correspondingly, the appropriate amount of penalty¹⁴⁰.
83. The process of defining the relevant market typically starts with the product/service under investigation (“focal product”). The next step, if necessary, is to define all the substitute products to the focal product. This exercise includes defining the geographical market, which may extend beyond the area under investigation and in which the focal product is sold (“focal area”).
84. In the present case, a distinct market definition is not necessary for the first purpose of establishing an infringement of the section 34 prohibition. This is because 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 appreciably¹⁴¹. CCS notes that the present case involves agreements and/or concerted practices that amount to price fixing.
85. However, market definition is relevant for the second purpose of assessing the appropriate amount of penalties. As will be discussed below, however, penalties in this case are calculated based on the undertakings’ turnover from the focal product only. Even if substitutes were to exist, the relevant turnover base would not increase, because the liable parties were not involved in the business of those substitutes. Accordingly, CCS is not deliberating on market definition beyond the focal product and area.
86. In the *Pest Control Case*, CCS adopted the position taken by the CAT in *Argos Limited & Littlewoods Limited v Office of Fair Trading*¹⁴², that market definition is not intrinsic to the determination of liability in a price-fixing case. The CAT held:

¹³⁹ See paragraph 1.6 and 1.7 of CCS Guidelines on Market Definition

¹⁴⁰ See paragraph 2.1 of CCS Guidelines on the Appropriate Amount of Penalty

¹⁴¹ See paragraph 3.2 of CCS Guidelines on the Section 34 Prohibition

¹⁴² [2005] CAT 13 at paragraphs 178 and 179

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.

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

(II) The Relevant Product Market

88. In this ID, as stated in paragraph 32 above, CCS has focused on the sale of express bus or excursion bus services between Singapore and Malaysia or Southern Thailand, sold in Singapore, in the form of either standalone bus tickets or as part of coach package tours. In this context, the general observations of CCS set out in Section I sub-section B “Background to Bus and Coach Transportation Services, including Coach Package Tours, Industry” should be noted.
89. As a starting point for determining the relevant product market, CCS identified the focal products sold by members of the EBAA, namely:
- a) sale of one-way express bus tickets from Singapore to Malacca, Kuala Lumpur (“KL”), Genting, Ipoh, Simpang/Taiping and Butterworth/Penang, where the Minimum Selling Price (“MSP”) applies; and
 - b) sale of express bus or excursion bus services for destinations in Malaysia or Southern Thailand, in the form of either standalone bus tickets or as part of coach package tours, that are sold with fuel and insurance charge (“FIC”).
90. Based on the overlapping focal products above, CCS considers that the relevant product market is the sale of express bus or excursion bus services between Singapore and Malaysia or Southern Thailand, sold in Singapore, in the form of either standalone bus tickets or as part of coach package tours. The issue is then whether other forms of bus/coach transportation and other modes of transportation may be considered as potential substitutes.

91. A cheaper alternative to travel to destinations in Malaysia from Singapore would be to use the public bus service e.g. SBS Transit Bus 170, to Johor Bahru and then transfer to Malaysian express buses for the onward journey to the Malaysian destinations. While this may be cheaper¹⁴³, passengers find this inconvenient¹⁴⁴ and prefer travelling on express buses departing from Singapore because of the frequent bus timings, their reliability and better quality¹⁴⁵. Most express bus passengers have luggage for which transferring from Singapore public buses to Malaysian express buses would be inconvenient¹⁴⁶. As such, CCS does not consider this to be a reasonable substitute.
92. Given the customer base, the cost of fuel and tolls and the need to focus on driving, the Parties did not see the option of self-drive as a substitute for express buses¹⁴⁷.
93. Passengers may also travel to Malaysia and Southern Thailand via rail. However, CCS notes that not all destinations are accessible by rail¹⁴⁸. For destinations not directly served by rail, passengers would need to combine the rail transport with local transportation services in order to arrive at the specific destination. This would take more time and cause greater inconvenience to passengers¹⁴⁹. For other rail-accessible destinations, such

¹⁴³ See Answer to Question 7 of Tan Boon Huat's Notes of Information / Explanation Provided on 20 January 2009 and Answer to Question 6 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009 where they claim the cost savings amount to 20% to 40% of the cost of express bus tickets. *cf* See Answer to Question 7 of Leong Sing Kiong's Notes of Information / Explanation Provided on 20 January 2009 and Answer to Question 12 of Wesley Ng's Notes of Information / Explanation Provided on 16 January 2009 where they claim the cost savings is only a few dollars or 10 Malaysian ringgit

¹⁴⁴ See Answer to Question 10 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 13 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 8 of Voo Wei Keong's Notes of Information / Explanation Provided on 16 January 2009

¹⁴⁵ See Answer to Question 7 of Tan Boon Huat's Notes of Information / Explanation Provided on 20 January 2009. See Answer to Question 7 of Leong Sing Kiong's Notes of Information / Explanation Provided on 20 January 2009. See Answer to Question 8 of Johnny Lim's Notes of Information / Explanation Provided on 15 January 2009. See Answer to Question 6 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009

¹⁴⁶ See Answer to Question 10 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 13 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 8 of Voo Wei Keong's Notes of Information / Explanation Provided on 16 January 2009

¹⁴⁷ See Answer to Question 7 of Voo Wei Keong's Notes of Information / Explanation Provided on 16 January 2009. See Answer to Question 12 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009

¹⁴⁸ See Answer to Question 5 of Tan Boon Huat's Notes of Information / Explanation Provided on 20 January 2009

¹⁴⁹ See Answer to Question 15 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 15 of Susan Ng's Notes of Information / Explanation Provided on 21

as Kuala Lumpur, the journey by rail takes more time, costs more, offers less scheduled departures, less comfort and is less reliable when compared to express buses¹⁵⁰. As such, CCS considers that travelling by rail may not be a substitute to taking express buses.

94. Another mode of transport from Singapore to Malaysia and Southern Thailand is via air. However, at the time of the infringements, air transport was not considered as a possible substitute to express bus travel¹⁵¹ because of the higher costs¹⁵² involved¹⁵³, the relatively few destinations served and the need to arrange for local transportation to travel into the city centre or to reach other destinations in Malaysia¹⁵⁴.
95. CCS also understands that cruise ships are not considered as a competitor¹⁵⁵ to express buses. The destinations that cruise ships serve are limited to Penang and Malacca¹⁵⁶, while express bus allows passengers to travel to various destinations in Malaysia and Southern Thailand.
96. For the reasons set out in paragraph 91 to 95 CCS considers that other forms of transport between Singapore and Malaysia and Southern Thailand may not be good substitutes for express buses.

January 2009. See Answer to Question 6 of Leong Sing Kiong's Notes of Information / Explanation Provided on 20 January 2009

¹⁵⁰ See Answer to Question 7 of Johnny Lim's Notes of Information / Explanation Provided on 15 January 2009. See Answer to Question 5 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 23 of Sebastian Yap's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 6 of Voo Wei Keong's Notes of Information / Explanation Provided on 16 January 2009. See Answer to Question 5 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009

¹⁵¹ See Answer to Question 4 of Johnny Lim's Notes of Information / Explanation Provided on 15 January 2009. See Answer to Question 9 of Tan Kah Hin's Notes of Information / Explanation Provided on 14 January 2009

¹⁵² See Answer to Question 8 of Leong Sing Kiong's Notes of Information / Explanation Provided on 20 January 2009. See Answer to Question 7 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009

¹⁵³ Prior to the revocation of the Air Shuttle Services Agreement on 18 November 2008

¹⁵⁴ See Answer to Question 7 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009. See Answer to Question 13 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 18 of Sebastian Yap's Notes of Information / Explanation Provided on 21 January 2009. See Answer to Question 18 of Voo Wei Keong's Notes of Information / Explanation Provided on 16 January 2009. See Answer to Question 8 of Tan Boon Huat's Notes of Information / Explanation Provided on 20 January 2009

¹⁵⁵ See Answer to Question 9 of Tan Boon Huat's Notes of Information / Explanation Provided on 20 January 2009. See Answer to Question 9 of Leong Sing Kiong's Notes of Information / Explanation Provided on 20 January 2009. See Answer to Question 3 of Raymond Lim's Notes of Information / Explanation Provided 15 January 2009

¹⁵⁶ See Answer to Question 10 of Wesley Ng's Notes of Information / Explanation Provided on 16 January 2009

97. Even if the relevant product market were to extend beyond the focal products, a distinct market boundary is not necessary in this case for CCS to establish an infringement of the section 34 prohibition. Given that the Parties' relevant turnover base would be the same in any wider market that includes other forms of transport, CCS considers that it is appropriate in the present case to calculate penalties on the basis of the narrowest market that comprises the focal product only (i.e. the sale of express bus or excursion bus services between Singapore and Malaysia or Southern Thailand, sold in Singapore, in the form of either standalone bus tickets or as part of coach package tours).

(III) The Relevant Geographic Market

98. For the purposes of calculating relevant turnover and determining penalties in this case, CCS considers that the relevant geographic market is Singapore, as customers travelling from Singapore to Malaysia and southern Thailand would typically buy their tickets from Singapore companies that operate express bus or excursion bus services.

M. The Evidence Relating to the Agreements and/or Concerted Practices, CCS' Analysis of the Evidence and CCS' Conclusions on the Infringements

99. The structure of analysis of the infringements are as follows:

- a) an outline of the facts and evidence;
- b) CCS' analysis of evidence; and
- c) CCS' conclusions on the infringement.

(I) Minimum Selling Price

(i) The facts and the evidence

Documentary evidence

100. The evidence obtained from CCS' investigations¹⁵⁷ indicate that the MSP was first raised in the minutes of the 6th Executive Committee meeting held

¹⁵⁷ Documentary evidence was obtained during CCS' s.64 inspections and the s.63 notices issued to the various parties

on 20 April 2004 under an item titled ‘Standardise selling price’¹⁵⁸ scheduled to be discussed at the next meeting.

101. At the 7th Executive Committee meeting held on 6 October 2004, the issue of a minimum selling price for express bus tickets was discussed as set out below in the minutes of meeting¹⁵⁹:

f. Standardize selling fare for Express Bus Tickets

A minimum selling price is to be agreed by the members and thereafter in the event of any down sell due to promotional activities; a written notice is required to inform the association.

102. During the 8th Executive Committee meeting held on 3 November 2004, members were asked to submit their minimum selling price approved by the LTA to the Secretary (then Elson Yap) and copy the same to the President (then Joe Lim)¹⁶⁰ before a making a decision on the MSP issue.
103. The next mention of the MSP was in the minutes of the 12th Executive Committee meeting on 5 April 2005¹⁶¹, where Sebastian Yap proposed a recommendation to all members to increase their fares to a minimum of \$25 for one-way express coach travel to KL to take effect from 1 June 2005 because of the increase in transport fares in Malaysia. This proposal was repeated by Sebastian Yap at the 13th Executive Committee meeting on 4

¹⁵⁸ Minutes of the 6th Committee meeting held on 20 April 2004 under ‘Administration Matters Outline’. The representatives for Konsortium (Joe Lim), Grassland (Tan Boon Huat), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Alisan (Leong Sing Kiong), Regent Star (Yap Chor Seng), GR Travel (Chris Tay) and Gunung Raya (Chan Keong Meng who was Managing Director at the time) were present. The representatives for Transtar (Elson Yap), Gunung Raya (Ken Lim) and Eltabina (Aznan bin Sharib) were absent

¹⁵⁹ Minutes of the 7th Committee meeting held on 6 October 2004. The representatives for Konsortium (Joe Lim), Sri Maju (Susan Ng), Gunung Raya (Ken Lim Ken), Enjoy (Michael Seng), Five Stars (Johnny Lim), Alisan (Leong Sing Kiong), Regent Star (Sebastian Yap), GR Travel (Chris Tay) and Gunung Raya (Leong Lean Pong) were present. The representatives for Grassland (Tan Boon Huat), Transtar (Elson Yap) and Eltabina (Aznan bin Sharib) were absent

¹⁶⁰ Minutes of the 8th Committee meeting held on 3 November 2004 at paragraph d. The representatives for Konsortium (Joe Lim), Grassland (Tan Boon Huat), Transtar (Elson Yap), Sri Maju (Susan Ng), Gunung Raya (Ken Lim Ken), Enjoy (Michael Seng), Five Stars (Vincent Lim), Alisan (Leong Sing Kiong), Regent Star (Sebastian Yap), GR Travel (Chris Tay), Eltabina (Rovi) and Gunung Raya (Leong Lean Pong) were present. Johnny Lim and Aznan bin Sharib were absent

¹⁶¹ Minutes of the 12th Committee meeting held on 5 April 2005 at paragraph c. The representatives for Konsortium (Joe Lim), Grassland (Tan Boon Huat), Transtar (Elson Yap), Enjoy (Michael Seng), Alisan (Leong Sing Kiong), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), GR Travel (Chris Tay), Eltabina (Ruby), Gunung Raya (Joanne) and EBAA (Kim Huang) were present. The representative for Sri Maju (Susan Ng) and Ken Lim were absent

May 2005¹⁶², where it was stated in the minutes that “...the decision still lies within the member itself and whether it is within their ability to do so”.

104. It was only at the 14th Executive Committee meeting on 1 June 2005 that the representatives from Five Stars, Gunung Raya, Sri Maju, Transtar, GR Travel, Konsortium, Regent Star, Grassland, Alisan and Enjoy agreed to the following “recommended Selling prices from Singapore to different destinations”¹⁶³:

Singapore to Melaka	\$18
Singapore to KL	\$25
Singapore to Ipoh	\$33
Singapore to TaiPing	\$35
Singapore to Butterworth	\$37
Singapore to Penang	\$38

105. It was also recorded in the minutes of the meeting on 1 June 2005 that Enjoy was selling tickets to Ipoh departing at 8:30 a.m. at \$28 but that it might revise this amount to \$30¹⁶⁴. Eltabina was absent from the meeting. While Kim Huang, the then-administrator of the EBAA claimed that she had faxed over the minutes of meeting to Eltabina¹⁶⁵, Eltabina claimed that they did not receive the minutes¹⁶⁶. At the same meeting, a suggestion was made by Joe Lim for all EBAA members to implement a coach tax of \$2 on all the tickets sold to bring in extra income for EBAA and its members. Over the next few meetings, the Executive Committee agreed to set the coach tax at \$2 for one-way tickets and \$3 for two-way tickets with effect from 1 November 2005 and to rename the coach tax as the fuel and insurance charge (“FIC”)¹⁶⁷.
106. The 18th Executive Committee meeting held on 9 November 2005 was attended by representatives from Five Stars, Sri Maju, Transtar, GR Travel,

¹⁶² Minutes of the 13th Committee meeting held on 4 May 2005 at paragraph b. The representatives for Konsortium (Joe Lim), Grassland (Tan Boon Huat), Transtar (Elson Yap), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), Eltabina (Ruby), Gunung Raya (Joanne) and EBAA (Kim Huang) were present. The representative for Alisan (Leong Sing Kiong) was absent

¹⁶³ Minutes of the 14th Committee meeting held on 1 June 2005 at paragraph a

¹⁶⁴ Ibid

¹⁶⁵ See Answer to Question 22 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

¹⁶⁶ See Answer to Question 79 of Aznan Bin Sharib’s Notes of Information / Explanation Provided on 5 November 2008

¹⁶⁷ See Minutes of the 15th Executive Committee meeting held on 6 July 2005 at paragraph a, Minutes of the 16th Committee meeting held on 7 September 2005 at paragraph a, and Minutes of the 17th Executive Committee meeting held on 5 October 2005 at paragraph a

Konsortium, Regent Star, Grassland, Alisan and Enjoy. The representatives of Eltabina and Gunung Raya were absent. The relevant extracts of the 18th Executive Committee meeting minutes are reproduced below¹⁶⁸:

b. Revised of fare

As agreed by all members, the following are the recommended selling prices from Singapore to different destinations after the implementation of FIC:

<i>Singapore to Melaka</i>	<i>->\$20</i>
<i>Singapore to KL</i>	<i>->\$27</i>
<i>Singapore to Ipoh</i>	<i>->\$35</i>
<i>Singapore to Taiping</i>	<i>->\$37</i>
<i>Singapore to Butterworth</i>	<i>->\$39</i>
<i>Singapore to Penang</i>	<i>->\$40</i>

107. As all the fares reflect a \$2 increase, it would appear that the revised selling prices agreed upon at the 18th Executive Committee meeting merely reflected the incorporation of the FIC into the selling prices agreed upon at the 14th Executive Committee meeting on 1 June 2005.
108. EBAA was not able to provide CCS with minutes of the 19th and 20th Executive Committee meetings. However, a circular dated 4 March 2006¹⁶⁹ was sent by Joe Lim, then President of the EBAA, to all EBAA members, stating that arising from the 20th Executive Committee meeting held on 2 March 2006, the Executive Committee had, “*with 100 percent agreement*”, decided to increase the MSP for the following one way express tickets:

<i>Singapore to Melaka</i>	<i>\$22.00</i>
<i>Singapore to KL</i>	<i>\$29.00</i>
<i>Singapore to Genting</i>	<i>\$35.00</i>
<i>Singapore to Ipoh</i>	<i>\$36.00</i>
<i>Singapore to Simpang/Taiping</i>	<i>\$37.00</i>
<i>Singapore to B'Worth/Penang</i>	<i>\$39.00</i>

109. The revised rates included an additional agreed MSP figure to Genting. The circular stated that the fares had incorporated the FIC and would take effect on 10 March 2006. The circular was copied to Konsortium, Grassland,

¹⁶⁸ Minutes of the 18th Committee meeting held on 9 November 2005 at paragraph b

¹⁶⁹ Circular dated 4 March 2006 issued by the EBAA titled ‘Minimum Selling Price (MSP) for One Way Express Ticket’ to its members

Transtar, GR Travel, Sri Maju, Enjoy, Five Stars, Regent Star, Alisan and Gunung Raya for their “*compliance and understanding*”.

110. At a subsequent Executive Committee meeting held on 21 June 2006¹⁷⁰ at which all the members were present except for Leong Sing Kiong of Alisan and Aznan Bin Sharib of Eltabina, it was recorded under the item “*Resolution for FIC Rebate*” that Michael Seng had expressed his unhappiness over the fact that some members e.g. Alisan, had sold below the agreed price. In response, Elson Yap proposed a vote of no confidence for Alisan to be removed from the Executive Committee. However, Johnny Lim decided to let Leong Sing Kiong explain his position at the next meeting, failing which action would be taken against him¹⁷¹. The minutes of meeting were subsequently forwarded to Leong Sing Kiong by email and faxed to Aznan Bin Sharib¹⁷².
111. At the next meeting on 15 August 2006, Leong Sing Kiong informed the Executive Committee that he intended to quit the Executive Committee as well as EBAA due to a shortage of manpower and internal problems at Alisan. Johnny Lim, then President of EBAA, asked him to reconsider his decision about quitting the association and to revert by 15 September 2006¹⁷³. At the 3rd Annual General Meeting (“AGM”) held on 11 October 2006, Johnny Lim informed the meeting that the Executive Committee had decided to “*relinquish*” Leong Sing Kiong and Aznan Bin Sharib of their committee appointments in view of their busy schedules and non-attendance at committee meetings¹⁷⁴. At the Executive Committee meeting on 17 January 2007, it was announced that the membership of both Alisan and Eltabina had been terminated with effect from 1 January 2007 for their failure to renew their membership for the year 2006.
112. The minutes of subsequent Executive Committee meetings made no further reference to the MSP. However, following the commencement of CCS’ investigations, the EBAA sent out a circular dated 24 July 2008 to its members, the relevant extracts of which state the following¹⁷⁵:

¹⁷⁰ The representatives for Five Stars (Johnny Lim), Grassland (Tan Boon Huat), Transtar (Elson Yap), GR Travel (Ken Lim), Sri Maju (Susan Ng), Enjoy (Michael Seng), Konsortium (Raymond Lim), Regent Star (Sebastian Yap), Gunung Raya (Vincent Lim) and EBAA (Tan Kah Hin) were present. The representatives for Alisan (Leong Sing Kiong) and Eltabina (Aznan Bin Sharib) were absent. Vincent Lee from Luxury and Sebastian Peck from iVision Pte Ltd were in attendance

¹⁷¹ Minutes of 2/06 meeting held on 21 June 2006 under paragraphs 4 and 5

¹⁷² See email sent by Tan Kah Hin on 10 August 2006 at 1:53 p.m. provided by EBAA during section 64 inspection held on 24 June 2008 and marked TKH-003

¹⁷³ See paragraphs 4 and 5 of Minutes of 3/06 meeting held on 15 August 2006

¹⁷⁴ See paragraph 16 of Minutes of 3rd Annual General meeting held on 11 October 2006

¹⁷⁵ Circular dated 24 July 2008 issued by Tan Kah Hin on behalf of EBAA to all members of the EBAA titled “EBAA Committee meeting Held on 23 July 2008”

1. Please be informed that at the EBAA Committee meeting held on 23 July 2008, the committee members have decided as follows:

(a) As a reminder to all members, the minimum selling prices of express bus tickets to various locations are merely recommended selling prices. Any decision to sell at the recommended price or otherwise is entirely at the discretion of the members, depending on the type of coach they operate and their respective costs structures.

Evidence from the Interviews

113. Interview of Alisan personnel¹⁷⁶ - Leong Sing Keong confirmed that he attended the 6th, 7th, 8th, 12th, 14th, 18th and 20th Executive Committee meetings¹⁷⁷. In respect of the 12th Executive Committee meeting held on 5 April 2005 during which Sebastian had proposed to increase the fare of a one-way coach ticket to KL to a minimum of \$25, Leong Sing Kiong said that everyone was selling at a different price then. His interview notes in this respect are reproduced below:

Q65. Prior to this suggestion by Sebastian was there already an MSP in place?

A: No. Before that, everyone was selling at a different price. Most of them were selling at \$23 but I sold mine at \$20 because mine were old buses. I got scolded by everyone for that.

Q66. How had Sebastian worked out the MSP for one-way trip to KL at \$25?

A: He said that we had to sell at \$25 to cover our cost.

Q67. But you could cover your cost by selling your tickets at \$20?

A: Yes but there was very little profit.

Q68. What was the reaction of the other members of the EBAA attending this meeting?

A: I cannot remember clearly. There were some who asked why not \$28 or \$30. Then there was a vote. There were equal votes for and against

¹⁷⁶ See Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

¹⁷⁷ See Answers to Question 51, 55, 60, 63, 74, 82 and 85 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

so we deferred to the next meeting. I remember I abstained two or three times.

114. In respect of the 14th Executive Committee meeting on 1 June 2005, Leong Sing Kiong said that everyone had agreed orally on the different selling prices to be imposed for each destination after discussion¹⁷⁸. The prices were then revised at the 18th Executive Committee meeting to incorporate an additional \$2 for the FIC¹⁷⁹.
115. In respect of the 20th Executive Committee meeting on 2 March 2006, Leong Sing Keong confirmed that everyone agreed to the increase for the various destinations and that he implemented the MSP thereafter, charging \$29 for KL after 10 March 2006 when he had only charged \$27 (including \$2 for FIC) before¹⁸⁰.
116. After leaving the EBAA, he felt that he did not have to follow the agreed prices and was able to sell tickets at \$3 or \$4 below the rest¹⁸¹. Leong Sing Kiong explained that the MSP was set only for one-way express bus tickets as it was cheaper to buy in Malaysia the ticket for the return journey¹⁸². The minutes of the Executive Committee meeting held on 17 January 2007 record that Alisan's membership of the EBAA was terminated with effect 1 January 2007¹⁸³.
117. Interview of Eltabina's personnel¹⁸⁴ – Aznan Bin Sharib claimed he had never seen the minutes of the 14th Executive Committee meeting and that no one told him about the agreement on the selling prices¹⁸⁵. He had also not seen the minutes of the 18th Executive Committee meeting or the circular dated 4 March 2006¹⁸⁶. He said he did not agree to the prices and was selling tickets to KL and Ipoh at \$23 and \$30 respectively because his

¹⁷⁸ See Answers to Question 75 & 77 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

¹⁷⁹ See Answer to Question 83 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

¹⁸⁰ See Answers to Question 89, 92, 94 to 96 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

¹⁸¹ See Answers to Question 98, 101 & 103 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

¹⁸² See Answer to Question 15 of Leong Sing Kiong's Notes of Information / Explanation Provided on 20 January 2009

¹⁸³ See Minutes of 01/2007 Executive Committee meeting held on 17 January 2007

¹⁸⁴ See Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

¹⁸⁵ See Answers to Questions 79 & 81 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

¹⁸⁶ See Answers to Questions 85 to 86 and 87 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

coaches were of a lower standard¹⁸⁷. He also claimed he did not receive the minutes of the Executive Committee meeting on 21 June 2006 during which Michael Seng had expressed his unhappiness about members undercutting the agreed prices¹⁸⁸.

118. Interview of Enjoy's personnel¹⁸⁹ – When questioned on the rationale of setting up the EBAA, Michael Seng indicated that its purpose was to control the pricing of fares to prevent express bus companies from undercutting one another. When queried on this, he elaborated¹⁹⁰:

Q44. What do you mean controlling the pricing of fares to prevent express bus companies from “slashing each other throat”?

A: Before the EBAA was formed in 2003/2004, Elson Yap (Transtar), Ken Lim (GR Travel), Leong Sing Keong (Alisan) and I would sometimes go for coffee break together at Golden Mile. During these meetings, we would talk about pricing of express bus tickets and agree to sell at a uniform price. However, later on, someone would start slashing prices and do not follow the agreement that we have made. Therefore forming an association would make it easier for everyone to discuss and control the pricing of the express bus tickets.

Q45. How would the association control the pricing of the express bus tickets?

A: With an association, the Chairman and secretary will issue memos to control the price of express bus tickets and all members will follow the price. It is easier to discuss their pricing and get express bus companies to follow the prices in the association, they will not deviate from the agreed price since they are one of the appointment holders in the EBAA.

119. Michael Seng confirmed that he attended the 6th, 7th, 8th, 12th, 13th, 14th 18th and 20th Executive Committee meetings¹⁹¹. In respect of the 14th Executive Committee meeting on 1 June 2005 during which the members had agreed on the selling prices of one-way bus tickets to various destinations, Michael Seng said that the selling prices of all the EBAA members were available for the discussion and ultimately, they decided to set the MSP at a price

¹⁸⁷ See Answers to Questions 59, 82 and 88 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

¹⁸⁸ See Answer to Question 89 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

¹⁸⁹ See Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁰ See Answers to Questions 44 & 45 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹¹ See Answers to Questions 74, 79, 87, 89, 96, 100, 111 and 114 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

below the highest price that one of the members was charging for each destination¹⁹². An exception was made for him to sell tickets to Ipoh at \$28, instead of the agreed minimum of \$33, for the bus departing at 8:30 a.m. as the bus was used by his regular customers and he could not charge them such high prices¹⁹³. According to Michael Seng, the prices agreed at the 18th Executive Committee meeting held on 9 November 2005 were based on the prices agreed at the 14th Executive Committee meeting but with the addition of \$2 for the one-way FIC¹⁹⁴.

120. In relation to the 20th Executive Committee meeting held on 2 March 2006 and the subsequent letter dated 4 March 2006 issued by the EBAA, Michael Seng confirmed that there was an agreement on the increase of the minimum selling prices¹⁹⁵ which was subsequently implemented by Enjoy and the other EBAA members¹⁹⁶. Michael Seng explained that the price to Taiping or Simpang and the price to Butterworth were not adjusted as there was very little business on the former route and a lot of competition on the latter route.
121. In respect of the Executive Committee meeting held on 21 June 2006, Michael Seng confirmed that he had expressed his unhappiness about some members e.g. Alisan selling below the minimum prices agreed on 2 March 2006. Elson Yap had proposed a vote of no confidence and Alisan subsequently left the association because of financial difficulties¹⁹⁷. According to Michael Seng, Enjoy ceased all business by the end of July 2006¹⁹⁸.
122. According to Michael Seng, the MSP was in operation during his period of membership in the EBAA¹⁹⁹. Michael Seng attended the 3rd AGM, held on 11 October 2006 on behalf of Enjoy but he did not attend any further Executive Committee meetings after that. The last meeting attended by a

¹⁹² See Answers to Questions 101 to 102 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹³ See Answers to Questions 108 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁴ See Answers to Questions 112 to 113 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁵ See Answers to Questions 122, 125 & 126 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁶ See Answers to Questions 127 & 128 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁷ See Answer to Question 145 to 146 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁸ See Answer to Question 15 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

¹⁹⁹ See Answer to Question 134 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

representative of Enjoy was the 02/2007 Executive Committee meeting when Richard Lim attended on behalf of Michael Seng²⁰⁰. Enjoy did not renew its EBAA membership for 2007 although Michael Seng continued to be referred to as the Treasurer in the minutes of the Executive Committee meetings held on 17 January 2007²⁰¹, 30 May 2007²⁰² and 11 July 2007²⁰³. At the Executive Committee meeting held on 11 July 2007, Susan Ng was appointed as interim Treasurer “*in view of the problem faced by the Association with the Treasurer (Michael Seng)*”²⁰⁴.

123. Interview of Five Stars personnel²⁰⁵ - Johnny Lim confirmed that he attended the 6th, 7th, 12th, 13th, 14th and 18th Executive Committee meetings²⁰⁶. In respect of the 12th Executive Committee meeting during which Sebastian Yap had recommended that they increase their fares to a minimum of \$25 for a one-way ticket to KL, Johnny Lim said that the increase was \$2 from a base of \$23²⁰⁷. This proposal was repeated at the 13th Executive Committee meeting because EBAA members were still charging at \$20 or \$23²⁰⁸. In respect of the 14th Executive Committee meeting, Johnny Lim said that while there was an agreement on the minimum selling prices, the members may not implement the agreed prices²⁰⁹. Although Five Stars has charged below the MSP during special promotions, Five Stars usually charged higher than the MSP²¹⁰. He agreed that the minimum selling prices agreed at the 18th Executive Committee meeting were those agreed at the 14th Executive Committee meeting with the addition of \$2 for one-way FIC²¹¹.

124. In respect of the 20th Executive Committee meeting, Johnny Lim said that the minimum selling prices were increased by a further \$2²¹². However, the

²⁰⁰ See Minutes of 02/2007 Executive Committee meeting held on 30 May 2007

²⁰¹ See Minutes of 01/2007 Executive Committee meeting held on 17 January 2007

²⁰² See Minutes of 02/2007 Executive Committee meeting held on 30 May 2007

²⁰³ See Minutes of 03/2007 Executive Committee meeting held on 11 July 2007

²⁰⁴ See paragraph 4 of the Minutes of 03/2007 Executive Committee meeting held on 11 July 2007

²⁰⁵ See Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008.

²⁰⁶ See Answers to Questions 7, 11, 32, 44, 50 & 68 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008

²⁰⁷ See Answer to Question 41 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008

²⁰⁸ See Answer to Question 45 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008

²⁰⁹ See Answers to Questions 52 to 53 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008

²¹⁰ See Answers to Question 59 and 60 of Johnny Lim's Notes of Information / Explanation Provided on 14^t August 2008

²¹¹ See Answers to Question 69 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008

²¹² See Answer to Question 77 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008

MSP for Penang and Butterworth were increased by \$1 only to avoid reaching the price of \$40 which may be considered expensive or unlucky by some customers²¹³. According to Johnny Lim, while nobody would object to the MSPs, nobody would follow them²¹⁴. Hence, the MSP was always discussed during meetings²¹⁵. Johnny Lim said that “100% agreement” in the letter from EBAA dated 4 March 2006 meant that all Executive Committee members agreed to the increase of MSP²¹⁶. When asked if Five Stars implemented these minimum selling prices, Johnny Lim said that he was not sure of the prices charged as these were set by his operations staff who had received the minimum selling prices, probably from representatives of GR Travel or Gunung Raya²¹⁷.

125. Interview of GR Travel’s personnel²¹⁸ – Ken Lim said that the reason for setting up the EBAA was to allow them to interact to prevent them from undercutting each other and going under²¹⁹. Ken Lim could only confirm that he attended the 7th and 8th Executive Committee meetings²²⁰. He said there were many discussions on a standardised price but his view was that it was not possible in practice due to the varying types of coaches that each company had²²¹. When queried on the letter from the EBAA dated 4 March 2006 which set out the MSP to various destinations and whether his company implemented the MSP, he replied that they would simply follow the rules set by the association. His interview notes in this respect are reproduced below²²²:

²¹³ See Answer to Question 78 of Johnny Lim’s Notes of Information / Explanation Provided on 14 August 2008

²¹⁴ See Answers to Question 77 to 79 of Johnny Lim’s Notes of Information / Explanation Provided on 14 August 2008

²¹⁵ See Answer to Question 98 of Johnny Lim’s Notes of Information / Explanation Provided on 14 August 2008

²¹⁶ See Answer to Question 81 of Johnny Lim’s Notes of Information / Explanation Provided on 14 August 2008

²¹⁷ See Answers to Questions 83 to 86 of Johnny Lim’s Notes of Information / Explanation Provided on 14 August 2008

²¹⁸ See Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008, Tay Seow Hoon’s Notes of Information / Explanation Provided on 24 November 2008 and Vincent Lim’s Notes of Information / Explanation Provided on 13 August 2008

²¹⁹ See Answer to Question 33 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008

²²⁰ See Answers to Question 339 & 345 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008

²²¹ See Answers to Question 341, 352 & 355 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008

²²² See Answers to Questions 373 to 375 of Ken Lim’s Notes of Information / Explanation Provided on 19 August 2008

Q373: You would agree that the MSP is no longer stated as a recommended MSP or as a recommended selling price and that the MSP was for compliance for all ordinary members?

A: Usually they will not follow. They will do it their own way, even though they agree during the meeting.

Q374: Did your company implement the MSP?

A: We will just follow. We do not like to break the rules set down by the association. We have many branches, so we cannot allow our staff to offer discounts on their own. But I cannot answer for other companies. Our company will definitely not sell below the MSP. We will sell above the MSP and never below.

Q375. Are your fares currently still above this MSP?

A: Definitely higher.

126. Tay Seow Hoon, also known as Chris Tay, attended the 6th, 7th, 8th and 12th Executive Committee meetings on behalf of GR Travel and took the relevant minutes of the meeting²²³. According to her, the issue of a standardised selling price arose because a lot of companies were slashing prices which affected profits²²⁴. Before the suggestion was made at the 12th Executive Committee meeting to increase the one-way fare to KL to \$25, GR Travel was selling such tickets at \$23²²⁵.
127. Vincent Lim attended the 14th, 15th, 16th, 17th and 18th Executive Committee meetings on behalf of GR Travel²²⁶. He said that before Sebastian Yap's suggestion to increase the price of one-way coach tickets to KL to \$25 at the 12th Executive Committee meeting, everyone was charging a different price²²⁷. Vincent Lim confirmed that at the 14th Executive Committee meeting on 1 June 2005, the members had agreed to allow Enjoy to sell tickets to Ipoh at \$28, \$5 below the recommended selling price of \$33²²⁸. In addition, Vincent Lim confirmed that at the 18th Executive Committee

²²³ See Answers to Questions 45 & 46, 49 & 50, 54 and 61 of Tay Seow Hoon's Notes of Information / Explanation Provided on 24 November 2008

²²⁴ See Answers to Questions 48 and 52 of Tay Seow Hoon's Notes of Information / Explanation Provided on 24 November 2008.

²²⁵ See Answer to Question 63 of Tay Seow Hoon's Notes of Information / Explanation Provided on 24 November 2008

²²⁶ See Answers to Questions 52, 84, 98, 104 and 118 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

²²⁷ See Answer to Question 218 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

²²⁸ See Answer to Question 83 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

meeting on 9 November 2005, all members agreed to the recommended selling price as set out in paragraph 106 above²²⁹.

128. Interview of Grassland personnel²³⁰ - Tan Boon Huat was asked about the issue of standardised selling price that was first brought up in the 6th Executive Committee meeting held on 20 April 2004 and discussed again in the 7th Executive Committee meeting on 6 October 2004. He explained that this was the result of a need to minimize competition for coach ticket prices as they did not want to see smaller and weaker companies close due to intense competition²³¹. His interview notes in this respect are reproduced below:

Q70. Referring to paragraph (f)[of] the minutes of the 7th Committee meeting held on 24 October 2004 under the sub-heading "Standardize selling fare for Express Bus Tickets" where it is said that a minimum selling price ("MSP") is to be agreed by the members and thereafter in the event of any down sell due to promotional activities; a written notice is required to inform the association, could you explain this?

A: We were concern[ed] that if everyone started slashing prices during low season, it would destroy the service and industry. So this was devised to safeguard the smaller players so that the big companies would not be able to squeeze them out of the industry.

He also confirmed that Grassland agreed to the minimum selling price then²³².

129. Tan Boon Huat confirmed that he had attended the 12th Executive Committee meeting on 5 April 2005 and the 13th Executive Committee meeting on 4 May 2005²³³ and that the members had agreed with Sebastian Yap's suggestion to increase their fares to a minimum of \$25 for one-way coach tickets to KL²³⁴. Tan Boon Huat was asked to explain about the minutes of the 13th Executive Committee meeting:

²²⁹ See Answer to Question 132 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

²³⁰ See Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008 and Ling Wang Hock's Notes of Information / Explanation Provided on 21 November 2008.

²³¹ See Answer to Question 66 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³² See Answer to Question 71 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³³ See Answers to Questions 77 & 84 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³⁴ See Answers to Questions 82 & 85 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

Q86: The minutes also state that “the decision still lies within the member itself and whether it is within their ability to do so”, what was meant by this sentence?

A: For companies with lower sales would prefer to have a MSP in place to prevent bigger companies from selling at low prices. For companies like mine, it would not affect us as we have already been selling above the MSP. So individual companies were allowed to sell [at] any price as long as we did not sell below the agreed MSP.

130. Tan Boon Huat did not attend the 14th Executive Committee meeting on 1 June 2005 or the 18th Executive Committee meeting on 9 November 2005 but received a copy of the relevant minutes²³⁵. With regard to the 20th Executive Committee meeting held on 2 March 2006, Tan Boon Huat could not recall if Grassland had sent a representative but he said that Grassland did not object to the implementation of the MSP and was therefore taken to have agreed to the MSP²³⁶. He added that Grassland was not concerned with the MSP as it was charging prices that were much higher than the agreed MSP²³⁷. Grassland did not have to adjust its prices following the implementation of the MSP²³⁸. Grassland subsequently issued a new price list on 1 May 2006 when it decided not to implement the FIC charges²³⁹. Further price changes were effected on 29 September 2007 and 6 June 2008²⁴⁰.
131. Tan Boon Huat explained that the MSP was set only for one-way express bus tickets because customers found it cheaper to purchase tickets in Malaysia when travelling from Malaysia to Singapore²⁴¹.
132. When questioned about the 2/06 Executive Committee meeting held on 21 June 2006, Tan Boon Huat said²⁴²:

²³⁵ See Answers to Questions 88, 93, 102 & 104 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³⁶ See Answers to Questions 108 & 114 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³⁷ See Answers to Questions 115 & 121 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³⁸ See Answer to Question 118 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²³⁹ See Answer to Question 125 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²⁴⁰ See Answer to Question 126 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²⁴¹ See Answer to Question 15 of Tan Boon Huat's Notes of Information / Explanation Provided on 20 January 2009

²⁴² See Answer to Question 131 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

Q131. It seems that Leong S[eng] Kiong of Alisan had to explain his position for selling below the MSP or agreed price or may be asked to leave the committee. Could you explain further about this?

A: If I didn't recall wrongly, Alisan was selling his coach ticket prices very low so the committee decided to taken action against Alisan. I am not aware what action they were referring to.

Q132: What happened to Alisan in the end?

A: I don't know as I decided not to be involved in EBAA matters.

133. Tan Boon Huat did not renew Grassland's membership of the EBAA for 2007. This is recorded as an afternote in the minutes of the Executive Committee meeting held on 17 January 2007 that Grassland had informed Tan Kah Hin on 19 January 2007 that they would not renew their membership²⁴³. Tan Boon Huat also said that Eltabina was not very interested in EBAA's matters and hardly attended any meetings or got involved in the discussions²⁴⁴.
134. Ling Wang Hock, Operations Manager, attended the 14th and 18th Executive Committee meetings on behalf of Tan Boon Huat²⁴⁵. When asked if Grassland sold its coach tickets above the MSP as agreed on 2 March 2006, Ling Wang Hock replied in the affirmative and explained that all members had to sell above the MSP²⁴⁶.
135. Interview of Gunung Raya's personnel²⁴⁷ – With respect to the 20th Executive Committee meeting, Vincent Lim confirmed that he had received the EBAA circular dated 4 March 2006²⁴⁸. However, he could not remember if GR Travel or Gunung Raya had implemented the minimum selling prices²⁴⁹. Vincent Lim was asked about the meeting held on 21 June 2006 at which Michael Seng had expressed his unhappiness over Alisan

²⁴³ See afternote to paragraph 5 of Minutes of 01/2007 Executive Committee meeting held on 17 January 2007

²⁴⁴ See Answer to Question 48 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

²⁴⁵ See attendance list of Minutes of 14th Executive Committee meeting held on 1 June 2006 and Answer to Question 56 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 November 2008

²⁴⁶ See Answer to Question 65 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 November 2008

²⁴⁷ See Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008 and 15 August 2008

²⁴⁸ See Answer to Question 232 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

²⁴⁹ See Answers to Questions 242 to 243 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

selling below the “agreed price” and his interview notes in this respect are reproduced below²⁵⁰:

Q160: In the minutes, Mr Michael Seng expressed his unhappiness over the cost of tickets sold by Alisan saying that Alisan had sold below the agreed price. Do you know what Mr Seng was referring to?

A: We set up the price previously which all members had agreed to sell at the price.

Q161: What was this “agreed price” that had been agreed?

A: One way coach tickets.

136. Interview of Konsortium personnel²⁵¹ - Joe Lim admitted that the committee members agreed and concluded a standardised selling price to destinations in Malaysia at the 14th Executive Committee meeting on 1 June 2005²⁵². He confirmed that the standardisation was not a government requirement; rather it was to provide an agreed price which members could follow as closely as possible instead of selling at different prices²⁵³. He said that the selling prices were recommended in that they were minimum prices above which members were free to fix their prices²⁵⁴. He also confirmed that the Executive Committee had agreed on the revised selling prices at the 18th Executive Committee meeting on 9 November 2005²⁵⁵.
137. According to him, all the members agreed on 2 March 2006 to increase the MSP for the destinations in Malaysia²⁵⁶. Joe Lim admitted that recommending the selling price of coach tickets and packages was in contravention of clause 21.4 of the Constitution.²⁵⁷ He further admitted that Konsortium followed the agreed MSP and had not sold below the MSP

²⁵⁰ See Answers to Questions 160 & 161 of Vincent Lim’s Notes of Information / Explanation Provided on 13 August 2008

²⁵¹ See Joe Lim’s and Raymond Lim’s Notes of Information / Explanation both Provided on 8 August 2008

²⁵² See Answers to Question 100 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

²⁵³ See Answer to Question 101 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

²⁵⁴ See Answers to Questions 71 and 72 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

²⁵⁵ See Answer to Question 209 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

²⁵⁶ See Answers to Questions 133 and 135 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

²⁵⁷ See Answers to Questions 84 and 85 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

since March 2006²⁵⁸. He also said that there was one time before 2008 during which there was a change in price but it was not below the MSP²⁵⁹.

138. According to Raymond Lim, the EBAA was set up as a discussion platform for market players to prevent undercutting or price wars²⁶⁰. He admitted that the MSP was established to prevent price wars among the members²⁶¹. According to him, members could monitor compliance with the recommended selling prices by calling one another's counter²⁶². Raymond Lim did not attend the 6th, 7th, 8th, 12th, 13th, 14th or 20th Executive Committee meetings²⁶³. He attended the 18th Executive Committee meeting and confirmed that members had agreed to increase by \$2 the recommended selling prices of tickets to destinations in Malaysia agreed at the 14th Executive Committee meeting, so as to take into account the FIC²⁶⁴. In respect of the prices agreed at the 20th Executive Committee meeting, he said that these were updating the previous prices to prevent price wars but some prices remained unchanged as customers were already complaining that the tickets were expensive and they had reached the "ceiling"²⁶⁵. According to Raymond Lim, Konsortium implemented the MSP and the fares remain above the MSP agreed at the 20th Executive Committee meeting²⁶⁶. Raymond Lim explained that the MSP was set for one-way express bus tickets only because the return ticket price was set by their Malaysian counterparts²⁶⁷. In addition, MSPs were only set for destinations to which all of them were operating as those were destinations with high demand²⁶⁸. Raymond Lim said that there was no formal

²⁵⁸ See Answers to Questions 137 and 139 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁵⁹ See Answers to Questions 137 and 139 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶⁰ See Answers to Questions 28 and 58 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶¹ See Answers to Questions 60 and 414 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶² See Answer to Question 428 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶³ See Answers to Questions 408, 410, 416, 420, 422, 424 and 433 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶⁴ See Answer to Question 430 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶⁵ See Answers to Questions 436 and 437 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶⁶ See Answers to Questions 438 and 440 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

²⁶⁷ See Answer to Question 13 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009

²⁶⁸ See Answer to Question 15 of Raymond Lim's Notes of Information / Explanation Provided on 15 January 2009

announcement to cease the operation of the MSP because in his view it was always a recommendation²⁶⁹.

139. Interview of Regent Star personnel²⁷⁰ - According to Sebastian Yap, Regent Star is a sales office of Transtar²⁷¹. Sebastian Yap confirmed that the “standardise selling price” first mentioned during the 6th Executive Committee meeting held on 20 April 2004 referred to the standardisation of the selling fare to the various destinations to provide a guideline to the members on what the others were charging²⁷². This was because the members were charging different prices and the members were complaining that some were selling at too low while others were selling at too high a price²⁷³.
140. In relation to the 12th Executive Committee meeting held on 5 April 2005, Sebastian Yap explained that he had suggested the minimum of \$25 for a one-way coach ticket to KL because this was a median figure between the prices of \$24 and \$27 or \$28 charged by the members²⁷⁴. Members which attended both the 12th and 13th Executive Committee meetings did not raise any objections to this figure²⁷⁵. According to Sebastian Yap, out of 9 members attending the 13th Executive Committee meeting, only Grassland was charging above \$25 at that time²⁷⁶. In respect of the 14th Executive Committee meeting on 1 June 2005, at which the members had agreed on the recommended selling prices of tickets from Singapore to the various different destinations, Sebastian Yap said that these were reached after discussion amongst members²⁷⁷. However, he claimed that the members simply agreed to use these prices as a guideline and could choose not to follow them²⁷⁸. According to him, some of the fares by Grassland were

²⁶⁹ See Answer to Question 442 of Raymond Lim’s Notes of Information / Explanation Provided on 8 August 2008

²⁷⁰ See Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008, 8 August 2008 and 21 January 2009

²⁷¹ See Answer to Question 2 of Sebastian Yap’s Notes of Information / Explanation Provided on 21 January 2009

²⁷² See Answer to Question 259 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

²⁷³ See Answer to Question 261 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

²⁷⁴ See Answer to Question 277 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

²⁷⁵ See Answers to Questions 282, 286 & 288 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

²⁷⁶ See Answer to Question 333 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

²⁷⁷ See Answer to Question 295 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

²⁷⁸ See Answers to Questions 292 & 293 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

above these prices while some of the fares by Alisan, Enjoy and Konsortium were below these prices. However, Transtar and Regent Star never sold below these recommended prices²⁷⁹. Sebastian Yap confirmed that the recommended selling prices agreed at the 18th Executive Committee meeting on 9 November 2005 were the same as those agreed at the 14th Executive Committee meeting, but for the addition of \$2 for one-way FIC²⁸⁰.

141. Sebastian Yap claimed to be unaware of the EBAA circular dated 4 March 2006 but said that Transtar and Regent Star had always sold their tickets above the prices stated in the circular save for 1 service (out of 10 services) to KL, which was still priced at \$27, instead of \$29 as stated in the circular²⁸¹. According to him, minimum selling prices were fixed for one-way tickets as EBAA members were more concerned with the price of tickets sold for journeys out of Singapore than with the price of tickets out of Malaysia²⁸².
142. Interview of Sri Maju personnel²⁸³ – Susan Ng attended the 6th, 7th and 8th Executive Committee meetings²⁸⁴. According to Susan Ng, the rationale for requiring a written notice to inform the EBAA of any down-sell which was raised during the 7th Executive Committee meeting held on 6 October 2004 was a suggestion made to ensure the charging of a standardised price. Her interview notes in this respect are reproduced below²⁸⁵:

Q323. Why in the event of down sell, a written notice is required to inform the association? Was any action taken pursuant to the written notice?

A: At that time, there was control by the EBAA to stop members from selling below that price because it may affect the business or sales of other companies in the industry. This was suggested by Michael Seng so that the prices may be standardized. I am not sure as it never happened and was simply mentioned during meetings.

²⁷⁹ See Answer to Question 297 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

²⁸⁰ See Answer to Question 301 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

²⁸¹ See Answers to Questions 302, 306 and 311 to 316 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

²⁸² See Answer to Question 37 of Sebastian Yap's Notes of Information / Explanation Provided on 21 January 2009

²⁸³ See Susan Ng's Notes of Information / Explanation Provided on 11 August 2008 and 21 January 2009

²⁸⁴ See Answers to Questions 318, 320 and 325 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

²⁸⁵ See Answer to Question 323 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

143. Susan Ng did not attend the 12th Executive Committee meeting but she attended the 13th, 14th and 18th Executive Committee meetings. Despite holding the position of Treasurer in the EBAA Executive Committee, Susan Ng claimed that she could not recall what had transpired at Executive Committee meetings and claimed that she did not follow up on what was discussed²⁸⁶.
144. Susan Ng was asked about the EBAA circular dated 4 March 2006. She admitted that Sri Maju had followed the price of \$29 for coach tickets to KL stated in the circular but claimed that she could not recall if Sri Maju followed the MSP stated for the other destinations²⁸⁷. When queried whether Sri Maju took into account the MSP when pricing their coach tickets, Susan Ng stated that Sri Maju referred to the EBAA recommended MSP in pricing their coach tickets²⁸⁸. However, Sri Maju would not follow the EBAA recommended price if it was too high²⁸⁹. Susan Ng claimed that the meetings on MSP allowed her to gain awareness of her competitors' prices to price below them²⁹⁰. She also said that there was a lot of price competition in the market prior to the setting up of the MSP and Sri Maju used to sell at very low rates. Enjoy then suggested that EBAA members sell tickets at a standardised price to avoid competition. While Sri Maju resisted initially given that their regular customers were used to their low prices, it eventually relented²⁹¹.
145. Susan Ng was queried on two faxes dated 24 July and 25 September 2007 containing the rates for Genting resorts and coach tickets which were received by Sri Maju from Transtar. In response, Susan Ng explained that these were sent as Transtar had an allotment of rooms for Genting and Sri Maju purchased hotel rooms from them²⁹². Nonetheless, when queried why Transtar included their coach rates in the fax, Susan Ng replied that this

²⁸⁶ See Answer to Question 341 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

²⁸⁷ See Answer to Question 336 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

²⁸⁸ See Answer to Question 338 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

²⁸⁹ Ibid

²⁹⁰ See Answer to Question 55 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009

²⁹¹ See Answer to Question 22 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009

²⁹² See Answers to Questions 300 and 306 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

was to let Sri Maju know the prices they were charging. Her interview notes in this respect are reproduced below²⁹³:

Q307. Referring to Exhibit NSK-039, why did Transtar include their coach rates in the fax to you if you were simply purchasing the hotel rooms from them?

A: This is to let us know the prices they charge for their coaches. If our coaches are full, we can buy the coach tickets from them. If our coaches are full and customers enquire about other companies, we can easily provide Transtar's rates to them.

146. Susan Ng claimed that the coach ticket price charged by Sri Maju was lower than those charged by other express coach companies²⁹⁴.
147. Interview of Transtar personnel²⁹⁵ – When questioned on why the minimum selling price for express coach tickets had to be standardised as raised in the 6th and 7th Executive Committee meeting, Elson Yap explained that the rationale for the MSP was for the EBAA to consolidate and standardize the prices so as not to create chaos in the market and to prevent a price war amongst members²⁹⁶. According to Elson Yap, the MSP was based on a mid-point between the selling prices on all routes (save for Genting) of all the member companies. Given that EBAA had set the MSP, the rationale for the written notice to be provided to EBAA in the event of any sale below the MSP was to inform EBAA so that it could explain matters if there were complaints about undercutting²⁹⁷.
148. According to Elson Yap, the suggestion of \$25 raised during the 12th Executive Committee meeting held on 5 April 2005 was worked out during the meeting²⁹⁸. He said that not all members agreed to the MSP of \$25 for the KL route and therefore it was not implemented and members were left to set their individual prices²⁹⁹.

²⁹³ See Answer to Question 307 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

²⁹⁴ See Answer to Question 312 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

²⁹⁵ See Elson Yap's Notes of Information / Explanation Provided on 14 August 2008 and 21 January 2009 and Sebastian Yap Chor Seng's Notes of Information / Explanation Provided on 8 August 2008

²⁹⁶ See Answer to Question 205 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

²⁹⁷ See Answer to Question 206 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

²⁹⁸ See Answers to Questions 214 and 216 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

²⁹⁹ See Answers to Questions 220 and 221 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

149. When questioned about the 14th Executive Committee meeting held on 1 June 2005, Elson Yap said that the members had submitted their coach ticket prices for the various destinations and the mid-point of these prices was used to achieve agreement by everyone on one recommended selling price for each route³⁰⁰. Elson Yap said that these prices were minimum selling prices in that while one was allowed to sell above them, it was not advisable to sell below them³⁰¹. An exception was made for Enjoy to sell tickets to Ipoh at \$28, instead of \$33, because Enjoy's buses were very old³⁰². Elson Yap said that Transtar would usually follow the agreed prices but it might charge below the recommended selling prices in the low season and undercut in order to survive³⁰³.
150. Elson Yap confirmed that at the 18th Executive Committee meeting held on 9th November 2005, the MSP for destinations to Malaysia were revised to include the addition of \$2 for the one-way FIC³⁰⁴. Elson Yap claimed he did not receive the EBAA circular dated 4 March 2006 and could not recall if he had attended the 20th Executive Committee meeting on 2 March 2006³⁰⁵. He claimed that members were allowed to sell below the recommended selling prices in the circular and that Regent Star and Transtar did not follow them³⁰⁶. According to him, the MSP ceased to be in operation on or about 2006 although he is unable to recall the exact date³⁰⁷.
151. According to Elson Yap, MSP was set for one-way and not two-way express bus tickets as customers found it cheaper to purchase the ticket for the return trip in Malaysia. In addition, the price of the return trip would have to be set by the Malaysian bus operators who would have to obtain approval from the Malaysian authorities for the prices set³⁰⁸. In determining the price to charge for a two-way ticket, he would take the sum of (a) the

³⁰⁰ See Answer to Question 225 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁰¹ See Answer to Question 224 of Elson Yap's Notes of Information/Explanation Provided on 14 August 2008

³⁰² See Answer to Question 229 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁰³ See Answer to Question 226 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁰⁴ See Answer to Question 231 of Elson Yap's Notes of Information/Explanation Provided on 14 August 2008

³⁰⁵ See Answer to Question 232 & 235 of Elson Yap's Notes of Information/Explanation Provided on 14 August 2008

³⁰⁶ See Answers to Questions 239 & 240 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁰⁷ See Answer to Question 242 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁰⁸ See Answer to Question 37 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009

price of a one-way ticket from Singapore; (b) the price for the return leg charged by the Malaysian express bus operator; and (c) a premium or an administrative charge for (b)³⁰⁹.

152. Elson Yap was questioned about two faxes dated 24 July 2007 and 25 September 2007 containing the rates for Genting Highlands Resort and Transtar's coach ticket prices (valid from 1 October to 31 December 2007) which were faxed to a list of companies, including Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Sri Maju, WTS and 707 Travel. Elson Yap indicated that this was a common practice as Genting coach ticket prices were open knowledge. His interview notes are reproduced below³¹⁰:

A: This is because these are my agencies and partners. They are players. I sent it to them mainly because of the Genting ticket prices. This is to let them know my coach ticket prices for Genting. Genting coach ticket prices are open knowledge. This is to let them know how much I am charging for the coach tickets. I have always had this practice. The other members would not fax their rates to me unless I request it. I sent it to them because they had requested it. They wanted to buy the Genting package from me. Sri Maju, Konsortium are my agent. Five Stars is not my agent but they are in my master list. This is the practice all along – whenever I have a new price, I would fax it to them.

153. Interview of Lapan Lapan personnel³¹¹ – Wesley Ng was not aware of any minimum selling prices applying to the EBAA members in respect of coach tickets to Malaysia or Thailand³¹².
154. Interview of Luxury Tours personnel³¹³ – Vincent Lee said that after he joined the EBAA in March 2006, he was given a copy of the EBAA circular dated 4 March 2006³¹⁴. From his understanding of the circular, the recipients were told to sell at the stated prices³¹⁵. He was therefore aware

³⁰⁹ See Answer to Question 38 of Elson Yap's Notes of Information / Explanation Provided on 21 January 2009

³¹⁰ See Answer to Question 244 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³¹¹ See Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

³¹² See Answers to Questions 214 to 217 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

³¹³ See Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008 and 16 January 2009

³¹⁴ See Answer to Question 79 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008 and Answers to Questions 27, 28, 30 and 31 of Vincent Lee's Notes of Information / Explanation Provided on 16 January 2009

³¹⁵ See Answer to Question 35 of Vincent Lee's Notes of Information / Explanation Provided on 16 January 2009

that the minimum selling price for a one-way ticket to KL was \$29³¹⁶. While he said that he did not feel compelled to follow the price, he was, at that time, pricing his tickets to KL at \$45 and his prices have always remained above \$29³¹⁷.

155. Interview of WTS personnel³¹⁸ – Voo Wei Keong could not remember if he was informed about the minimum selling prices for coach tickets when he joined the EBAA³¹⁹.
156. Interview of Nam Ho personnel³²⁰ – Marshall Ooi was not aware of the minimum selling prices for coach tickets or the EBAA circular dated 4 March 2006³²¹. Malaysian coach packages do not form part of Nam Ho's core business³²².
157. Interview of T&L personnel³²³ - According to Tan Yong Leng, coach tickets to Malaysia make up a very small part of T&L's business³²⁴ and T&L would obtain coach tickets from other industry players such as Konsortium and Sri Maju³²⁵. Tan Yong Leng had not seen the EBAA circular dated 4 March 2006. However, a separate price list reflecting the same prices had been given to him by Konsortium before he joined the EBAA to sell express bus tickets purchased from Konsortium in accordance with the list³²⁶. He said that members of the EBAA have to follow the prices indicated on the EBAA circular dated 4 March 2006 and that there

³¹⁶ See Answer to Question 32 of Vincent Lee's Notes of Information / Explanation Provided on 16 January 2009

³¹⁷ See Answer to Questions 35 to 38 of Vincent Lee's Notes of Information / Explanation Provided on 16 January 2009

³¹⁸ See Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

³¹⁹ See Answer to Question 311 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

³²⁰ See Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008 and 19 January 2009

³²¹ See Answers to Questions 267 to 269 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008 and Answers to Questions 12 and 13 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

³²² See Answer to Question 12 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

³²³ See Tan Yong Leng's Notes of Information / Explanation Provided on 11 and 12 September 2008

³²⁴ See Answer to Question 11 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

³²⁵ See Answer to Question 10 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

³²⁶ See Answer to Question 32 of Tan Yong Leng's Notes of Information / Explanation Provided on 12 September 2008

was frequent talk of charging the same price to reduce competition and stabilise the market³²⁷.

158. Interview of EBAA personnel³²⁸ – Kim Huang joined the EBAA as an administrative assistant in April 2005 and left sometime in January or February 2006³²⁹. According to Kim Huang, the idea of a standardised minimum price originated from Sebastian Yap. Her interview notes are reproduced below³³⁰:

Q53. Who came up with the idea?

A: Before I joined them, they were already discussing about this issue. Mr Sebastian Yap was very vocal about this issue. I had the impression that he was the one who is more vocal about [t]his. I recall at the meetings he would say that there is a selling price, for instance for a ticket between Singapore to Ipoh, and he would ask why some of the members of the EBAA are selling below the minimum price. I think the [people] he was referring to would be Alisan and Enjoy. Actually he was not pointing out particular people but people in the industry know that these small players are selling at a lower pricing.

Q54. What is the purpose of bringing up the issue of minimum price?

A: His point of view is that the association is a platform to standardize their procedures and their problems. I don't know his purpose but I know that he wanted everyone in the association to have a minimum selling price and not going any lower than that.

159. According to Kim Huang, who attended the 14th Executive Committee meeting held on 1 June 2005, the big companies such as Five Stars, Konsortium and Transtar all agreed to sell at the same minimum price for tickets from Singapore to the different destinations in Malaysia while the representatives from Grassland and Gunung Raya said they would have to consult their bosses³³¹. Susan Ng from Sri Maju and Leong Sing Keong

³²⁷ See Answers to Questions 33 & 34 of Tan Yong Leong's Notes of Information / Explanation Provided on 12 September 2008

³²⁸ See Huang Xiu Qin's Notes of Information / Explanation Provided on 28 November 2008

³²⁹ See Answer to Question 12 of Huang Xiu Qin's Notes of Information / Explanation Provided on 28 November 2008

³³⁰ See Answers to Questions 53 & 54 of Huang Xiu Qin's Notes of Information / Explanation Provided on 28 November 2008

³³¹ See Answer to Question 98 of Huang Xiu Qin's Notes of Information / Explanation Provided on 28 November 2008

from Alisan had no objections while Michael Seng from Enjoy mentioned that he might agree³³².

(ii) CCS' analysis of the evidence

160. CCS notes that the issue of the minimum selling price was first raised in 2004 and an agreement on the minimum selling prices of bus tickets to the various destinations in Malaysia was first reached on 1 June 2005, before the section 34 prohibition came into effect on 1 January 2006. However, the agreement continued into 2006 and beyond 24 July 2008. Section 34(5) of the Competition Act makes clear that the prohibition applies to agreements, decisions and concerted practices implemented before 1 January 2006.

Agreement and/or Concerted Practice

161. The evidence indicates that there was an agreement reached on 1 June 2005 at the 14th Executive Committee meeting between the following EBAA members: Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar.
162. Representatives from these parties attended the meeting and agreed to the following selling prices of one-way coach tickets to the various destinations in Malaysia:

<i>Singapore to Melaka</i>	<i>\$18</i>
<i>Singapore to KL</i>	<i>\$25</i>
<i>Singapore to Ipoh</i>	<i>\$33</i>
<i>Singapore to TaiPing</i>	<i>\$35</i>
<i>Singapore to Butterworth</i>	<i>\$37</i>
<i>Singapore to Penang</i>	<i>\$38</i>

163. In addition, they agreed to make an exception for Enjoy who would continue to sell tickets to Ipoh departing at 8:30 a.m. at \$28 but might revise this to \$30.
164. The MSP fares were revised on 9 November 2005 at the 18th Executive Committee meeting to incorporate an additional \$2 for the one-way FIC. Representatives of the parties set out in paragraph 106 attended the meeting and agreed to the following selling prices of one-way coach tickets:

³³² See Answers to Questions 99, 100 & 101 of Huang Xiu Qin's Notes of Information / Explanation Provided on 28 November 2008

<i>Singapore to Melaka</i>	\$20
<i>Singapore to KL</i>	\$27
<i>Singapore to Ipoh</i>	\$35
<i>Singapore to TaiPing</i>	\$37
<i>Singapore to Butterworth</i>	\$39
<i>Singapore to Penang</i>	\$40

165. Although the representative of Gunung Raya, one Ms Joanne Tan, was recorded in the minutes as being absent, the minutes of meeting were sent to Gunung Raya by fax³³³.
166. The 9 November 2005 revised fares were revised again on 2 March 2006 at the 20th Executive Committee meeting when the Executive Committee decided to increase the selling prices of one-way bus tickets. While the minutes of the 20th Executive Committee meeting were not available, it is clear from the circular dated 4 March 2006 sent out by Joe Lim, then President of the EBAA, to the parties set out in paragraph 109 that the Executive Committee's decision was unanimous and that the following selling prices were for the members' "compliance and understanding":

<i>Singapore to Melaka</i>	\$22.00
<i>Singapore to KL</i>	\$29.00
<i>Singapore to Genting</i>	\$35.00
<i>Singapore to Ipoh</i>	\$36.00
<i>Singapore to Simpang/Taiping</i>	\$37.00
<i>Singapore to B'Worth/Penang</i>	\$39.00

167. In addition to the destinations in respect of which were covered in 9 November 2005, the revisions were expanded to include one-way bus tickets to Genting and the circular stated that the revised fares would take effect on 10 March 2006.
168. In respect of the unanimity of the decision, it is important to note that unlike other trade associations where the Executive Committee members comprise a small proportion of the ordinary membership, the Executive Committee of EBAA comprises all the ordinary members with voting rights. CCS notes that the Executive Committee's decision to "relinquish" Leong Sing Kiong and Aznan Bin Sharib of their appointments in the Executive Committee was announced at the 3rd Annual General meeting on 11 October 2006, in conjunction with the resolution to delete the posts of Assistant Secretary and Assistant Treasurer from the Executive Committee.

³³³ See Answer to Question 45 of Huang Xiu Qin's Notes of Information / Explanation Provided on 28 November 2008.

This enabled the perpetuation of a structure in which all ordinary members continued to be represented on the Executive Committee. Such a structure allowed the ordinary members to discuss and agree on prices during Executive Committee meetings. As illustrated by *Bureau national interprofessionnel du cognac v Guy Clair*³³⁴ and *Papiers peints de Belgique*³³⁵ referred to earlier in paragraph 48, the fact that the ordinary members of EBAA meet under the aegis of a trade association does not remove their agreement from the scope of the section 34 prohibition. An agreement made by members of an association constitutes an agreement between undertakings.

169. CCS notes that the minutes of the Executive Committee meeting held on 21 June 2006 record Michael Seng's unhappiness that Alisan had sold below the agreed prices. This would constitute evidence that the MSP was still in operation as at 21 June 2006. In addition, CCS notes that the FIC was incorporated into the MSP and Michael Seng's grouse that Alisan was charging below the MSP was in fact raised during the discussion on the resolution for the FIC rebate. Although Transtar³³⁶ claimed that these minimum selling prices were discontinued on or about 2006 and there appears to be no further reference to the MSP in subsequent minutes of meetings, the evidence suggests that having established a price floor via the MSP, subsequent price increases was undertaken via the mechanism of the FIC. For instance, there is evidence that Vincent Lee of Luxury and Tan Yong Leng of T&L, both of whom had joined the EBAA after the EBAA circular of 4 March 2006, were made aware of such price floor stated in the circular dated 4 March 2006. CCS further notes that there is evidence of information sharing on ticket prices which shows the existence of the MSP. For instance, Transtar sent its Genting coach ticket prices, which was above the MSP, to other Parties (see paragraphs 145 and 152). CCS also notes that there was no announcement to cease the MSP³³⁷. In addition, CCS notes that the EBAA circular sent out to members on 24 July 2008, after CCS had inspected the premises of EBAA and some of the members, reminded EBAA members that the minimum selling prices of express bus tickets to various locations were merely recommended selling prices.

³³⁴ Case 123/83, [1985] 2 CMLR 430

³³⁵ OJ L 237, 29.8.74, p 3, [1974] 2 CMLR D 102

³³⁶ See Answer to Question 242 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³³⁷ See Answer to Question 100 of Leong Sing Keong's Notes of Information / Explanation Provided on 10 September 2008, Answer to Question 120 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008, Answer to Question 442 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008 and Answer to Question 245 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

170. It is therefore clear to CCS that the agreement reached on 1 June 2005 continued to be in operation as at 24 July 2008. If the minimum selling prices were no longer in existence, there would be no need to issue such a reminder. Such an institutionalised and detailed system of fixing minimum selling prices amounted to a price-fixing agreement amongst members of the EBAA with the object of reducing competition between players in the coach ticketing industry.
171. CCS further notes that the representatives of Alisan³³⁸, Enjoy³³⁹, GR Travel³⁴⁰, Grassland³⁴¹, Konsortium³⁴² and Regent Star³⁴³ indicated that they had implemented the minimum selling prices stated in the EBAA circular dated 4 March 2006 and had constantly priced above them. While Johnny Lim claimed to be unsure about whether Five Stars had implemented the minimum selling prices, CCS notes that the minimum selling prices were forwarded to his operations staff who would have taken them into account in setting the prices. In addition, it was Johnny Lim's evidence that the prices of Five Stars, GR Travel and Gunung Raya were aligned and it was clear from the evidence of Ken Lim that GR Travel's fares were above the minimum selling prices that were revised on 2 March 2006³⁴⁴.
172. CCS also notes that it was Susan Ng's evidence that while Sri Maju had followed the price of \$29, as stated in the circular dated 4 March 2006, for coach tickets to KL, it had used the prices for the other destinations in that circular to price below its competitors³⁴⁵. Similarly, Elson Yap claimed that

³³⁸ See Answers to Questions 93 to 96 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³³⁹ See Answers to Questions 127 to 128 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

³⁴⁰ See Answers to Questions 374 to 375 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

³⁴¹ See Answer to Question 121 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

³⁴² See Answers to Questions 137 and 139 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008. See also Answers to Questions 438 and 440 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

³⁴³ See Answer to Question 316 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008.

³⁴⁴ See Answer to Question 374 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

³⁴⁵ See Answer to Question 336 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008 and Answer to Question 55 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009

Regent Star and Transtar did not follow the minimum selling prices³⁴⁶. CCS addressed this situation in the *Pest Control Case*³⁴⁷ where it was stated that:

127. ...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*³⁴⁸, 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.
173. CCS notes that the minutes of the 20th Executive Committee meeting were not available. It was also unclear from the interviews who had attended the 20th Executive Committee meeting. Be that as it may, the EBAA circular dated 4 March 2006 setting out the prospective prices to be charged was sent to the parties stated in paragraph 109.
174. As held by the European Court of Justice in *Suiker Unie and others v Commission*³⁴⁹, see paragraph 51, the requirement of independence precludes any direct or indirect contact between economic operators, which has the object or effect of either influencing the conduct on the market of an actual or potential competitor or disclosing to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market³⁵⁰. 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 market: *P. Hüls AG v. Commission*³⁵¹.
175. In the present case, even if the parties did not attend the meetings where the MSP was discussed, the receipt of prospective price information enabled

³⁴⁶ See Answers to Questions 239 & 240 of Elson Yap’s Notes of Information / Explanation Provided on 14 August 2008

³⁴⁷ See 600/008/06, paragraph 127 & 128

³⁴⁸ Case 86/398 OJ 1986 L 230/1 at paragraph 85

³⁴⁹ Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1973] ECR-I 1663

³⁵⁰ Ibid at para. 174

³⁵¹ Case C-199/92 [1999] ECR I-4287.

them to eliminate in advance uncertainty about the future conduct of their market competitors and to take into account the information disclosed in determining the policy which they intended to follow on the market. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice between the parties set out in paragraph 161.

176. CCS notes that Aznan Bin Sharib of Eltabina did not attend the 6th, 7th, and 8th Executive Committee meetings. While one Ms Ruby attended the 12th and 13th Executive Committee meetings on behalf of Eltabina, she did not attend the 14th and 18th Executive Committee meetings at which the agreement on the selling prices of coach tickets had been reached and revised respectively. In addition, the EBAA circular dated 4 March 2006 was not sent to Eltabina. While Kim Huang claimed that she had faxed over the minutes of the 14th Executive Committee meeting to Eltabina³⁵², Aznan Bin Sharib claimed that he did not receive the minutes³⁵³. In addition, Aznan Bin Sharib said he had not seen the minutes of the 18th Executive Committee meeting or the circular dated 4 March 2006³⁵⁴ and did not agree to the prices³⁵⁵. The evidence of Aznan Bin Sharib was supported by Tan Boon Huat who said that Aznan Bin Sharib hardly attended Executive Committee meetings or got involved in the discussions³⁵⁶. In the circumstances, CCS considers that there is insufficient evidence to show that Eltabina was a party to the agreement and/or concerted practice between the parties set out in paragraph 161.

Object or Effect of Preventing, Restricting or Distorting Competition

177. The interviews reveal that the introduction of the MSP was premised on an intention to reduce competition by preventing any price war amongst competitors³⁵⁷ and minimising the slashing of coach ticket prices which

³⁵² See Answer to Question 22 of Huang Xiu Qin's Notes of Information / Explanation Provided on 2 December 2008.

³⁵³ See Answer to Question 79 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008.

³⁵⁴ See Answers to Questions 85 to 86 and 87 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

³⁵⁵ See Answers to Questions 59, 82 and 88 of Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

³⁵⁶ See Answer to Question 48 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

³⁵⁷ See Answers to Questions 60 & 414 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008; See Answer to Question 205 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

affected profits³⁵⁸. Before the introduction of the MSP, everyone was selling at different prices³⁵⁹, in particular, lower prices. As an example, before the suggestion made by Sebastian Yap at the 12th Executive Committee meeting on 5 April 2005 to sell one-way coach tickets to KL at \$25, most of the EBAA members were selling their tickets at \$20 or \$23³⁶⁰. According to Sebastian Yap himself, out of 9 members attending the 13th Executive Committee meeting on 4 May 2005, only Grassland was charging above \$25 at that time³⁶¹. The institution of a minimum selling price was undertaken at a time after the market was liberalised on 1 January 2005. While CCS notes that this was before the section 34 prohibition came into effect, the intent with which the minimum selling prices was instituted is nevertheless relevant as the agreement continues to exist after the section 34 prohibition came into effect.

178. CCS notes that this desire to eliminate competition between players in the market by instituting a minimum selling price³⁶² amounts to a blatant price-fixing agreement with the object of restricting, preventing and distorting competition in the coach ticketing industry³⁶³. Such restriction of competition deprives consumers of the efficiencies and innovation which businesses competing against one another are spurred to achieve. Given the manifestly anti-competitive object of the agreement, there is no need to show that the agreement and/or concerted practice had effects restrictive of competition.

Representations by the Parties

179. In the written representations of Five Stars, GR Travel, Gunung Raya and Konsortium, it was argued that the spirit and intent of the MSP agreement

³⁵⁸ See Answer to 52 of Tay Seow Hoon's Notes of Information / Explanation Provided on 24 November 2008; See Answers to Questions 44 & 45 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008

³⁵⁹ See Answers to Questions 101 to 102 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008, Answer to Question 101 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008 and Answers to Questions 261 and 277 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

³⁶⁰ See Answer to Question 65 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008, Answer to Question 45 of Johnny Lim's Notes of Information / Explanation Provided on 14 August 2008, Answer to Question 63 of Tay Seow Hoon's Notes of Information / Explanation Provided on 24 November 2008 and Answer to Question 205 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁶¹ See Answer to Question 333 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

³⁶² See Answer to Question 224 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

³⁶³ See Answers to Questions 44 & 45 of Michael Seng's Notes of Information / Explanation Provided on 5 November 2008; See Answers to Questions 60 & 414 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

was to create fair competition for all express bus agents to prevent drastic fluctuations of fare prices brought about, for example, by sudden unforeseen fluctuations in fuel prices, which would inevitably hurt the public consumers. They further claim that the MSP agreement encouraged competition because it only set price floors, not price ceilings; according to these parties, setting price ceilings would have been more detrimental to competition because if the price ceiling had been set too low, it would have driven out competitors that are unable to sustain such low prices. These parties submitted that the benefits of the MSP outweighed its anti-competitive effects as the consumers were the ultimate beneficiaries.

180. CCS considers that these parties' arguments are entirely misconceived and are not substantiated. As set out at paragraph 177 above, there was clear evidence that most of the EBAA members were charging below the MSP before the MSP agreement was implemented, and the price floor subsequently set by the MSP reduced price competition with no redeeming benefits. As such, CCS is unable to agree with these representations.

(iii) CCS' conclusions on the MSP agreement

181. CCS thus considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice to fix the price of bus tickets between the following parties with the object of restricting, preventing or distorting competition in the relevant market in breach of the section 34 prohibition: Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar.

(II) Fuel and Insurance Charge ('FIC')

(i) The facts and the evidence

Documentary Evidence

182. The imposition of a coach tax was first mooted by Joe Lim during the 14th Executive Committee meeting on 1 June 2005³⁶⁴ as a mechanism for bringing in extra income for the members. The minutes record the following:

As brought up by Joe, he suggested that all EBAA are to implement a coach tax (fuel + insurance) on all tickets that they sold. This will bring in

³⁶⁴ The representatives from Konsortium (Joe Lim), Transtar (Elson Yap), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), Alisan (Leong Sing Kiong), GR Travel (Vincent Lim), Gunung Raya (Joanne) and Grassland (Ling Wang Hock) were present. The representative from Eltabina (Ruby) was absent

*extra income for all members and also to EBAA. In addition, it will benefit the passenger because insurance will be included in the tax. The suggested selling price is \$2 per ticket. All members are supposed to decide whether they want the tax to be build in or paid as additional by the passenger and this is to be finalized by the next meeting.*³⁶⁵

183. The implementation of a coach tax was brought up again at the 15th Executive Committee meeting on 6 July 2005³⁶⁶ during which it was agreed that the coach tax be set at \$2 for one-way journeys and \$3 for two-way. The relevant portion of the minutes of meeting state the following:

*As brought up in the previous meeting, all members agreed on the implementation of the coach tax when passengers purchase their coach tickets. It was emphasize that the implementation will increase revenue and decrease the burden for all members. It is currently set at \$2 for one-way ticket and \$3 for two-way ticket. However, EBAA is supposed to check with LTA and CASE in any case it would be violating any regulation set by the government. The percentage that EBAA will be earning shall be discussed in the later part.*³⁶⁷

184. At the 16th Executive Committee meeting on 7 September 2005³⁶⁸, the Executive Committee agreed that the coach tax would be implemented on 1 November 2005 and that it would be named the fuel and insurance charge (“FIC”) and launched officially at the Travel Malaysia exhibition³⁶⁹.
185. The Executive Committee agreed on the percentage earned by EBAA from the sale of the FIC coupons at the 17th Executive Committee meeting on 5 October 2005³⁷⁰. The minutes record the following:

³⁶⁵ See paragraph b of Minutes of the 14th Committee meeting held on 1 June 2005.

³⁶⁶ The representatives from Konsortium (Joe Lim), Transtar (Elson Yap), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), Gunung Raya (Leong Lean Pong), Alisan (Violet), GR Travel (Vincent Lim) and Grassland (Ling Wang Hock) were present. The representative from Eltabina (Ruby) was absent. A representative from Sri Maju Sarata Express, Wendy, was also present

³⁶⁷ See paragraph a of Minutes of the 15th Committee meeting held on 6 July 2005.

³⁶⁸ The representatives from Konsortium (Joe Lim), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), GR Travel (Vincent Lim), Grassland (Ling Wang Hock), Gunung Raya (Joanne) and Eltabina (Ruby) were present. The representatives from Alisan (Leong Sing Kiong) and Transtar (Elson Yap) were absent. A representative from Sri Maju Sarata Express, Wendy, was also present

³⁶⁹ See paragraph a of the Minutes of the 16th Committee meeting on 7 September 2005.

³⁷⁰ The representatives from Konsortium (Joe Lim), Transtar (Elson Yap), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), Alisan (Leong Sing Kiong), GR Travel (Vincent Lim), Grassland (Ling Wang Hock) and Gunung Raya (Joanne) were present. The representative for Eltabina (Ruby) was absent. A representative from Sri Maju Sarata Express, Wendy, was also present.

As brought up in the previous meeting, all members agreed on the implementation of the coach tax when passengers purchase their coach tickets. It was emphasize that the implementation will increase revenue and decrease the burden for all members. It is currently set at \$2 for one-way ticket and \$3 for two-way ticket. It will start effect from 1st of November and EBAA will launch it officially during the “Travel Malaysia” exhibition. The ticket will be given the name, “FIC” (Fuel & Insurance Charge). EBAA is entitled to earn 25%; i.e. One-way: 50 cents and Two-way: 75 cents. From the revenue earned, EBAA will then Pay the insurance company based on 30 cents and 50 cents respectively. The area of insured will cover up to Hatyai.³⁷¹ (Emphasis added)

186. Following this, an article was published in the *Lianhe Zaobao* on 13 October 2005 stating that a number of the Singapore-Malaysia express buses would be imposing fuel surcharges³⁷². The article describes the escalating fuel cost and states that with effect from 1 November 2005, members of the EBAA would impose a FIC of \$2 for a one-way bus ticket and \$3 for a return bus ticket. The article quoted Joe Lim, President of the EBAA and Executive Director of Konsortium, as saying that he had no choice but to transfer part of the escalating fuel costs to consumers as the companies were unable to bear the increasing fuel costs. Joe Lim also said that the charge would include an insurance fee that would provide passengers with insurance coverage for accidents as well as property loss occurring during the journey.
187. It would appear that the FIC was not implemented by all the members on 1 November 2005. An email dated 2 November 2005 was sent by Joe Lim, the President of EBAA, to Chris Tay and Vincent Lim of GR Travel, Elson Yap and Sebastian Yap of Transtar and Johnny Lim of Five Stars³⁷³, urging them to purchase the FIC coupons and start implementing the FIC. In that email, Joe Lim said that only Konsortium and Enjoy had implemented the FIC thus far. As EBAA would have to place a security deposit of S\$50,000 with the insurer AIG, members would have to purchase at least S\$5,000 worth of coupons in the first instance.
188. The email dated 2 November 2005 was sent by Joe Lim to Vincent Lim (GR Travel) and Chris Tay (GR Travel), Johnny Lim (Five Stars), Sebastian Yap (Transtar) and Elson Yap of (Transtar), Sri Maju and Leong

³⁷¹ See paragraph a of Minutes of 17th Committee meeting held on 5 October 2005.

³⁷² See EY-009 produced by Elson Yap to CCS during the section 64 inspection on 24 June 2008

³⁷³ Copy of email from Joe Lim dated 2 November 2005 produced by Tan Boon Huat marked I1 on 30 July 2008 in response to CCS' section 63 notice dated 21 July 2008

Sing Kiong (Alisan) on 4 November 2005, together with the following contents³⁷⁴:

Subject: *Fuel & Insurance Charge (FIC)*

Dear all,

Fuel & Insurance Charge (FIC) is a effort created by the association, the aim is to help the members to have some extra cash to offset the ever-high diesel that Malaysia is charging.

*Since last few meeting, **all members has been briefed and agreed** that FIC is going to implementing wef 1 Nov 2005, press conference and the recent Travel Malaysia 2005 has also mentioned about the issue and by now, every public, coach takers are fully aware that buses are charge the Fuel surcharge too, after the Air and Cruise transport (sic). (Emphasis added)*

Since 29 Oct, purchase form has been issue to members and follow by several calls to remind members to pick up the coupons, they are still quite a number of the members has not done so.

<i>Konsortium</i>	<i>Coupon collected 31/10 and paid</i>
<i>Transtar</i>	<i>Coupon collected 2/11 and paid</i>
<i>Enjoy</i>	<i>Coupon collected 31/10 and not paid</i>
<i>Alisan</i>	<i>Coupon collected 31/10 and not paid</i>
<i>Five Stars</i>	<i>Coupon collected 31/10 and not paid</i>
<i>GR Travel</i>	<i>Coupon collected 31/10 and not paid</i>
<i>Gunung</i>	<i>Coupon collected 31/10 and not paid</i>
<i>Regent Star</i>	<i>Coupon not collected and not paid</i>
<i>Grassland</i>	<i>Coupon not collected and not paid</i>
<i>Sri Maju</i>	<i>Coupon not collected and not paid</i>
<i>Eltabina</i>	<i>Coupon not collected and not paid</i>

To avoid misunderstanding of being not supporting the association's idea, I urged those members that has not take the coupon to quickly submit the purchase form and pick up the coupon and to start implementing FIC

189. At the 18th Executive Committee meeting held on 9th November 2005³⁷⁵, members who had yet to order FIC coupons were urged to fax their orders

³⁷⁴ Copy of email from Joe Lim dated 4 November 2005 produced by Tan Boon Huat marked I2 on 30 July 2008 in response to CCS' section 63 notice dated 21 July 2008

³⁷⁵ The representatives from Konsortium (Joe Lim and Raymond Lim), Transtar (Elson Yap), Sri Maju (Susan Ng), Enjoy (Michael Seng), Five Stars (Johnny Lim), Regent Star (Sebastian Yap), Alisan (Leong Sing Kiong), GR Travel (Vincent Lim) and Grassland (Ling Wang Hock) were present. The representatives for Eltabina (Ruby) and Gunung Raya (Joanne) were absent

as soon as possible. The relevant paragraph of the minutes of meeting reads as follows:

*The implementation of the coach tax (FIC) has effectively commenced on the 1st of November 2005. However, Joe brings up that there are some members who have yet to order the coupons. It was emphasize that the implementation **will increase revenue and decrease burden for all members**. All members should therefore, take action accordingly as the association serve as a platform for every member. There will be an authorization letter, attached with an article taken from LianHe ZaoBao. Every member will be receiving two laminated copies and it is meant to be placed in their office for customers' reference. The idea of having an official notice to be printed in the Straits Times was supported by members. Members who have yet to place their order for FIC, please fax your order to Konsortium office as soon as possible³⁷⁶. (Emphasis added)*

190. The minutes go on to record that by 24 November 2005, all the Executive Committee members, except GR Travel, Gunung Raya and Eltabina, had purchased FIC coupons.
191. The authorisation letter mentioned in the minutes of the 18th Executive Committee meeting state the following:

(Date)

_____, a member of the Express Bus Agencies Association (EBAA), will apply the Fuel & Insurance Charge (FIC) to defray the increased operational fuel costs, with effect from (Date).

The charges are as follows:

S\$2.00 One-way trip: Single trip from Singapore to West Malaysia & Hatyai, Thailand or vice versa*

S\$3.00 Two-way trip: Round trip to West Malaysia & Hatyai, Thailand*

** Inclusive of insurance coverage underwritten by AIG (please refer to the reverse page of the coupon)*

Thank you for your understanding and support.

By order,

³⁷⁶ See paragraph a of Minutes of 18th Committee meeting on 9 November 2005

192. At the Executive Committee meeting on 31 May 2006, Johnny Lim, then President of EBAA, circulated a proposal to implement a rebate system based on the total value of FIC coupons purchased from EBAA by individual members. Members purchasing more than \$10,000, \$30,000 and \$50,000 worth of FIC coupons would be entitled to a 10%, 11% and 12% rebate respectively.
193. The rebates would be computed twice yearly, in June and December, with the first rebate based on purchases made from October 2005 to end June 2006. Ken Lim proposed that the resolution for such a rebate system be circulated to all members for their approval. It was also recorded that Alisan and Enjoy might not be entitled to the first rebate as they had not made any purchases for 2006³⁷⁸.
194. Following the meeting, Tan Kah Hin, manager of the EBAA, sent an email dated 8 June 2006 to Elson Yap, Joe Lim, Johnny Lim, Ken Lim, Michael Seng, Micker Sia (WTS), Raymond Lim, Sebastian Yap, Stella Sim (Luxury), Susan Ng and Vincent Lim requesting them to approve or reject the resolution by 15 June 2006.
195. On 20 June 2006, Tan Kah Hin sent out a letter to all EBAA members informing them that the following members had agreed to the resolution: Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Luxury, Regent Star, Sri Maju and Transtar. Alisan, Eltabina and WTS did not reply. The letter also set out a table of the purchases of one-way and two-way FIC coupons by the EBAA members as at 20 June 2006. The following members were reflected as having made purchases of FIC coupons: Alisan, Enjoy, Five Stars, Grassland, Konsortium, Regent Star, Sri Maju, Transtar and WTS³⁷⁹. The fact that 10 members agreed and 3 members abstained was recorded in the minutes of the Executive Committee meeting on 21 June 2006³⁸⁰. At this same meeting, it was highlighted that payment from Alisan for the FIC coupons purchased was still outstanding. In addition, Michael Seng of Enjoy raised the issue of Alisan selling coach tickets below the agreed minimum selling prices.

³⁷⁷ Copy of EBAA authorisation letter to Grassland Express & Tours Pte Ltd dated 28 October 2005 referred to as TBH-16 in Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

³⁷⁸ See paragraph 7 of Minutes of Executive Committee meeting on 31 May 2006

³⁷⁹ See EBAA-062006/023 dated 20 June 2006

³⁸⁰ See paragraph 3 of Minutes of 02/06 Executive Committee meeting on 21 June 2006

196. In administering the rebate scheme, Tan Kah Hin produced spreadsheets of the purchase by EBAA members of one-way and two-way FIC coupons for following periods:

- a) 2005 to 30th June 2006;
- b) 1 July 2006 to 31 December 2006;
- c) 1 January 2007 to 30 June 2007; and
- d) 1 July 2007 to 31 December 2007³⁸¹.

197. The spreadsheets indicate the following undertakings purchased FIC coupons in 2005 and 2006:

	2005		1st qtr 06		2nd qtr 06		3rd qtr 06		4th qtr 06	
	1-way	2-way	1-way	2-way	1-way	2-way	1-way	2-way	1-way	2-way
Alisan	7,000	2,000	-	-	-	-	-	-	-	-
Enjoy	3,400	4,400	-	-	4,000	4,000	-	-	-	-
Five Stars	4,000	4,000	10,000	27,000	30,000	30,000	10,000	40,000	20,000	50,000
Grassland	37,500	9,000	46,000	11,500	-	7,000	-	-	-	-
Konsortium	23,200	19,600	6,900	5,500	18,000	15,000	18,000	12,500	31,000	25,000
Lapan Lapan	-	-	-	-	-	-	-	-	-	-
Luxury	-	-	-	-	500	2,500	1,000	-	-	-
Nam Ho	-	-	-	-	-	-	-	-	-	-
Regent Star	10,000	-	-	-	-	-	-	-	-	-
Sri Maju	24,000	4,000	10,000	-	24,000	5,000	17,000	2,000	30,000	7,000
T&L	-	-	-	-	1,000	2,500	-	-	-	-
Transtar	4,000	16,000	12,000	12,000	16,000	18,000	15,000	14,000	24,500	26,500
WTS	-	-	1,000	6,000	2,500	5,000	-	5,000	-	8,500

³⁸¹ Spreadsheets provided by EBAA on 23 December 2008 in response to CCS' section 63 Notice dated 18 December 2008

198. The spreadsheets indicate that the following undertakings purchased FIC coupons in the year 2007 at the agreed rates:

	1 st qtr 07		2 nd qtr 07		3 rd qtr 07		4 th qtr 07	
	1-way	2-way	1-way	2-way	1-way	2-way	1-way	2-way
Alisan	-	-	-	-	-	-	-	-
Enjoy	-	-	-	-	-	-	-	-
Five Stars	35,000	35,000	25,000	35,000	24,500	30,000	6,011	15,726
Grassland	-	-	-	-	-	-	-	-
Konsortium	12,000	2,000	24,000	15,000	16,000	10,000	15,000	5,500
Lapan Lapan	-	-	-	-	500	500	-	-
Luxury	500	500	1,500	3,500	765	1,765	-	500
Nam Ho	-	500	-	-	-	1,000	-	-
Regent Star	-	-	-	-	-	-	-	-
Sri Maju	7,000	2,000	17,000	3,000	7,100	3,000	7,000	3,000
T&L	-	-	-	-	-	-	-	-
Transtar	13,000	7,000	19,000	18,000	21,000	17,000	10,000	10,000
WTS	500	5,000	500	8,000	467	4,000	-	4,500

199. The FIC rebate payments to members were audited by the Treasurer and another committee member approved by the committee. Of the ordinary members, only Eltabina did not purchase any FIC coupons.
200. A spreadsheet of the purchases of the FIC coupons for the period July to December 2006 was attached to the Agenda for the Executive Committee meeting to be held on 17 January 2007³⁸². Similarly a spreadsheet of the purchases of the FIC coupons for the period ending 30 June 2007 was attached to the Agenda for the Executive Committee meeting to be held on

³⁸² Email enclosing Agenda and Attachments for Executive Committee meeting to be held on 17 January 2007 was produced by Tan Kah Hin during the section 64 inspection on 24 June 2006 and is marked TKH-03

11 July 2007³⁸³. In addition, bar charts were put up to compare the purchases and rebates of Five Stars, Konsortium, Luxury, Sri Maju, Transtar and WTS for periods October 2005 to June 2006, July to December 2006 and January to June 2007. Paragraph 7 of the Minutes of 03/2007 Executive Committee meeting held on 11 July 2007 states:

FIC Rebates (Jan – Jun 2007)

7. The committee approved the FIC payment for period Jan – Jun 2007. The audit of the account is tasked to Mr. Vincent Lim and the incumbent Treasurer, Ms Susan Ng.³⁸⁴

201. The revenue of EBAA less the rebate paid to members was as follows:

Period ending 30 Jun 06	Period ending 31 Dec 06	Period ending 30 Jun 07	Period ending 31 Dec 07
\$87,447.50	\$54,364.52	\$44,920.00	\$60,804.88

Evidence from interviews

202. Interview of Alisan personnel³⁸⁵ – Leong Sing Kiong attended the 14th Executive Committee meeting on 1 June 2005. He said that there was agreement amongst the representatives at the meeting to implement the coach tax at \$2 per ticket. According to Leong Sing Keong, those present at the meeting said that “*the uniformity of price was good so that there would be no arguments*” and all association members should sell at the same price in order to avoid quarrels amongst themselves³⁸⁶. He felt that as a member of the association, he has an obligation to comply and it was a win-win idea for the members to earn extra income³⁸⁷. He did not know how the sum of \$2 was arrived at³⁸⁸.

³⁸³ Email enclosing Agenda and Attachments for Executive Committee meeting to be held on 11 July 2007 was produced by Tan Kah Hin during the section 64 inspection on 24 June 2006 and is marked TKH-03

³⁸⁴ See Minutes of the 03/2007 Executive Committee meeting held on 11 July 2007 produced by Tan Kah Hin during the section 64 inspection on 24 June 2006 and is marked TKH-03

³⁸⁵ See Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

³⁸⁶ See Answers to Questions 116 to 118 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

³⁸⁷ See Answers to Questions 110 to 112 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

³⁸⁸ See Answer to Question 115 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

203. Leong Sing Kiong did not attend the 15th Executive Committee meeting but his assistant Violet attended on his behalf and updated him on what had transpired at the meeting³⁸⁹. He did not know if any check had been made with LTA or CASE as to whether the coach tax would violate government regulations³⁹⁰.
204. Leong Sing Kiong did not attend the 16th Executive Committee meeting but he attended the 17th Executive Committee meeting. He was informed at the meeting that the EBAA would earn 20 and 25 cents for one-way and two-way coupons respectively and no one objected³⁹¹.
205. Leong Sing Kiong attended the 18th Executive Committee meeting on 9 November 2005. According to Leong Sing Kiong, everyone was selling FIC coupons except him. He did not have any coupons as he did not have \$5,000 for the minimum purchase. In the end, he paid \$1,000 and came to an arrangement with the EBAA to pay for the balance by instalments³⁹². Leong Sing Kiong confirmed that he received a copy of the authorisation letter and displayed it at his office until he left the association³⁹³.
206. Leong Sing Kiong did not attend the meeting held on 31 May 2006 and was unaware of the FIC rebate³⁹⁴. He claimed he did not receive the resolution for FIC rebate³⁹⁵. According to Leong Sing Kiong, he and the other members sold the coupons at \$2 for one-way and \$3 for two-way and he took 3 to 4 months to sell his first batch of coupons³⁹⁶. He was not able to get more coupons after that as he had not paid for the first batch³⁹⁷.
207. Leong Sing Kiong did not attend the meeting on 21 June 2006 but Tan Kah Hin told him that they would be taking action to terminate Alisan's membership because of the failure to pay for the FIC coupons and the

³⁸⁹ See Answers to Questions 124 and 127 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹⁰ See Answer to Question 135 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹¹ See Answers to Questions 149 and 150 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹² See Answer to Question 155 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹³ See Answers to Questions 165 and 166 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹⁴ See Answer to Question 174 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹⁵ See Answer to Question 185 of Leong Sing Kiong's Notes of Information / Explanation provided on 10 September 2008

³⁹⁶ See Answers to Questions 177, 178 and 182 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

³⁹⁷ See Answer to Question 176 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008

subscription fee³⁹⁸. Leong Sing Kiong attended the meeting on 15 August 2006 and informed the Executive Committee that he intended to quit the Executive Committee as well as the EBAA. He was advised to reconsider, after which he decided to leave the Executive Committee and the association because he was facing financial difficulties and was unable to make payment³⁹⁹. After he informed Tan Kah Hin of his intention to leave, Tan Kah Hin did not inform him of the meetings and informed him that the committee had approved his official termination from 1 January 2007⁴⁰⁰. Alisan no longer collects fuel surcharge or insurance surcharge from its customers⁴⁰¹.

208. Interview of EBAA personnel⁴⁰² – Kim Huang had attended a job interview for a position with Five Stars, however, during the interview she was told she would be working for EBAA⁴⁰³. She said that her duties in the EBAA were to assist in the travel exhibition and to take the minutes at meetings⁴⁰⁴.
209. Kim Huang said the minutes taken by her were approved by Joe Lim before she sent them out⁴⁰⁵. According to Kim Huang, the fuel and insurance charge (“FIC”) was additional income to cover increases in fuel and labour costs⁴⁰⁶. She said that EBAA would also make a profit from the FIC coupons as EBAA needed to make an income apart from subscriptions⁴⁰⁷. At the 14th Executive Committee meeting, the members did not object to the proposal to introduce the FIC. However, Joanne from Gunung Raya and Ling Wang Hock from Grassland had to go back to check with their bosses⁴⁰⁸. According to Kim Huang, all EBAA members who had coaches

³⁹⁸ See Answer to Question 191 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

³⁹⁹ See Answers to Questions 201 and 204 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

⁴⁰⁰ See Answers to Questions 205, 206 and 209 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

⁴⁰¹ See Answers to Questions 222 and 224 of Leong Sing Kiong’s Notes of Information / Explanation Provided on 10 September 2008

⁴⁰² See Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008 and Tan Kah Hin’s Notes of Information / Explanation Provided on 20 August, 21 August and 26 August 2008.

⁴⁰³ See Answer to Questions 7 & 8 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 28 November 2008

⁴⁰⁴ See Answer to Question 33 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 28 November 2008

⁴⁰⁵ See Answers to Questions 24, 45 and 54 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴⁰⁶ See Answer to Question 2 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴⁰⁷ See Answers to Questions 4 and 5 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴⁰⁸ See Answer to Question 18 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

or express buses running to Malaysia had to implement the FIC⁴⁰⁹. When asked if the members had agreed to the implementation of the coach tax, Kim Huang said:

Q21. The minutes state that the implementation of the coach tax was agreed on by the members and that the only consideration was whether the tax should be built into the price of the ticket or whether it should be paid as an additional by the passenger, is this correct?

A: It says “finalized by next meeting” so they may have to give feedback at next meeting. In any event, they can’t disagree if it’s going to be implemented by EBAA members. If they don’t implement it together, the customer would go for the one without the FIC as it would be cheaper.⁴¹⁰

210. Kim Huang confirmed that at the 15th Executive Committee meeting, all the members agreed to the implementation of the coach tax at \$2 for one-way and \$3 for two-way⁴¹¹. At the 16th Executive Committee meeting, Joe Lim decided to rename the coach tax as FIC and there was no objection by the members⁴¹². At the 17th Executive Committee meeting, the members decided on the percentage that EBAA would earn⁴¹³. Kim Huang remembered that Alisan, Enjoy, Five Stars, GR Travel, Grassland, Konsortium, Regent Star, Sri Maju and Transtar had purchased FIC coupons but not Eltabina or Gunung Raya⁴¹⁴. According to Kim Huang, the phrase “all members should therefore, take action accordingly as the association serve as a platform for every member” in the minutes of the 18th Executive Committee meeting meant that everyone in the association should follow the association’s regulations and implement the FIC⁴¹⁵. When the FIC was first implemented, Kim Huang kept records of the sale of the FIC coupons to EBAA members⁴¹⁶. According to Kim Huang, she

⁴⁰⁹ See Answers to Questions 8, 13 and 14 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹⁰ See Answer to Question 21 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹¹ See Answers to Questions 26, 27 and 32 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹² See Answer to Question 44 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹³ See Answer to Question 49 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹⁴ See Answer to Question 55 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹⁵ See Answer to Question 59 and 60 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹⁶ See Answer to Question 67 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

had been instructed, possibly by Joe Lim, to include the line “By order of management committee, EBAA” in the authorisation letter⁴¹⁷.

211. Tan Kah Hin joined the EBAA as Administrator in April 2006. 5 or 6 months later, his designation was changed to that of ‘manager’⁴¹⁸. Tan Kah Hin’s compensation package comprised a fixed monthly salary, fixed allowances, a 13th month bonus and a variable bonus which is based on 3.5% of EBAA’s annual audited revenue of which FIC sales formed a source⁴¹⁹. Part of Tan Kah Hin’s role was to monitor the FIC sales and put up a report every 6 months⁴²⁰. In relation to the Executive Committee meetings, he would send the agenda to the President for approval before disseminating the agenda to all the members of the EBAA⁴²¹. After the meetings, the minutes would be sent to the President for vetting before they were disseminated to the members by email or fax. Tan Kah Hin would ensure that the members receive the minutes by setting the return receipt function on his emails or by calling up the members after he had faxed out the minutes. He would also print out the minutes of the previous meeting at every meeting⁴²².
212. With regard to the rebate scheme tabled at the Executive Committee meeting held on 31 May 2006, Tan Kah Hin said that the rationale for the FIC rebate was to act as an incentive to the EBAA members to sell more FIC coupons⁴²³. Tan Kah Hin said he was asked to work out the rebate percentages and he came up with the rebate percentages based on the feedback received from the members⁴²⁴. While EBAA would lose about 25% profit due to the rebates, members may not push for the sales of FIC coupons without the rebates⁴²⁵. As to the reaction of the members to the proposed FIC rebate system, Tan Kah Hin said:

⁴¹⁷ See Answer to Question 70 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

⁴¹⁸ See Answer to Question 7 of Tan Kah Hin’s Notes of Information / Explanation Provided on 20 August 2008

⁴¹⁹ See Answers to Questions 14 and 17 of Tan Kah Hin’s Notes of Information / Explanation Provided on 20 August 2008

⁴²⁰ See Answer to Question 106 of Tan Kah Hin’s Notes of Information / Explanation Provided on 21 August 2008

⁴²¹ See Answer to Question 119 of Tan Kah Hin’s Notes of Information / Explanation Provided on 21 August 2008

⁴²² See Answers to Questions 122 to 128 of Tan Kah Hin’s Notes of Information / Explanation Provided on 21 August 2008

⁴²³ See Answer to Question 130 of Tan Kah Hin’s Notes of Information / Explanation Provided on 21 August 2008

⁴²⁴ See Answers to Questions 132 and 133 of Tan Kah Hin’s Notes of Information / Explanation Provided on 21 August 2008

⁴²⁵ See Answer to Question 136 of Tan Kah Hin’s Notes of Information / Explanation Provided on 21 August 2008

Q137. So were the members pleased when the FIC rebate came out?

*A. Yes. Especially those who sell high volumes of the FIC, like Grassland and Five Stars, Konsortium and Transtar.*⁴²⁶

213. Besides Eltabina who did not purchase FIC coupons, all the other members were selling the FIC coupons at the agreed quantum of \$2 for one-way and \$3 for two-way⁴²⁷. The proposal by Ken Lim for a resolution to be circulated was to obtain a consensus from all the members of EBAA before giving out the rebate⁴²⁸. In respect of the purchases of FIC coupons as at 20 June 2006, Tan Kah Hin explained that GR Travel did not purchase any FIC coupons at all because it would get its coupons from Five Stars⁴²⁹. Enjoy purchased FIC coupons after the meeting on 31 May 2006 but subsequently Enjoy owed the EBAA money, which sum was eventually written off. Alisan owed EBAA \$5,000 for the purchase of the FIC coupons, of which \$2,500 was recovered and \$2,500 was written off⁴³⁰.
214. Interview of Eltabina personnel⁴³¹ – Aznan bin Sharib said that he was unaware of what occurred at the 14th to 18th Executive Committee meetings and that he never agreed to the implementation of the coach tax. He did not purchase any FIC coupons and claimed never to have received the EBAA authorisation letter⁴³². He claimed that he was unaware of the FIC rebate and that he did not receive the email or resolution for the FIC rebate⁴³³. In relation to the minutes of the 3rd Annual General meeting on 11 October 2006 where it was recorded that the committee positions of Aznan Bin Sharib and Leong Sing Kiong would be relinquished in view of their absence from committee meetings and the failure to renew their membership for the year 2006, Aznan said that he had received a telephone

⁴²⁶ See answer to Question 137 of Tan Kah Hin's Notes of Information / Explanation provided on 21 August 2008

⁴²⁷ See Answers to Questions 141 and 142 of Tan Kah Hin's Notes of Information / Explanation Provided on 21 August 2008

⁴²⁸ See Answers to Questions 143 to 144 of Tan Kah Hin's Notes of Information / Explanation Provided on 21 August 2008

⁴²⁹ See Answer to Question 4 of Tan Kah Hin's Notes of Information / Explanation Provided on 26 August 2008

⁴³⁰ See Answers to Questions 6 to 8 of Tan Kah Hin's Notes of Information / Explanation Provided on 26 August 2008

⁴³¹ See Aznan Bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

⁴³² See Answers to Questions 91 to 102 of Aznan bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

⁴³³ See Answers to Questions 103 to 105 of Aznan bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

call about his subscription fees and he had told them that he wanted to leave the EBAA⁴³⁴.

215. Interview of Enjoy personnel⁴³⁵ – Michael Seng said that the coach tax was implemented because of the rising fuel price and to ensure some form of insurance coverage for passengers⁴³⁶. Implementation was obligatory for the EBAA members⁴³⁷. The coach tax would bring in extra income for the members as the cost of the insurance coverage is not high and the price at which they sell the FIC coupon is much higher⁴³⁸. Michael Seng could not remember how the sum of \$2 was arrived at but said all the members present agreed to implement a coach tax of \$2 per ticket⁴³⁹.
216. Michael Seng said that the price for the one-way and two-way coach tax at \$2 and \$3 respectively was agreed at the 15th Executive Committee meeting⁴⁴⁰. According to Michael Seng, they were aware of the price which they had to pay to AIG when they made such an agreement⁴⁴¹. Michael Seng also said that the Executive Committee members had decided that the coach tax would be built into the price of an express bus ticket, but it would be collected separately for tour packages⁴⁴². Michael Seng believed that Joe Lim and Sebastian Yap had checked with LTA or CASE as to the legality of the coach tax but could not remember the results of their check⁴⁴³. Michael Seng said the components of the coach tax were mainly insurance premiums and the profits were used to cover their fuel expenses and increase their income⁴⁴⁴.

⁴³⁴ See Answers to Questions 111 and 112 of Aznan bin Sharib's Notes of Information / Explanation Provided on 5 November 2008

⁴³⁵ See Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴³⁶ See Answer to Question 2 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴³⁷ See Answer to Question 3 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴³⁸ See Answer to Question 4 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴³⁹ See Answers to Questions 8 and 10 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴⁰ See Answer to Question 22 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴¹ See Answer to Question 33 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴² See Answer to Question 19 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴³ See Answer to Question 24 to 26 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴⁴ See Answer to Question 28 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

217. Michael Seng said that at the 16th Executive Committee meeting, all the members present were committed to imposing the coach tax at the rate of \$2 for one-way tickets and \$3 for two-way tickets, except for Eltabina which did not bother about the implementation for the coach tax⁴⁴⁵. He claimed that it was Sebastian Yap who decided to launch the coach tax at the Travel Malaysia exhibition and Joe Lim who decided to rename the coach tax as the FIC⁴⁴⁶.
218. Michael Seng attended the 17th and 18th Executive Committee meetings. His impression was that Raymond Lim was the one who suggested that the EBAA would make 20 and 25 cents from selling the one-way and two-way coupons respectively to members and everyone agreed to it⁴⁴⁷. According to Michael Seng, the members had authorised Johnny Lim, Raymond Lim and Sebastian Yap to handle the negotiations with the insurance firm⁴⁴⁸. Michael Seng said that all the members had agreed to display the authorisation letter at their offices to inform customers that the FIC is imposed by all the EBAA members⁴⁴⁹. Enjoy received a copy of the authorisation letter and displayed it at their sales counter⁴⁵⁰. Enjoy also sold the FIC coupons to customers at the agreed \$2 for one-way and \$3 for two-way⁴⁵¹.
219. Michael Seng did not attend the Executive Committee meeting held on 31 May 2006 but his manager, one Richard Lim attended on his behalf and briefed him on the contents of the meeting⁴⁵². Michael Seng was aware of the FIC rebate and its purpose of encouraging members to sell FIC coupons. He purchased FIC coupons after that meeting to enjoy the rebate⁴⁵³. In his view, Ken Lim had proposed that a resolution be circulated as regards the proposed FIC rebate because of the low attendance at that

⁴⁴⁵ See Answer to Question 35 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴⁶ See Answers to Questions 39 and 40 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴⁷ See Answer to Question 45 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴⁸ See Answer to Question 48 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁴⁹ See Answers to Questions 57 and 59 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵⁰ See Answers to Questions 60 and 62 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵¹ See Answers to Questions 63, 142 and 143 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵² See Answers to Questions 69 to 70 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵³ See Answers to Questions 83 and 91 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

- meeting⁴⁵⁴. He agreed to the resolution and received \$1,000 in rebate from the EBAA⁴⁵⁵.
220. Michael Seng attended the Executive Committee meeting on 21 June 2006. He confirmed that Elson had proposed a vote of no confidence in Alisan to remove Alisan from the committee for selling below the minimum selling prices and for not purchasing enough FIC coupons from the EBAA⁴⁵⁶. The vote was not held and Alisan could not be bothered as he had no money to pay for the FIC coupons⁴⁵⁷.
221. Michael Seng attended the Executive Committee meeting held on 15 August 2006. Michael Seng confirmed that Alisan wanted to leave the committee and association due to financial difficulties but some members including Joe Lim, Susan Ng, Voo Wei Keong and him, preferred Alisan to stay in the association so that they would be able to discuss the pricing of Alisan's express bus tickets to avoid Alisan slashing its prices unnecessarily⁴⁵⁸.
222. The last meeting attended by Enjoy's representative was the 02/2007 Executive Committee meeting on 30 May 2007 during which Richard Lim was asked to pay the outstanding amount of \$2,236 to the EBAA⁴⁵⁹. Michael Seng did not renew Enjoy's membership subscription for the year 2007⁴⁶⁰. After he left the EBAA, he did not receive any information on the FIC or MSP from EBAA or its members⁴⁶¹.
223. Interview of Five Stars personnel⁴⁶² – Johnny Lim also confirmed that there was a discussion amongst the representatives present at the 14th Executive Committee meeting and that all present agreed to implement the coach tax at \$2 per ticket⁴⁶³. According to Johnny Lim, the main intention for the

⁴⁵⁴ See Answer to Question 85 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵⁵ See Answers to Questions 96 and 98 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵⁶ See Answer to Question 105 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵⁷ See Answers to Questions 104 and 106 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵⁸ See Answers to Questions 112 to 114 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁵⁹ See paragraphs 2 and 3 of Minutes of 02/2007 Monthly meeting held on 30 May 2007

⁴⁶⁰ See Answer to Question 133 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁶¹ See Answer to Question 138 of Michael Seng's Notes of Information / Explanation Provided on 6 November 2008

⁴⁶² See Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008.

⁴⁶³ See Answers to Questions 92 & 94 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

implementation of the coach tax was to provide insurance for passengers which the EBAA could purchase in bulk from AIG at a low rate⁴⁶⁴ and to cover operational costs such as salaries and maintenance:

Q97. Is it correct to say that part of the coach tax was to cover insurance premiums bought by the company on behalf of its passengers and another part of the coach tax was to cover the companies' fuel expenses?

A: Not the fuel. The admin. Certain percent goes to the operation, e.g. we have to issue the coupon to passengers, sometimes we have to do the claims for the passengers. Because we cannot upsell the ticket.

Q98. The trips operated by your company were for different destinations in Malaysia and Thailand and thus the amount of fuel consumed on these trips would be different for each destination, why didn't Five Stars decide to impose a range of fuel surcharges depending on the destination?

A: Because at the time it was not the fuel, but the operating cost. All ticket prices were different, there was no standard price for the destinations.

Q99. And the premium was the same, regardless of destination?

A: Yes. That's why I say it was because of the insurance.

Q100. Was a formal vote undertaken on the coach tax, or did you just go around and all just agree?

A: All agreed. It was for the benefit of the passenger, so we all agreed that to charge and pay the amount was very reasonable. At the time it was totally not fuel. It was for the operation, like salaries and maintenance.⁴⁶⁵

224. Johnny Lim said that at the 14th Executive Committee meeting, they had left the mode of implementation i.e. whether to add the FIC into the ticket price or to collect the FIC separately, to be decided at the next meeting⁴⁶⁶. Five Stars had initially collected the FIC from the customer separately but subsequently added the FIC into the ticket price⁴⁶⁷.

⁴⁶⁴ See Answers to Questions 82 to 86 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁶⁵ See Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁶⁶ See Answers to Questions 101 and 102 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁶⁷ See Answer to Question 103 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

225. With respect to the 15th Executive Committee meeting, Johnny Lim said that the method of collection of FIC from passengers was left up to each member to decide, given their different operating systems⁴⁶⁸. Johnny Lim did not know whether checks had been made with LTA or CASE as to whether the coach tax would violate government regulations⁴⁶⁹.
226. Johnny Lim agreed that all the representatives present at the 16th Executive Committee meeting were agreeable to implementing the FIC at the price of \$2 for a one-way ticket and \$3 for a two-way ticket⁴⁷⁰. He also said that none of the members were reluctant to impose the coach tax and needed to be convinced of the benefits or voiced any objections to the coach tax at this meeting⁴⁷¹.
227. Johnny Lim said that at the 17th Executive Committee meeting on 5 October 2005, it was agreed among the members that EBAA would purchase one-way and two-way FIC coupons from the insurance company at 30 cents and 50 cents respectively and sell them onto members at 50 cents and 75 cents and members would then charge passengers \$2 and \$3⁴⁷². Johnny Lim claimed that Five Stars did not purchase any FIC coupons prior to 1 November 2005, as they were still using their own insurance⁴⁷³.
228. In relation to the minutes of the 18th Executive Committee meeting held on 9 November 2005, Johnny Lim said that the line “*all members should therefore, take action accordingly as the association serve as a platform for every member*” was meant to encourage members who had not purchased FIC coupons to purchase them and implement the FIC⁴⁷⁴. Johnny Lim confirmed that the members present at the meeting had agreed to display the authorisation letter and the *Lianhe Zaobao* article to inform customers of the insurance coverage⁴⁷⁵. When asked whether Five Stars had ever

⁴⁶⁸ See Answer to Question 115 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁶⁹ See Answer to Question 124 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁷⁰ See Answer to Question 136 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁷¹ See Answers to Questions 139 and 140 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁷² See Answers to Questions 150 and 151 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁷³ See Answer to Question 156 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁷⁴ See Answers to Questions 167 & 168 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁴⁷⁵ See Answers to Questions 173, 176 to 178 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

deviated from the price of \$2 for one-way FIC coupons and \$3 for two-way FIC coupons, Johnny Lim said:

Q172. For the period 1 November 2005 till 30 November 2007, which was when the increase in the FIC took effect, did Five Stars ever sell the FIC coupons to its passengers at a different price to the \$2 for one-way and \$3 for two-way coupons?

A. Because after that, the coach ticket and the FIC was built in together, and we would adjust the ticket price according to demand. For Five Stars, we did not collect the FIC separately, and the coach ticket prices would vary depending on the destination. There's no such thing as the FIC price changing. We would not know how to distinguish between FIC and the coach ticket⁴⁷⁶.

229. Johnny Lim said that the FIC rebate proposal circulated at the meeting on 31 May 2006 was to encourage members to sell more FIC coupons⁴⁷⁷. He suggested the rebate scheme and its percentages and all the members agreed⁴⁷⁸. Johnny Lim explained that Five Stars had purchased coupons on behalf of Gunung Raya and GR Travel. As such, Alisan and Enjoy were the only members which were not selling FIC coupons⁴⁷⁹. From Johnny Lim's point of view, this may be because Alisan and Enjoy catered to a different customer base and were afraid of losing their customers if they added the FIC to their ticket prices⁴⁸⁰.
230. In relation to the 3rd Annual General meeting on 3 November 2006, Johnny Lim explained that they had voted to remove Aznan Bin Sharib and Leong Sing Kiong from the Executive Committee due to their absence at the monthly committee meetings and their failure to pay the annual subscription for 2006⁴⁸¹.
231. Interview of GR Travel personnel⁴⁸² – Ken Lim did not attend the 14th, 15th, 16th or 17th Executive Committee meetings⁴⁸³. He did not know how the

⁴⁷⁶ See Answer to Question 172 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁷⁷ See Answer to Question 188 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁷⁸ See Answers to Questions 189 and 192 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁷⁹ See Answer to Question 198 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁸⁰ See Answers to Questions 195 and 197 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁸¹ See Answer to Question 283 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁴⁸² See Ken Lim's Notes of Information / Explanation Provided on 19 August 2008.

sum of \$2 was arrived at but felt that a \$2 coach tax was a reasonable amount to charge his passengers⁴⁸⁴. In his view, the coach tax was likely to cover insurance premiums alone⁴⁸⁵. He said that he was not handling the express bus business then and that Vincent Lim was the one in charge of the pricing strategy for coaches⁴⁸⁶. He did not know what his company charged its customers for one-way and two-way coach tickets⁴⁸⁷. He did not know whether his company displayed the authorisation letter from the EBAA for the sale of FIC coupons or why there was a need to do so⁴⁸⁸. Ken Lim attended the meeting on 31 May 2006. He said there was a need for a resolution for everyone to approve the FIC rebate so that there would be a record of the money being paid out by the association⁴⁸⁹.

232. Vincent Lim attended the 14th, 15th, 16th, 17th and 18th Executive Committee meetings on behalf of GR Travel. Vincent Lim said that the coach tax was implemented to cover insurance premiums and to bring in extra income for the companies⁴⁹⁰. The members present at the 14th Executive Committee meeting agreed to implement the coach tax at \$2 per ticket but he was unaware how the \$2 was arrived at⁴⁹¹. Vincent Lim also said that the members agreed to allow Enjoy to sell tickets to Ipoh at a lower price because of the lower quality of his coaches⁴⁹².
233. Vincent Lim said that at the 15th Executive Committee meeting on 6 July 2005, there was no calculation or discussion on the quantum to be charged for the one-way and two-way FIC coupons and that all the members present at the meeting had agreed that the prices should be \$2 and \$3

⁴⁸³ See Answers to Questions 65, 86, 98 and 101 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁸⁴ See Answers to Questions 78 and 80 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁸⁵ See Answer to Question 81 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁸⁶ See Answers to Questions 82 and 97 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁸⁷ See Answers to Questions 120 and 123 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁸⁸ See Answers to Questions 124 and 126 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁸⁹ See Answer to Question 146 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁴⁹⁰ See Answer to Question 57 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹¹ See Answers to Questions 65, 67 and 68 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹² See Answers to Questions 82 and 83 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

respectively⁴⁹³. He said that it was also decided amongst the members present that the coach tax should be included into the price of the ticket⁴⁹⁴. He did not know whether any checks had been made with LTA or CASE as to whether the coach tax would violate government regulations⁴⁹⁵. According to Vincent Lim, GR Travel did not purchase FIC coupons but obtained them from Five Stars⁴⁹⁶. Vincent Lim said that for the period from 1 November 2005 to 30 November 2007, GR Travel charged \$2 for one-way coupons and \$3 for two-way coupons, without deviation and he was not aware of anyone who had charged a different price⁴⁹⁷. Vincent Lim did not attend the meeting on 31 May 2006. According to him, the purpose of the FIC rebate was to encourage sales of FIC coupons by members as this would profit both the members as well as the EBAA⁴⁹⁸.

234. Interview of Grassland personnel⁴⁹⁹ – Ling Wang Hock attended the 14th Executive Committee meeting on 1 June 2005 on behalf of Grassland. He did not know how the sum of \$2 was arrived at and there was no discussion among the attendees of the meeting on the price of the coach tax⁵⁰⁰. The members agreed to implement the coach tax and no one objected to the price of \$2 per ticket⁵⁰¹.
235. Tan Boon Huat said that the reason for the implementation of the coach tax was because of rising fuel costs and to provide insurance coverage to its passengers. He said:

Q137. Why was there the need to implement a tax for both insurance and fuel?

⁴⁹³ See Answers to Questions 90 and 91 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹⁴ See Answer to Question 87 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹⁵ See Answer to Question 94 of Vincent Lim's Notes of Information / Explanation provided on 13 August 2008

⁴⁹⁶ See Answers to Questions 115, 153 and 154 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹⁷ See Answers to Questions 122 to 124 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹⁸ See Answer to Question 140 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁴⁹⁹ See Tan Boon Huat's Notes of Information / Explanation Provided on 16 and 17 September 2008 and Ling Wang Hock's Notes of Information / Explanation Provided on 21 November 2008.

⁵⁰⁰ See Answers to Questions 75 and 76 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 November 2008

⁵⁰¹ See Answers to Questions 77 and 79 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 November 2008

A: *The price for diesel in Malaysia had been rising and the Malaysia express bus companies had raised the rent of our buses. As for the insurance component, we wanted to add extra coverage for the passengers as it would include the loss of baggage and personal accident coverage. Passengers on the bus would be covered by the insurance bought by the Malaysia express bus companies. But this insurance only covered basic accident and injury happening on the bus. At that time, the diesel cost was increasing and we also wanted to have extra coverage for our passengers, therefore we decided to combine both components in the tax.*⁵⁰²

236. According to Tan Boon Huat, everyone was obliged to implement the coach tax⁵⁰³. His understanding was that since they were selling the coupons at a higher price than the price at which they purchased the coupons from EBAA, the difference would be their income⁵⁰⁴.
237. Ling Wang Hock attended the 15th Executive Committee meeting on behalf of Grassland and briefed Tan Boon Huat about the implementation of the coach tax⁵⁰⁵. Tan Boon Huat also received a copy of the minutes of meeting⁵⁰⁶. Ling Wang Hock said it was agreed at this meeting that the coach tax would be implemented at \$2 for one-way and \$3 for two-way⁵⁰⁷. According to Tan Boon Huat's understanding, the coach tax would be included in the coach ticket prices and Grassland followed suit⁵⁰⁸. Tan Boon Huat said that there was a need to emphasise that the implementation of the coach tax would "increase the revenue and decrease the burden for all members" to inform the members that they can make money out of the FIC coupons⁵⁰⁹. Tan Boon Huat believed that there were fuel and insurance components in the coach tax but could not recall the quantum of increase in the fuel price⁵¹⁰. He did not know how much the insurance company would

⁵⁰² See Answer to Question 137 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵⁰³ See Answer to Question 138 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵⁰⁴ See Answer to Question 139 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵⁰⁵ See Answers to Questions 83 and 84 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 September 2008

⁵⁰⁶ See Answer to Question 85 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 September 2008 and Answer to Question 153 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵⁰⁷ See Answers to Questions 86 and 89 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 September 2008

⁵⁰⁸ See Answer to Question 155 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵⁰⁹ See Answer to Question 157 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵¹⁰ See Answer to Question 162 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

charge EBAA and/or the members for coverage but had trust in those handing the matter to set a price that was sufficient to cover the insurance premiums⁵¹¹.

238. Similarly, Ling Wang Hock attended the 16th and 17th Executive Committee meetings on behalf of Grassland and briefed Tan Boon Huat about what had transpired⁵¹². Tan Boon Huat also received a copy of the minutes of meeting⁵¹³. According to Ling Wang Hock, no one objected to the amount that the EBAA would earn from the sale of the FIC coupons to members⁵¹⁴. Tan Boon Huat was asked why the minutes of the 16th and 17th Executive Committee meetings continued to emphasise the benefits of the FIC i.e. that “the coach tax would increase the revenue and decrease the burden for members”. Tan Boon Huat understood this to mean that all members were obliged to implement the coach tax and those who had not bought the coupons should do so. He believed that Alisan and Enjoy were reluctant to impose the coach tax as they were not doing well and did not want to fork out the sum needed to buy the coupons⁵¹⁵.
239. Tan Boon Huat said that Grassland only purchased their first batch of FIC coupons on 17 November 2005⁵¹⁶ and sold them at the agreed \$2 for one-way and \$3 for two-way⁵¹⁷. He said that Grassland could not and did not sell the FIC at any other price because the sale price “*was an order by the EBAA*”⁵¹⁸. He also said that it was agreed by all the members that they would display the laminated authorisation letter in their offices as this could be used to inform customers that the imposition of the FIC was a requirement of the EBAA and pacify them⁵¹⁹. He confirmed that he

⁵¹¹ See Answers to Questions 166 and 167 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008

⁵¹² See Answers to Questions 99, 100, 107 and 108 of Ling Wang Hock’s Notes of Information / Explanation Provided on 21 September 2008

⁵¹³ See Answers to Questions 101 and 109 of Ling Wang Hock’s Notes of Information / Explanation Provided on 21 September 2008 and Answers to Questions 170 and 179 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008

⁵¹⁴ See Answer to Question 114 of Ling Wang Hock’s Notes of Information / Explanation Provided on 21 September 2008

⁵¹⁵ See Answers to Questions 172 to 173 and 181 to 182 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008

⁵¹⁶ See Answer to Question 190 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008

⁵¹⁷ See Answer to Question 70 of Tan Boon Huat’s Notes of Information / Explanation Provided on 17 September 2008

⁵¹⁸ See Answer to Question 201 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008 and Answer to Question 71 of Tan Boon Huat’s Notes of Information / Explanation Provided on 17 September 2008

⁵¹⁹ See Answers to Questions 195 and 197 of Tan Boon Huat’s Notes of Information / Explanation Provided on 16 September 2008

received a copy of the authorisation letter and displayed it in Grassland's office⁵²⁰.

240. Tan Boon Huat did not attend the meeting held on 31 May 2006 during which the proposal for the FIC rebate had been circulated. However, he agreed to the proposed FIC rebate and received a rebate of \$7,485⁵²¹. Tan Boon Huat claimed that he stopped selling FIC coupons for express bus tickets and coach packages on 30 April 2006 and June 2006 respectively⁵²² and stopped purchasing FIC coupons after that⁵²³. He still had 4523 pieces of one-way coupons and 1810 pieces of two-way coupons⁵²⁴. According to him, the members made a lot of profits from the sale of FIC coupons as the coupons were sold at a higher price than their cost⁵²⁵. Grassland did not renew its EBAA membership for the year 2007⁵²⁶. Grassland no longer collects insurance surcharge and would adjust their coach ticket prices to deal with the rising fuel cost⁵²⁷.
241. Interview of Gunung Raya personnel – Vincent Lim represented Gunung Raya at the meeting on 21 June 2006 and may have been the one who agreed to the resolution for the proposed FIC rebate on behalf of Gunung Raya⁵²⁸.
242. Interview of Konsortium personnel⁵²⁹ – Joe Lim confirmed that he had mooted the implementation of a coach tax during the 14th Executive Committee meeting⁵³⁰ and that he suggested the selling price of \$2 per

⁵²⁰ See Answers to Questions 198 and 200 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁵²¹ See Answers to Questions 4 and 7 of Tan Boon Huat's Notes of Information / Explanation Provided on 17 September 2008

⁵²² See Answer to Question 206 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008 and Answer to Question 26 of Tan Boon Huat's Notes of Information / Explanation Provided on 17 September 2008

⁵²³ See Answer to Question 29 of Tan Boon Huat's Notes of Information / Explanation Provided on 17 September 2008

⁵²⁴ See Answer to Question 75 of Tan Boon Huat's Notes of Information / Explanation Provided on 17 September 2008

⁵²⁵ See Answer to Question 41 of Tan Boon Huat's Notes of Information / Explanation Provided on 17 September 2008

⁵²⁶ See paragraphs 4, 5 and afternote of Minutes of 01/2007 Monthly meeting held on 17 January 2007

⁵²⁷ See Answers to Questions 79 and 80 of Tan Boon Huat's Notes of Information / Explanation Provided on 17 September 2008

⁵²⁸ See Answers to Questions 156 and 158 of Vincent Lim's Notes of Information / Explanation Provided on 13 August 2008

⁵²⁹ See Joe Lim's Notes of Information / Explanation Provided on 8 August 2008 and Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³⁰ See Answers to Question 103 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

ticket⁵³¹. He said that the objective of the coach tax was to introduce fuel charges⁵³² to offset the rising fuel cost; the inclusion of insurance was an additional benefit⁵³³. The coach tax would bring in extra income for EBAA when it sells the coupons, for which it would pay \$0.35, to its members at \$0.50. The members would in turn sell the coupons to customers at \$2⁵³⁴. Joe Lim could not remember how the sum of \$2 was arrived at but confirmed that everyone agreed to implement the coach tax at \$2⁵³⁵.

243. In respect of the 15th Executive Committee meeting, Joe Lim said that all the representatives present agreed to implement the coach tax⁵³⁶. Joe Lim also said that there was a discussion amongst the representatives present on the quantum to be charged for the one-way and two-way coach tax and he had suggested the amounts of \$2 and \$3 respectively in his capacity as President⁵³⁷. Regarding how the coach tax would be charged, Joe Lim said that for Konsortium, the coach tax would be included as part of the price of the coach ticket but for packages it would be collected separately⁵³⁸. Joe Lim did not check with LTA or CASE as to whether the coach tax would violate any government regulation and could not remember if any check was ultimately made⁵³⁹.
244. Joe Lim said that it was agreed amongst the attendees at the 16th Executive Committee meeting that the implementation of the FIC would commence on 1 November 2005, and that the Travel Malaysia Fair at that time was a good platform to inform customers about the same⁵⁴⁰. He also said that

⁵³¹ See Answer to Question 117 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³² See Answer to Question 104 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³³ See Answer to Question 123 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³⁴ See Answers to Questions 108 and 109 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³⁵ See Answers to Questions 117, 118 and 124 of Joe Lim's Notes of Information / Explanation provided on 8 August 2008

⁵³⁶ See Answers to Question 144 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³⁷ See Answers to Questions 153 and 155 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³⁸ See Answer to Question 149 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵³⁹ See Answer to Question 157 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁴⁰ See Answer to Question 169 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

Executive Committee had decided to rename the coach tax and call it the FIC⁵⁴¹.

245. Joe Lim said that the decision on the percentage of earning that the EBAA would receive from the sale of FIC coupons was made by the Executive Committee during the 17th Executive Committee meeting⁵⁴². He also said that Konsortium purchased FIC coupons prior to the launch on 1 November 2005⁵⁴³, and he had emailed his staff, as early as 31 October 2005, on the mechanics of implementing the FIC⁵⁴⁴.
246. Joe Lim confirmed that Konsortium sold FIC coupons to its customers at the agreed prices of \$2 for one-way and \$3 for two-way. However, he also said that for some of his customers he sold the coupons at a higher rate⁵⁴⁵. Joe Lim agreed that all the Executive Committee members present at the 18th Executive Committee meeting agreed to display the laminated authorisation letter in their offices as it would help the members convince their customers that the FIC had been implemented⁵⁴⁶.
247. In respect of the rebate scheme, Joe Lim explained that its rationale was to encourage members to purchase more FIC coupons:

Q228. Please explain the rationale of the FIC rebate?

A. I guess it was to encourage members to take up more FIC coupons. Based on my knowledge, some members did not purchase enough FIC, given their high volume of customers. So they have come up with this incentive scheme to promote the FIC.

...

Q239. Is it because EBAA wants to return some of its FIC profits to its members?

A. This rebate is meant to encourage members to buy the FIC coupons. The Executive Committee members were happy to pay less to EBAA, because the Executive Committee members were also the head of

⁵⁴¹ See Answer to Question 173 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁴² See Answers to Questions 177 & 178 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁴³ See Answers to Questions 190 & 191 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008.

⁵⁴⁴ See Answer to Question 195 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008 and LCC-I-009

⁵⁴⁵ See Answer to Question 207 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁴⁶ See Answer to Question 212 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

*member companies buying the FIC coupons. This is purely a business point of view.*⁵⁴⁷

248. Raymond Lim did not attend the 14th, 15th, 16th or 17th Executive Committee meetings but he attended the 18th Executive Committee meeting⁵⁴⁸. Raymond Lim said that all the committee members agreed that the authorisation letter should be displayed in their offices to show customers that they are members of the EBAA and are authorised to collect the fuel surcharge⁵⁴⁹. Raymond Lim said that GR Travel and Gunung Raya did not buy any FIC coupons because Five Stars would purchase FIC coupons on their behalf⁵⁵⁰. Raymond Lim confirmed that Konsortium had always sold the FIC coupons to its passengers at the agreed price of \$2 for one-way and \$3 for two-way. This would be included in the price of bus tickets but charged separately for coach packages⁵⁵¹.
249. With respect to the Executive Committee meeting on 31 May 2006, Raymond Lim said that the FIC rebate scheme was introduced due to complaints from members that they were paying too much to EBAA for the FIC coupons⁵⁵². Given that rebates involve the payment of money, Ken Lim proposed that a resolution be circulated so that absentees would also be informed⁵⁵³.
250. Interview of Lapan Lapan personnel – Lapan Lapan joined the EBAA on 21 September 2007. According to Wesley Ng, Lapan Lapan joined the EBAA because it found the insurance coverage useful and wanted to benefit from the bulk rate enjoyed by the EBAA in purchasing the FIC coupons from AIG⁵⁵⁴.

⁵⁴⁷ See Answers to Questions 228 & 239 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁴⁸ See Answers to Questions 64, 86, 102, 107 and 120 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁴⁹ See Answers to Questions 135 and 137 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁵⁰ See Answer to Question 125 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁵¹ See Answer to Question 134 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁵² See Answer to Question 152 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁵³ See Answers to Questions 163 and 164 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁵⁵⁴ See Answers to Questions 51 and 52 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

251. Wesley Ng said that in early October 2007 he knew that the price for a one-way FIC coupon was S\$2.00⁵⁵⁵. Lapan Lapan purchased FIC coupons in the third quarter of 2007⁵⁵⁶. According to Wesley Ng, he absorbed the FIC and his final selling price did not increase to account for the FIC⁵⁵⁷.
252. Interview of Luxury personnel⁵⁵⁸ – Luxury’s application to join the EBAA was received on 7 March 2006⁵⁵⁹ with a cheque for \$800 as payment for the fees to join as an active member⁵⁶⁰. Vincent Lee said he first became aware of the FIC after he joined the EBAA in 2006⁵⁶¹. Vincent Lee did not attend the Executive Committee meeting on 31 May 2006 during which the FIC rebate system was proposed and only found out about it subsequently⁵⁶². However, Vincent Lee confirmed that he had indicated his agreement on the resolution that was circulated and agreed to the implementation of the FIC rebate system⁵⁶³.
253. Vincent Lee attended the 2/06 Executive Committee meeting held on 21 June 2006⁵⁶⁴ and the EBAA issued a letter dated 21st June 2006 to Luxury authorising it to apply the FIC to defray increased fuel costs with effect from 21 June 2006⁵⁶⁵. Vincent Lee also attended the 3/06 Executive Committee meeting held on 15 August 2006⁵⁶⁶ and the 3rd Annual General meeting held on 11 October 2006⁵⁶⁷. During the latter meeting, he was asked to check on Luxury’s status as a ticketing agent for an express bus agency which would qualify Luxury to join the EBAA as an ordinary

⁵⁵⁵ See Answer to Question 106 of Wesley Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁵⁵⁶ See EBAA “FIC Rebates for Period Ending 31st December 2007” spreadsheet attached as Appendix 9 to Rajah & Tann’s letter dated 23 December 2008 in response to section 63 notice dated 18 December 2008

⁵⁵⁷ See Answers to Questions 107 and 108 of Wesley Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁵⁵⁸ See Vincent Lee’s Notes of Information / Explanation Provided on 8 August 2008

⁵⁵⁹ See EBAA application form completed by Vincent Lee provided to CCS by Tan Kah Hin during the section 64 inspection on 24 June 2006 and marked TKH-02. See also Answer to Question 32 of Vincent Lee’s Notes of Information / Explanation Provided on 8 August 2005

⁵⁶⁰ Original term for the class of membership that is now known as ordinary member.

⁵⁶¹ See Answers to Questions 87, 90 and 91 of Vincent Lee’s Notes of Information / Explanation Provided on 8 August 2008

⁵⁶² See Answers to Questions 120 and 121 of Vincent Lee’s Notes of Information / Explanation Provided on 8 August 2008

⁵⁶³ See VL-01 produced by Vincent Lee on 8 August 2008 and Answer to Question 142 of Vincent Lee’s Notes of Information / Explanation Provided on 8 August 2008

⁵⁶⁴ See Minutes of 02/06 Executive Committee meeting held on 21 June 2006 where it was recorded that Vincent Lee was “in attendance”

⁵⁶⁵ See copy of EBAA authorisation letter to Luxury dated 21 June 2006 shown to Tan Kah Hin during CCS’ interview on 21 August 2008 and marked TKH-9

⁵⁶⁶ See Minutes of 03/06 Executive Committee meeting held on 15 August 2006 where it was recorded that Vincent Lee was “in attendance”

⁵⁶⁷ See Minutes of 3rd AGM held on 11 October 2006 where Vincent Lee was reflected as a “member”

member⁵⁶⁸. Vincent Lee attended the 01/2007 Executive Committee meeting held on 17 January 2007, which minutes record that the increased entrance fee for ordinary members had been waived for both Luxury and WTS⁵⁶⁹.

254. The FIC Rebate spreadsheets for the period 2005 to 30 June 2006 indicate that Luxury purchased 500 one-way FIC coupons and 2,500 two-way FIC coupons in the 2nd Quarter of 2006⁵⁷⁰.
255. Vincent Lee said that he was one of the last members to purchase the FIC coupons because when he first joined, he declined to buy the coupons⁵⁷¹. However, he changed his mind later as he felt that he had to show support as a member⁵⁷². Vincent Lee said that initially he did not charge his customers for the coupons as Luxury's fares were already very high:

Q387. Referring to the spreadsheet of the sales of the FIC from October 2005 to June 2006, can you confirm that when Luxury first purchased the FIC coupons sometime in June 2006 when it purchased 500 one-way and 2,500 two-way coupon?

A: Yes this is what we purchased from the association.

Q388. What price did Luxury sell the FIC coupons during this period of time, did it sell it at \$2 for one-way and \$3 for two-way coupons?

A: The first purchase, we absorbed the cost and we pay the association.

Q389. Did you include this in your packages?

A: Yes.

Q390. So what do you mean when you say that you absorbed the costs?

A: We commit to buy the tickets because of the guidelines. Our fares are very high so we absorb the costs in our pricing.

⁵⁶⁸ See Answers to Questions 187 to 190 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

⁵⁶⁹ See paragraph 18 of Minutes of 01/2007 Executive Committee meeting held on 17 January 2007

⁵⁷⁰ See spreadsheets provided by EBAA on 23 December 2008 in response to CCS' section 63 Notice dated 18 December 2008

⁵⁷¹ See Answer to Question 181 of Vincent Lee's Notes of Information / Explanation provided on 8 August 2008

⁵⁷² See Answer to Question 397 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

Q391. You didn't increase the cost by \$2 or \$3. You just absorb it?

A: For instance for foreign tourists, we absorb the costs when they want to take short tours. Sometimes they request for transfers between Singapore and KL and we will factor this in.

Q392. So sometimes you mean that you do sell the coupons?

A: Yes we follow the guidelines.

Q393. When do you do this?

A: For passengers who say that they want 2-way transfers.

Q394. Prior to the revision in the FIC rates that took effect on 1 December 2007, did Luxury ever sell the FIC coupons at a different price to the \$2 for one-way and \$3 for two-way coupons?

A: We don't sell it at a different price. We absorb the costs.

Q395. For instances where you actually do sell it, do you sell it at a different price?

A: We sell it at the recommended price.⁵⁷³

256. According to Rendy Wong Chih Chiang, outbound manager of Luxury, the FIC was added into their coach ticket prices but collected separately for coach packages⁵⁷⁴. The gains from the sales of FIC coupons went towards defraying the rising fuel cost⁵⁷⁵.
257. The FIC Rebate spreadsheets for the period July 2006 to December 2007 indicate that Luxury purchased the following number of FIC coupons⁵⁷⁶:

	One-way FIC	Two-way FIC
3 rd Qtr 2006	1,000	-

⁵⁷³ See Answers to Questions 387 to 395 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

⁵⁷⁴ See Answer to Question 45 of Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

⁵⁷⁵ See Answer to Question 48 of Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

⁵⁷⁶ See spreadsheets provided by EBAA on 23 December 2008 in response to CCS' section 63 Notice dated 18 December 2008

4 th Qtr 2006	-	-
1 st Qtr 2007	500	500
2 nd Qtr 2007	1,500	3,500
3 rd Qtr 2007	765	1,765
4 th Qtr 2007 (old rate)	-	500

258. Interview of Nam Ho personnel⁵⁷⁷ – Nam Ho sells its own guided tours as well as free and easy tours which it used to obtain from Enjoy and subsequently, from Konsortium after Enjoy ceased business. As it was compulsory for Nam Ho to sell the FIC coupons for the free and easy coach packages it obtains from these partners, this created confusion for Nam Ho's counter staff and customers given that the FIC did not apply to Nam Ho's guided tours. When Enjoy ceased business and Nam Ho started working with Konsortium, Raymond Lim asked Marshall Ooi to join the EBAA so that Nam Ho could purchase the FIC coupons directly from the EBAA⁵⁷⁸. Nam Ho joined the EBAA as an associate member on 12 July 2006⁵⁷⁹. Marshall Ooi confirmed that he had received an email from Tan Kah Hin on 13 July 2006 attaching a certificate of sale authorising Nam Ho to sell FIC coupons as a member of the EBAA which he displayed at his sales counter until the paper the certificate was printed on became faded⁵⁸⁰.
259. Marshall Ooi confirmed that Nam Ho purchased 500 two-way FIC coupons on 19 January 2007⁵⁸¹ and that he sold the coupons to his customers at \$3⁵⁸². Marshall Ooi said that he would collect the FIC separately and the FIC was applied to both guided tours as well as free and easy tours for ease of administration⁵⁸³.

⁵⁷⁷ See Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008

⁵⁷⁸ See Answers to Questions 32 to 34 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008

⁵⁷⁹ EBAA application form completed by Marshall Ooi provided to CCS by Tan Kah Hin during the section 64 inspection on 24 June 2006 and marked TKH-02 and see Answer to Question 31 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2006

⁵⁸⁰ See Answer to Question 83 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008 and EBAA Certificate of Sale to Nam Ho shown to Tan Kah Hin on 21 August 2008 marked TKH-8

⁵⁸¹ See Answers to Questions 62 & 63 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

⁵⁸² See Answers to Questions 129 and 130 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008

⁵⁸³ See Answers to Questions 79 and 89 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008

260. Interview of Regent Star personnel⁵⁸⁴ – When asked why Joe Lim suggested the implementation of a coach tax, Sebastian Yap replied:

Q98. Do you know why Joe suggested that there be an implementation of this coach tax?

*A. This is actually one of the way to cope with the fuel hike from RM\$0.80 something to RM\$1.00 something. I cannot recall the exact amounts. So with this increment we felt a pinch and we need somehow some revenue to balance it without increasing the so-called agreed fare, the MSP. At the same time we were looking at some extra benefit for the consumer, for the first time we incorporate this together with the insurance.*⁵⁸⁵

261. According to Sebastian Yap, the sum of \$2 came about as they estimated the insurance cost to be \$1 or less and the additional \$1 would be the fuel charge⁵⁸⁶.
262. Sebastian Yap said that by the 15th Executive Committee meeting, Johnny Lim had discussed the cost of the insurance coverage with the insurance company and as the Executive Committee already knew the cost, the members “*more or less*” came to an agreement to charge \$2 for the one-way and \$3 for the two-way coach tax⁵⁸⁷. Sebastian Yap also said that it had been decided that the coach tax would be collected as a separate component from the price of the ticket and that there were no objections from the rest of the meeting attendees to this method⁵⁸⁸.
263. Sebastian Yap said that it was a common decision of those present at the 16th Executive Committee meeting to rename the coach tax the “FIC”⁵⁸⁹. He did not recall any further discussion about the implementation of the FIC at this meeting because the members were “*so happy to implement*” the

⁵⁸⁴ See Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008.

⁵⁸⁵ See Answer to Question 98 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁸⁶ See Answer to Question 110 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁸⁷ See Answer to Question 129 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁸⁸ See Answers to Questions 130 and 131 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁸⁹ See Answer to Question 154 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

FIC⁵⁹⁰. Sebastian Yap said that he had no reservations about implementing the FIC⁵⁹¹.

264. Sebastian Yap said that it was at the 17th Executive Committee meeting that the members present agreed on the percentage which the EBAA would earn from on-selling the FIC coupons to members⁵⁹². Sebastian Yap confirmed that there was agreement amongst those present to implement the FIC on the purchase and sale prices indicated in the minutes⁵⁹³. He said that the implementation of the FIC was publicised in the Straits Times and the *Lianhe Zaobao*⁵⁹⁴. Sebastian Yap said that the EBAA members were required to purchase a minimum of \$5,000 worth of FIC coupons for the initial purchase and confirmed that Regent Star and Transtar purchased coupons before 1 November 2005⁵⁹⁵.
265. In respect of the 18th Executive Committee meeting, Sebastian Yap said that it was recorded in the minutes that the implementation of the FIC “*effectively commenced on 1 November 2005*” because there was an understanding among the members that they would implement the FIC with effect from 1 November 2005⁵⁹⁶. He confirmed that there was an agreement between the members on the same:

Q177. It was necessary that all the members should buy the coupons?

A. What you mean by necessary at the meeting we had already agreed.

Q178. There was a requirement that they should buy the coupons?

A. At the meeting we had all agreed to implement the FIC, so all should have submitted this form.

⁵⁹⁰ See Answer to Question 152 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁹¹ See Answer to Question 155 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁹² See Answers to Questions 158 and 159 of Sebastian Yap’s Notes of Information / Explanation Provided on 6th August 2008

⁵⁹³ See Answer to Question 164 of Sebastian Yap’s Notes of Information / Explanation provided on 6 August 2008

⁵⁹⁴ See Answer to Question 166 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁹⁵ See Answers to Questions 168 and 169 of Sebastian Yap’s Notes of Information / Explanation Provided on 6 August 2008

⁵⁹⁶ See Answer to Question 172 of Sebastian Yap’s Notes of Information / Explanation provided on 6 August 2008

266. Sebastian Yap confirmed that for the period 1 November 2005 till 30 November 2007, Regent Star and Transtar sold FIC coupons to its customers at the price of \$2 for one-way coupons and \$3 for two-way coupons⁵⁹⁷. Sebastian Yap said that there was an agreement by the members present at 18th Executive Committee meeting that the EBAA should issue an authorisation letter to be displayed at the members' offices to inform customers that only EBAA members impose the FIC⁵⁹⁸.
267. Sebastian Yap did not attend the Monthly meeting on 31 May 2006 during which the proposal for a FIC rebate scheme had been circulated⁵⁹⁹. According to Sebastian Yap, the rebate scheme was a reinforcement mechanism to encourage EBAA members to sell FIC coupons⁶⁰⁰. He was not sure if he had come up with the idea of a FIC rebate but he was strongly in favour of it as it would encourage members to sell more coupons⁶⁰¹:

Q204. Were you involved in coming up with the idea to have an FIC rebate or who came up with the idea of an FIC rebate?

A: I am not so sure if I came up with the idea but I am strongly in for it.

Q205. Why have an FIC rebate?

A: To encourage members to sell the rebate. Because we do not punish them we better give them a rebate.

268. According to Sebastian Yap, a report on the sales of FIC coupons was discussed at the 3rd Annual General meeting on 3 November 2006. Such periodic reports allowed the Executive Committee to monitor the sales of FIC coupons made by each member company⁶⁰². When they noticed that members were not putting in effort to sell FIC coupons, they would encourage these members to improve their sales⁶⁰³.

⁵⁹⁷ See Answers to Questions 183 & 185 of Sebastian Yap's Notes of Information / Explanation provided on 6 August 2008

⁵⁹⁸ See Answers to Questions 186, 188 and 189 of Sebastian Yap's Notes of Information / Explanation provided on 6 August 2008

⁵⁹⁹ See Answer to Question 194 of Sebastian Yap's Notes of Information / Explanation provided on 6 August 2008

⁶⁰⁰ See Answers to Questions 85 to 87 of Sebastian Yap's Notes of Information / Explanation Provided on 6 August 2008

⁶⁰¹ See Answers to Questions 204 and 205 of Sebastian Yap's Notes of Information / Explanation provided on 6 August 2008

⁶⁰² See Answers to Questions 260 to 264 of Sebastian Yap's Notes of Information / Explanation provided on 6 August 2008

⁶⁰³ See Answer to Question 293 of Sebastian Yap's Notes of Information / Explanation provided on 6 August 2008

269. Interview of Sri Maju personnel⁶⁰⁴: Susan Ng said that the rationale for the imposition of the coach tax was to provide a benefit, in the form of insurance coverage, to the passengers:

Q52. Why was there the need to implement a tax for both insurance and fuel? Why must there be a fuel element?

*A. My mind keeps concentrating on the benefits of the insurance so I cannot recall the fuel portion. I cannot understand why there was a fuel element and cannot recall whether the prices of fuel increased then.*⁶⁰⁵

270. According to Susan Ng, the end result of the 14th Executive Committee meeting was that the members present wanted to impose the coach tax⁶⁰⁶. Susan Ng did not know how the selling price of \$2 was arrived at⁶⁰⁷. She remembered that Sri Maju had charged \$35 (\$33 + \$2 for FIC) for a one-way ticket to Ipoh on 1 November 2005. According to her, Sri Maju charged the FIC according to the coupons and statements issued by the EBAA⁶⁰⁸.

271. Susan Ng attended the 15th Executive Committee meeting but could not recall how the prices of \$2 for one-way and \$3 for two-way tickets were decided⁶⁰⁹. She agreed with the minutes of meeting where it was recorded that all members had agreed to the implementation of the coach tax⁶¹⁰ but the method of collection was left to the individual companies to decide⁶¹¹. Susan Ng also attended the 16th and 17th Executive Committee meetings but her recollection of events was poor⁶¹².

272. With regard to the purchase of FIC coupons, Susan Ng said:

⁶⁰⁴ See Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶⁰⁵ See Answer to Question 52 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶⁰⁶ See Answer to Question 66 of Susan Ng's Notes of Information / Explanation Provided on 11th August 2008

⁶⁰⁷ See Answer to Question 59 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶⁰⁸ See Answer to Question 65 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶⁰⁹ See Answer to Question 83 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶¹⁰ See Answer to Question 78 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶¹¹ See Answer to Question 80 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁶¹² See Answers to Questions 90 to 102 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

Q104. Were there a minimum number of coupons that a member (both ordinary/associate) had to purchase?

A: No, there weren't although every member bought the coupons. The EBAA would recommend members to buy. It states very clearly that if you are an EBAA member, you must buy it. They would emphasise the benefits of the coupons. If we agree with the benefits, we would buy.

...

Q106. Did Sri Maju purchase coupons before the launch of the FIC on 1 November 2005?

A: Starting we didn't buy. We only bought from 28 November 2005. We were worried customers might not be able to accept it. Subsequently, all companies were selling FIC coupons and customers were querying us about it so we purchased the coupons.
⁶¹³

273. Susan Ng said that Sri Maju charged its customers \$2 for one-way coupons and \$3 for two-way coupons for the period of the first FIC⁶¹⁴. She also said the following in relation to the sale of FIC coupons:

Q116. Had there been any complaints by customers about the imposition of the FIC? Is this a discount on the coupon or the whole ticket price?

*A: Starting, they would complain and ask why they had to buy the coupons. When we explained that there was an insurance element which brings benefits to them, they would accept it. Some customers would ask whether they can choose not to buy the FIC and reduce the coach ticket price accordingly. If it is a regular customer, we would give them a discount. We cannot discount on the coupon but would provide a reduction in the total ticket price.*⁶¹⁵

274. Susan Ng admitted that she had signed the resolution for the proposed FIC rebate and the resolution was passed⁶¹⁶. With regards to the 2/06 meeting held on 21 June 2006, Susan Ng said Michael Seng had expressed his unhappiness that Alisan and Sri Maju had sold their tickets below the

⁶¹³ See Answers to Questions 104 and 106 of Ng Sow Kiow Susan's Notes of Information / Explanation provided on 11 August 2008

⁶¹⁴ See Answers to Questions 113 and 115 of Susan Ng's Notes of Information / Explanation provided on 11 August 2008

⁶¹⁵ See Answer to Question 116 of Susan Ng's Notes of Information / Explanation provided on 11 August 2008

⁶¹⁶ See Answers to Questions 133 and 147 of Susan Ng's Notes of Information / Explanation provided on 11 August 2008

- agreed coach ticket price (plus the \$2 FIC) and she had explained that Sri Maju's tickets were cheaper because the buses were of a different size⁶¹⁷.
275. With regards to the bar chart titled "FIC ½ Yearly Sales Comparison"⁶¹⁸ Susan Ng said that the members had joked about the fact that Luxury purchased so few FIC coupons and encouraged Luxury to try harder⁶¹⁹.
276. Interview of T&L personnel⁶²⁰: T&L joined the EBAA as an associate member on 22 June 2006⁶²¹. T&L does not operate its own express buses but sells coach tickets for seats on buses operated by Konsortium, Sri Maju and Phya Travels⁶²².
277. Tan Yong Leng said he was aware of the FIC before joining EBAA as T&L had obtained coach tickets from EBAA members and they had to charge the FIC according to the price given to T&L. According to Tan Yong Leng, T&L had to sell the FIC coupons if he was selling the coach seats of EBAA members and the FIC would be added to the coach ticket price⁶²³. After becoming an associate member, T&L was able to issue the FIC coupons and earn a profit from the difference in the purchasing price from EBAA and the selling price to the customers⁶²⁴. Tan Yong Leng confirmed that he had received the letter from the EBAA authorising T&L to apply the FIC to defray increased fuel costs with effect from 21st June 2006 and displayed it in a frame at the counter⁶²⁵.
278. Tan Yong Leng confirmed that T&L had purchased 1,000 one-way and 1,000 two-way FIC coupons on 22 June 2006 and sold them at \$2 for one-way and \$3 for two-way, according to what was stipulated by the EBAA⁶²⁶.

⁶¹⁷ See Answers to Questions 143 to 145 of Susan Ng's Notes of Information / Explanation provided on 11 August 2008

⁶¹⁸ Bar Chart titled "FIC ½ Yearly Sales Comparison" produced by EBAA during section 64 inspection on 24 June 2008

⁶¹⁹ See Answer to Question 174 of Susan Ng's Notes of Information / Explanation provided on 11 August 2008

⁶²⁰ See Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁶²¹ EBAA application form completed by Tan Yong Leng provided to CCS by Tan Kah Hin during the section 64 inspection conducted on 24 June 2006 and marked TKH-02. See also Answer to Question 19 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁶²² See Answer to Question 10 of Tan Yong Leng's Notes of Information / Explanation provided on 11 September 2008

⁶²³ See Answer to Question 55 of Tan Yong Leng's Notes of Information / Explanation provided on 11 September 2008

⁶²⁴ See Answers to Questions 20, 50, 51 and 55 of Tan Yong Leng's Notes of Information / Explanation provided on 11 September 2008

⁶²⁵ Copy of EBAA authorisation letter to T&L dated 21st June 2006 produced by Tan Kah Hin during interview on 26 August 2008 and marked TKH-06

⁶²⁶ See Answers to Questions 59 to 60 and 93 to 94 of Tan Yong Leng's Notes of Information / Explanation provided on 11 September 2008

While he could choose to sell the FIC coupons when selling coach seats of non-EBAA members, he did not do so⁶²⁷.

279. Interview of Transtar personnel⁶²⁸: Elson Yap confirmed that the coach tax was first mooted because Malaysian fuel prices had started to increase⁶²⁹. According to Elson Yap, not all the representatives present at the 14th Executive Committee meeting agreed to implement the coach tax. Michael Seng from Enjoy objected and there might have been others who did not agree but who did not voice their objections⁶³⁰. Elson Yap said there were no calculations involved in arriving at the price of \$2. Instead the representatives had considered whether this amount would be an acceptable sum to their passengers⁶³¹.
280. With respect to the 15th Executive Committee meeting, Elson Yap said that no one present at the meeting disagreed with the implementation of the coach tax⁶³². The quantum of the FIC was agreed at \$2 for one-way and \$3 for two-way because the return trip involves costs incurred in ringgit which is lower⁶³³. According to Elson Yap, no check was made with LTA or CASE as to whether the coach tax would violate government regulation⁶³⁴.
281. Elson Yap confirmed that Regent Star and Transtar purchased FIC coupons before the launch of the FIC on 1 November 2005⁶³⁵ and for the period of 1 November 2005 to 30 November 2007, they had sold these coupons to their passengers at the agreed price of \$2 for one-way and \$3 for two-way:

Q.151 From the period of 1 November 2005 to 30 November 2007, did Transtar or Regent Star ever sell the FIC coupons to its passengers at a different price to the \$2 for one-way and \$3 for two-way coupons?

⁶²⁷ See Answer to Question 61 and 85 of Tan Yong Leng's Notes of Information / Explanation provided on 11 September 2008

⁶²⁸ See Elson Yap's Notes of Information / Explanation Provided on 6 August 2008 and 8 August 2008

⁶²⁹ See Answer to Questions 80 of Elson Yap's Notes of Information / Explanation Provided on 6th August 2008

⁶³⁰ See answer to question 84 of Elson Yap's Notes of Information / Explanation Provide on 6th August 2008

⁶³¹ See Answer to Questions 91 of Elson Yap's Notes of Information / Explanation Provided on 6th August 2008

⁶³² See answer to Question 108 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

⁶³³ See Answers to Questions 112 and 113 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

⁶³⁴ See Answer to Question 117 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

⁶³⁵ See Answer to Question 139 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

A: We only charge a different price after it has been amended during committee meetings of the EBAA. If the EBAA says that it remains the same, we do not charge differently.

282. In respect of the rebate scheme, Elson Yap said that Ken Lim had proposed that a resolution be circulated as the attendance was low and the scheme would affect the association's revenue⁶³⁶. The resolution was ultimately passed⁶³⁷. Elson Yap admitted that at the 2/06 Monthly meeting on 21 June 2006, he had mentioned a vote of no confidence in Alisan as members who have been absent from Executive Committee meetings for 3 times consecutively could be asked to leave the committee⁶³⁸.
283. In relation to the bar charts tabled at the 03/2007 Monthly meeting on 11 July 2007, Elson Yap said that the members did question why Luxury sold so few coupons⁶³⁹.
284. Interview of WTS personnel⁶⁴⁰: WTS applied to join the EBAA as an associate member on 7 March 2006 with a cheque for \$460 as payment for subscription fees⁶⁴¹. According to Voo Wei Keong, the main reason that WTS joined the EBAA was so that they could get a members' price for a booth at the Travel Fair organised by the EBAA⁶⁴². Voo Wei Keong claimed he did not receive the resolution for the proposed FIC rebate⁶⁴³ and thus WTS did not vote on the resolution⁶⁴⁴.
285. The FIC Rebate spreadsheets for the period 2005 to 30 June 2006 indicate that WTS first purchased FIC coupons sometime in the first quarter of 2006 when they purchased 1,000 one-way FIC coupons and 6,000 two-way FIC coupons⁶⁴⁵. In answer to questions on the price that WTS charged its

⁶³⁶ See Answer to Question 171 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

⁶³⁷ See Answer to Question 185 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

⁶³⁸ See Answer to Question 183 of Elson Yap's Notes of Information / Explanation provided on 6 August 2008

⁶³⁹ See Answer to Question 20 of Elson Yap's Notes of Information / Explanation provided on 8 August 2008

⁶⁴⁰ See Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁶⁴¹ EBAA application form completed by Micker Sia provided to CCS by Tan Kah Hin during the section 64 inspection conducted on 24 June 2006 and marked TKH-02

⁶⁴² See answer to Question 50 of Voo Wei Kiong's Notes of Information / Explanation provided on 11th August 2008

⁶⁴³ EBAA letter "Ebaa-062006/023" dated 20th June 2006 provided to CCS by Tan Kah Hin during the section 64 inspection conducted on 24th June 2006 and marked TKH-003

⁶⁴⁴ See Answer to Question 107 of Voo Wei Kiong's Notes of Information / Explanation provided on 11th August 2008

⁶⁴⁵ Spreadsheets provided by EBAA on 23 December 2008 in response to CCS' section 63 Notice dated 18 December 2008

- customers for FIC coupons, Voo Wei Kiong said that he sold them at \$2 for one-way and \$3 for two-way for non-premium coaches to KL and Genting.
286. For premium coaches, WTS absorbed the FIC as the ticket prices were already high. For the Mersing route, WTS absorbed the FIC charge until June 2008⁶⁴⁶. WTS has stopped absorbing the FIC charges for its premium coaches but Voo Wei Keong could not remember when this was the case⁶⁴⁷.
287. Voo Wei Keong attended the 3/06 meeting on 15 August 2006, the 3rd Annual General meeting on 11 October 2006 and the 01/2007 meeting on 17 January 2007. At the meeting on 17 January 2007, he was asked to convert WTS' associate membership to ordinary membership in line with its current mode of operation⁶⁴⁸.

(ii) CCS' analysis of the evidence

288. As was the case for the minimum selling prices, CCS notes that the FIC was first raised in 2005, before the section 34 prohibition came into effect on 1 January 2006. However, the agreement on the FIC continued into 2006 and beyond. As pointed out earlier, section 34(5) of the Competition Act makes clear that the prohibition applies to agreements, decisions and concerted practices implemented before 1 January 2006.

Agreement and/or Concerted Practice

289. The evidence indicates that there was an agreement reached on 6 July 2005 at the 15th Executive Committee meeting on the implementation of the coach tax at \$2 for one-way and \$3 for two-way between the following EBAA members: Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar. Although Violet from Alisan and Ling Wang Hock from Grassland were not the official representatives at this meeting, it was clear from the interviews of Leong Sing Kiong and Tan Boon Huat that they had been updated on what had transpired at the meeting⁶⁴⁹. In addition, Tan Boon Huat received a copy of the minutes of meeting. It should be noted that there is no evidence that checks were made with either CASE or LTA on whether the coach tax

⁶⁴⁶ See Answers to Questions 111 to 112 and 270 to 271 and 273 of Voo Wei Kiong's Notes of Information / Explanation provided on 11th August 2008

⁶⁴⁷ See Answers to Questions 272 and 273 of Voo Wei Kiong's Notes of Information / Explanation provided on 11th August 2008

⁶⁴⁸ See paragraph 17 of the minutes of 01/2007 Monthly meeting on 17 January 2007

⁶⁴⁹ See Answers to Questions 124 and 127 of Leong Sing Kiong's Notes of Information / Explanation Provided on 10 September 2008, Answers to Questions 83, 84, 85, 86 and 89 of Ling Wang Hock's Notes of Information / Explanation Provided on 21 September 2008 and Answer to Question 153 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

would violate any regulations. No objections to the agreement were raised by the representatives from Alisan and Grassland over the next two Executive Committee meetings on 7 September 2005 and 5 October 2005 respectively during which the issue was discussed. Rather, the members named earlier agreed on other aspects of the coach tax including the date of implementation, its official name, where it would be launched and the profits that the EBAA would be entitled to make from the sale of FIC coupons to members.

290. That such an agreement was reached between these members on the implementation of the coach tax, the date of implementation and the terms on which it should be implemented was documented in the minutes of the various Executive Committee meetings and the emails sent out by Joe Lim and confirmed by the representatives during their interviews. The members also agreed to display an authorisation letter issued by the EBAA at their offices at the 18th Executive Committee meeting on 9 November 2005 and proceeded to put the agreement into effect by purchasing FIC coupons from the EBAA and implementing the FIC at \$2 for one-way and \$3 for two-way.
291. As set out earlier in paragraph 47 and 48, an agreement made by the members of an association constitutes an agreement between undertakings. The agreement on the FIC was reinforced by adopting the rebate system that allowed the purchase of FIC coupons from the EBAA by members to be monitored. Presumably, once the FIC coupons were purchased from the EBAA, the Parties would then sell the coupons on to their customers and at the prices agreed. As such, continued purchases of FIC coupons, which would be apparent on the FIC spreadsheets produced by the EBAA, would allow the Parties to indirectly monitor that there was continued implementation and presumably adherence to the FIC agreement. The evidence shows that in general the Parties did actually sell the FIC coupons at the agreed prices.
292. CCS notes that the members may have implemented the agreement differently depending on their operations. For example, Johnny Lim of Five Stars was unable to say whether he had sold the FIC coupons at the agreed price because the FIC was added onto the coach ticket price, after which the coach ticket price would be adjusted according to demand⁶⁵⁰. However, as set out earlier in paragraph 45 and 46, CCS considers that an agreement would still be caught under the section 34 prohibition even if it was not the

⁶⁵⁰ See Answer to Question 172 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

intention of an undertaking so agreeing to implement or adhere to the terms of the agreement.

293. CCS notes that Aznan Bin Sharib of Eltabina did not attend the 14th to 18th Executive Committee meetings. While one Ms Ruby attended the 16th Committee meeting on behalf of Eltabina, Aznan claimed that he never agreed to the implementation of the coach tax. In addition, he did not purchase any FIC coupons and claimed that he never received the EBAA authorisation letter or the resolution for the FIC rebate. The evidence of Aznan Bin Sharib was supported by Tan Boon Huat who said that Aznan Bin Sharib hardly attended Executive Committee meetings or got involved in the discussions⁶⁵¹. In the circumstances, CCS considers that there is insufficient evidence to show that Eltabina was a party to the agreement and/or concerted practice between the parties set out in paragraph 289.

Object or Effect of Preventing, Restriction or Distorting Competition

294. It is CCS' view that the FIC agreement constitutes a clear price-fixing agreement by the members. CCS notes that the members agreed on a uniform surcharge which constitutes a component of the total coach ticket price. As held in *Ferry operators – Currency surcharges*⁶⁵², see paragraph 77 this amounted to an agreement to introduce a uniform increase in price. As the EC explained in the case of *VOTOB*⁶⁵³, see paragraph 78, when an element of a price is fixed, competition on that price element is excluded. By fixing the FIC and a source of recovery, members have less incentive to be as efficient as possible. The fixing of a uniform surcharge also ignores differences in the individual member's circumstances. Individual members could have calculated the increased operational costs and decided, on an independent basis, whether to meet such costs from their own profit or to pass it onto the customers, and if they decided to pass it on to their customers, determined by how much to increase their prices, taking into account prevailing market conditions and their own competitive position. The matter was put starkly by Kim Huang's interview:

Q21. The minute state that the implementation of the coach tax was agreed on by the members and that the only consideration was whether the tax should be build into the price of the ticket or whether it should be paid as an additional by the passenger, is this correct?

⁶⁵¹ See Answer to Question 48 of Tan Boon Huat's Notes of Information / Explanation Provided on 16 September 2008

⁶⁵² Commission Decision (97/84/EC) (IV/34.503) OJ L 26, 29.1.97, p 23

⁶⁵³ *Report on Competition Policy 1992* (Vol XXII) 177-186

A: *It says “finalized by the next meeting” so they may have to give feedback at next meeting. In any event, they can’t disagree if it’s going to be implemented by EBAA members. **If they don’t implement it together, the customer would go for the one without the FIC as it would be cheaper.*** (Emphasis added)⁶⁵⁴.

295. Given the manifestly anti-competitive object of the agreement, there is no need to show that the agreement and/or concerted practice had had effects restrictive of competition.

Representations by the Parties

296. In the written representations of Five Stars, GR Travel, Gunung Raya and Konsortium, it was argued that the FIC had no fuel element and the prices of \$2 for one-way and \$3 for two-way were merely recommended selling prices of the underlying insurance policy approved by AIG with no penalty for non-compliance. They claimed that there was no compulsion on EBAA members to purchase the FIC coupons and no sales quota was imposed.
297. CCS considers that these representations are unmeritorious. It was clear from the name of the fuel and insurance charge and on the face of the FIC coupons that the charge incorporated a fuel surcharge and the coupons were more than insurance coupons. It is also clear from the minutes of the Executive Committee meetings, the Lianhe Zaobao article, the email sent out on 4 November 2005 by Joe Lim, then the President of EBAA, and the letters issued by EBAA authorising its members to charge the FIC, that the rising fuel cost was the impetus for the FIC. Given that the FIC incorporated a fuel component of which neither EBAA nor AIG was a supplier, the FIC agreement cannot be said to be a vertical agreement between AIG or EBAA on the one hand and EBAA members on the other. There is no evidence that AIG approved or endorsed the selling prices of the FIC coupons. Further, there is no requirement in law that an agreement must be supported by enforcement procedures to find an infringement of the section 34 prohibition.
298. CCS thus considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice to fix the price of the FIC between the following parties with the object of restricting, preventing or distorting competition in the relevant market in breach of the section 34 prohibition: Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar. In addition, the

⁶⁵⁴ See Answer to Question 21 of Huang Xiu Qin’s Notes of Information / Explanation Provided on 2 December 2008

EBAA facilitated the operation of the agreement by sending out authorisation letters to the EBAA members and administering the rebate system.

(III) The First Revision to the Fuel and Insurance Charge (FIC)

(i) The facts and evidence

Documentary Evidence

299. On 2 October 2007⁶⁵⁵, the EBAA Executive Committee held a meeting and agreed to a review of the FIC. The minutes of meeting were circulated to Johnny Lim, Elson Yap, Susan Ng, Sebastian Yap, Raymond Lim, Ken Lim, Vincent Lim, Vincent Lee and Voo Wei Keong. It was stated in the minutes:

[that the EBAA Executive Committee]:

*agreed to a FIC review to be submitted by AIG. This revised cost shall take effect from 1.12.2007.*⁶⁵⁶

300. In a series of emails dated 09 October 2007, 7.20pm⁶⁵⁷, October 10, 2007, 12.23pm⁶⁵⁸, October 10, 2007, 6.45pm⁶⁵⁹, and October 12, 2007, 3.11pm⁶⁶⁰ between Tan Kah Hin and Sebastian Yap, Raymond Lim and Johnny Lim, Tan Kah Hin made comparisons of what was then current price elements of the FIC (i.e. the cost price of the AIG FIC coupons, the EBAA's selling price to its members and EBAA members' selling price of the FIC coupons to their customers) with contemplated price increases of the same. Notably, in these comparisons, he noted the increase in profits for the EBAA and its members.
301. In an email dated October 12, 2007, 6.01pm⁶⁶¹, to Sebastian Yap, Raymond Lim and copied to Johnny Lim, Tan Kah Hin stated:

Current Sales of FIC and Profit Margin by AIG, EBAA and Members for every \$1.00 value

⁶⁵⁵ Representatives from Five Stars, Transtar, Sri Maju, Regent Star, Konsortium, WTS and Luxury were present. The representatives from GR Travel and Gunung Raya were absent

⁶⁵⁶ Minutes of 04/2007 Monthly meeting Held on Tuesday, 2nd Oct 2007 at 2.30pm at EBAA Office #03-36, Golden Mile Complex, para 18

⁶⁵⁷ Exhibit marked as TKH-24

⁶⁵⁸ Exhibit marked as TKH-25

⁶⁵⁹ Exhibit marked as TKH-26

⁶⁶⁰ Exhibit marked as TKH-28

⁶⁶¹ Exhibit marked as TKH-29

FIC	AIG Cost(a)	AIG % Profit(b)	EBAA Cost(c)	EBAA Profit (d) [c-a]	EBAA % Profit (e) [d/c x 100]	Member Cost(f) ⁶⁶²	Member Profit (g) [f-c]	Member % Profit (h) [g/c x 100]
1-Way	\$0.30	60%	\$0.50	\$0.20	40.00%	\$2.00	\$1.50	300.00%
2-Way	\$0.50	66.66%	\$0.75	\$0.25	33.33%	\$3.00	\$2.25	300.00%

Proposed Sales of FIC and Change in Profit Margin by AIG, EBAA and Members

FIC	AIG Cost (a)	AIG % Change in Profit(b)	EBAA Cost(c)	EBAA Profit (d) [c-a]	EBAA % Change in Profit(e) [d/c x 100]	Member cost(f)	Member Profit (g) [f-c]	Member % Change in Profit (h) [g/c x 100]
1-Way	\$0.40	33.33%	\$0.65	\$0.25	38.46%	\$3.00	\$2.35	361.54%
2-Way	\$0.65	30.00%	\$1.00	\$0.35	35.00%	\$5.00	\$4.00	400.00%

302. At the bottom of the tables, Tan Kah Hin stated:

“On the comparison table above:

- AIG will have a \$0.10 increase in revenue for the 1-way FIC and \$0.15 increase in revenue for the 2-way FIC
- EBAA will have an increase of \$0.05 in revenue for the 1-way FIC and \$0.10 increase in revenue for the 2-way FIC.
- EBAA members will have an increase of \$0.85 in revenue for the 1-way FIC and \$1.75 increase in revenue for the 2-way FIC.”

303. On 15 October 2007, the EBAA issued a press release in connection with the Travel Malaysia Fair 2007 which was to be held from 26 to 28 October 2007⁶⁶³. In the press release, EBAA announced:

⁶⁶² Which was clarified during the course of interviews with parties that it meant the price at which members would sell to their customers: see for e.g. Sebastian Yap, 6 Aug 2008, answer to Q. 322, Vincent Lee, 8 Aug 2008, answer to Q. 261-262, Johnny Lim, 6 Aug 2008, answer to Q. 298 and Raymond Lim, 8 Aug 2008, answer to Q. 260

In lieu of the rising fuel prices, EBAA has announced that with effect from 1st December 2007, there would be an increase in Fuel and Insurance Charge (FIC) surcharge from \$2 to \$3 for one-way tickets and from \$3 to \$5 for two way tickets departing from Singapore. This is applicable for all tickets purchased from its member companies. The FIC covers Fuel Surcharge and Insurance Protection to the customers as a value-add service. The travel insurance would provide additional benefits and increase in sum insured to the passengers.

Early Bird Discount will be given for those who booked their tour packages and coach fares at the event for the December holiday will enjoy the current surcharge rate before the new surcharge rate take effect in December 2007 (sic)

304. Some three days *later*, on 18 October 2007, Tan Kah Hin sent out an email⁶⁶⁴ to both EBAA ordinary and associate members stating:

“In view of the rising fuel prices, EBAA has announced that with effect from 1st December 2007, there will be an increase in Fuel and Insurance Charge (FIC) surcharges from \$2 to \$3 for the one-way tickets and from \$3 to \$5 for the two-way tickets for passengers departing from Singapore.

A press release statement regarding the increase in Fuel and Insurance Charge (FIC) has been notified to all the major newspapers to inform the general public of the impending price increase. The newspaper article shall appear on Monday, 22nd October 2007 under the “New Market” section of the Straits Times, Lianhe Zaobao and Berita Harian.”

305. The email was accompanied by a letter⁶⁶⁵ prepared by Tan Kah Hin. The letter stated:

- “1. In view of the rising fuel prices, EBAA has announced that with effect from 1st December 2007, there will be an increase in Fuel and Insurance Charge (FIC) surcharges from \$2 to \$3 for the one-way tickets and from \$3 to \$5 for the two-way tickets for passengers departing from Singapore. This is applicable for all tickets purchased from its member companies. The FIC covers Fuel Surcharge and Insurance Protection to the passengers as a value-added service. The travel insurance will provide additional benefits and increase in sum insured to the passengers.*
- 2. Special rates will be given for those who booked their tour packages and coach fares at the Travel Malaysia 2007 event in October 2007 for the*

⁶⁶³ Produced by Tan Kah Hin on 28 Aug 2008 marked TKH-50

⁶⁶⁴ EBAA, “FIC Surcharge-Revised Rate” dated 18 Oct 2007

⁶⁶⁵ Letter dated 18th October 2007 titled “FIC Surcharge – Revised Rates” issued by the EBAA to its members. The Distribution List included representatives from Five Stars, GR Travel, Gunung Raya, Konsortium, Luxury, Sri Maju, Transtar, Regent Star, WTS, Desaru Fruit Farm, Nam Ho, Cheery, Lapan Lapan and T&L

December holiday. They will enjoy the current FIC surcharge rate before the new surcharge rate takes effect from 1st December 2007.

3. *A press release statement regarding the increase in Fuel and Insurance Charge (FIC) has been notified to all the major newspapers to inform the general public of the impending price increase. The newspaper article shall appear on Monday, 22nd October 2007 under the “New Market” section of the Straits Times, Lianhe Zaobao and Berita Harian.*

....

9. *Members who are participating in the Travel Malaysia 2007 fair in October are reminded to offer the current surcharge rate to their customer as an incentive for all booking made for the month of December 2007. All other booking other than those booked at the fair will apply the new surcharge rate to their customers effective 1st December 2007.”*

306. This letter stated that the FIC rate offered by EBAA to its members would be increased from \$0.50 to \$0.65 for one-way FIC coupons. The rate offered by EBAA to its members for two-way FIC coupons would be increased from \$0.75 to \$1. As for the FIC rates offered by EBAA members to the passengers, those would be increased from the current \$2 to \$3 for one-way FIC coupons and from \$3 to \$5 for two-way FIC coupons.
307. On 26 October 2007, The Straits Times carried an article on the luxury coach and express bus services business⁶⁶⁶. A sidebar stated:

“Highlights

Travel Malaysia 2007 is the biggest fair on Malaysian destinations. It features more than 100 booths and about 40 exhibitors.

It is organised by the Express Bus Agencies Association and supported by the Malaysian Tourism Promotion Board. Admission to the fair is free.

An early bird discount will be given to those who book tour packages and coach journeys at the fair for travel during the December holidays.

They will enjoy the current fuel and insurance surcharge rates before the hike on Dec 1. The increase is from \$2 to \$3 for a one-way ticket and from \$3 to \$5 for a two-way trip for passengers departing from Singapore.”

308. On 1 November 2007, Tan Kah Hin circulated a notice of EBAA’s Annual General meeting which stated:

⁶⁶⁶ The article was provided to CCS by Sebastian Yap marked SYCS-30

“To adopt the implementation of the Revised FIC Surcharges.”⁶⁶⁷

309. On 21 November 2007, the EBAA’s AGM was held. The minutes of the AGM subsequently recorded⁶⁶⁸:

“13(b). Revised FIC Surcharges. The meeting noted that the revised FIC surcharges shall be implemented with effect from 1 December 2007. All EBAA members with Travel Agency (TA) permit are obliged to sell the FIC to their customers for all tour and coach bookings made at their sale counters”.

14. Chairman requested all members to take advantage of the FIC to offset their operational and maintenance cost due to the increase in fuel prices. The FIC also provides comprehensive insurance protection and coverage to the customers.

310. On 22 November 2007, Tan Kah Hin also sent a template of the amended authorisation note reflecting the new rates of \$3 for one-way and \$5 for two way coupons to all the ordinary and associate members for display at their sales counters⁶⁶⁹. This template contained EBAA’s logo and stated the following:

1st December 2007

(Company Name) _____, a member of the Express Bus Agencies Association (EBAA), will apply the Fuel & Insurance Charge (FIC) surcharges to defray the increased operational fuels costs, with effect from 1st December 2007.

The charges are as follows:

\$3.00 One-way trip: Single Trip from Singapore to West Malaysia & Hatyai, Thailand or vice versa*

\$5.00 Two-way trip: Round Trip from Singapore to West Malaysia & Hatyai, Thailand*

** Inclusive of insurance coverage underwritten by AIG (please refer to the reverse page of the coupon)*

We thank you for your understanding and kind support.

⁶⁶⁷ EBAA, Notice of Annual General meeting, 1 Nov 2007. Para 5b

⁶⁶⁸ Minutes of 4th Annual General meeting, 21 Nov 2007, para 13(b) and 14. Present at this meeting were representatives from Five Stars, Transtar, Sri Maju, Konsortium, Gunung Raya, Luxury, WTS, Lapan Lapan, IPP Financial Advisers, Grand City Fashion, Travelzone and Desaru Fruit Farm

⁶⁶⁹ Email from Tan Kah Hin to the ordinary and associate members dated 22 November 2007 at 11:04 a.m.

*By order,
Management Committee, EBAA*

Evidence from interviews

311. Interview of EBAA personnel: Tan Kah Hin explained that following the meeting between the members of the Executive Committee on 2 October 2007, the scope of the FIC review was to include all three prices related to the FIC, that is, the price that AIG sells to EBAA, the price that EBAA sells to its members and the price that the members sell to the public⁶⁷⁰.
312. This review was with a view to increase the FIC prices to address the increases in fuel price experienced by EBAA members⁶⁷¹. In order to make the increase more palatable for customers, the EBAA Executive Committee decided to increase the insurance coverage of the FIC. The EBAA approached AIG to negotiate an increase in the insurance coverage and the corresponding revision in premiums⁶⁷². Tan Kah Hin clarified that AIG had not sought to increase the insurance premiums of the FIC coupons sold to EBAA⁶⁷³.
313. The negotiations with AIG on the coverage and premium for the revised FIC were left to Sebastian Yap and Raymond Lim in their capacity as Chairman and Deputy Chairman, respectively, of the Events and Promotion, Terminal Services subcommittee⁶⁷⁴. Tan Kah Hin was to assist them. A meeting between the EBAA and AIG representatives took place on 12 Oct 2007⁶⁷⁵ and following further negotiations, it was eventually agreed between the parties that AIG would charge EBAA \$0.40 (instead of \$0.30) and \$0.65 (instead of \$0.50) for one-way and two-way coupons respectively, in return for revised benefits, for example, a \$10,000 increase for “Accidental Death and Permanent Disablement” coverage.

⁶⁷⁰ See Answer to Question 88 of Tan Kah Hin’s Notes of Information / Explanation Provided on 26 August 2008

⁶⁷¹ See Answer to Question 93 of Tan Kah Hin’s Notes of Information / Explanation Provided on 26 August 2008

⁶⁷² See Answers to Questions 88 to 106 of Tan Kah Hin’s Notes of Information / Explanation Provided on 26 August 2008

⁶⁷³ See Answer to Question 99 of Tan Kah Hin’s Notes of Information / Explanation Provided on 26 August 2008

⁶⁷⁴ See Answer to Question 100 of Tan Kah Hin’s Notes of Information / Explanation Provided on 26 August 2008

⁶⁷⁵ See Answers to Questions 97 & 123 of Tan Kah Hin’s Notes of Information / Explanation Provided on 26 August 2008. Sebastian, Raymond, Tan Kah Hin met with AIG’s Eugene Lim and Tricia Lim at AIG’s offices at Martin Road

314. Tan Kah Hin explained that the press release dated 15 October 2007 was made on the instructions of Sebastian Yap⁶⁷⁶. He explained that in the press release, it was stated that EBAA members would be implementing an increase in their fares because of an increase in the FIC. The increase in the FIC was required because of the increase in the price of fuel⁶⁷⁷.
315. Tan Kah Hin confirmed that the EBAA letter dated 18 October 2007 circulated to all ordinary and associate members of the EBAA stated that they would all have to apply the revised rates of \$3 (one way) and \$5 (two way).⁶⁷⁸ He prepared this letter on the instructions of Sebastian Yap and Raymond Lim. He obtained the approval of Johnny Lim, then President of the EBAA, before he disseminated the letter⁶⁷⁹. The letter also contained instructions on how members with leftover coupons with the old coverage could return them to the EBAA or complete the sale of such FIC coupons at the old rates. Leftover coupons unsold could be returned for a full refund. Tan Kah Hin stated that most of those in the distribution list with previous FIC purchases returned old FIC coupons⁶⁸⁰.
316. Tan Kah Hin explained that the information on the revised FIC tabled at the 4th AGM held on 21 November 2007 was for information only and there was no need for the AGM to agree to the revised rates⁶⁸¹. He confirmed that no one raised any objections to the revised rate at the AGM⁶⁸².
317. Interview of Five Stars personnel: Johnny Lim confirmed that he attended the EBAA Executive Committee meeting on 2 October 2007⁶⁸³. He said that the members present decided to increase the price of FIC coupons to be sold to their customers⁶⁸⁴. The reason for the increase in the FIC was

⁶⁷⁶ See Answer to Question 80 of Tan Kah Hin's Notes of Information / Explanation Provided on 28 August 2008

⁶⁷⁷ See Answer to Question 82 of Tan Kah Hin's Notes of Information / Explanation Provided on 28 August 2008

⁶⁷⁸ See Answer to Question 2 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁶⁷⁹ See Answer to Question 4 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁶⁸⁰ See Answer to Question 13 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁶⁸¹ See Answers to Questions 18 & 25 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁶⁸² See Answer to Question 26 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁶⁸³ See Answer to Question 271 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁸⁴ See Answer to Question 227 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

- because of the increase in insurance coverage and also other costs e.g. maintenance, building a coach, staff salaries etc⁶⁸⁵.
318. Johnny Lim confirmed that while Raymond Lim, Sebastian Yap and Tan Kah Hin negotiated with AIG, as President, he had to approve any subsequent agreement with AIG⁶⁸⁶.
319. Johnny Lim acknowledged that he approved the contents of EBAA's 18 October 2007 letter which was circulated to all its members⁶⁸⁷. He explained that the reason why a press release was made to inform the general public of the impending price increase was because prior informed customers would be less likely to ask questions at the counter and his staff would not have to waste time explaining to them again⁶⁸⁸.
320. Johnny Lim confirmed that there was no vote held to decide on the revised FIC rates at the AGM held on 21 November 2007⁶⁸⁹. He confirmed that Five Stars did implement the new FIC rates on 1 Dec 2007⁶⁹⁰.
321. Interview of GR Travel and Gunung Raya personnel: Vincent Lim was asked about his views after receiving the letter from EBAA dated 18 October 2007. He said that if one was a member of the EBAA, one was required to follow and increase the rates⁶⁹¹. He believed that GR Travel and Gunung Travel implemented the new FIC rates on 1 December 2007⁶⁹².
322. Ken Lim also agreed that the 18 October 2007 letter meant that the EBAA ordinary members were required to sell the FIC⁶⁹³ and his company would usually follow the new FIC rates⁶⁹⁴.

⁶⁸⁵ See Answer to Question 278 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁸⁶ See Answer to Question 285 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁸⁷ See Answer to Question 348 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁸⁸ See Answer to Question 359 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁸⁹ See Answer to Question 367 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁹⁰ See Answer to Question 355 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁶⁹¹ See Answer to Question 90 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

⁶⁹² See Answer to Question 94 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

⁶⁹³ See Answer to Question 271 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

⁶⁹⁴ See Answer to Question 277 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008

323. Interview of Konsortium personnel: Raymond Lim confirmed that he attended the Executive Committee meeting held on 2 October 2007⁶⁹⁵. He said that all members in the discussion agreed to increase the cost of FIC as well as the insurance coverage of the FIC⁶⁹⁶. It was further agreed that the increase in the FIC price as well as any increase in insurance premiums payable to AIG should take place on 1 December 2007⁶⁹⁷.
324. Raymond Lim explained that it was decided that the FIC should be increased to \$3 for one-way and \$5 for two-way tickets due to the increase in the price of oil in Malaysia. He claimed that it was felt that something had to be done; otherwise, his own takings would suffer by S\$1,000 daily⁶⁹⁸. Raymond Lim confirmed that it was Sebastian Yap, Johnny Lim and himself who were responsible for the decision on how much to increase the quantum of the FIC⁶⁹⁹.
325. When asked whether there was any voting held on the AGM on 21 November 2007 pertaining to the increase in the FIC, Raymond Lim stated that there was none and reiterated that this was because all had already agreed to revise the FIC previously⁷⁰⁰. Nevertheless, he confirmed that the ordinary members present at the AGM agreed to the quantum of the increase of the FIC rates⁷⁰¹.
326. Raymond Lim explained that there was a need to make a press release regarding the FIC to tell the passengers of EBAA members that the price of the FIC had been revised so as to avoid future disputes⁷⁰². Similarly, he felt that the reason why Joe Lim wanted the EBAA to give an authorisation letter to the members of the EBAA to display in their offices was because he wanted to reduce potential arguments at the front desk over the FIC⁷⁰³.

⁶⁹⁵ See Answer to Question 234 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁶⁹⁶ See Answers to Questions 237 & 239 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁶⁹⁷ See Answer to Question 240 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁶⁹⁸ See Answer to Question 261 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁶⁹⁹ See Answer to Question 305 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷⁰⁰ See Answer to Question 326 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷⁰¹ See Answer to Question 327 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷⁰² See Answer to Question 295 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷⁰³ See Answer to Question 318 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

When asked why there was a need for displaying the authorisation note at the offices of Konsortium, Raymond Lim replied⁷⁰⁴:

“Q302. What was the reason for displaying the authorisation note at the office of Konsortium?”

A: The association did up a letter to prove that we are a member, and can collect fuel surcharge with insurance. It is like a license.”

327. Joe Lim stated that the 18 October 2007 email was sent out to inform recipients about the increase in quantum from \$2 and \$3, to \$3 and \$5. He stated that he was agreeable to the quantum of increase in the FIC as stated in the email⁷⁰⁵ and that he simply followed the EBAA decision⁷⁰⁶.

328. When Joe Lim was asked whether he could choose not to follow the increase in the FIC as stated in the email from Tan Kah Hin dated 18 October 2007, Joe Lim’s reply was telling:

“Q337. Can you choose not to follow the increase in FIC? Why?”

A: I can choose not to follow the increase in FIC. We assess our own decision of EBAA recommended decisions. But at the end of the day, it will not hurt us if we follow EBAA’s decision. If I sell at \$3 and \$5, why not. It reduces Konsortium’s burden.”

329. Joe Lim said that he implemented the new FIC rates with effect from 1 December 2007⁷⁰⁷. He also explained that a press release was useful because it would make it easier to convince customers of the revised FIC charges⁷⁰⁸.

330. Interview of Lapan Lapan personnel: Wesley Ng stated that on or about 2 October 2007, he was aware of the FIC rates i.e. that they were \$2 for one way⁷⁰⁹. Wesley Ng confirmed that he received the email sent by Tan Kah Hin dated 18 October 2007⁷¹⁰ as well as the minutes of the AGM held on

⁷⁰⁴See Answer to Question 302 of Raymond Lim’s Notes of Information / Explanation Provided on 8 August 2008

⁷⁰⁵See Answer to Question 324 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

⁷⁰⁶See Answer to Question 315 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

⁷⁰⁷See Answer to Question 344 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

⁷⁰⁸See Answer to Question 333 of Joe Lim’s Notes of Information / Explanation Provided on 8 August 2008

⁷⁰⁹See Answer to Question 106 of Wesley Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷¹⁰See Answer to Question 138 of Wesley Ng’s Notes of Information / Explanation Provided on 11 August 2008

- 21 November 2007⁷¹¹. Wesley Ng attended the AGM held on 21 November 2007⁷¹². He said that EBAA members were informed that they should sell the FIC to their customers and they were given information about the revised FIC rates⁷¹³.
331. Wesley Ng said that all tickets sold by Lapan Lapan would be sold with a FIC that was given to the customer without charge⁷¹⁴. Wesley Ng claims that Lapan Lapan never charged for the FIC⁷¹⁵. However, Wesley Ng also said that he regarded that he would have a competitive advantage if he could charge less than his competitors but yet offer more services⁷¹⁶.
332. Interview of Luxury personnel: Vincent Lee stated that while he did not attend the Executive Committee meeting, he was represented by Rendy Wong⁷¹⁷. He confirmed that he received the EBAA letter and email dated 18 October 2007⁷¹⁸. Vincent Lee felt that the AGM agreed on the revised rates to be imposed⁷¹⁹. He confirmed that Luxury implemented the revised FIC rates⁷²⁰.
333. Interview of Nam Ho personnel: Marshall Ooi stated that he received a copy of the minutes of meeting for the AGM held on 21 November 2007⁷²¹ and he purchased 1000 two way FIC coupons at \$1 each from EBAA on 22 November 2007. He then sold them to customers at \$3 each. From 1 December 2007, he sold his FIC coupons to customers at \$5 each⁷²². Marshall Ooi explained that his member of staff was informed by

⁷¹¹ See Answer to Question 106 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

⁷¹² See Answer to Question 157 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

⁷¹³ See Answers to Questions 159 & 160 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

⁷¹⁴ See Answer to Question 23 of Wesley Ng's Notes of Information / Explanation Provided on 16 January 2009

⁷¹⁵ See Answer to Question 24 of Wesley Ng's Notes of Information / Explanation Provided on 16 January 2009

⁷¹⁶ See Answer to Question 108 of Wesley Ng's Notes of Information / Explanation Provided on 11 August 2008

⁷¹⁷ See Answers to Questions 218 & 219 of Vincent Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷¹⁸ See Answer to Question 296 of Vincent Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷¹⁹ See Answer to Question 321 of Vincent Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷²⁰ See Answer to Question 313 of Vincent Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷²¹ See Answer to Question 168 of Marshall Ooi's Notes of Information / Explanation Provided on 11 September 2008

⁷²² See Answer to Question 71 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

Konsortium staff that the prices of FIC sold by Nam Ho had to increase from \$3 to \$5⁷²³. After 1 December 2007, Nam Ho sold their FICs at \$5 instead of \$3⁷²⁴. The increase of \$2 per FIC coupon sold to the customer was retained by Nam Ho⁷²⁵.

334. Interview of Regent Star personnel: Sebastian Yap confirmed that he attended the Executive Committee meeting held on 2 October 2007. He agreed that AIG was not the party who initiated an increase in the premium of the insurance coverage sold to EBAA.⁷²⁶ He stated that EBAA members wanted to increase the insurance coverage because they wanted to increase the fuel surcharge.⁷²⁷ As the FIC would be increased, EBAA members wanted to increase the insurance coverage as well. He stated that while the quantum of the increase of the FIC had not been agreed at the meeting held on 2 October 2008, the persons present⁷²⁸ as well as the Executive Committee of EBAA made the joint decision to increase the FIC⁷²⁹. Sebastian Yap clarified that he believed that he, Raymond Lim and Johnny Lim had the necessary mandate from the Executive Committee to decide on the details of the increase to the FIC⁷³⁰.
335. Sebastian Yap explained that the series of emails with Raymond Lim, Johnny Lim and Tan Kah Hin was to discuss different prices in relation to the FIC i.e. the increment of the cost per FIC coupon and at what rate the member will have to purchase and what rate the member will sell the FIC⁷³¹.
336. Sebastian Yap stated that the 18 October 2007 EBAA letter was sent to all associate and ordinary members of the EBAA. In his view, he felt that the Executive Committee had accepted the recommendation as stated in the 18

⁷²³ See Answer to Question 74 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

⁷²⁴ See Answers to Questions 77 & 78 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

⁷²⁵ See Answers to Questions 82 & 83 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

⁷²⁶ See Answer to Question 300 of Sebastian Yap's Notes of Information / Explanation Provided on 6 August 2008

⁷²⁷ See Answer to Question 296 of Sebastian Yap's Notes of Information / Explanation Provided on 6 August 2008

⁷²⁸ See Answer to Question 299 of Sebastian Yap's Notes of Information / Explanation Provided on 6 August 2008

⁷²⁹ See Answer to Question 306 of Sebastian Yap's Notes of Information / Explanation Provided on 6 August 2008

⁷³⁰ See Answers to Questions 75 & 76 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

⁷³¹ See Answer to Question 310 of Sebastian Yap's Notes of Information / Explanation Provided on 6 August 2008

- October 2007 letter⁷³². Sebastian Yap explained that the statement that the FIC is “applicable for all tickets purchased from” members meant that all express bus tickets purchased by consumers have to come with the FIC which was priced at \$3 to \$5 with effect from 1 December 2007⁷³³. Sebastian Yap stated that at the AGM, members present agreed to the increased FIC charges that were circulated via the emails and letter on 18 October 2007⁷³⁴.
337. Sebastian confirmed that Transtar and Regent Star both implemented the revised FIC rates.⁷³⁵
338. Interview of Sri Maju personnel: Susan Ng stated that that she attended the Executive Committee meeting on 2 October 2007⁷³⁶. She confirmed that the decision to increase the price of the FIC was passed⁷³⁷. Susan Ng stated that Sri Maju usually just followed the EBAA charges⁷³⁸.
339. Susan Ng stated that she also attended the AGM held on 21 November 2007⁷³⁹. Although the matter was not put to a vote, she stated that the majority of the members present agreed to the increase in the FIC rates⁷⁴⁰. She stated that while Sri Maju can choose not to sell the FIC, she felt that as members of the EBAA, she should support the EBAA⁷⁴¹.
340. Interview of T&L personnel: Tan Yong Leng stated that he received the 18 October 2007 letter from the EBAA⁷⁴². Tan Yong Leng stated that he did

⁷³² See Answer to Question 98 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁷³³ See Answer to Questions 106 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁷³⁴ See Answer to Question 162 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁷³⁵ See Answer to Question 106 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁷³⁶ See Answer to Question 177 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷³⁷ See Answer to Question 182 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷³⁸ See Answer to Question 193 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷³⁹ See Answer to Question 253 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷⁴⁰ See Answer to Question 254 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷⁴¹ See Answer to Question 256 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008

⁷⁴² See Answer to Question 116 of Tan Yong Leng’s Notes of Information / Explanation Provided on 11 September 2008

- not attend the AGM held on 21 November 2007⁷⁴³ and did not know about the increase in the FIC prices until Tan Kah Hin or Katherine Ong, a full time staff of EBAA, called him⁷⁴⁴. Tan Yong Leng felt that an increase in the FIC would translate to greater profits for T&L. He confirmed that T&L sold the FIC coupons at the revised rates⁷⁴⁵.
341. Interview of Transtar personnel: Elson Yap confirmed that he attended the meeting held on 2 October 2007⁷⁴⁶. He stated that the FIC cost was increased because of the increases in fuel prices at that time⁷⁴⁷.
342. Elson Yap stated that he had seen the 18 October 2007 letter from the EBAA⁷⁴⁸. He did not raise any issues about it when he was informed about the contents of the letter by Sebastian Yap⁷⁴⁹.
343. Elson Yap confirmed that he attended the AGM on 21 November 2007 and also received the minutes of meeting⁷⁵⁰. He stated that the AGM held on 21 November 2007 passed the resolution to increase the FIC charges⁷⁵¹. He stated that members present agreed, without having to vote, on the quantum of increase in the FIC rates⁷⁵². Elson Yap confirmed that Transtar implemented the revised FIC rates⁷⁵³.
344. Interview of Travelzone personnel: Neo Tiam Beng said that Travelzone took over the EBAA associate membership held by Nier Transport Services

⁷⁴³ See Answer to Question 124 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁷⁴⁴ See Answer to Question 122 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁷⁴⁵ See Answers to Questions 113 to 114 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008. See also Answers to Questions 8 and 14 of Tan Yong Leng's Notes of Information / Explanation Provided on 12 September 2008

⁷⁴⁶ See Answer to Question 23 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁴⁷ See Answer to Question 27 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁴⁸ See Answer to Question 88 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁴⁹ See Answer to Question 91 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁵⁰ See Answer to Question 108 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁵¹ See Answer to Question 110 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁵² See Answers to Questions 110 & 111 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁵³ See Answer to Question 91 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

- sometime around December 2007⁷⁵⁴. Neo Tiam Beng attended the 4th AGM on 21 November 2007 and an amended authorisation form was subsequently sent by Tan Kah Hin to one of Travelzone's employees, Aris Latiff, on 22 November 2007⁷⁵⁵.
345. EBAA's FIC rebate spreadsheet for the period ending 31 December 2007 shows that Travelzone purchased one batch of 500 one-way FIC coupons and 500 two-way FIC coupons in the 4th quarter of 2007⁷⁵⁶. Travelzone sold the two-way FIC coupons at the revised price of \$5⁷⁵⁷.
346. Sim Lee Siang, Travelzone's secretary, said that she purchased the FIC coupons in December 2007 to sell with Travelzone's Desaru tour packages⁷⁵⁸. She said that Travelzone charged \$5 for the two-way FIC coupons that they sold because they were following the prices which Konsortium and Five Stars charged their customers⁷⁵⁹. Sim Lee Siang said that she had been told by Five Stars and Konsortium that she had to collect the FIC from customers⁷⁶⁰.
347. Interview of WTS personnel: Voo Wei Keong stated that he was present at the Executive Committee meeting on 2 October 2007⁷⁶¹. No one objected to the increase of the FIC⁷⁶². He stated that he agreed that the price of the FIC charged to customers had to increase because operating costs had increased; he felt that any form of FIC increase would be good⁷⁶³.
348. Voo Wei Keong stated that he received the 18 October 2007 email and letter from Tan Kah Hin⁷⁶⁴. Voo Wei Keong stated that while he could not

⁷⁵⁴ See Answers to Questions 48 & 49 of Neo Tiam Beng's Notes of Information / Explanation Provided on 3 November 2008

⁷⁵⁵ Email from Tan Kah Hin to the ordinary and associate members dated 22 November 2007 at 11:04 a.m.

⁷⁵⁶ See Appendix 9 of Rajah & Tann's letter to CCS dated 23 December 2008 in response to the section 63 notice dated 18 December 2008

⁷⁵⁷ See Answers to Questions 17 to 19 of Sim Lee Siang's Notes of Information / Explanation Provided on 2 April 2009

⁷⁵⁸ See Answer to Question 17 of Sim Lee Siang's Notes of Information / Explanation Provided on 2 April 2009

⁷⁵⁹ See Answer to Question 19 of Sim Lee Siang's Notes of Information / Explanation Provided on 2 April 2009

⁷⁶⁰ See Answer to Question 27 of Sim Lee Siang's Notes of Information / Explanation Provided on 2 April 2009

⁷⁶¹ See Answer to Question 158 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷⁶² See Answers to Questions 173 & 174 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷⁶³ See Answer to Question 165 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷⁶⁴ See Answers to Questions 177 & 178 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

recall whether he received the minutes of the AGM held on 21 November 2007, he did not raise any objections to its contents⁷⁶⁵. He did not remember anyone else raising objections⁷⁶⁶. Voo Wei Keong confirmed that WTS did implement the new FIC rates⁷⁶⁷.

(ii) CCS' analysis of the evidence

349. CCS is of the view that the evidence shows that the FIC agreement reached between the members of the EBAA on 6 July 2005 was revised on or about 2 October 2007. The evidence shows that Five Stars, GR Travel, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar continued with the agreement to fix the price of the FIC. With the exception of Sri Maju, they increased the price of the FIC sold to their customers with effect from 1 December 2007. The evidence also shows that Lapan Lapan, Luxury, Nam Ho, T&L, Travelzone and WTS agreed with the revised FIC and participated in the FIC agreement.

First Revision of the FIC agreement

350. CCS is of the view that the Executive Committee meeting held on 2 October 2007 provided the three members (Sebastian Yap, Raymond Lim and Johnny Lim) with the mandate to determine the following prices: that is, (a) the price that EBAA pays to AIG for insurance coverage, (b) the price that EBAA sells the FICs to its members and (c) the price that members sell the FICs to their customers. CCS is of the view that the increase in the FIC implemented on 1 December 2007 was initiated by members of the EBAA because of increased operating costs, including increased fuel costs⁷⁶⁸.
351. As they intended to make any increase in the price of the FIC sold to customers more acceptable, EBAA members agreed at the Executive Committee meeting on 2 October 2007 to approach AIG to increase the insurance coverage for their customers. Sebastian Yap and Raymond Lim were authorised to negotiate with AIG on what would be an appropriate price for EBAA to pay AIG for the increased coverage. Tan Kah Hin

⁷⁶⁵ See Answer to Question 215 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷⁶⁶ See Answers to Questions 215 & 216 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷⁶⁷ See Answer to Question 193 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

⁷⁶⁸ This was the common complaint made by EBAA members at that time. See for e.g. Raymond Lim, 8 Aug 2008, answer to Q. 261

- assisted them at this meeting with AIG as well as other necessary matters to put into effect the increase in the rates.
352. Following the discussions with AIG, in a series of emails in October 2007, that took place between Sebastian Yap, Raymond Lim, Johnny Lim and Tan Kah Hin, it was agreed that EBAA would charge its members \$0.65 and \$1 for one-way and two-way FIC coupons respectively. Further, it was concluded that members who sold the one-way and two-way coupons at \$3 and \$5 respectively should make a 361.54% and 400% mark-up (up from the 300% mark-up previously).
353. Thereafter, Tan Kah Hin drafted a press release on the instructions of Sebastian Yap and Raymond Lim. This was forwarded to the media. Pertinently, from the language used in the press release, the implementation of the revisions in the second FIC was couched as a decision made by the EBAA on behalf of all its members, that is, the EBAA “*announced... an increase in Fuel and Insurance Charge.*” In the same announcement, it was also stated that those who booked their tour packages for the December holidays at the Travel Malaysia Fair 2007 held from 26 to 28 October 2007 would enjoy the old FIC rates. Given that EBAA was prepared to go public with these announcements and even bind its members to charging the old rates, it was evident that the EBAA members must have agreed to an increase in the FIC.
354. The 18 October 2007 letter sent by the EBAA to all its members also provided another crucial piece of evidence of the agreement between the parties to revise the FIC. The letter stated that there would be an increase in the FIC from \$2 to \$3 for one-way tickets and from \$3 to \$5 for two-way tickets for passengers departing from Singapore. It also mentioned that this was applicable for all tickets purchased from member companies. Further, special rates were promised for customers who booked their packages at an upcoming travel fair. Members participating in the Travel Malaysia 2007 fair in October 2007 were reminded to offer the current FIC rate to their customers as an incentive for all bookings made for December 2007⁷⁶⁹. All other bookings would attract the new FIC rates effective from 1 December 2007⁷⁷⁰. This was clear evidence that there was a subsisting agreement in place between the EBAA members at that time.
355. CCS is of the view that if there was no agreement between the EBAA members to revise the FIC by that time, then the EBAA would not have

⁷⁶⁹ Para 2 of the EBAA 18 Oct 07 letter

⁷⁷⁰ Para 9 of the EBAA 18 Oct 07 letter

- been in a position to state the revised FIC prices in the 18 October 2007 letter nor promise rates which would bind member companies participating in the Travel Malaysia 2007 event at that time. It should be borne in mind that the press release had already been made by the time this letter was distributed to its members⁷⁷¹. Notably, none of the EBAA member companies raised any objections to the letter⁷⁷².
356. At the AGM held on 21 November 2007, EBAA members discussed the increase in the price of the FIC to be sold to their members. There was no vote taken and Johnny Lim encouraged members to “take advantage of the FIC to offset their operational and maintenance cost due to the increase in fuel prices.” The members present agreed to the implementation of the revised FIC and the decision was thus made to increase the FIC prices sold to customers from 1 December 2007⁷⁷³. The minutes recording this was later circulated to all members. None of the members took any objection to the minutes.
357. In the template for the authorisation letter prepared by EBAA which was sent to members on 22 November 2007, the charges for the one-way and two-way FICs were reflected in the template. In CCS’ view, this authorisation letter was intended to reduce the number of complaints that customers may have by giving them the impression that the member concerned was *authorised* to impose a surcharge. This was also the view of some of the EBAA members who felt that this letter would reduce disputes between customers and counter staff. Further, the recipients of the authorisation note would clearly have knowledge of the rates being charged by their competitors for the FIC they sold to customers.
358. The evidence also showed that there was a standardised commencement date (being 1 December 2007) for the revised FIC. This was reflected in the 18 October 2007 EBAA letter, the template for the authorisation letter sent by Tan Kah Hin on 22 November 2007 and in the minutes of the AGM meeting. EBAA members who adhered to the revised FIC rate commenced implementation on 1 December 2007.
359. The concerted acts of increasing their selling prices of the FIC on 1 December 2007 by the EBAA members provide additional evidence of the agreement between the Parties concerned. By their own admission,

⁷⁷¹ See email from Tan Kah Hin to the EBAA members on 18 October 2007 at 4.32 p.m., titled “FIC Surcharge – Revised Rate (IMMEDIATE ATTENTION)”

⁷⁷² See Answer to Question 10 of Tan Kah Hin’s Notes of Information / Explanation Provided on 27 August 2008

⁷⁷³ See Answer to Question 27 of Tan Kah Hin’s Notes of Information / Explanation Provided on 27 August 2008

representatives from Five Stars⁷⁷⁴, GR Travel⁷⁷⁵, Gunung Raya⁷⁷⁶, Konsortium⁷⁷⁷, Luxury⁷⁷⁸, Nam Ho⁷⁷⁹, Regent Star⁷⁸⁰, T&L⁷⁸¹, Transtar⁷⁸² and WTS⁷⁸³ confirmed during their interviews that they implemented the agreement. It is trite law that the fact of agreement may be express or implicit in the participants' behaviour (see *Viho Europe BV /Toshiba Europa (I.E.) Gmbh*⁷⁸⁴ at paragraph 44). The fact of implementation of the FIC as well as the coordinated manner in which the FIC was implemented goes towards supporting CCS' view that these undertakings had an agreement about the FIC.

360. It is also clear that EBAA members' sales of the FIC were monitored by other members. The FIC rebates for the period ending 31 December 2007⁷⁸⁵ showed that Five Stars, Konsortium, Lapan Lapan, Luxury, Nam Ho, Sri Maju, Transtar, Travelzone and WTS purchased the new FIC coupons from EBAA at the revised rate and this was tabled at the executive committee meeting on 19 February 2008.
361. As stated earlier, CCS considers that the system of rebates offered by the EBAA for FIC purchases by their members was in order for it to keep track of the numbers of FICs sold. In the minutes of meeting held on 19 February 2008⁷⁸⁶, it was stated:

Summary of FIC Rebates for Period Jul – Dec 2007

⁷⁷⁴ See Answer to Question 355 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁷⁷⁵ See Answer to Question 277 of Ken Lim's Notes of Information / Explanation Provided on 19 August 2008. See also Answer to Question 94 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

⁷⁷⁶ See Answer to Question 94 of Vincent Lim's Notes of Information / Explanation Provided on 15 August 2008

⁷⁷⁷ See Answer to Question 344 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁷⁷⁸ See Answer to Question 313 of Vincent Lee's Notes of Information / Explanation dated 8 August 2008

⁷⁷⁹ See Answer to Question 153 of Marshall Ooi's Notes of Information/Explanation date 11 Sep 2008

⁷⁸⁰ See Answers to Questions 106 of Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

⁷⁸¹ See Answers to Questions 113 to 114 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008. See also Answers to Questions 8 and 14 of Tan Yong Leng's Notes of Information / Explanation Provided on 12 September 2008

⁷⁸² See Answer to Question 91 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁷⁸³ See Answer to Question 193 of Voo Wei Keong's Notes of Information/Explanation dated 11 Aug 2008

⁷⁸⁴ OJ 1991 L287/39 at paragraph 22

⁷⁸⁵ Attached to the agenda for EBAA Committee meeting 01/2008 dated 31 January 2008

⁷⁸⁶ Minutes of 01/2008 monthly meeting Held on Tuesday, 19 February 2008 at 4.00pm at Five Stars Tours Office #05-01, People's Park Complex (Amendment), sent out to Committee Members on 31 Feb 2008. This was attended by Johnny Lim, Vincent Lee, Susan Ng, Sebastian Yap, Raymond Lim, Voo Wei Keong, Ken Lim and Tan Kah Hin

17. *The meeting was informed of the total amount paid to members for the period Jul – Dec 2007. Chairman noted that the sales from Sri Maju Tours, WTS Travel and Luxury Tours are still low. However, Chairman also noted that the sale by Lapan Lapan Travel as a new member has been encouraging.*
362. CCS notes that Sri Maju asserted that they did not adhere to the revised prices as announced by the EBAA. However, even if they deviated from the agreement by continuing to charge their own prices, this did not mean that they were not party to the FIC agreement. As stated at 45 to 46 CCS considers that an agreement would still be caught under the section 34 prohibition even if it was not the intention of the Party to implement or adhere to the terms of the agreement. In the present case, Sri Maju did not raise any objections to fixing the price of the FIC when discussions on this took place at the 2 October 2007 and the 21 November 2007 meetings. At most, Susan Ng may have raised concerns about the quantum of the increase, but this is not sufficient to have distanced Sri Maju from the agreement. As Susan Ng's own evidence to CCS revealed, ultimately, she chose to support EBAA's initiative to revise the FIC. It is also noteworthy that Sri Maju did not object to being a recipient of the documents containing information about the revised FIC prices. Through its participation in the FIC discussion, Sri Maju had obtained information about the future conduct of its competitors, thereby eliminating the uncertainty of their future actions. CCS finds that Sri Maju was a party to the FIC agreement.
363. In respect of Lapan Lapan, Luxury, Nam Ho, T&L, Travelzone and WTS, CCS notes that they joined the EBAA after the FIC agreement was first reached on 6 July 2005. However, it cannot be denied that all of them were party to the FIC agreement/concerted practice, at the very least from the following dates: 2 October 2007 for Luxury and WTS, 18 October 2007 for Lapan Lapan, Nam Ho and T&L and 21 November 2007 for Travelzone.
364. Representatives from Luxury and WTS were present at the Executive Committee meeting on 2 October 2007 where they agreed to a review of the price of the FIC coupons due to increased operating costs. The email and letter dated 18 October 2007 committing the members to the revised rates were circulated to Luxury and WTS and no objection was raised from either of them. In addition, representatives of Luxury and WTS were present at the AGM on 21 November 2007 where there was an agreement on the implementation of the revised FIC on 1 December 2007. The minutes of meeting were subsequently circulated to them and they did not object to the minutes. Instead they proceeded to implement the agreement

by selling the FIC coupons at the revised rates of \$3 for one-way and \$5 for two-way.

365. CCS notes that Lapan Lapan claimed that they did not sell the FIC nor did their overall selling prices increase as a result of providing the FIC without charge to their customers. Nonetheless, CCS considers that Lapan Lapan was a party to the FIC agreement/concerted practice.
366. Lapan Lapan received Tan Kah Hin's email, dated 18 October 2007, annexing a letter of the same date to all members. Both these documents referred to a revision of the FIC prices. On 1 November 2007, Lapan Lapan received another email from Tan Kah Hin annexing a "*Notice of Annual General Meeting*" which stated as follows:

5. To transact any other ordinary business that may properly be transacted at an Annual General Meeting.

- a. To confirm and execute Travel Malaysia 2008 event in April and October 2008.
- b. **To adopt the implementation of the Revised FIC Surcharges.**
- c. Others.

(Emphasis added)

367. Wesley Ng did not deny attending the 4th AGM which was held on 21 November 2007. He stated that he was informed during the AGM that EBAA members should sell the FIC to their customers. Lapan Lapan subsequently received a copy of the FIC authorisation template from EBAA with the revised FIC prices on 22 November 2007. CCS notes that between 1 December and 31 December 2007, Lapan Lapan purchased a total of 4,000 one-way FIC coupons and 100 two-way FIC coupons from the EBAA at the revised rate of 65 cents per one-way coupon and \$1 per two-way coupon⁷⁸⁷. At EBAA's Executive Committee meeting held on 19 February 2008, Wesley Ng was appointed a member of the Executive Committee. As Wesley Ng himself was prepared to concede, Lapan Lapan would obtain a competitive advantage if he was able to sell express bus tickets to his customers for the same price but with the insurance coverage at no additional charge.

⁷⁸⁷ See Appendix 9 of Rajah & Tann's letter dated 23 December 2008 in response to section 63 notice dated 18 December 2008

368. While Lapan Lapan did not appear to play an active role in the discussion leading to the FIC revision, this does not lead to the conclusion that they were not party to the FIC agreement. According to the jurisprudence of the EC, where an undertaking participates, even without taking an active part, in meetings between undertakings for anti-competitive purposes and does not publicly distance itself from the proceedings of those meetings, thereby causing the other participants to think that it subscribes to the result of those meetings and will conform with it, it can be considered as participating in the cartel resulting from those meetings⁷⁸⁸. CCS finds that Wesley Ng was physically present at the 4th AGM and did nothing to publicly distance Lapan Lapan from discussion about the FIC agreement. Instead, Lapan Lapan proceeded to spend S\$2,700 purchasing FIC coupons in December 2007, which purchase was reported at the subsequent Executive Committee meeting on 19 February 2008, thus causing the other members to believe that it subscribed to the agreement and will conform with it. Thus, CCS considers that Lapan Lapan had participated in the FIC agreement from 18 October 2007.
369. In their representations, Lapan Lapan, Luxury and WTS argued that they were unaware that the FIC was intended to cover a component of the fuel cost and that they were in a vertical relationship with the EBAA in respect of the purchasing of insurance coverage. As set out earlier at paragraph 297, it was clear from the FIC's name and on the face of the FIC coupons that the charge incorporated a fuel surcharge. In addition, it is clear from the letter issued by the EBAA authorising members to charge the revised FIC that the FIC was meant to "defray the increased operational fuel cost". The email and letter dated 18 October 2007 put this beyond doubt by citing "rising fuel prices" as the impetus for the revision in FIC. Given that the EBAA was never a supplier of fuel, the price of the FIC coupons sold by the members to passengers cannot be regarded as a suggested resale price imposed by a vertical supplier. Rather, the price was a result of an agreement among the EBAA members as fellow competitors on a component of the total ticket price.
370. In respect of Nam Ho and T&L, CCS notes that the email and letter dated 18 October 2007 committing the members to the revised rates and subsequently the minutes of the AGM on 21 November 2007 evidencing the endorsement of the implementation of the revised rates were circulated to them. Neither raised any objections. Both then proceeded to implement the agreement at the revised price after 1 December 2007. As associate

⁷⁸⁸ see Case T-7/89 SA Hercules Chemicals v Commission 1991 ECR II-1711, paragraph 232, Case T-12/89 Solvay v Commission 1992 ECR II-907, paragraph 98, and Case T-141/89 Trefileurope v Commission 1995 ECR II-791, paragraphs 85 and 86.

members purchasing FIC coupons directly from EBAA, both Nam Ho and T&L were able to profit from the difference in the purchase price from EBAA and the selling price to customers on every FIC coupon sold. In addition, Nam Ho applied the FIC to the guided tours it organised even though there was no requirement on it to do so. In this manner, Nam Ho thus benefited further from the agreement.

371. CCS notes that Travelzone attended the 4th AGM held on 21 November 2007 where the revised FIC prices and the commencement date for the new prices had been endorsed. Tan Kah Hin sent an email on 22 November 2007 appending the authorisation form to Aris Latiff, a Travelzone employee. Subsequently, sometime between 22 November to 1 December 2007, Travelzone purchased a batch of 500 one-way and 500 two-way FIC coupons and sold the two-way coupons at the revised price of \$5 per coupon on the Desaru tour packages it organised.
372. Taking into account the above, CCS is of the view that the discussions and the implementation relating to this first revision of the FIC constitutes evidence of the continuation of the price fixing agreement originally made between the members of the EBAA on 6 July 2005. It is reiterated that as of 1 December 2007, there is clear evidence that Five Stars, GR Travel, Gunung Raya, Konsortium, Lapan Lapan, Luxury, Nam Ho, Regent Star, Sri Maju, T&L, Transtar, Travelzone and WTS participated or continued in the agreement and/or concerted practice to fix the FIC price sold to customers. This agreement/concerted practice has as its object the restriction of competition on the quantum of the FIC which formed part of the price of a ticket to the destination concerned. In addition, the EBAA facilitated the operation of the agreement by calculating the relevant increases and circulating the relevant information.

(IV) The Second Revision to the Fuel and Insurance Charge (FIC)

(i) The facts and the evidence

Documentary evidence

373. The second revision to the FIC agreement was made at an Executive Committee meeting held on 5 June 2008. According to Tan Kah Hin, no minutes of meeting were recorded⁷⁸⁹. However, a circular⁷⁹⁰ dated 5 June

⁷⁸⁹ See Question and Answer 81 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁷⁹⁰ EBAA Circular dated 5 June 2008 titled "Fuel Surcharge – Revised Rate for New Booking" produced by EBAA during section 64 inspection on 24 June 2008 and marked TKH-004

2008 (the “5 June 2008 circular”), was sent by the EBAA to Five Stars, Gunung Raya, Konsortium, Lapan Lapan, Luxury, Nam Ho, Regent Star, Sri Maju, T&L, Transtar, and WTS.

374. The copy of the 5 June 2008 circular produced to CCS by the EBAA during the section 63 inspection conducted on 24 June 2008 had a document titled “*Attendance Sheet for Committee meeting (Fuel Hike) – 05 June 2008*”⁷⁹¹ and representatives for Five Stars, Konsortium, Luxury, Regent Star, Sri Maju, Transtar and WTS signed the attendance sheet. The representatives from GR Travel and Lapan Lapan did not sign the attendance sheet.
375. The 5 June 2008 circular states that the FIC was increased in response to the increase of RM\$1.00 in the cost of the diesel fuel pump price that was announced by the Malaysian authorities. The relevant extracts of the circular are reproduced below:

1. In view of the increase in cost of diesel fuel pump price of RM\$1.00 a litre as announced by the Malaysian authority effective 5th June 2008, EBAA executive committee has conveyed a meeting on the same day at 2:00pm and announced that with immediate effect, there will be an increase in cost of Fuel and Insurance Charge (FIC) surcharges to be collected from the passengers as follows:

Tier	From	To	Additional Cost	New Rate		
				1- Way	Return	2- Way
1	SIN	Malacca	RM\$150 > RM \$10	\$5	\$4	\$9
	SIN	Kuala Lumpur	RM\$250 > RM\$17	\$8	\$5	\$13
	SIN	Genting Highland	RM\$330 > RM\$20	\$9	\$5	\$14
2	SIN	Ipoh / Tg. Intan	RM\$420 > RM\$26	\$10	-	-
	SIN	Taiping / Rantau	RM\$550 > RM\$34	\$13	-	-
	SIN	Penang	RM\$650 >	\$14	-	-

⁷⁹¹ See TKH-004

3			RM\$40			
	SIN	Alor Star / Hatyai	RM\$750 > RM\$47	\$16	-	-

Note: The additional cost is the increase in the cost of RM\$1.00 per litre in diesel pump price and the resulted increase in cost per passenger is based on 60% load factor for a 26-seater VIP coach.

2. Tier 1 reflects the cost of FIC to be collected from passenger for destination up to Genting Highland and Tier 2 & 3 is for destination up to Alor Star / Hatyai.

3. All members are requested to collect the new FIC surcharge rate for booking with immediate effect. The new FIC surcharges would help off-set the cost of increase in pump prices for diesel at the current market rate.

4. The cost of the FIC offered to EBAA members remains unchanged at \$0.65 for the 1-way coupon and \$1.00 for the 2-way coupon.

376. The details of the new FIC rates were also published on the EBAA's website⁷⁹² where it was stated that:

Fuel and insurance charge (FIC) surcharges shall be collected for all passengers departing from Singapore travelling in member's express bus. This is applicable to all tickets purchased from its member companies.

377. The FIC rebates spreadsheet compiled by EBAA show the following purchases of FIC coupons⁷⁹³:

	2 nd qtr 08		3 rd qtr 08		4 th qtr 08	
	1-way	2-way	1-way	2-way	1-way	2-way
Five Stars	35,000	45,000	20,000	30,000	25,000	50,000
Konsortium	22,000	13,000	18,000	10,000	25,000	17,000
Lapan Lapan	12,000	-	-	-	-	-
Luxury	1,500	-	3,000	4,000	3,000	2,500

⁷⁹² See SYCS-38 referred to in Sebastian Yap's Notes of Information / Explanation Provided on 8 August 2008

⁷⁹³ Appendix 10 to Rajah & Tann's letter dated 23 December 2008 in response to CCS' section 63 notice dated 18 December 2008

	2 nd qtr 08		3 rd qtr 08		4 th qtr 08	
	1-way	2-way	1-way	2-way	1-way	2-way
Nam Ho	-	1,000	-	-	-	1,000
Sri Maju	6,000	6,000	3,415	1,322	8,000	4,000
T&L	-	-	-	-	-	-
Transtar	17,000	16,000	18,000	14,000	16,000	14,000
WTS	2,500	5,000	-	8,000	-	10,000

378. Coupon purchase forms⁷⁹⁴ indicate that the following Parties purchased FIC coupons after 5 June 2008:

- a) Sri Maju purchased 2,000 one-way and 2,000 two-way coupons on 7 June 2008;
 - b) Konsortium purchased 2,000 one-way and 4,000 two-way coupons on 11 June 2008 and 2,000 one-way and 2,000 two-way coupons on 23 June 2008⁷⁹⁵;
 - c) Transtar purchased 3,000 one-way and 3,000 two-way coupons on 11 June 2008 and 2,000 one way and 3,000 two-way coupons on 23 June 2008;
 - d) Five Stars purchased 5,000 two-way coupons on 16 June 2008; and
 - e) Lapan Lapan purchased 3,000 one-way coupons on 16 June 2008.
379. On 24 July 2008, the EBAA sent a letter to its members stating that at a meeting held on 23 July 2008, the Executive Committee decided to remind members that the minimum selling price of express bus tickets to various locations was merely a recommendation and that the EBAA would no longer provide recommendations on the fuel charge to be imposed by the members when selling the FIC coupons to their customers⁷⁹⁶.

Evidence from the Interviews

⁷⁹⁴ Produced by EBAA during CCS' section 64 inspection on 24 June 2008, marked TKH-016

⁷⁹⁵ Coupon purchase form dated 23 June 2008 additionally produced by Konsortium in response to CCS' section 63 notice on 3 July 2008

⁷⁹⁶ See EBAA letter dated 24 July 2008, referred to as TKH-53 in Tan Kah Hin's Notes of Information / Explanation Provided on 14 January 2009

380. Interview of EBAA personnel⁷⁹⁷ – Tan Kah Hin said that the meeting on 5 June 2008, 2 p.m. was called by Sebastian Yap⁷⁹⁸ on 4 June 2008 in response to the impending fuel increase in Malaysia⁷⁹⁹. The meeting was attended by representatives from Five Stars, Konsortium, Luxury, Regent Star, Sri Maju, Transtar, WTS, and EBAA⁸⁰⁰. According to Tan Kah Hin, Ken Lim, Wesley Ng and Raymond Lim did not attend. Raymond Lim was represented by a member of his staff⁸⁰¹.
381. Tan Kah Hin said that at the meeting, the members discussed whether individual companies should increase their coach fares but this was rejected as members had different fare structures and computation systems⁸⁰². The members concluded that it was easier and less complicated to raise the FIC rather than the coach fares as all members were selling the FIC.
382. Tan Kah Hin said that all members present at the meeting agreed on the formula for computing the increases to the FIC⁸⁰³. Having agreed on the formula, he, Voo Wei Keong, Elson Yap and two operations staff from Transtar remained behind⁸⁰⁴ to work out the final FIC increases⁸⁰⁵. The rest of the members left. Tan Kah Hin confirmed that all the members present agreed to the revision and increase to the FIC and that there were no objections from any of the members present⁸⁰⁶. On the instructions of Elson Yap, Tan Kah Hin sent the 5 June 2008 circular to three non-members, namely Grassland, 707 Travel Pte Ltd and Alisan⁸⁰⁷. None of the

⁷⁹⁷ See Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁷⁹⁸ See Answer to Question 79 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁷⁹⁹ See Answer to Question 83 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰⁰ See Answer to Question 80 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008. Representatives were Johnny Lim (Five Stars), Susan Ng (Sri Maju), Elson Yap (Transtar) and two coach operations staff from Transtar, Sebastian Yap (Regent Star), Voo Wei Keong (WTS), Vincent Lee (Luxury), one male representative from Konsortium and Tan Kah Hin (EBAA).

⁸⁰¹ See Answer to Question 85 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰² See Answer to Questions 90, 91 & 92 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰³ See Answers to Questions 101 & 106 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰⁴ See Clarification after Answer to Question 110 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰⁵ See Answer to Question 112 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰⁶ See Answers to Questions 116 & 117 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

⁸⁰⁷ See Answer to Question 123 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

- recipients of the 5 June 2008 circular raised any objections to the revision to the FIC⁸⁰⁸.
383. Interview of Five Stars personnel⁸⁰⁹ - Johnny Lim confirmed that he attended the meeting on 5 June 2008. However, while he said that he left the meeting at about 4 p.m.⁸¹⁰, he confirmed that he was present during the discussions on how to calculate the increases⁸¹¹.
384. Johnny Lim also stated that after he received the 5 June 2008 circular sometime after 7 p.m. on 5 June 2008, he forwarded this to his staff and informed them to make the “*the change according to what EBAA has discussed*”⁸¹². On 6 June 2008, Ivy Bong, a Five Stars’ employee, sent the new FIC rates to her colleagues and Five Stars’ agents.
385. Interview of GR Travel and Gunung Raya personnel - Vincent Lim did not attend the meeting on 5 June 2008. However, he received the 5 June 2008 circular from the EBAA⁸¹³. Vincent Lim said that by 5 June 2008, GR Travel was no longer purchasing FIC coupons from EBAA⁸¹⁴. GR Travel had also terminated its membership of EBAA as recorded in the minutes of Executive Committee meeting held on 19 February 2008 due to the merger of GR Travel with Five Stars⁸¹⁵. Vincent Lim said that at this time all FIC coupons were sold under Five Stars as Gunung Raya and GR Travel had merged with it.
386. Ken Lim stated that he did not attend the meeting of 5 June 2008. However, he confirmed that he received the 5 June 2008 circular from the EBAA⁸¹⁶.

⁸⁰⁸ See Answers to Questions 116 & 117 of Tan Kah Hin’s Notes of Information / Explanation Provided on 27 August 2008

⁸⁰⁹ See Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008, Ken Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁸¹⁰ See Answer to Question 391 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁸¹¹ See Answer to Question 396 of Johnny Lim’s Notes of Information / Explanation Provided on 6th August 2008

⁸¹² See Answers to Questions 401 and 436 of Johnny Lim’s Notes of Information / Explanation Provided on 6 August 2008

⁸¹³ See Answer to Question 134 of Vincent Lim’s Notes of Information provided on 15 August 2008.

⁸¹⁴ See Answers to Questions 155 and 156 of Vincent Lim’s Notes of Information / Explanation provided on 15th August 2008

⁸¹⁵ See Answer to Question 123 of Vincent Lim’s Notes of Information / Explanation provided on 15 August 2008

⁸¹⁶ See Answers to Questions 308 & 309 of Ken Lim’s Notes of Information / Explanation Provided on 6 August 2008

387. Interview of Konsortium personnel - Joe Lim attended the meeting on 5 June 2008.⁸¹⁷ Raymond Lim confirmed that he received the 5 June 2008 circular⁸¹⁸.
388. Joe Lim said that there was a discussion amongst the Executive Committee on how to deal with the increase in the cost of diesel announced by the Malaysian government. Joe Lim said that at first there was discussion on increasing the selling prices of tickets to deal with the diesel increase. However, this was rejected. Instead, the Executive Committee decided to amend the FIC rates⁸¹⁹. Joe Lim said that Konsortium increased their FIC charges on 9 June 2008⁸²⁰.
389. Interview of Lapan Lapan personnel - Wesley Ng said that he did not attend the meeting of 5 June 2008 but had received the 5 June 2008 circular⁸²¹. Wesley Ng confirmed that Lapan Lapan was still offering the FIC to their customers who purchased an express bus ticket. Wesley Ng reiterated that they did so without charge⁸²².
390. Interview of Luxury personnel - Vincent Lee stated that he attended the meeting held on 5 June 2008 and received the 5 June 2008 circular⁸²³. Vincent Lee said that Sebastian Yap called for the meeting on 5 June 2008 and Sebastian presented on his proposal to increase the FIC rates⁸²⁴. No one else present at the meeting suggested alternative amounts. Vincent Lee recalled that none of the members present objected to the increases and he thought that everyone had agreed to the new increases⁸²⁵. Vincent Lee said that Luxury did increase their FIC charges after 5 June 2008. However, he

⁸¹⁷ See Answer to Question 353 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁸¹⁸ See Answer to Question 345 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁸¹⁹ See Answer to Question 353, 356 & 357 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁸²⁰ See Answer to Question 359 of Joe Lim's Notes of Information / Explanation Provided on 8 August 2008

⁸²¹ See Answers to Questions 182 & 183 of Wesley Ng Fun Mun's Notes of Information / Explanation Provided on 11 August 2008

⁸²² See Answer to Question 207 of Wesley Ng Fun Mun's Notes of Information / Explanation Provided on 11 August 2008

⁸²³ See Answers to Questions 352 to 354 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

⁸²⁴ See Answers to Questions 351, 352 & 358 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

⁸²⁵ See Answers to Questions 367 to 368 of Vincent Lee's Notes of Information / Explanation Provided on 8 August 2008

- claims that he told the staff that the EBAA prices were a guideline and that the counter staff could offer discounts⁸²⁶.
391. Rendy Wong, manager at Luxury, was present at the 5 June 2008 meeting⁸²⁷. Rendy Wong claimed that there was a consensus amongst those present at the meeting to increase the FIC⁸²⁸.
 392. Interview of Nam Ho personnel - Marshall Ooi did not attend the meeting of 5 June 2008 but he received the 5 June 2008 circular⁸²⁹. Marshall Ooi said that after the meeting on 5 June 2008, Nam Ho sold FIC coupons at the rates set by Konsortium when they were selling Konsortium packages. While Marshall Ooi claimed that Nam Ho set its own FIC rates when it sold FIC coupons on its own products⁸³⁰, he agreed that the FIC rates implemented by Nam Ho were either the same as what EBAA had announced or higher⁸³¹.
 393. Interview of Regent Star personnel - Sebastian Yap said that he attended the meeting on 5 June 2008 and received the 5 June 2008 circular. He said that Elson Yap had called for the meeting⁸³². Sebastian Yap said that there was a discussion amongst those present. A number of formats for revising the FIC were suggested, but eventually the format suggested by Elson Yap was adopted⁸³³. Sebastian Yap said that there were no objections and there was unanimous agreement amongst those present to the revised FIC amounts⁸³⁴.
 394. Interview of Sri Maju personnel – Susan Ng attended the meeting on 5 June 2008 and received the EBAA circular dated 5 June 2008.⁸³⁵ Susan Ng said that there was a discussion and that the “*majority agreed to the increases*

⁸²⁶ See Answers to Questions 382 & 384 of Vincent Lee’s Notes of Information / Explanation Provided on 8 August 2008

⁸²⁷ See Answer to Question 82 of Wong Chih Chiang’s Notes of Information / Explanation Provided on 27 November 2008

⁸²⁸ See Answer to Question 94 of Wong Chih Chiang’s Notes of Information / Explanation Provided on 27 November 2008

⁸²⁹ See Answers to Questions 196 to 198 of Marshall Ooi’s Notes of Information provided on 11 September 2008

⁸³⁰ See Answers to Questions 89 to 93 of Marshall Ooi’s Notes of Information provided on 19 January 2009

⁸³¹ See Answers to Questions 265 of Marshall Ooi’s Notes of Information provided on 11 September 2008

⁸³² See Answers to Questions 154 to 156 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁸³³ See Answer to Question 163 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁸³⁴ See Answers to Questions 177 to 179 of Sebastian Yap’s Notes of Information / Explanation Provided on 8 August 2008

⁸³⁵ See Answer to Question 265 of Susan Ng’s Notes of Information / Explanation Provided on 11 August 2008.

and the minority just followed". There were no objections to the increases⁸³⁶. Susan Ng said that while Sri Maju had reservations about the increases, nevertheless, she agreed with the majority⁸³⁷.

395. However, Susan Ng claimed that Sri Maju subsequently did not implement the FIC increases agreed at the meeting on 5 June 2008:

Q288. Why didn't Sri Maju follow the rates recommended in the FIC Surcharge – Revised Rate circulated by the EBAA [NSK-032] (5 June 2008 circular)? Did you look at this table to determine (y)our increases?

A. This is because our customers may not be able to accept it so Sri Maju did not increase the price at the same time with the other players in the industry. It was only when customers queried about it and when they were unable to cover our costs, did we increase their coach ticket prices. For KL, we increased \$5, for Genting, we increased by \$5. This should be included in the price of the coach ticket but I am unsure why it is labelled as FIC. Yes, we looked at the table circulated by the EBAA in determining the prices of our coach ticket. Our company has our own principles and operational structure so we do not need to follow EBAA's⁸³⁸

Later, Susan Ng clarified that the FIC was incorporated into the price of express bus tickets and coach package tours sold by Sri Maju and that the FIC was sold at the rates prescribed by the EBAA⁸³⁹.

396. Interview with T&L personnel - Tan Yong Leng did not attend the meeting on 5 June 2008 but he received the EBAA circular of 5 June 2008⁸⁴⁰. Tan Yong Leng was told by Raymond Lim that he could no longer sell the FIC coupons (priced at \$3 for a one-way ticket and \$5 for a two-way ticket). T&L had to use Konsortium's FIC coupons if he used their buses⁸⁴¹. Tan Yong Leng said that when he sold Konsortium packages he would have to sell it at the price that Konsortium stated⁸⁴² and he would only earn the

⁸³⁶ See Answers to Questions 272 and 273 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁸³⁷ See Answer to Question 274 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁸³⁸ See Answer to Question 288 of Susan Ng's Notes of Information / Explanation Provided on 11 August 2008

⁸³⁹ See Answers to Questions 25 & 26 of Susan Ng's Notes of Information / Explanation Provided on 21 January 2009

⁸⁴⁰ See Answers to Questions 149 & 151 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁸⁴¹ See Answers to Questions 156 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁸⁴² See Answers to Questions 168 to 169 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

- agent's commission from Konsortium at \$5 (one-way) and \$10 (two-way)⁸⁴³.
397. Interview of Transtar personnel – Elson Yap attended the meeting on 5 June 2008⁸⁴⁴. He said that Sebastian Yap was the one who called for the meeting⁸⁴⁵. Elson Yap said that there was a discussion amongst those present. As a result of that, new FIC prices were decided and he said that there was no objection to the FIC price increases⁸⁴⁶. However, Elson Yap later claimed that there was agreement, amongst those present, on the need to increase the FIC but not on the quantum of the increase⁸⁴⁷.
398. Sam Sze Wei, Transtar's transport manager, went to the EBAA office on 5 June 2008, but when he arrived, only Elson Yap, Sebastian Yap, Tan Kah Hin and another of his colleagues from Transtar, Sean Lim, were present. Sam Sze Wei then jotted down the new FIC prices that were on a whiteboard⁸⁴⁸. When he returned to Transtar's office, he had a discussion with Elson Yap, Sebastian Yap and Sean Lim about the new FIC rates to be imposed. The new FIC rates were then incorporated into Transtar's reservation system⁸⁴⁹.
399. EBAA records of the FIC coupon purchase form also show that Transtar had purchased 2000 one-way and 3000 two-way coupons from EBAA on 23 June 2008 after the increase in FIC charges⁸⁵⁰.
400. Interview of WTS personnel - Voo Wei Keong attended the meeting on 5 June 2008 and received a copy of the EBAA circular.⁸⁵¹ Voo Wei Keong said that a formula to determine the increases was suggested at the meeting

⁸⁴³ See Answers to Question to 169 of Tan Yong Leng's Notes of Information / Explanation Provided on 11 September 2008

⁸⁴⁴ See Answer to Question 128 of Elson Yap's Notes of Information Provided on 14 August 2008

⁸⁴⁵ See Answer to Question 129 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁸⁴⁶ See Answers to Questions 136 & 138 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁸⁴⁷ See Answer to Question 139 of Elson Yap's Notes of Information / Explanation Provided on 14 August 2008

⁸⁴⁸ See Answers to Question 118 to 122 of Sam Sze Wei's Notes of Information / Explanation Provided on 26 November 2008

⁸⁴⁹ See Answers to Question 138 of Sam Sze Wei's Notes of Information / Explanation Provided on 26 November 2008

⁸⁵⁰ See Answer to Question 244 of Sebastian Yap's Notes of Information provided on 8 August 2008

⁸⁵¹ See Answers to Questions 237 & 238 of Voo Wei Keong's Notes of Information / Explanation Provided on 11 August 2008

and that everyone at the meeting “*more or less agreed*” with it⁸⁵². Voo Wei Keong said that no one objected with the increases that were worked out⁸⁵³.

401. Voo Wei Keong confirmed that WTS had applied the revised FIC charges subsequent to the meeting of 5 June 2008:

“Q283. Did WTS sell the FIC coupons to its customers at the new rates agreed at the meeting on 5 June 2008, after this date?

A: Yes.”

(ii) CCS’ analysis of the evidence

Second Revision to FIC agreement

402. The evidence indicates that the following EBAA members: Five Stars, Konsortium, Luxury, Regent Star, Sri Maju, Transtar and WTS agreed to revise the FIC agreement at an Executive Committee meeting held on 5 June 2008. Representatives from these parties agreed on the method of calculation of the increases to the FIC rates sold to their customers. The evidence shows that amongst the members present, there was unanimity on the decision to revise the FIC rates and none of the members objected to the need to revise or the method of calculation.
403. After the exact selling prices of the FIC was confirmed, Tan Kah Hin sent the 5 June 2008 circular to, *inter alia*, the members who attended the meeting setting out the revised rates for implementation. CCS notes that there were no objections from the recipients of the 5 June 2008 circular to the revisions.
404. CCS notes that in the case of Konsortium, after 6 June 2008, they were charging identical prices for the FIC prices stated in the 5 June 2008 circular for one-way express bus tickets to Malacca, Kuala Lumpur and Ipoh⁸⁵⁴. CCS notes that a travel brochure for “*KL Hotel Package by SVIP Coach (3)*” for the period 8 June 2008 to 30 September 2008 showed that the price of the FIC was identical to the prices stated in the 5 June 2008 circular⁸⁵⁵.

⁸⁵² See Answers to Questions 250 & 251 of Voo Wei Keong’s Notes of Information / Explanation Provided on 11 August 2008

⁸⁵³ See Answers to Questions 254 & 255 of Voo Wei Keong’s Notes of Information / Explanation Provided on 11 August 2008

⁸⁵⁴ See email price-list titled “Konsortium Express & Tours Pte Ltd (Effective from – 06 June to 31 Oct 2008) given to CCS by Konsortium by a letter dated 3 July 2008 in response to section 63 notice

⁸⁵⁵ See RL-54 referred to in Raymond Lim’s Notes of Information / Explanation Provided on 8 August 2008

405. Travel brochures obtained from Five Stars showed that after 5 June 2008, the FIC that Five Stars charged for express one-way and two-way bus tickets to KL⁸⁵⁶ and Genting⁸⁵⁷ were identical to the FIC prices stated in the 5 June 2008 circular. The price of a one-way FIC coupon for an express bus ticket to Ipoh⁸⁵⁸ and Penang⁸⁵⁹ was also identical to the price agreed and set out in the 5 June 2008 circular. The FIC being charged for a coach package tour to Malacca was also identical to the price stated in the 5 June 2008 circular.
406. CCS also notes that Luxury's prices for the FIC also increased accordingly. Luxury's Rendy Wong said that the manner in which the FIC increases were calculated would not apply to Luxury as they used different types of buses. He claimed that he would use the calculation method that had been used at the Executive Committee meeting as a guideline when he calculated Luxury's increases⁸⁶⁰. However, when shown a Luxury brochure for "*2D1N Kuala Lumpur Go as you please*" package⁸⁶¹ and for the "*2D KL Spa Indulgence*" package⁸⁶², Rendy Wong agreed that the new FIC increases stated on these packages were the same as the increases agreed at the 5 June 2008 meeting⁸⁶³. Travel brochures obtained from Luxury show that the FIC that Luxury was charging for express bus tickets to KL and Malacca were identical to the prices agreed at the meeting on 5 June 2008⁸⁶⁴.
407. In the case of Transtar, CCS notes that after EBAA's 5 June 2008 circular, an urgent internal memo was sent by Ms Molly Chittick, Transtar's senior sales manager to Transtar counter staff listing the new FIC rates to be

⁸⁵⁶ See JL-019 brochure titled "Sin ~ Kuala Lumpur ~ Sin by S. VIP Coach" provided by Five Stars during CCS' section 64 inspection on 24 June 2008

⁸⁵⁷ See JL-019 brochure titled "Genting Coach Transport (S. VIP Coach)" provided by Five Stars during CCS' section 64 inspection on 24 June 2008

⁸⁵⁸ See JL-019 brochure titled "Sin ~ Ipoh ~ Sin by Executive Coach" provided by Five Stars during CCS' section 64 inspection on 24 June 2008

⁸⁵⁹ See JL-019 brochure titled "Sin ~ Penang ~ Sin BY Executive Coach" provided by Five Stars during CCS' section 64 inspection on 24 June 2008

⁸⁶⁰ See Answer to Question 96 of Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

⁸⁶¹ See WCC-016 referred to in Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

⁸⁶² See WCC-017 referred to in Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

⁸⁶³ See Answers to Questions 129 & 138 of Wong Chih Chiang's Notes of Information / Explanation Provided on 27 November 2008

⁸⁶⁴ See email marked from Janice Lim dated 7 June 2008 titled "Revised KL Coach Ticket rate with IMMEDIATE effect" attaching a document titled "Coach Ticket Rate" provided to CCS by Luxury during section 64 inspection on 24 June 2008 and marked RW-008

charged “(w)ith (i)mmediate effect”⁸⁶⁵. The FIC prices for the S.VIP and Premium coaches to Kuala Lumpur, Genting, Ipoh, Taiping and Penang listed in the internal memo were identical to the prices agreed at the meeting on 5 June 2008 and contained in the 5 June 2008 circular. Transtar published on its website⁸⁶⁶ a page titled “*Fuel and Insurance Charge*”. The page stated:

In view of the increase in cost of diesel fuel pump price of RM\$1.00 a litre as announced by the Malaysian authority effective 5 June 2008, EBAA Executive Committee has announced that with immediate effect, there will be an increase in cost of Fuel and Insurance Charge (FIC) surcharges to be collected from passengers ...

408. The webpage went on to list the prices of the new FIC rates for various destinations served by Transtar and for the different classes of Transtar coaches. These were the same as or higher than those stated in the 5 June 2008 circular.
409. CCS notes that provided an undertaking participates, even without taking an active part, in meetings between undertakings for anti-competitive purposes and does not publicly distance itself from the proceedings of those meetings, thereby causing the other participants to think that it subscribes to the result of those meetings and will conform with it, it can be considered as participating in the anti-competitive agreement resulting from those meetings⁸⁶⁷.
410. Although Lapan Lapan did not attend the meeting on 5 June 2008, they nonetheless received the 5 June 2008 circular setting out the revised prices. Lapan Lapan likewise did not object to the revised prices. Instead they continued to purchase FIC coupons from the EBAA and provided them to their customers whenever they purchased tickets from them. As stated earlier at paragraphs 45 and 46, it is established case law that a member who deviates from an anti-competitive agreement is not absolved. As stated at paragraphs 365 to 368 above, Lapan Lapan’s actions of providing FIC coupons to its customers without charge does not absolve it of liability. CCS finds that Lapan Lapan was aware of the revised FIC prices. The receipt of prospective price information enabled it to eliminate in advance uncertainty about the future conduct of its market competitors and to take

⁸⁶⁵ Urgent Memo from Molly Chittick to counter staff titled “New Fuel Surcharges” dated 6 June 2008 produced by Transtar during section 64 inspections on 23 June 2008 and marked EY-002

⁸⁶⁶ See SY-020 given to CCS by Transtar during section 64 inspection of Transtar’s premises

⁸⁶⁷ see Case T-7/89 Hercules Chemicals v Commission 1991 ECR II-1711, paragraph 232, Case T-12/89 Solvay v Commission 1992 ECR II-907, paragraph 98, and Case T-141/89 Trefileurope v Commission 1995 ECR II-791, paragraphs 85 and 86

into account the information disclosed in determining its policy on the market. As stated in the discussion relating to the first revision of the FIC, Lapan Lapan clearly used such information by choosing not to charge for the FICs provided to its customers.

411. Although Nam Ho did not attend the meeting on 5 June 2008, it received the 5 June 2008 circular. Marshall Ooi claimed that from 5 June 2008 onwards, Nam Ho set its own FIC prices sold with its own packages. However, CCS notes that its FIC rates after 5 June 2008 were at least the same as or higher than the agreed rates stated in the 5 June 2008 circular. It is therefore clear that the receipt of such price information allowed it to eliminate in advance uncertainty about the future conduct of its competitors in the market and to take into account the same in determining its own pricing decisions. As such, Nam Ho is not absolved from liability for participation in the FIC agreement.
412. CCS notes that T&L does not operate its own express buses and was unable to purchase and sell its own FIC coupons on the coach tickets supplied by other EBAA members e.g. Konsortium after 5 June 2008. In the circumstances, CCS considers there is insufficient evidence to show that T&L was a party to the FIC agreement after 5 June 2008.
413. In the present case the parties that were sent the 5 June 2008 circular, received prospective information affecting prices that would enable them to eliminate in advance uncertainty about the future conduct of their market competitors and to take into account the information disclosed in determining the policy which they intended to follow on the market. Therefore, CCS considers that the FIC agreement was revised at the meeting on 5 June 2008 and that Five Stars, Konsortium, Lapan Lapan, Luxury, Nam Ho, Regent Star, Sri Maju, Transtar and WTS were still party to the FIC agreement, or at the very least, the concerted practice.
414. CCS considers that even though Gunung Raya was still a member of the EBAA, its participation in the FIC agreement had been terminated with effect 1 January 2008, when its operations were merged with Five Stars.
415. The evidence reveals that the second revision of the FIC rates was premised on an intention to have a uniform increase in prices by EBAA members in order to offset the increase in diesel prices in June 2008. It is pertinent that once news broke of a hike in the price of diesel in Malaysia, instead of deciding on their own how to respond to this increase, one of the key responses for EBAA members was to call for a meeting to discuss what should be the appropriate change to their prices. At this meeting on 5 June

2008, there was discussion amongst the EBAA members on whether to increase the coach fares or the FIC charges before they agreed on a revision of the FIC rates. It was decided that an increment in the FIC rates would be less complicated. A further discussion then took place amongst members who were tasked to work out what should be the actual increases in the fuel prices before this information was disseminated to the rest of the members by way of the 5 June 2008 circular. CCS notes that the Parties would stand to profit significantly from the revised FIC rates. The percentage of profit that each Party stood to gain from the revised FIC rates would be between 669% and 2361% (see Annex 2 for a table of the profits from the revision to the FIC rates).

(V) CCS' conclusion on the FIC agreement

(i) Infringement by the members

416. The evidence reveals that the agreement to fix the prices of the FIC between members of the EBAA on 6 July 2005, continued up to 24 July 2008⁸⁶⁸. CCS considers that the FIC agreement was terminated by the Parties when the EBAA sent the 24 July 2008 letter to the Parties. This FIC agreement was continuing and regularly revised as and when circumstances warranted it. As laid out above, there have been no less than 2 price revisions in the 3 years preceding CCS' inspection on 24 June 2008. Despite claims of independence in determining the pricing of coach fares and/or FIC rates, EBAA members would consult each other in order to prevent any price competition. Members of the EBAA regularly met at Executive Committee meetings to consider the ongoing sales of the FIC by other members.

Representations by the Parties

417. The representations by Five Stars, GR Travel, Gunung Raya, Konsortium, Lapan Lapan, Luxury and WTS raised the argument that the FIC agreement had net economic benefits. These parties argued that the FIC agreement enabled them to obtain the best insurance coverage at the cheapest possible price, which would not have been possible but for the bulk purchase by EBAA. In addition, Lapan Lapan, Luxury and WTS argued that there was no evidence of any adverse appreciable effects as the industry remained extremely competitive and no competitor had been driven out of the market as a direct consequence of the sale of the FIC coupons.

⁸⁶⁸ See EBAA's circular dated 24 July 2008 to EBAA members

418. It is CCS' view that these representations are unmeritorious. The FIC agreement was not necessary for obtaining the bulk discounts for insurance coverage as the EBAA could have obtained insurance coverage at a bulk discount for its members without the members agreeing on the price for sale to their passengers. In fact, CCS understands that EBAA EBAA was able to sell coupons for insurance to members without any agreement between the parties on the price at which these coupons should be sold. Further, as set out earlier, the FIC incorporated a fuel component which is wholly unrelated to the obtaining of insurance coverage from AIG.

(iii) Infringement by the EBAA

419. CCS considers that the EBAA played an instrumental role in facilitating and administering the FIC agreement. This was in spite of the fact that its actions were contrary to clause 21.4 of the EBAA Constitution, see paragraph 6. Firstly, the EBAA employed two full time staff i.e. Tan Kah Hin and Katherine Ong who, in the course of their work, provided secretariat support for the agreement. The EBAA also provided invaluable support in that the EBAA's manager, Tan Kah Hin, calculated increases whenever there were plans to increase the FIC charges. He circulated information on the FIC rates to EBAA members and sent reminder emails to members who did not purchase FIC coupons.

420. The EBAA produced documents to facilitate the smooth operation of the agreement. Even the authorisation letters sent out by EBAA after the 18th Executive Committee meeting held on 9 November 2005 contained the phrase **"By order, management committee, EBAA"**. CCS' view is that the purpose of the authorisation letters was to provide a veneer of authority for the member displaying the letter that the member selling the FIC was authorised and required to sell the FIC. As explained by both Raymond Lim⁸⁶⁹ and Johnny Lim⁸⁷⁰, the letter was meant to reduce potential arguments with customers at the front desk over the FIC. In CCS' view, the authorisation was calculated to lead the customer to conclude that the EBAA member had no other choice but to increase the FIC and charge the customer the rate specified in the letter.⁸⁷¹

421. Additionally, EBAA played a crucial role in the monitoring of the implementation of the agreement. When the FIC was first implemented,

⁸⁶⁹ See Answer to Question 318 of Raymond Lim's Notes of Information / Explanation Provided on 8 August 2008

⁸⁷⁰ See Answer to Question 359 of Johnny Lim's Notes of Information / Explanation Provided on 6 August 2008

⁸⁷¹ See Answer to Question 32 of Tan Kah Hin's Notes of Information / Explanation Provided on 27 August 2008

Kim Huang, as the administrator of the EBAA, kept records of the sale of the FIC coupons to EBAA members⁸⁷². Subsequently, Tan Kah Hin assumed the duties of monitoring the FIC sales and put up a report every six months⁸⁷³. Tan Kah Hin would also ensure the dissemination of price information as agreed upon to all members of EBAA after each Executive Committee meeting⁸⁷⁴ as detailed in paragraphs 208 to 213, 311 to 316 and 380 to 382. In CCS' view, this ensures that all members of the EBAA were duly updated with information after each Executive Committee meeting so as to ensure that there were no significant deviations of conduct by members who did not attend meetings.

422. Further, the EBAA also administered a rebate scheme to encourage the sale of FIC coupons by its members. Tan Kah Hin produced spreadsheets of the purchases made by EBAA members of one-way and two-way FIC coupons at half yearly intervals from 2005 to at least 30 June 2008. Comparison charts were tabled at Executive Committee meetings to encourage members who purchased low amounts to purchase more⁸⁷⁵. When members joined the EBAA but did not purchase the FIC coupons, Tan Kah Hin would send them email reminders⁸⁷⁶. CCS notes that Tan Kah Hin also had a personal pecuniary interest in ensuring the success of the FIC agreement; his variable bonus was dependant on EBAA's audited revenue of which FIC formed a source, see paragraph 211.
423. The EBAA also benefited financially from the sale of the FIC coupons. The evidence indicates that while revenue from the sale of FIC coupons constituted additional income for members to cover increases in fuel and labour costs⁸⁷⁷ it was also intended that the EBAA would make a profit from the sales of FIC coupons to members as it needed to have an income separate from that earned from membership subscriptions⁸⁷⁸. According to Raymond Lim, one of the reasons why the FIC rebate scheme was

⁸⁷² See Answer to Question 67 of Huang Xiu Qin's Notes of Information/Explanation Provided on 2 December 2008

⁸⁷³ See Answer to Question 106 of Tan Kah Hin's Notes of Information/Explanation Provided on 21 August 2008

⁸⁷⁴ See Answer to Question 119 of Tan Kah Hin's Notes of Information/Explanation Provided on 21 August 2008

⁸⁷⁵ See Minutes of 01/2008 monthly meeting Held on Tuesday, 19 February 2008 at 4.00pm at Five Stars Tours Office #05-01, People's Park Complex (Amendment), sent out to Committee Members on 21 Feb 2008. This was attended by Johnny Lim, Vincent Lee, Susan Ng, Sebastian Yap, Raymond Lim, Voo Wei Keong, Ken Lim and Tan Kah Hin

⁸⁷⁶ Email dated 21 February 2008 and 28 March 2008

⁸⁷⁷ See Answer to Question 2 of Huang Xiu Qin's Notes of Information/Explanation Provided on 2 December 2008

⁸⁷⁸ See Answers to Questions 4 and 5 of Huang Xiu Qin's Notes of Information/Explanation Provided on 2 December 2008

introduced was due to complaints from members that they were paying too much to EBAA for the FIC coupons⁸⁷⁹.

424. In *AC-Treuhand AG v Commission of the European Communities*, (the *Organic Peroxides* case see paragraph 65)⁸⁸⁰, the applicant was a consultancy firm and an agent which took instructions for the members of the cartel. On appeal to the CFI, it argued *inter alia* that the activities it was involved in were solely clerical and administrative activities and it did not participate in the anti-competitive exchange of information between the three organic peroxide producers. In response, the CFI stated:

129. Next, it is necessary to note the case-law concerning the conditions which the participation of an undertaking in a cartel must satisfy for it to be possible to hold that undertaking liable as a co-perpetrator of the infringement.

130. In that regard, it is sufficient for the Commission to show that the undertaking concerned attended meetings at which anticompetitive agreements were concluded, without manifesting its opposition to such meetings, to prove to the requisite legal standard that that undertaking participated in the cartel. In order to establish that an undertaking participated in a single agreement, made up of a series of unlawful acts over time, the Commission must prove that that undertaking intended, through its own conduct, to contribute to the common objectives pursued by the participants as a whole and [*100] that it was aware of the substantive conduct planned or implemented by other undertakings in pursuance of those objectives, or that it could reasonably have foreseen that conduct and that it was ready to accept the attendant risk. In that regard, where an undertaking tacitly approves an unlawful initiative, without publicly distancing itself from the content of that initiative or reporting it to the administrative authorities, the effect of its behaviour is to encourage the continuation of the infringement and to compromise its discovery. It thereby engages in a passive form of participation in the infringement which is therefore capable of rendering that undertaking liable in the context of a single agreement (see, to that effect, *Commission v Anic Partecipazioni*, cited in paragraph 65 above, paragraphs 83 and 87; *Aalborg Portland and Others v Commission*, cited in paragraph 23 above, paragraphs 81 to 84; and *Dansk Rørindustri and Others v Commission*, cited in point 113 above, paragraphs 142 and 143; see also *Tréfileurope v Commission*, cited in paragraph 108 above, paragraph 85 and the case-law cited therein). It is also apparent from the case-law that those principles [*101] apply *mutatis mutandis* in respect of meetings which are attended not only by competing

⁸⁷⁹ See Answer to Question 152 of Raymond Lim's Notes of Information / Explanation provided on 8 August 2008

⁸⁸⁰ Case T-99/04 in 2008/C 209/72

producers, but also by their clients (see, to that effect, Joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle and Others v Commission* [2001] ECR II-2035, paragraphs 62 to 66).

...

136. In the light of the considerations set out in paragraphs 115 to 127 above, the Court considers that those principles apply *mutatis mutandis* to the participation of an undertaking whose economic activity and professional expertise mean that it cannot but be aware of the anti-competitive nature of the conduct at issue and enable it to make a significant contribution to the committing of the infringement. In those circumstances, the applicant's argument that a consultancy firm cannot be regarded as a co-perpetrator of an infringement - because it does not carry out an economic activity on the relevant market affected by the restriction of competition and because its contribution to the cartel is merely subordinate - cannot be upheld.

425. As a separate undertaking, EBBA engaged in activities which were separate and could not be attributed to its members. As laid out above, CCS' view is that the acts carried out by EBAA's key employees i.e. Kim Huang and Tan Kah Hin amounted to invaluable support which contributed to the success and promotion of the FIC agreement between the members. As the EBAA's conduct was clearly separate from its members, CCS is of the view that the EBAA itself must be held responsible, independently of its members, for its involvement in the FIC agreement.
426. Even if an argument is made that once the members of an association are penalised, then the association must then be absolved from liability, such an argument must fail. As examined in paragraphs 59 to 69, the section 34 prohibition also applies to associations of undertakings in the face of existing agreements between association members: see the *Felt Roofing* case and *Cimenteries CBR and Others v Commission of the European Communities*⁸⁸¹, where the association was penalised independently of its members.

Representations by EBAA

427. EBAA argued that the CCS has not established that EBAA is an undertaking for the purposes of section 34, *inter alia*, on the basis that it has no economic activity and is not active in any market. EBAA further submitted that it is at most an association of undertakings. In this regard, EBAA argued that CCS has not established the capacity in which EBAA

⁸⁸¹ Case T-25/95 [2000] ECR II-491

was found liable, whether as an association of undertakings or as an undertaking. EBAA argued that its employees were merely following the instructions of the Executive Committee and performing mere secretarial activities with no discretionary powers of any sort. In its representations, EBAA referred to *Ahlström Osakeyhtiö and Others v Commission* [1988] ECR 5193 (“the Woodpulp case”) and argued that CCS has not adduced any evidence that EBAA’s conduct was separate from that of its members. CCS’ finding that EBAA’s conduct was separate from its members could only be based on the finding that EBAA made an anti-competitive decision in recommending resale prices to its members, which being a vertical agreement, was not in violation of section 34 of the Act.

428. CCS is unable to agree with these representations. As set out earlier in paragraph 42, CCS’ view is that EBAA is an undertaking within the meaning of the Act. Given its recurrent sale of FIC coupons to its members at a profit, its argument that it has no economic activity and is not active in any market is untenable.

429. In the *Woodpulp* case, the Kraft Export Association (“KEA”) was an association of US pulp producers. Article II(A) of its policy statement states that the members represented at a meeting will agree unanimously on prices and terms of payment for sales to a majority of the export markets of selected grades of pulp produced in the US. In so far as each member company will be informed in advance via the agenda when revised prices will be discussed, the unanimous agreement of the members present will be binding on all members. In fining KEA ECU 50,000 and the members of KEA amounts between 50,000 and 150,000, the EC said:

(120)3. Under the KEA agreement and on the basis of its policy statement, KEA, as an association of undertakings, adopted further decisions which restricted competition between its members. **The agreements on new prices between the members** represented at the regular meetings under Article II(A) of the policy statement (see paragraph 32) are binding for all members as to their announced prices and **take the form of price recommendations by KEA**. ...[emphasis added]

430. On appeal, the ECJ declared the decision concerning KEA void as it was apparent that KEA’s price recommendations could not be distinguished from the pricing agreements concluded by undertakings which were members and that KEA had not played a separate role in the implementation of those agreements.

431. In CCS’ view, the facts in the *Woodpulp* case are distinguishable from the present case. EBAA, as an undertaking, participated in the FIC agreement

between the members by facilitating and administering the agreement as highlighted earlier in paragraphs 419 to 426. In particular, Tan Kah Hin who was employed as a manager circulated information on the FIC rates to EBAA members, issued authorisation letters to them and monitored the sales of the FIC coupons, upon which his bonus was indirectly dependent. He was also involved in calculating the increases to the FIC when it was first revised in October 2007 and again in June 2008. As dealt with earlier at paragraphs 297 and 369, EBAA was not a supplier of fuel and its involvement in the FIC rates could not, by any means, be seen as a recommended resale price by a vertical supplier.

432. As highlighted earlier, the limited participation of a trade association in a cartel, in the form of secretarial and administrative support, does not preclude a finding that it is liable, independently of its members, for its involvement in operating the cartel: see the *Felt Roofing* case, *Cimenteries CBR and Others v Commission of the European Communities*. In the present case, the involvement of EBAA and its facilitation of the FIC agreement, as indicated by the tenor of the authorisation letters and public pronouncements, increased the stability of the functioning of the agreement. In CCS' view, EBAA played a separate role in the implementation of the FIC agreement.
433. In this respect, CCS considers that EBAA has infringed the section 34 prohibition by participating in the FIC agreement as an undertaking.

(iii) Conclusion that the FIC agreement had the Object or Effect of Preventing, Restricting or Distorting Competition

434. Given the manifestly anti-competitive object of the agreement, there is no need to show that the agreement and/or concerted practice had had effects restrictive of competition.
435. In view of the evidence laid out above, CCS concludes that the evidence unequivocally establishes the elements of an agreement, or at the very least, a concerted practice to fix the price of the FIC in the relevant market. CCS' view is that the following Parties are in breach of the section 34 prohibition: Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Lapan Lapan, Luxury, Nam Ho, Regent Star, Sri Maju, T&L, Transtar, Travelzone, WTS and the EBAA.

SECTION III: DECISION OF INFRINGEMENT

436. CCS is satisfied that there is sufficient evidence in paragraphs 100 to 433 above to find that the Parties listed at paragraph 1 above, infringed the

section 34 prohibition by entering into agreement(s) and/or concerted practices to fix prices in respect of the separate infringements listed in paragraphs 181 and 434 to 435 above. CCS therefore makes a decision that the Parties have infringed the section 34 prohibition and imposes penalties on the Parties, listed at paragraph 1 above in respect of participation in the MSP agreement and the FIC agreement, as applicable. Although CCS has analysed the MSP and FIC agreements separately for the purpose of liability, as the FIC was incorporated into the MSP, CCS will, where parties were involved with both MSP and FIC agreements, consider both together and impose a single penalty.

437. On the basis of the evidence set out at paragraphs 100 to 433 above, CCS has considered the relevant duration for each of the infringements. The duration of an infringement is of importance in so far as it may have an impact on the penalty that may be imposed for that infringement⁸⁸². CCS considers that the MSP agreement commenced on or about 1 June 2005 and was continuing in operation as at 24 July 2008, whilst the FIC agreement commenced on or about 1 June 2005 and continued until 24 July 2008⁸⁸³. Therefore, CCS considers that the duration of the MSP and FIC infringements are from 1 January 2006 until at least 24 July 2008 when the EBAA circulated the letter of 24 July 2008, see paragraphs 170 and 416.

438. Although the MSP agreement and the FIC agreement were both made before 31 July 2005, CCS does not consider that the Competition (Transitional Provisions for Section 34 Prohibition) applies. The Regulations state:

“2. *In these Regulations, unless the context otherwise requires –*

...

“transitional period” means the period from 1 January 2006 to 31 June 2006 (both dates inclusive).

3. – (1) *No penalty shall be imposed by the Commission on a party to an agreement made on or before 31st July 2005, for an infringement by the agreement of the section 34 prohibition –*

(a) during the transitional period;

(b) subject to regulations 6 (3) and 7 (1) and (2), during any extension of the transitional period granted to the party;

⁸⁸² See CCS Guidelines on the Appropriate Amount of Penalty, at paragraphs 2.1, 2.7 and 2.8

⁸⁸³ See letter from EBAA to members dated 24 July 2008

(c) subject to regulation 7, where the party has made an application and CCS notifies its decision on the application on or after 1st July 2006, during the interim period,; and

(d) subject to regulation 7 (4), where the party has made an application and the application is refused, during any period specified by CCS under regulations 5 (4) or by the Board under section 73 (8) of the Act on an appeal under regulation 9, for the party to bring the infringement to an end.

(2) Paragraph (1) does not apply to any infringement by any agreement of the section 34 prohibition which continues or occurs after the expiry of the applicable period referred to in paragraph (1)."

439. CCS considers that as the MSP agreement and FIC agreement continued in operation **after** 1 July 2006, Regulation 3(2) would apply and no immunity from penalties is conferred on the parties.

SECTION IV: CCS' ACTION

440. This section sets out CCS' action and its reasons.

A. Directions

441. Section 69(1) of the Act provides that where CCS 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 CCS considers that the FIC agreement has been terminated, it is not necessary to issue any directions in relation to the FIC agreement.

442. CCS notes that the MSP agreement remains in existence⁸⁸⁴. Therefore, and in order to bring the infringement to an end, CCS **directs**, in accordance with section 69(1) of the Act that the Parties listed in paragraph 181 terminate, with immediate effect, the MSP agreement.

B. Financial penalties - general points

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

⁸⁸⁴ Notwithstanding that EBAA's 24 July 2008 circular refers to the MSP as a "recommendation".

444. However, before imposing a financial penalty CCS must be satisfied that the infringement has been committed intentionally or negligently⁸⁸⁵. Similar positions are adopted in the EC and the UK and this was the position that CCS adopted in the *Pest Control Case*. CCS notes that both the EC 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 Bouwnijverheid (SPO) and Others v Commission of the European Communities*⁸⁸⁶ and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading*⁸⁸⁷.
445. As established in the *Pest Control Case*⁸⁸⁸, the circumstances in which CCS 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 actions 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.
446. Ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. CCS is likely to find that an infringement of the section 34 prohibition has been committed negligently where an undertaking ought to have known that its agreement or conduct would result in a restriction or distortion of competition⁸⁸⁹. CCS considers that price fixing 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.
447. CCS also considers that, by reason of the very nature of the agreements and/or concerted practices involving price fixing, 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

⁸⁸⁵ See section 69(3) of the Act and paragraphs 4.3 to 4.11 of CCS Guidelines on Enforcement

⁸⁸⁶ (Case C-137/95P) [1996] ECR I-1611

⁸⁸⁷ See [2002] CAT 1, [2002] Comp AR 13, at paragraphs 452 to 458

⁸⁸⁸ See 600/008/06, paragraph 355

⁸⁸⁹ See paragraphs 4.7 to 4.10 of CCS Guidelines on Enforcement

competition. CCS is therefore satisfied that each of the Parties intentionally infringed the section 34 prohibition.

448. CCS imposes a penalty on the Parties listed at paragraph 1, in relation to the infringements considered at paragraphs 181 and 434 and 435 above in respect of which each Party is found to have participated in price fixing arrangements.

Representations by the Parties

449. In its representations, EBAA stated it could not have committed the infringement in relation to the FIC agreement intentionally or negligently because the position in Singapore in relation to recommended prices by trade associations was not clear at the time that the Competition Act came into force and is still not clear and that given this uncertainty in the law CCS has not established that EBAA's infringement was either intentional or negligent. EBAA argued that no penalty should be imposed.
450. CCS is unable to find merit in this representation as the act that is the subject matter of the infringement decision is not a price recommendation but an agreement between horizontal competitors, which as stated in paragraphs 419 to 433 above, EBAA played a separate role in implementing. In any event, CCS has always taken the public position that fee guidelines are generally harmful to competition. Therefore, CCS rejects EBAA's representation that it did not commit the infringement intentionally or negligently.
451. In their representations, Lapan Lapan, Luxury and WTS stated that they did not act intentionally or negligently in participating in the FIC agreement. They argued that they were under the knowledge that they were purchasing an insurance product that they could on-sell to their customers and that there was genuine uncertainty that they were in violation of the Competition Act. As stated in paragraph 369, CCS is of the opinion that it was clear to the parties that the FIC incorporated a fuel component. Therefore, CCS rejects the representations put forward by Lapan Lapan, Luxury and WTS that they did not commit the infringement intentionally or negligently.

C. Calculation of penalties

452. CCS Guidelines provide that in calculating the amount of financial penalty to be imposed, CCS will take into consideration the following:

- 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 in the undertaking's last business year;
- the duration of the infringement;
- other relevant factors, e.g. as deterrent value; and,
- any further aggravating and mitigating factors.

453. Similar considerations are taken into account by the EC 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 EC determines the fine by:

- First working out the basic amount of the fine by looking at the value of sales (turnover) and taking a percentage of the value of sales which is based on the gravity of the infringement ("base amount"). In determining whether the percentage should be on the low or high end, the EC will consider the nature of the infringement, the combined market share of the infringing undertakings, the geographic scope of the infringement and whether or not the infringement was implemented;
- The base amount would then be multiplied by the number of years of infringement.
- Finally, adjustments will be made keeping in mind any aggravating or mitigating circumstances and the need for deterrence⁸⁹⁰.

454. 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 factors⁸⁹¹.

455. 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 sales or turnover, applying a multiplier for the duration of infringement and then adjusting that figure to take into account similar factors such as

⁸⁹⁰ See Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003

⁸⁹¹ See OFT's guidance as to the appropriate amount of a penalty (December 2004)

deterrence and aggravating and mitigating considerations. CCS adopted this approach in the *Pest Control Case* and similarly adopts this approach for the present case.

(i) Seriousness of the Infringements and relevant turnover

Seriousness of the Infringements

456. As stated in the *Pest Control Case*, CCS:

364. ... 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.

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 consideration⁸⁹².

366. The seriousness of the infringement may also depend on the nature of the infringement. CCS considers that the price fixing arrangements in this case, set out above, are serious infringements.

457. CCS considers that cartel cases involving price-fixing, bid-rigging, market sharing and limiting or controlling production or investment are especially serious infringements and should normally attract a percentage of the relevant turnover that is on the high-end. However, the actual percentage that CCS will assign varies depending on the circumstances of the case.

458. Nature of the product – The sale of one-way express bus tickets from Singapore to Malacca, Kuala Lumpur, Genting, Ipoh, Simpang/Taiping and Butterworth/Penang are the subject matter of the MSP price fixing agreement. The sale of one-way express bus tickets, two-way express bus tickets and coach package tours to Malaysia and Southern Thailand, to which the FIC was charged, are the subject matter of the FIC price-fixing agreement.

⁸⁹² See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.3

459. Structure of the market and market share of the parties - The higher the combined market share of the infringing parties, the greater the potential to cause damage to the affected markets. Further, a high market share figure generally indicates a more stable agreement/concerted practice as third parties find it more difficult to undercut and possibly undermine the incumbents. These factors affect the base amount. In the present case, CCS notes that the EBAA members account for 60% of sales of express bus tickets from Singapore to Malaysia, see paragraph 33. As for coach package tours, CCS notes that there are no ridership statistics on the volume of passengers that the members of the EBAA carried.
460. CCS notes that there may be regulatory entry barriers to the relevant market, for instance an express bus operator would need to obtain the relevant permits from the Malaysian Transport Authorities, the LTA and a travel agent licence from STB⁸⁹³. Likewise the sale of coach package tours would require LTA and STB permits and licences. However, CCS notes that the regulatory entry barriers are low because it is relatively easy to obtain such permits. In addition, CCS notes that the margins in this industry appear to be low.
461. Effect on customers, competitors and third parties - It is not practically feasible for CCS to quantify the amount of loss caused to passengers as a result of the FIC agreement and MSP agreement. This is due to the unavailability of the actual pricing information under the “counterfactual” scenario, i.e. the level at which the focal product would have been priced during the infringement period, had the Parties not engaged in fixing the MSP and FIC.
462. Having regard to the nature of the product, the structure of the market, the market shares of the Parties, the effect of the infringements on customers, competitors and third parties, and in particular the factors listed at paragraphs 443 to 447, CCS considers it will be appropriate, in the current case, to fix the starting point percentage of the relevant turnover nearer the lower end. As such CCS considers that a starting point of [...] % of relevant turnover for each of the Parties involved in the MSP and the FIC agreements⁸⁹⁴ and a starting point of [...] % of relevant turnover for each of the Parties involved in only the FIC agreement⁸⁹⁵ is appropriate in the circumstances. In particular, CCS notes that the implementation of the FIC

⁸⁹³ See paragraph 27 to 33 (Background to Bus and Coach Transportation Services Industry).

⁸⁹⁴ Alisan, Enjoy, Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar.

⁸⁹⁵ EBAA, Lapan Lapan, Luxury, Nam Ho, T&L, Travelzone and WTS.

agreement was not done surreptitiously but publicised to customers and that the FIC agreement involves price-fixing on a component of the total price.

Relevant Turnover

463. The relevant turnover in the last business year will be considered when CCS assesses the impact and effect of the infringement on the market⁸⁹⁶. The “last business year” is the business year preceding the date on which the decision of CCS is taken, or if figures are not available for that business year, the one immediately preceding it⁸⁹⁷.
464. In paragraphs 88 to 98 above, CCS has defined the relevant product and geographic markets, for the purpose of calculating penalties, to comprise the focal product and focal area only, i.e. the sale of express bus or excursion bus services between Singapore and Malaysia or Southern Thailand, sold in Singapore, in the form of either standalone bus tickets or as part of coach package tours.

Relevant turnover in respect of Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar

465. These Parties are involved in the MSP agreement and the FIC agreement and sold both express bus tickets and coach package tours (to which the FIC was attached).
466. CCS notes that the relevant turnover that would be applicable to the MSP agreement, i.e. the turnover obtained from the sale of one-way express bus tickets to the destinations listed would also form part of the relevant turnover for the FIC agreement, as the sale of any ticket affected by the MSP agreement was also subject to the FIC agreement. Therefore, for the Parties that were involved in both agreements, CCS will impose only one penalty in respect of both agreements.
467. CCS considers the entire turnover obtained from the sale of one-way and two-way express bus tickets, to which the FIC was charged, forms part of the relevant turnover. However, CCS accepts that the price of coach package tours is made up, *inter alia*, of the aggregate of the cost of the coach ticket (return), FIC, accommodation, stated meals and tour guides⁸⁹⁸. As such, CCS considers that only the portion of the coach package tour price that is attributable to transportation and the FIC should form part of the relevant turnover.

⁸⁹⁶ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.4

⁸⁹⁷ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.5

⁸⁹⁸ In most cases the FIC was charged as separate component from the price of the coach package tour

468. It is apparent that the proportion of the price of the coach package tours that is attributable to transportation will vary according to a number of factors, including, *inter alia*, the standard of coach used, the standard of the hotel, the length of the package and the Party selling the package. Therefore, CCS will take a percentage of the price of the coach package as relevant turnover. This percentage has been arrived at by dividing the prevailing express bus ticket price for a given destination in 2007 and 2008 by the prevailing coach package tour price for the corresponding destination. Details of the price of express bus tickets as well as the price of various coach package tours were obtained from some of the Parties. Alisan and Grassland did not provide details of the prices of their express bus tickets and coach package tours. Luxury did not provide details of the prices of their express bus tickets.
469. Having arrived at the percentages, CCS has taken the lowest percentages from all the Parties who provided details. These percentages are shown in the table below:

Company	Destinations	Package Price ⁸⁹⁹	Bus Ticket Price ⁹⁰⁰	Percentage of Package Price relating to bus transport
Five Stars/ Gunung Raya/ GR Travel	2D1N Malacca ⁹⁰¹	S\$95	S\$44	46%
Regent Star/ Transtar	Genting & Sunway Free-and-Easy ⁹⁰²	S\$185	S\$67	36%
	3D2N Genting & Palace of Golden Horses ⁹⁰³	S\$188	S\$67	36%
Konsortium	3D2N Genting & Palace of	S\$168	S\$60	36%

⁸⁹⁹ Only low season package prices were used

⁹⁰⁰ Only low season 26 seater bus ticket prices were used

⁹⁰¹ Validity date of package: 15 April – 30 September 2008. Cost of bus ticket was computed based return ticket price to Malacca

⁹⁰² Validity date of package: 1 April – 31 May 2008. Cost of bus ticket was computed based on one-way ticket from Singapore to Genting and the one-way ticket back from Kuala Lumpur to Singapore

⁹⁰³ Validity date of package: 1 April – 30 June 2008. Cost of bus ticket was computed based on one-way ticket from Singapore to Genting and the one-way ticket back from Kuala Lumpur to Singapore

Company	Destinations	Package Price ⁸⁹⁹	Bus Ticket Price ⁹⁰⁰	Percentage of Package Price relating to bus transport
	Golden Horses ⁹⁰⁴			
Sri Maju	3D2N Ipoh & Cameron ⁹⁰⁵	S\$268	S\$64	24%
WTS	3D2N Sunway Lagoon Free-and-Easy ⁹⁰⁶	S\$200	S\$55	28%

470. CCS will adopt the lowest percentage i.e. 24% as a representative percentage for all the Parties that sold coach package tours to which the FIC was charged. CCS will further discount this percentage by rounding it down to 20%. Therefore, 20% of the turnover obtained from the sale of coach package tours will form part of the relevant turnover.

471. Therefore, for the purposes of calculating the appropriate penalties for Five Stars, GR Travel, Grassland, Gunung Raya, Konsortium, Regent Star, Sri Maju and Transtar, CCS considers the relevant turnover is the turnover obtained in Singapore from the sale of one-way and two-way express bus tickets plus 20% of turnover from sale of coach package tours.

Relevant turnover in respect of EBAA

472. As stated at paragraphs 419 to 433 CCS considers that the EBAA played an instrumental role in facilitating and administering the FIC agreement. CCS notes in this connection that paragraph 3 of the Schedule to the Competition (Financial Penalties) Order 2007 provides that the applicable turnover of an association of undertakings is the aggregate applicable turnover of the undertakings that are the members of the association. Given, however, that the members are separately considered as infringing parties, CCS, in this case, considers that the relevant turnover for the EBAA is the turnover it obtained from the sale of the FIC coupons to its members.

Relevant turnover in respect of Lapan Lapan

⁹⁰⁴ Validity date of package: 1 April – 30 June 2008. Cost of bus ticket was computed based on return ticket to Genting

⁹⁰⁵ Validity date of package: Not available. Cost of bus ticket was computed based on one-way ticket from Singapore to Ipoh and the one-way ticket back from Kuala Lumpur to Singapore

⁹⁰⁶ Validity date of package: 1 April – 30 September 2008. Cost of bus ticket was computed based on return ticket to Kuala Lumpur

473. Lapan Lapan only sold express bus tickets on which the FIC was given without charge. Therefore, Lapan Lapan's relevant turnover will be the turnover obtained in Singapore from the sale of express bus tickets to which the FIC was given without charge.

Relevant turnover in respect of Luxury and WTS

474. Luxury and WTS sold both express bus tickets on which the FIC was charged and coach package tours on which the FIC was charged. However, Luxury and WTS were only party to the FIC agreement. CCS considers that Luxury's and WTS' relevant turnover will be the turnover obtained in Singapore from the sale of one-way and two-way express bus tickets plus 20% of turnover from sale of coach package tours.

Relevant turnover in respect of Nam Ho

475. Nam Ho sold tour packages on which the FIC was attached. In order to determine the relevant turnover from the sale of tour packages applicable to Nam Ho, CCS will adopt the methodology in paragraphs 468 to 470 and use 20% of Nam Ho's tour packages turnover. Therefore, the relevant turnover applicable to Nam Ho will be 20% of the turnover obtained in Singapore from the sale of tour packages.

Relevant turnover in respect of Alisan, Enjoy & T&L

476. Alisan, Enjoy and T&L were unable to provide CCS with relevant turnover figures. Therefore, in order to determine Alisan's and Enjoy's relevant turnover, CCS has calculated the proportion of total turnover that was made up by the relevant turnover for the ordinary members that provided CCS with relevant turnover figures (see **Annex 3**). CCS has then calculated that on average [...] % of an ordinary member's total turnover is made up by its relevant turnover. CCS will apply this percentage to Alisan's and Enjoy's total turnover to determine their respective relevant turnovers.
477. In order to determine T&L's relevant turnover, CCS has calculated the proportion of total turnover that was made up by the relevant turnover for the associate members that provided CCS with relevant turnover figures (see **Annex 4**). CCS has then calculated that on average [...] % of an associate member's total turnover is made up by its relevant turnover. CCS will apply this percentage to T&L's total turnover figures to determine its relevant turnover.
478. The proportion of total turnover made up by relevant turnover is much lower for the associate members when compared to the ordinary members.

CCS considers that this is because of their different business models where a larger proportion of the ordinary members' businesses involve the operation of express bus services or the sale of coach package tours.

Relevant turnover in respect of Travelzone

479. Travelzone sold its own package tours to Desaru and it sold two-way FIC coupons with these packages⁹⁰⁷. CCS will adopt the methodology in paragraphs 468 to 470 and use 20% of Travelzone's Desaru package tours turnover. Therefore, CCS considers that for the purposes of calculating the penalties to be imposed on Travelzone, the relevant turnover will be 20% of the turnover Travelzone obtained in Singapore from the sale of its Desaru package tours.

Representations by the Parties

480. Lapan Lapan, Luxury, Regent Star, Transtar and WTS argued in their representations that the relevant turnover should be the turnover obtained from the sale of FIC coupons alone. To support this contention, they relied on the case of *ACCC v Qantas Airways Ltd* [2008] FCA 1976. They contended that the Federal Court of Australia took the relevant turnover to be the revenue from fuel surcharges on routes to and from Australia and not the airfreight revenue to and from Australia.
481. A closer reading of the decision reveals otherwise. In *ACCC v Qantas Airways Ltd*, Qantas had admitted contravening section 45 of the Australian Trade Practices Act for giving effect to the collusive understandings relating to the imposition of fuel surcharges from 2000 to February 2006. ACCC and Qantas then agreed on the penalty of \$20 million. In its consideration of the level of penalty, the Federal Court of Australia identified, among others, the following relevant considerations: the nature and extent of the contravening conduct, the amount of loss or damage caused, the circumstances in which the conduct took place, the size of the contravening company, the degree of market power, the deliberateness of the contravention and the period over which it extended. The revenue generated as a result of the fuel surcharges to and from Australia in the sum of \$175.42 million was raised in the discussion on the amount of loss or damage caused. However, it was recognised that this sum did not demonstrate the actual loss to shippers or their customers because absent the fuel surcharge understanding, some price increases would have occurred to cover the increased costs of fuel, which did increase over the

⁹⁰⁷ See Question and Answer 17 & 18 of Sim Lee Siang's Notes of Information / Explanation Provided on 2 April 2009

relevant period. The global revenue of \$902 million from the carriage of air freight was also raised in discussing the size of the contravening party. The Court recognised that surcharge revenue alone was not an accurate indication of an airline's overall position. A comparison of the proposed penalty with the fuel surcharge revenue on routes to and from Australia was only undertaken in the context of assessing the parity of the proposed penalty with that imposed on British Airways Plc.

482. As discussed in paragraph 294, the FIC agreement amounts to an agreement to introduce a uniform price increase. The FIC is intrinsically tied with the sale of standalone bus tickets or coach package tours. In the circumstances, CCS is of the view that it is appropriate to use as the relevant turnover the sum of the turnover obtained in Singapore from the sale of one-way and two-way express bus tickets and 20% of turnover from sale of coach package tours that is attributable to transportation.
483. In the representations by Regent Star and Transtar, they argued that the MSP agreement only applies to one-way Super VIP coaches and the relevant turnover should not include revenue from other luxury coaches and tour excursion buses or from trips made from Malaysia to Singapore. As set out earlier in paragraph 466, the relevant turnover applicable to the MSP agreement would also form part of the relevant turnover for the FIC agreement which applied equally to the other luxury coaches as well as to return trips. In the circumstances, CCS is unable to accept such representations.
484. Regent Star and Transtar also argued that whilst structured as separate legal entities, they should be considered a single economic entity in determining the relevant turnover for the purposes of calculating financial penalties. They argued that both Regent Star and Transtar pursue a single economic aim on a long term basis and Regent star has no economic independence or autonomy. In support, they relied on the following:
- a) Sebastian Yap, director of Transtar, is Regent Star's representative at the EBAA;
 - b) Elson Yap, managing director and shareholder of Transtar, is also a shareholder of Regent Star;
 - c) Loh Choon Lee is general manager of both Regent Star and Transtar and is in charge of their day to day operations;
 - d) Both Regent Star and Transtar run operations from the same premises and share staff. All commercial decisions relating to

Regent Star and Transtar are made simultaneously and by the same management and they negotiate jointly when dealing with suppliers and landlords;

- e) Regent Star is an exclusive authorised agent of Transtar and does not operate its own express bus services or maintain its own fleet of buses.

485. The following is a table on the directors and shareholders of Regent Star and Transtar:

	Transtar	Regent Star
Directors	Elson Yap	Loh Chwee Cha
	Sebastian Yap	Loh Choon Lee
Shareholders	Elson Yap: 32%	Elson Yap: 50%
	Sebastian Yap: 8%	
	Morning Star Transcorporation Sdn Bhd: 60%	Loh Choon Lee: 50%

486. CCS has discussed the issue of a single economic entity in its decision in the *Qantas and Orangestar Cooperation Agreement*. As can be seen from the above, the only link between the two companies is that Elson Yap, the managing director and shareholder of Transtar, is also a shareholder of Regent Star. However, Elson Yap is only a minority shareholder of Transtar and holds no share in Morning Star Transcorporation Sdn Bhd⁹⁰⁸, although he is a director there. Morning Star Transcorporation Sdn Bhd, the majority shareholder of Transtar, does not have any shareholding in Regent Star. Loh Choon Lee holds an equal number of shares in Regent Star as Elson Yap and is the director of Regent Star, as is her father Loh Chwee Cha. While it is acknowledged that Loh Chwee Cha and Loh Choon Lee are the step-father and step-sister of Elson Yap and Sebastian Yap respectively, these family ties do not absolve the legal duties that Loh Chwee Cha and Loh Choon Lee both have, as directors, to consider foremost the goals and interests of Regent Star. As such, legal control of Regent Star rests firmly in the hands of its board of directors. As long as the board had the legal ability to determine the course of business activity for

⁹⁰⁸ Similarly, Sebastian Yap, Loh Choon Lee and Loh Chwee Cha do not hold any directorships or shareholding in Morningstar Transcorporation Sdn Bhd.

Regent Star independently of Transtar, it is capable of conspiring with Transtar and the other Parties in violation of section 34.

487. CCS notes that Loh Choon Lee is general manager of both Regent Star and Transtar and is in charge of their day to day operations. In addition, according to their representations, both Regent Star and Transtar run operations from the same premises, use the same staff and make commercial decisions together. Operational instructions are issued on the same memo to Regent Star and Transtar sales staff. However, it is also noted that Regent Star held its own lease to its premises at B1-01 Lavender MRT station, employed its own staff and paid the foreign worker levies or CPF contributions for its workers from its own funds. As such, it was clear that Regent Star held itself out as a distinct entity and took on its own financial risks.
488. While Regent Star held itself out as an authorised agent for Transtar, it sold tour packages on behalf of tour companies other than Transtar. Loh Choon Lee said that Regent Star does occasionally act as an agent in the sale of tour packages or air tickets for other agencies. In such instances, it would make payment to these agencies and earn a commission fee or service fee⁹⁰⁹. CCS notes that Sebastian Yap, a director and shareholder of Transtar, was Regent Star's representative at the EBAA. As Sebastian Yap himself acknowledged, it is not a requirement that an EBAA member must be represented by a director. Indeed, if Regent Star and Transtar were one economic entity, there would be no reason for their separate representation at the EBAA. In CCS' view, even commonly owned firms must compete against each other, if they hold themselves out as distinct entities.
489. In their representations, Regent Star and Transtar argued that for each express bus ticket or coach package tour sold by Regent Star on behalf of Transtar as its authorised agent, Regent Star would pay over [...] % of the ticket price to Transtar as cost of goods sold and retain [...] % as its agent commission. As such, they argued that Transtar's relevant turnover figures have been overstated by the amount of S\$[...], being [...] % of Regent Star's relevant turnover figures. In CCS' view, this argument is misconceived as it ignores the sales made by Transtar to Regent Star or, for that matter, other intermediaries in the distribution chain. There is no rule that only sales made to the end consumer can constitute the relevant turnover. Having found that Regent Star and Transtar are not a single economic entity, paragraph 2 of the Schedule to the Competition (Financial

⁹⁰⁹ See Answers to Question 27 and 28 of Loh Choon Lee's Notes of Information/Explanation Provided on 2 October 2009

Penalties) Order 2007 is not applicable. As such, CCS rejects the representations of Regent Star and Transtar.

(ii) Duration of the Infringements

490. After calculating the base penalty sum, CCS will consider whether this sum should be adjusted to take into account the duration of the infringement. The duration to which the Parties infringed the section 34 Prohibition will depend on whether they are party to the infringing MSP and/or FIC agreements, and when they became party to the agreement(s). It should also be noted that with regard to the duration of an infringement, CCS Guideline on “The Appropriate Amount of Penalty” states that an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement⁹¹⁰. Therefore, where Parties are liable to infringement **for a period of less than 1 year**, CCS will consider the duration for the purposes of determining penalties as 1 year.
491. Support for this position can be found in the case of *Umbro Holdings Limited v The Office of Fair Trading*⁹¹¹, which was an appeal on the penalties imposed by the OFT on the parties involved in the *Replica Kits* case. Allsports Limited (“Allsports”) and Manchester United plc (“MU”) argued that their infringements lasted less than one year, in the case of Allsports for 3 months and MU for 5 months. Having calculated the relevant turnover, based on 1 year’s infringement, the OFT did not make an adjustment for duration with regard to Allsports and MU, in other words, the OFT applied a duration multiplier of 1. However, Allsports and MU argued that as the duration of their infringement was less than one year, the OFT should have applied a multiplier to reflect this. Allsports submitted that only 25% of their relevant turnover should be used.
492. The CAT, upholding the position taken by the OFT to impose a multiplier of 1 for duration against Allsports and MU, held as follows:
182. We do not, however, accept that there should, in effect, be built into Step 2 of the Guidance an automatic rule that agreements of less than a year should attract a multiplier of less than one...
493. For parties whose duration was more than 1 year, CCS will round down the duration to the nearest half year. CCS will deal with the adjustment for

⁹¹⁰ See CCS Guideline on the Appropriate Amount of Penalty, Paragraph 2.8

⁹¹¹ *Umbro Holdings Limited v Office of Fair Trading* [2005] CAT 22

duration applicable to each Party in the calculation of penalties for each Party at paragraphs 507 to 658 below.

(iii) Other Relevant Factors

494. CCS considers that the penalty may be adjusted as appropriate to achieve policy objectives, particularly the deterrence of the Parties and other undertakings from engaging in anti-competitive practices, such as price fixing. CCS considers that price fixing is one of the most serious infringements of the Act and as such, penalties imposed should be sufficient to deter undertakings from engaging in price fixing.
495. CCS considers that if the financial penalty imposed against any of the Parties after the adjustment for duration has been taken into account is insufficient to meet the objectives of deterrence, CCS will adjust the penalty to meet the objectives of deterrence.
496. CCS notes that in the UK, provision is made in the OFT's "Guidance as to the Appropriate Amount of Penalty" for such a situation⁹¹². It states that:

in exceptional circumstances, where the relevant turnover of an undertaking is zero (for example, in the case of buying cartels) and the penalty figure reached after the calculation in Steps 1 and 2 is therefore zero, the OFT may adjust the amount of this penalty at this stage

497. In the *Felt Roofing Case*⁹¹³ the OFT found that an undertaking's relevant turnover could amount to zero if that undertaking had ceased trading altogether or where the undertaking remained in business but had exited the relevant product or geographic market since the infringement took place. The OFT found at paragraph 278:

In order to achieve the OFT's objectives of imposing penalties which reflect the seriousness of the offence and deterring undertakings from engaging in similar practices in the future, the OFT considers that any such adjustment should ensure that the penalties paid by such undertakings are set at a similar level to penalties paid by other undertakings of a similar size and who have engaged in a similar number of infringements of a similar type. In setting penalties for an undertaking (Price) with nil relevant turnover in WM Roofing II⁹¹⁴, the CAT stated:

⁹¹² Paragraph 2.13 of the OFT's Guidance as to the Appropriate Amount of Penalty

⁹¹³ *Collusive tendering for felt and single ply-flat roofing contracts in the North East of England* CA98/02/2005, paragraph 278

⁹¹⁴ [2005] CAT 5 at paragraph 63

“We take into account the penalties imposed on the other undertakings, the relationship between the turnover of those undertakings and the penalties imposed on them, that Price had no relevant turnover, that Price only committed one infringement but that there was involvement on the part of a director and also that the OFT’s calculation of Price’s penalty for deterrent effect was necessarily based on an arbitrary assessment since Price had no relevant turnover.”

498. Where a party is unable or unwilling to provide CCS with information to determine its relevant turnover, CCS will impose a penalty that will reflect the seriousness of the infringement and with a view to deterring the undertaking as well as other undertakings from engaging in similar practices. In considering the appropriate penalty to be paid, CCS will consider the turnover of the other Parties that are party to the infringement.
499. While the financial position of the Parties and their ability to pay is a relevant consideration in the assessment of financial penalties, CCS considers that cartelists should generally not rely on their economic difficulties and those of the market in seeking a reduction of the penalties imposed, see *Tokai Carbon Ltd and others v European Commission*⁹¹⁵. The CFI held that in determining the appropriate fine the EC need not take into account an undertaking’s financial losses because:
370. ... recognition of such an obligation would have the effect of conferring an unfair competitive advantage on the undertakings least adapted to the conditions of the market...
500. In considering arguments about the potential insolvency of one of the cartelists, the CFI in *Tokai Carbon* 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.
501. The OFT takes into account any financial hardship considerations which are advanced at the time the penalty is being assessed when assessing the

⁹¹⁵ [2004] ECR II-1181, [2004] 5 CMLR 28

amount of the penalty⁹¹⁶. In *Achilles Paper Group Limited v OFT*⁹¹⁷, the appellant showed that it had suffered a net business loss and had expressed concern that a substantial fine would result in it becoming insolvent. However, the CAT adopted the principle in *Tokai Carbon* set out above and affirmed the OFT's decision not to reduce the fine.

502. In the OFT's decision of the *Northern Ireland Livestock and Auctioneers' Association (NILAA) of undertakings*⁹¹⁸, the OFT took into account the wholly exceptional circumstances in that the recommendation was a result of the effects of the diseases Bovine Spongiform Encephalopathy (BSE) and Foot and Mouth Disease (FMD). Accordingly, the Director-General exercised his discretion under section 36(1) of the UK Competition Act 1988 and did not impose a financial penalty on NILAA. CCS considers that the "wholly exceptional circumstances" that lead the OFT to not impose a financial penalty do not exist in the present case.
503. In *Sepia Logistics Limited (formerly known as Double Quick SupplyLine Limited) and Precision Concepts Limited v OFT*⁹¹⁹, 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 the 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. *[Emphasis added]*

(iv) Aggravating and Mitigating Factors

⁹¹⁶ See *Richard W Price (Roofing Contractors) Limited v OFT* [2005] CAT 5 at paragraphs 60 and 64

⁹¹⁷ [2006] CAT 24 see paragraph 56

⁹¹⁸ See OFT's decision of 3 February 2003, *Decision of the Northern Ireland Livestock and Auctioneers' Association of undertakings to recommend that its members introduce a buyer's commission in Northern Ireland cattle marts* (CA98/1/2003)

⁹¹⁹ [2007] CAT 13

504. At this next stage, CCS will consider the presence of aggravating or mitigating factors and make adjustments when assessing the amount of financial penalty⁹²⁰, 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.
505. CCS considers the involvement of directors or senior management as an aggravating factor⁹²¹. 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.
506. CCS notes that the role of an undertaking as a leader in, or an instigator of, an infringement may be an aggravating factor⁹²². CCS considers that a merely passive or follower role in an infringement is not sufficient to justify a reduction in the penalty. In the present case CCS finds that no one Party(s) acted as leader or instigator in the infringements.

D. Penalty for Alisan

507. Starting point: Alisan was a member of the EBAA from its inception until its membership was terminated on 1 January 2007 and it was represented on the Executive Committee by Leong Sing Keong. Alisan was involved in the MSP agreement and the FIC agreement.
508. As stated above at paragraph 476, Alisan did not provide CCS with its relevant turnover. Therefore, CCS will consider [...] % of Alisan's total turnover of S\$[...] as its relevant turnover. Therefore, Alisan's estimated relevant turnover is S\$[...]. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Alisan at [...] % of relevant turnover. The starting point for Alisan is therefore S\$[...] rounded down to the nearest S\$1⁹²³.
509. Adjustment for duration: Alisan was a party to the MSP and FIC infringements from 1 January 2006 to 1 January 2007, a period of 1 year. CCS makes no adjustment for duration.
510. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Alisan

⁹²⁰ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.10

⁹²¹ See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11

⁹²² See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11

⁹²³ All penalty calculations will be rounded down to the nearest \$1

because both the relevant turnover and the figure for the starting point represents an adequate proportion of Alisan's total turnover for the year ending 30 June 2006. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Alisan and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.

511. Adjustment for aggravating and mitigating factors: CCS considers the involvement of one of Alisan's director, namely Leong Sing Keong, in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Alisan and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
512. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,807 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
513. Representations by Alisan in respect of quantum of penalty: Alisan did not make any representations to CCS.
514. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,807 on Alisan.

E. Penalty for EBAA

515. Starting point: The EBAA's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 January 2008 to 31 December 2008. However, as the EBAA has not produced audited accounts for financial year 2008, CCS will adopt the figures for the financial year 1 January 2007 to 31 December 2007 to determine the EBAA's relevant turnover. The EBAA's relevant turnover is S\$[...].
516. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for the EBAA at [...] % of relevant turnover. The starting point for EBAA is therefore S\$[...].
517. Adjustment for duration: The EBAA has been party to the FIC agreement from 1 January 2006 until 24 July 2008. Therefore, the duration of the FIC

- infringements, in relation to EBAA, would be 2 years 6 months and 24 days. As stated at paragraph 493, CCS will adopt a duration multiplier of 2.5 for the EBAA and CCS determines that this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
518. Adjustment for other factors: CCS notes that the EBAA made a [...] for the financial year ending 31 December 2007. CCS is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. In order to act as an effective deterrent to EBAA and to other undertakings which may consider engaging in price-fixing agreements, CCS will adjust the penalty at this stage to S\$[...].
519. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of the EBAA's management, namely Tan Kah Hin, to be an aggravating factor and increases the penalty by [...]%. CCS considers that the EBAA and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
520. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
521. Representations by EBAA on the quantum of the penalty: In its representations EBAA raised the following mitigating factors. It argued that there should not be any uplift in the fine based on the involvement of Tan Kah Hin as his involvement was the basis of CCS' finding on liability and to rely on his involvement as an aggravating factor amounted to using the same facts twice against EBAA. CCS is unable to agree with such representations. There is no rule that facts forming the basis of a finding on liability cannot be considered as an aggravating factor.
522. Secondly, EBAA argued that CCS should either not impose a penalty or impose only a symbolic penalty on EBAA because the fixing of the FIC prices was not undertaken in a covert manner and that since its inception, the FIC agreement has been made known to the public. As stated in paragraph 462 above, CCS has taken into account the fact that implementation of the FIC was not done surreptitiously in arriving at its starting point of [...]% of relevant turnover. As such, CCS is unable to

accept EBAA's representations to impose no penalty or only a symbolic penalty only.

523. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,000 on EBAA.

F. Penalty for Enjoy

524. Starting point: Enjoy was a member of the EBAA from its inception until Enjoy left or was removed from the EBAA sometime on or about 11 July 2007⁹²⁴. As stated above at paragraph 476, Enjoy did not provide CCS with its relevant turnover. Therefore, CCS will consider [...] % of Enjoy's total estimated turnover of S\$[...] as its relevant turnover. Therefore, Enjoy's estimated relevant turnover is \$[...]. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Enjoy at [...] % of relevant turnover. The starting point for Enjoy is therefore S\$[...].
525. Adjustment for duration: Enjoy was party to the MSP and FIC agreement from 1 January 2006 until sometime on or about 11 July 2007. Therefore, CCS considers that the duration of Enjoy's participation in the FIC and MSP agreements is approximately 1 year 6 months. As stated at paragraph 493, CCS will adopt a duration multiplier of 1.5 for Enjoy. CCS considers that adopting a duration multiplier of 1.5 will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
526. Adjustment for other factors: CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Enjoy because both the relevant turnover and the figure for the starting point represents an adequate proportion of Enjoy's estimated total turnover. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Enjoy and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
527. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of Enjoy's directors, namely Michael Seng, in the infringements to be an aggravating factor and increases the penalty by [...] %. CCS considers that Enjoy and its representatives were

⁹²⁴ At the 03/2007 Executive Committee meeting, held on 11 July 2007, Michael Seng was relieved of his responsibilities as Treasurer. Enjoy is no longer listed as a member of the EBAA in any of the Executive Committee minutes after 11 July 2007

cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...] % for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...] % to S\$[...].

528. Adjustment to prevent maximum penalty being exceeded. The financial penalty of S\$23,425 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
529. Representations by Enjoy in respect of quantum of penalty: Enjoy did not make any representations to CCS.
530. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$23,425 on Enjoy.

G. Penalty for Five Stars

531. Starting point: Five Stars was a member of the EBAA from the EBAA's inception and it is represented on the Executive Committee by Johnny Lim. Five Stars was involved in the MSP agreement and the FIC agreement.
532. Five Stars' financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 January 2008 to 31 December 2008. However, as Five Stars has not produced audited accounts for financial year 2008, CCS will adopt the figures for the financial year 1 January 2007 to 31 December 2007 to determine Five Stars' relevant turnover. Five Stars' relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Five Stars' total relevant turnover is S\$[...].
533. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Five Stars at [...] % of relevant turnover. The starting point for Five Stars is therefore S\$[...].
534. Adjustment for duration: Five Stars was party to the MSP and FIC agreements from 1 January 2006 until at least 24 July 2008. Therefore, the duration of the MSP and FIC infringements, in relation to Five Stars, would be 2 years 6 months and 24 days. As stated at paragraph 493, CCS will adopt a duration multiplier of 2.5 for Five Stars and CCS determines this

- duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
535. Adjustment for other factors: CCS notes that Five Stars made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Five Stars because both the relevant turnover and the figure for the starting point represents an adequate proportion of Five Stars' total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Five Stars and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
536. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of two of Five Stars' directors, namely Johnny Lim and Ken Lim, in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Five Stars and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
537. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$450,207 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
538. Representations by Five Stars in respect of quantum of penalty: Five Stars sought a reduction of the starting point to [...]% of the relevant turnover, on the grounds that, at the very most, Five Stars committed the infringements negligently. As stated in paragraph 444, CCS may impose a financial penalty provided it is satisfied that the infringement has been committed either intentionally or negligently. CCS is not required to further classify the infringements as either intentional or negligent. The starting point of [...] % that has been adopted by CCS has already taken into account the fact that the FIC agreement was not done surreptitiously, as stated at paragraph 462. As such CCS is unable to agree to a further reduction in the starting point submitted by Five Stars.
539. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$450,207 on Five Stars.

H. Penalty for GR Travel

540. Starting point: GR Travel has been a member of the EBAA from the inception of the EBAA. It participated in both the MSP agreement and the FIC agreement.
541. GR Travel's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year ending 31 December 2008. However, as GR Travel has not produced audited accounts for financial year ending 31 December 2008, CCS will adopt the figures for the financial year ending 31 December 2007 to determine GR Travel's relevant turnover. GR Travel's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, GR Travel's total relevant turnover is S\$[...].
542. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for GR Travel at [...] % of relevant turnover. The starting point for GR Travel is therefore S\$[...].
543. Adjustment for duration: GR Travel was party to the MSP and FIC agreements from 1 January 2006 until 31 December 2007. Therefore, the duration of the MSP and FIC infringements, in relation to GR Travel, would be 2 years. As stated at paragraph 493, CCS will adopt a duration multiplier of 2 for GR Travel and CCS determines this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
544. Adjustment for other factors: CCS notes that GR Travel made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to GR Travel because both the relevant turnover and the figure for the starting point represents an adequate proportion of GR Travel's total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to GR Travel and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
545. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of GR Travel's directors, namely Ken Lim, in the infringements to be an aggravating factor and increases the

- penalty by [...]%. CCS considers that GR Travel and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
546. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$52,432 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
547. Representations by GR Travel in respect of quantum of penalty: GR Travel made representations which in substance are the same as those for Five Stars, which have been addressed above at paragraph 538 and 539.
548. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$52,432 on GR Travel.

I. Penalty for Grassland

549. Starting point: Grassland was a member of the EBAA from the inception of the EBAA and it was represented on the Executive Committee by Tan Boon Huat, who is a director of Grassland. Grassland was involved in the MSP agreement and the FIC agreement.
550. Grassland's financial year is from 1 July to 30 June. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 July 2007 to 30 June 2008. However, as Grassland left the EBAA on 19 January 2007⁹²⁵, CCS will adopt the figures for the financial year ending 30 June 2006 to determine Grassland's relevant turnover. Grassland's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Grassland's total relevant turnover is S\$[...].
551. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Grassland at [...] % of relevant turnover. The starting point for Grassland is therefore S\$[...].

⁹²⁵ See 01/2007 minutes of Executive Committee meeting held on 17 January 2007

552. Adjustment for duration: Grassland claims that it stopped purchasing FIC coupons on 20 April 2006 and that it stopped selling FIC coupons for express bus tickets and coach packages on 30 April 2006 and June 2006 respectively. The last meeting attended by a representative of Grassland was on 21 June 2006. As Grassland only terminated its membership on 19 January 2007, CCS considers that Grassland was a party to the MSP and the FIC agreements from 1 January 2006 to 19 January 2007 and therefore, their duration of infringement is 1 year 19 days. However, CCS determines that adopting a duration multiplier of 1 will be sufficient to achieve the necessary deterrent effect. Therefore, there is no adjustment for duration.
553. Adjustment for other factors: Grassland made a [...] for the financial year ending 30 June 2008. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Grassland because both the relevant turnover and the figure for the starting point represent an adequate proportion of Grassland's total turnover for the year ending 30 June 2008. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Grassland and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
554. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of Tan Boon Huat, one of its Directors, in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Grassland and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
555. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$27,706 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
556. Representations by Grassland in respect of quantum of penalty: In its representations Grassland raised the following mitigating factors seeking a reduction in the penalty. Firstly, it claimed that the penalty would be difficult to meet financially. Secondly, Grassland claimed that it did not profit from the implementation of the FIC agreement. Thirdly, that Grassland had been fully cooperative with CCS.

557. CCS has addressed the issue of the financial position of the Parties in paragraphs 499 to 503 above. Besides alleging a thin profit margin, Grassland has not provided any reasons to show why the penalty will be difficult to meet. CCS also notes that Grassland's [...] for the financial year ending 2008 was [...]%, [...] % and [...]. As for Grassland's contention that it cooperated with CCS, this has already been taken into account in paragraph 554 above. As such, CCS is unable to accept these representations.
558. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$27,706 on Grassland.

J. Penalty for Gunung Raya

559. Starting point: Gunung Raya has been a member of the EBAA from the inception of the EBAA. Gunung Raya participated in both the MSP agreement and the FIC agreement.
560. Gunung Raya's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year ending 31 December 2008. However, as Gunung Raya has not produced audited accounts for financial year ending 31 December 2008, CCS will adopt the figures for the financial year ending 31 December 2007 to determine Gunung Raya's relevant turnover. Gunung Raya's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Gunung Raya's total relevant turnover is S\$[...].
561. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Gunung Raya at [...] % of relevant turnover. The starting point for Gunung Raya is therefore S\$[...].
562. Adjustment for duration: Gunung Raya was party to the MSP and FIC agreements from 1 January 2006 until 31 December 2007⁹²⁶. Therefore, the duration of the MSP and FIC infringements, in relation to Gunung Raya, would be 2 years. Therefore, the penalty after adjustment for duration is S\$[...].

⁹²⁶ See Answer to Question 29 of Johnny Lim's Notes of Information / Explanation Provided on 15 January 2009

563. Adjustment for other factors: CCS notes that Gunung Raya made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Gunung Raya because both the relevant turnover and the figure for the starting point represents an adequate proportion of Gunung Raya's total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Gunung Raya and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
564. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of two of Gunung Raya's directors, namely Johnny Lim and Ken Lim, in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Gunung Raya and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
565. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$76,668 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
566. Representations by Gunung Raya in respect of quantum of penalty: Gunung Raya has made representations which in substance are the same as those for Five Stars, which have been addressed at paragraphs 538 and 539 above.
567. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$76,668 on Gunung Raya.

K. Penalty for Konsortium

568. Starting point: Konsortium has been a member of the EBAA from the inception of the EBAA. Konsortium was represented on the Executive Committee by Joe Lim and is currently represented by Raymond Lim, both of whom are directors of Konsortium. Konsortium participated in the MSP agreement and the FIC agreement.
569. Konsortium's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining

- penalties would be the financial year ending 31 December 2008. However, as Konsortium has not produced audited accounts for financial year ending 31 December 2008, CCS will adopt the figures for the financial year ending 31 December 2007, to determine Konsortium's relevant turnover. Konsortium's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Konsortium's total relevant turnover is S\$[...].
570. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Konsortium at [...] % of relevant turnover. The starting point for Konsortium is therefore S\$[...].
571. Adjustment for duration: Konsortium was party to the MSP and FIC agreements from 1 January 2006 until at least 24 July 2008. Therefore, the duration of the MSP and FIC infringements, in relation to Konsortium, would be 2 years 6 months and 24 days. As stated at paragraph 493, CCS will adopt a duration multiplier of 2.5 for Konsortium and CCS determines this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
572. Adjustment for other factors: CCS notes that Konsortium is one of the larger players in the EBAA. It made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Konsortium because both the relevant turnover and the figure for the starting point represent an adequate proportion of Konsortium's total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Konsortium and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
573. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of two Directors in the infringements to be an aggravating factor and increases the penalty by [...] %. CCS considers that Konsortium and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...] % for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...] % to S\$[...].

574. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$337,635 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
575. Representations by Konsortium in respect of quantum of penalty: Konsortium has made representations which in substance are the same as those for Five Stars, which have been addressed at paragraphs 538 to 539 above.
576. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$337,635 on Konsortium.

L. Penalty for Lapan Lapan

577. Starting point: Lapan Lapan joined the EBAA on 1 September 2007 and it is represented on the Executive Committee by Wesley Ng, who is a director of Lapan Lapan. Lapan Lapan was involved in the FIC agreement.
578. Lapan Lapan's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 January 2008 to 31 December 2008. However, Lapan Lapan has not provided the financial statements for the financial year ending 31 December 2008. Therefore, CCS will adopt the figures for the financial year ending 31 December 2007 to determine Lapan Lapan's relevant turnover. Lapan Lapan's relevant turnover for the year ending 31 December 2007 is S\$[...], representing turnover from the sale of express bus tickets.
579. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Lapan Lapan at [...] % of relevant turnover. The starting point for Lapan Lapan is therefore S\$[...].
580. Adjustment for duration: Lapan Lapan purchased their first batch of FIC coupons sometime before the end of September 2007. As stated in paragraphs 363 and 365 to 368, CCS considers that Lapan Lapan became a party to the FIC agreement, at the very least, from 18 October 2007. Therefore, Lapan Lapan is liable for the FIC infringement from 18 October 2007 until 24 July 2008, and their duration of infringement is slightly over 9 months. CCS has determined that Lapan Lapan's duration multiplier will be 1 and this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, there is no adjustment for duration.

581. Adjustment for other factors: CCS is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. CCS is of the view that the figure reached after adjustment for duration is an insignificant sum in relation to Lapan Lapan because both the relevant turnover and the figure for the starting point represent an inadequate proportion of Lapan Lapan's total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is insufficient to act as an effective deterrent to Lapan Lapan and to other undertakings which may consider engaging in price-fixing agreements. As stated above at paragraph 495 CCS will adjust the penalty at this stage to S\$[...].
582. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of its Directors in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Lapan Lapan and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
583. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
584. Representations by Lapan Lapan in respect of quantum of penalty: In its representations, Lapan Lapan raised the following mitigating factors urging CCS not to impose a penalty on it. Firstly, it claims that the FIC infringement did not have negative effects on customers, competitors and third parties and that there was no proof that Lapan Lapan enjoyed an increased market share or increased profits through the imposition of the FIC. Secondly, Lapan Lapan urged CCS not to impose a penalty as an unduly high penalty in the current economic conditions may have an adverse effect on Lapan Lapan's continued viability.
585. As stated at paragraph 76 above, price-fixing agreements will always have an appreciable adverse effect on competition. As such the representation that there is no proof of negative effects cannot be accepted. As for the representation that the imposition of the penalty will potentially result in insolvency, as stated at paragraph 503 above the onus lies with Lapan Lapan to satisfy CCS that the imposition of the penalty will potentially result in insolvency. Except for its bare assertion of possible financial hardship Lapan Lapan has not provided any further evidence to substantiate

its position and CCS regards Lapan Lapan as not having discharged its burden. As such CCS is unable to accept this representation.

586. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,000 on Lapan Lapan.

M. Penalty for Luxury

587. Starting point: Luxury joined the EBAA on 7 March 2006 and it was represented on the Executive Committee by Vincent Lee, one of its directors. It was party to the FIC agreement.

588. Luxury's financial year is from 1 July to 30 June. The "last business year" that should be considered for the purposes of determining penalties would be the financial year ending 30 June 2008. Luxury's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Luxury's total relevant turnover is S\$[...].

589. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Luxury at [...] % of relevant turnover. The starting point for Luxury is therefore S\$[...].

590. Adjustment for duration: Luxury purchased its first batch of FIC coupons sometime in June 2006. As stated in paragraphs 363 to 364, CCS considers that Luxury became a party to the FIC agreement, at the very least, from 2 October 2007. Therefore, Luxury is liable for the FIC infringement from 2 October 2007 until 24 July 2008, and the duration of infringement is close to 10 months. As stated at paragraph 490, CCS will adopt a duration multiplier of 1 for Luxury and this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].

591. Adjustment for other factors: CCS notes that Luxury made a [...] for the financial year ending 30 June 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. CCS is of the view that the figure reached after adjustment for duration is an insignificant sum in relation to Luxury because both the relevant turnover and the figure for the starting point represent an inadequate proportion of Luxury's total turnover for the year ending 30 June 2008. Accordingly, CCS considers that the figure of S\$[...] is insufficient to act as an effective deterrent to Luxury and to other

undertakings which may consider engaging in price-fixing agreements. As stated above at paragraph 495, CCS will adjust the penalty at this stage to S\$[...].

592. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of Luxury's directors, namely Vincent Lee, in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Luxury and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
593. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
594. Representations by Luxury in respect of quantum of penalty: Luxury has raised very similar mitigating factors as Lapan Lapan, which have been addressed at paragraphs 584 to 585 above.
595. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,000 on Luxury.

N. Penalty for Nam Ho

596. Starting point: Nam Ho joined the EBAA as an associate member on 12 July 2006 and it is represented on the EBBA by Marshall Ooi, who is a director of Nam Ho. Nam Ho was involved in the FIC agreement.
597. Nam Ho's financial year is from 1 July to 30 June. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 July 2007 to 30 June 2008. Nam Ho's relevant turnover is S\$[...], representing 20% of the turnover from the sale of coach package tours.
598. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Nam Ho at [...]% of relevant turnover. The starting point for Nam Ho is therefore S\$[...].

599. Adjustment for duration: Nam Ho purchased their first batch of FIC coupons on 19 January 2007⁹²⁷. As stated in paragraphs 363 and 370, CCS considers that Nam Ho became a party to the FIC agreement, at the very least, from 18 October 2007. Therefore, Nam Ho's liability for the FIC infringement is from 18 October 2007 till 24 July 2008, and their duration of infringement is approximately 9 months. As stated at paragraph 490, CCS will adopt a duration multiplier of 1 for Nam Ho and CCS determines this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
600. Adjustment for other factors: CCS notes that Nam Ho made a [...] for the financial year ending 30 June 2008. CCS is of the view that the figure of S\$[...] reached after adjustment for duration is not a significant sum in relation to Nam Ho to act as an effective deterrent to Nam Ho and to other undertakings which may consider engaging in price-fixing agreements. As stated above at paragraph 495 CCS will adjust the penalty at this stage to S\$[...].
601. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of Nam Ho's directors in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Nam Ho and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
602. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
603. Representations by Nam Ho in respect of quantum of penalty: In its representations, Nam Ho has raised the following mitigating factor in seeking a reduction in the penalty. Nam Ho states that it has [...] for the financial year ending 30 June 2008 and that the current year's financial performance may be badly affected by the current economic conditions. Apart from these bare assertions, Nam Ho has not illustrated how the penalty which CCS intends to impose on it would affect its financial viability. As such, CCS is of the view that it cannot accept Nam Ho's representation and there is no basis for a reduction in Nam Ho's penalty.

⁹²⁷ See Answer to Question 62 of Marshall Ooi's Notes of Information / Explanation Provided on 19 January 2009

604. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,000 on Nam Ho.

O. Penalty for Regent Star

605. Starting point: Regent Star was a member of the EBAA from its inception. Regent Star was involved in the MSP agreement and the FIC agreement.
606. Regent Star's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 January 2008 to 31 December 2008. However, as Regent Star has not produced audited accounts for financial year 2008, CCS will adopt the figures for 1 January 2007 to 31 December 2007 to determine Regent Star's relevant turnover. Regent Star's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Regent Star's total relevant turnover is S\$[...].
607. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Regent Star at [...] % of relevant turnover. The starting point for Regent Star is therefore S\$[...].
608. Adjustment for duration: Regent Star was party to the MSP and FIC agreement from 1 January 2006 until at least 24 July 2006. Therefore, the duration of the MSP and FIC infringements, in relation to Regent Star, would be 2 years 6 months and 24 days. As stated at paragraph 493, CCS will adopt a duration multiplier of 2.5 for Regent Star and CCS determines this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
609. Adjustment for other factors: CCS notes that Regent Star made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Regent Star because both the relevant turnover and the figure for the starting point represent an adequate proportion of Regent Star's total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Regent Star and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.

610. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of Regent Star's management, namely Sebastian Yap, and a Director, namely Elson Yap, in the infringements to be an aggravating factor and increases the penalty by [...] % to reflect this. CCS considers that Regent Star and its representative, Sebastian Yap, were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS will reduce the penalty by [...] % for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...] % to S\$[...].
611. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$103,875 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
612. Representations by Regent Star on the quantum of penalties: Regent Star raised the following mitigating factors. Firstly, it claimed that it was genuinely uncertain as to whether the MSP agreement and FIC agreement constituted an infringement of section 34 as it was unaware, given that prices were previously regulated by LTA, that price fixing was an infringement. Secondly, it claimed that it had terminated the infringement as soon as investigations commenced. Thirdly, it argued that it was facing intense competition from budget airlines which would reduce its revenue. The proposed financial penalty would cause substantial financial hardship and cause it to go into insolvency.
613. As set out earlier in paragraph 446 and in paragraph 4.8 of CCS' Guidelines on Enforcement, ignorance or a mistake of law (i.e. ignorance that the relevant agreement or conduct is an infringement) is no bar to a finding of intentional infringement. Even if Regent Star did not know that it would infringe the section 34 prohibition, it could not have been unaware that the MSP agreement and the FIC agreement would have the effect of restricting competition. While CCS notes PTC's regulation of passenger fares before 1 January 2005, the agreement between competitors on passenger fares was an entirely different matter altogether. CCS also notes that EBAA members were aware of this difference as they instructed EBAA, as early as 6 July 2005, to check with LTA and CASE on the legality of such arrangements. However, no such check was eventually made and the matter was not brought up again. As regards the representation that it had terminated the infringement as soon as investigations commenced, CCS notes that an entire month transpired after CCS commenced investigations on 24 June 2008 before the members met on 23 July 2008. In light of this and its

earlier finding that the MSP agreement was continuing in operation as at 24 July 2008, CCS is unable to accept the representation.

614. As for whether the financial penalty would cause Regent Star to go into insolvency, CCS notes that as stated at paragraph 503 above the onus lies with Regent Star to satisfy CCS that the imposition of the penalty will potentially result in insolvency. Aside from stating that the combined penalty for Regent Star and Transtar is [...] of both companies, Regent Star has not produced any further evidence to demonstrate that the imposition of the penalty will result in its insolvency. As such CCS is unable to accept this representation.
615. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$103,875 on Regent Star.

P. Penalty for Sri Maju

616. Starting point: Sri Maju has been a member of the EBAA from the inception of the EBAA. Sri Maju was represented on the Executive Committee by Susan Ng, who is also a director of Sri Maju. Sri Maju participated in the MSP agreement and the FIC agreement.
617. Sri Maju's financial year is from 1 April to 31 March. The "last business year" that should be considered for the purposes of determining penalties would be the financial year ending 31 March 2009. However, as Sri Maju has not produced audited accounts for financial year ending 31 March 2009, CCS will adopt the figures for 1 April 2007 to 31 March 2008, to determine Sri Maju's relevant turnover. Sri Maju's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Sri Maju's total relevant turnover is S\$[...].
618. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Sri Maju at [...] % of relevant turnover. The starting point for Sri Maju is therefore S\$[...].
619. Adjustment for duration: Sri Maju was party to the MSP and FIC agreements from 1 January 2006 until at least 24 July 2006. Therefore, the duration of the MSP and FIC infringements, in relation to Sri Maju, would be 2 years 6 months and 24 days. As stated at paragraph 493, CCS will adopt a duration multiplier of 2.5 for Sri Maju and CCS determines this

- duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
620. Adjustment for other factors: CCS notes that Sri Maju made a [...] for the financial year ending 31 March 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the size and financial position of the undertaking. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Sri Maju because both the relevant turnover and the figure for the starting point represent an adequate proportion of Sri Maju's total turnover for the year ending 31 December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Sri Maju and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.
621. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one Director in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that Sri Maju and its representatives were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
622. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$24,600 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
623. Representations by Sri Maju in respect of quantum of penalty: Sri Maju has not made any representations seeking a reduction.
624. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$24,600 on Sri Maju.

Q. Penalty for T&L

625. Starting point: T&L has been an associate member of the EBAA since 22 June 2006 and it was represented by Tan Yong Leng, who is also a director of T&L. T&L was involved in the FIC agreement. As stated above, at paragraph 477, T&L did not provide CCS with its relevant turnover. Therefore, CCS will calculate T&L's relevant turnover by taking [...]% of its total turnover of S\$[...]. Therefore, T&L's estimated relevant turnover is S\$[...]. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed

the starting point for T&L at [...] % of its estimated relevant turnover. The starting point for T&L is therefore S\$[...].

626. Adjustment for duration: T&L purchased its first batch of coupons on 22 June 2006. As stated in paragraphs 363 and 370, CCS considers that T&L became a party to the FIC agreement, at the very least, from 18 October 2007. Therefore, T&L was a party to the FIC agreement from 18 October 2007 till 5 June 2008, a period of slightly more than 7 months. As stated at paragraph 490, CCS will adopt a duration multiplier of 1 for T&L and CCS determines this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the penalty after adjustment for duration is S\$[...].
627. Adjustment for other factors: CCS notes that T&L made a [...] for the financial year ending 30 June 2007. However, CCS is of the view that the figure of S\$[...] reached after adjustment for duration is not a significant sum in relation to T&L to act as an effective deterrent to T&L and to other undertakings which may consider engaging in price-fixing agreements. As stated above at paragraph 495, CCS will adjust the penalty at this stage to S\$[...].
628. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of its directors, in the infringements to be an aggravating factor and increases the penalty by [...] %. CCS considers that T&L and its representatives, Tan Yong Leng, were cooperative in replying to CCS' request for documents via the section 63 notices and during the subsequent interviews. Accordingly, CCS will reduce the penalty by [...] % for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...] % to S\$[...].
629. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
630. Representations by T&L in respect of quantum of penalty: In its representations, T&L has raised the following mitigating factors seeking a reduction in the penalty. T&L states that its business has not picked up since the SARS outbreak, they are facing stiff competition from low cost carriers and have suffered a recent drop in customers brought about by the H1N1 flu virus. CCS does not consider that these representations constitute mitigating factors or add any mitigating value for the purposes of

calculating the financial penalty. The issue of the financial position of the Parties has been addressed at paragraphs 499 to 503.

631. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,000 on T&L.

R. Penalty for Transtar

632. Starting point: Transtar has been a member of the EBAA from the EBAA's inception and it is represented on the Executive Committee by Elson Yap, who is also the Managing Director of Transtar. Transtar was involved in the MSP agreement and the FIC agreement.
633. Transtar's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year from 1 January 2008 to 31 December 2008. However, as Transtar has not produced audited accounts for financial year 2008, CCS will adopt the figures for 1 January 2007 to 31 December 2007, to determine Transtar's relevant turnover. Transtar's relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, Transtar's total relevant turnover is S\$[...].
634. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Transtar at [...] % of relevant turnover. The starting point for Transtar is therefore S\$[...].
635. Adjustment for duration: Transtar was party to the MSP and FIC agreement from 1 January 2006 until at least 24 July 2008. Therefore, the duration of the MSP and FIC infringements, in relation to Transtar, would be 2 years 6 months and 24 days. As stated at paragraph 493, CCS will adopt a duration multiplier of 2.5 for Transtar and CCS determines this duration multiplier will be sufficient to achieve the necessary deterrent effect. Therefore, the relevant turnover after adjustment for duration is S\$[...].
636. Adjustment for other factors: CCS notes that Transtar is one of the bigger players in the EBAA. It made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to Transtar because both the relevant turnover and the figure for the starting point represent an adequate proportion of Transtar's total turnover for the year ending 31

December 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Transtar and to other undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.

637. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of two of Transtar's Directors, namely Elson Yap and Sebastian Yap, in the infringements to be an aggravating factor and increases the penalty by [...] % to reflect this. CCS considers that Transtar and its representatives were cooperative during the course of the section 64 inspections and the section 63 requests and interviews. As such CCS reduces the penalty by [...] % for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...] % to S\$[...].
638. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$518,167 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
639. Representations by Transtar in respect of quantum of penalty: In its representations, Transtar raised similar mitigating factors as Regent Star for which the arguments have already been addressed in paragraph 613. Similarly, Transtar has not discharged its burden of proving that the imposition of the financial penalty will result in the company's insolvency. As such, CCS is unable to accept Transtar's representations.
640. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$518,167 on Transtar.

S. Penalty for Travelzone

641. Starting point: Travelzone joined the EBAA on 22 November 2007 and it was represented by Neo Tiam Beng, one of its directors. It was a party to the FIC agreement.
642. Travelzone's financial year is from 1 January to 31 December. The "last business year" that should be considered for the purposes of determining penalties would be the financial year ending 31 December 2008. However, as Travelzone has not produced audited accounts for the financial year ending 31 December 2008, CCS will adopt the figures for the financial year ending 31 December 2007 to determine Travelzone's relevant turnover. Travelzone's relevant turnover is S\$[...], representing 20% of the turnover from the sale of Desaru package tours.

643. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for Travelzone at [...] % of relevant turnover. The starting point for Travelzone is therefore S\$[...].
644. Adjustment for duration: Travelzone purchased its only batch of FIC coupons sometime in December 2007. As stated in paragraphs 363 and 371, CCS considers that Travelzone became a party to the FIC agreement, at the very least, from 21 November 2007. Therefore, Travelzone is liable for the FIC agreement from 21 November 2007 till 24 July 2008 and the duration of infringement is approximately 8 months. CCS will adopt a duration multiplier of 1 for Travelzone. Therefore, there will be no adjustment for duration.
645. Adjustment for other factors: CCS notes that Travelzone made a [...] for the financial year ending 31 December 2007. CCS is of the view that the figure reached after adjustment for duration is not a significant sum in relation to Travelzone to act as an effective deterrent to Travelzone and to other undertakings which may consider engaging in price-fixing agreements. As stated above at paragraph 495, CCS will adjust the penalty at this stage to S\$[...].
646. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of Travelzone's directors, namely Neo Tiam Beng, in the infringements to be an aggravating factor and increases the penalty by [...] %. CCS considers that Travelzone and its representatives were cooperative in replying to CCS' section 63 requests and during their interviews. Accordingly, CCS reduces the penalty by [...] % for cooperation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...] % to S\$[...].
647. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$10,000 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
648. Representations by Travelzone in respect of quantum of penalty: In its representations, Travelzone has sought a reduction in the penalty on the grounds of financial hardship. The issue of the financial position of the Parties has been addressed at paragraphs 499 to 503. Besides alluding to its [...] since October 2007, Travelzone has not provided any reason to show why the financial penalty should be reduced. As such, CCS is unable to accept this representation.

649. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,000 on Travelzone.

T. Penalty for WTS

650. Starting point: WTS joined the EBAA on 7 March 2006 and it was represented on the Executive Committee by Voo Wei Keong, one of its directors. It was a party to the FIC agreement.
651. WTS' financial year is from 1 October to 30 September. The "last business year" that should be considered for the purposes of determining penalties would be the financial year ending 30 September 2008. However, as WTS has not produced audited accounts for financial year 2008, CCS will adopt the figures for financial year ending 30 September 2007. WTS' relevant turnover is made up of S\$[...], representing turnover from the sale of express bus tickets, plus S\$[...], representing 20% of the turnover from the sale of coach package tours. Therefore, WTS' total relevant turnover is S\$[...].
652. CCS has analysed its findings regarding the seriousness of the infringements in accordance with paragraphs 456 to 461 above and fixed the starting point for WTS at [...] % of relevant turnover. The starting point for WTS is therefore S\$[...].
653. Adjustment for duration: WTS purchased its first batch of FIC coupons sometime in the first quarter of 2006, sometime between joining the EBAA on 7 March 2006 and 31 March 2006. As stated in paragraphs 363 to 364, CCS considers that WTS became a party to the FIC agreement, at the very least, from 2 October 2007. Therefore, WTS is liable for the FIC infringement from 2 October 2007 until 24 July 2008, and their duration of infringement is close to 10 months. As stated at paragraph 490, CCS will adopt a duration multiplier of 1 for WTS. Therefore, the relevant turnover after adjustment for duration is S\$[...].
654. Adjustment for other factors: CCS notes that WTS made a [...] for the financial year ending 30 September 2007. CCS is of the view that the figure reached after adjustment for duration is a significant sum in relation to WTS because both the relevant turnover and the figure for the starting point represents an adequate proportion of WTS' total turnover for the year ending 30 September 2007. Accordingly, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to WTS and to other

undertakings which may consider engaging in price-fixing agreements and CCS will not make further adjustments to the penalty for this stage.

655. Adjustment for aggravating and mitigating factors: As stated above, CCS considers the involvement of one of WTS' directors, namely Voo Wei Keong, in the infringements to be an aggravating factor and increases the penalty by [...]%. CCS considers that WTS and its representative, Voo Wei Keong, were cooperative in replying to CCS' request for documents via the section 63 notices and during interviews. Accordingly, CCS reduces the penalty by [...]% for co-operation. After taking into account the aggravating and mitigating factors, the penalty has been adjusted by [...]% to S\$[...].
656. Adjustment to prevent maximum penalty being exceeded. The financial penalty i.e. S\$13,611 does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. S\$[...].
657. Representations by WTS in respect of quantum of penalty: WTS has raised very similar mitigating factors as Lapan Lapan, which have been addressed at paragraphs 584 to 585 above.
658. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$13,611 on WTS.

U. Conclusion on penalties

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

Party	Financial Penalty
Alisan	S\$10,807
EBAA	S\$10,000
Enjoy	S\$23,425
Five Stars	S\$450,207
GR Travel	S\$52,432
Grassland	S\$27,706
Gunung Raya	S\$76,668
Konsortium	S\$337,635

Lapan Lapan	S\$10,000
Luxury	S\$10,000
Nam Ho	S\$10,000
Regent Star	S\$103,875
Sri Maju	S\$24,600
T&L	S\$10,000
Transtar	S\$518,167
Travelzone	S\$10,000
WTS	S\$13,611
Total	S\$1,699,133

660. All Parties must pay their respective penalties to the Commission by no later than 5 p.m. on 4 January 2010. 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, CCS 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

Details of section 63 & 64 notices issued to Parties

1. Concurrently on 24 June 2008, CCS sent section 63 notices to the remaining ordinary members requesting for documents and information. The notices were sent to the following parties: Gunung Raya, GR Travel, Konsortium, Lapan Lapan, Regent Star, Sri Maju and WTS. CCS received responses from Konsortium, Lapan Lapan, Sri Maju and WTS between 3 July 2008 and 4 July 2008. Five Stars responded on behalf of GR Travel and Gunung Raya and Transtar responded on behalf of Regent Star.
2. On 18 July 2008, CCS sent section 63 notices to former ordinary members and some associate members of the EBAA requesting for documents and information. The notices were sent to the following parties: Nam Ho, T&L, Grassland, Enjoy and Alisan. CCS received responses from Grassland and Nam Ho between 22 July 2008 and 30 July 2008. No responses were received from Alisan and Enjoy.
3. CCS sent notices under section 63 of the Act requesting for further documents and information and requesting that representatives of the ordinary members and some associate members attend at CCS for interviews. The notices were sent to the following parties: EBAA, Five Stars, GR Travel, Gunung Raya, Konsortium, Lapan Lapan, Luxury, Sri Maju, Transtar and WTS Travel, on 24 July 2008 and to Alisan, Grassland, Nam Ho and T&L on 1 September 2008. CCS received the responses from Alisan, EBAA, Konsortium, Lapan Lapan, Sri Maju, T&L, Transtar and WTS between 28 July 2008 and 15 August 2008.
4. On 28 October 2008, CCS sent notices under section 63 requesting for documents and information from former ordinary members and some associate members and inviting the representatives from these former ordinary and associate members to attend at CCS for an interview. The notices were sent to the following parties: AZ Travel Pte Ltd, Cheery Travel Pte Ltd, Desaru Fruit Farm Pte Ltd, Eltabina, Enjoy, Genting International, Grand City Fashion Pte Ltd, Mah Mun Kong and Travelzone Network Services Pte Ltd on 30 October 2008. CCS received the responses between 3 November and 12 November 2008.
5. In addition, section 63 notices requesting for documents and information and for attendance at CCS for an interview were sent to operating personnel of EBAA, Five Stars, Grassland and Luxury on 17 November 2008 and to operating personnel of Transtar on 18 November 2008.

6. On 18 December 2008, CCS sent section 63 notices requesting for documents relating to turnover and related financial information to the following parties: Alisan, EBAA, Five Stars, Grassland, Konsortium, Lapan Lapan, Luxury, Nam Ho, Regent Star, Sri Maju, T&L, Transtar and WTS. CCS received their responses between 23 December 2008 and 19 February 2009.
7. On 18 March 2009, CCS sent section 63 notices requesting for documents and financial information to Travelzone and to Onn Ping Lan & Company, who are Alisan's accountants. CCS received the responses between 20 March 2009 and 30 March 2009.
8. On 4 September 2009, CCS sent section 63 notices for further documents and financial information to Transtar and Regent Star. CCS received the responses on 23 September 2009.

Details of Interviews

Name	Company	Designation	Date(s) of interviews	In Attendance
Leong Sing Kiong	Alisan	Director	10 Sep 2008	Nil
			20 Jan 2009	
Tan Kah Hin	EBAA	Manager	20 Aug 2008	Leonardo Bernard (Rajah & Tann)
			21 Aug 2008	Leonardo Bernard (Rajah & Tann)
			26 Aug 2008	Kala Anandarajah and Shannon Ong (Rajah & Tann)
			27 Aug 2008	Dominique Lombardi (Rajah & Tann)
			28 Aug 2008	Dominique Lombardi (Rajah & Tann)

Name	Company	Designation	Date(s) of interviews	In Attendance
			14 Jan 2009	Ajinkya Tulpule, Dominique Lombardi (Rajah & Tann)
Kim Huang	EBAA	Former Administrator	28 Nov 2008	Nil
			2 Dec 2008	
Aznan Bin Sharib	Eltabina	Director	5 Nov 2008	Nil
Michael Seng	Enjoy	Director	5 Nov 2008	Nil
			6 Nov 2008	
Johnny Lim	Five Stars	Director and General Manager	6 Aug 2008	Kala Anandarajah and Dominique Lombardi (Rajah & Tann)
			14 Aug 2008	Kala Anandarajah (Rajah & Tann)
			15 Jan 2009	Leonardo Bernard (Rajah & Tann)
Tay Seow Hoon	Five Stars	Deputy General Manager	24 Nov 2008	Leonardo Bernard (Rajah & Tann)
Ken Lim	GR Travel	Director	19 Aug 2008	Shannon Ong and Tan Loo Ying (Rajah & Tann)
Tan Boon Huat	Grassland	Managing Director	16 Sep 2008	Nil
			17 Sep 2008	
			20 Jan 2009	
Ling Wang Hock	Grassland	Operations Manager	21 Nov 2008	Nil
Vincent Lim	Gunung Raya	Director	13 Aug 2008	Leonardo Bernard and Tan Loo Ying (Rajah & Tann)
			15 Aug 2008	Shannon Ong and Tan Loo Ying (Rajah & Tann)

Name	Company	Designation	Date(s) of interviews	In Attendance
Joe Lim	Konsortium	Director	8 Aug 2008	Nil
Raymond Lim	Konsortium	Director	8 Aug 2008	Nil
			15 Jan 2009	
Wesley Ng	Lapan Lapan	Director	11 Aug 2008	Kala Anandarajah Dominique Lombardi and Corrine Li-Anne Chew
			16 Jan 2009	
Vincent Lee	Luxury	Managing Director	8 Aug 2008	Nil
			16 Jan 2009	Kala Anandarajah and Sarah Joy Lam (Rajah & Tann)
Wong Chih Chiang		Manager	27 Nov 2008	Leonardo Bernard (Rajah & Tann)
Marshall Ooi	Nam Ho	Director	11 Sep 2008 19 Jan 2009	Nil
Sebastian Yap	Regent Star	Director	6 Aug 2008	Harikumar Pillay (Drew & Napier)
			8 Aug 2008	Harikumar Pillay (Drew & Napier)
			21 Jan 2009	Leonardo Bernard (Rajah & Tann)
Susan Ng	Sri Maju	Director	11 Aug 2008	Shannon Ong and Tan Loo Wing (Rajah & Tann)
			21 Jan 2009	Nil
Tan Yong Leng	T&L	Managing Director	11 Sep 2008	Nil
			12 Sep 2008	
			19 Jan 2009	
Elson Yap	Transtar	Managing Director	6 Aug 2008	Chia Voon Jiet (Drew & Napier)
			14 Aug 2008	
			21 Jan 2009	Sarah Joy Lam (Rajah & Tann)
Loh Choon Lee	Transtar	General Manager	26 Nov 2008	Nil
			2 Oct 2009	

Name	Company	Designation	Date(s) of interviews	In Attendance
Sam Sze Wei	Transtar	Transport Manager	26 Nov 2008	Nil
Voo Wei Keong	WTS	Director	11 Aug 2008	Leonardo Bernard (Rajah & Tann)
			16 Jan 2009	
Vincent Yeo Hock Leong	AZ Travel Pte Ltd	Director	3 Nov 2008	Nil
Tan Cheong Chee	Cheery Travel Pte Ltd	Director	3 Nov 2008	Nil
Er Wee Heng	Desaru Fruit Farm Tour & Travel	Director	5 Nov 2008	Nil
Tham Sok Mei	Desaru Fruit Farm Tour & Travel	Sales Representative	5 Nov 2008	Nil
Irene Kong Wai Ping	Genting International (Singapore) Pte Ltd	Country Sales Manager	7 Nov 2008	Tan Hee Jeok, Scott Clements (Drew & Napier)
Yam Jong Fuat	Grand City Fashion Pte Ltd	Managing Director	7 Nov 2008	Nil
Mah Mun Kong	IPP Financial Advisors Pte Ltd	Financial Consultant	7 Nov 2008	Nil
Neo Tiam Beng	Travelzone Network Services Pte Ltd	Director	3 Nov 2008	Nil
Sim Lee Siang	Travelzone Network Services Pte Ltd	Secretary	2 April 2009	Nil

Annex 2

Table of Parties mark-up from 5 June 2008 revised FIC rates

Destinations	EBAA price to members for 1-way FIC coupon	2008 FIC 1-way coupon price (1 December 2007 price was S\$3)	Member's Profit 1-way (2008 price minus EBAA price)	Member's mark-up (1-way) - %	EBAA price to members for 2-way FIC coupon	2008 FIC 2-way coupon price (1 December 2007 price was S\$5)	Member's mark-up for 2-way (2008 price minus EBAA price)	Member's mark-up (2-way) - %
Malacca	S\$0.65	S\$5.00	S\$4.35	669.23%	S\$1.00	S\$8.00	S\$7.00	700.00%
Kuala Lumpur		S\$8.00	S\$7.35	1130.77%		S\$12.00	S\$11.00	1100.00%
Genting Highlands		S\$9.00	S\$8.35	1284.62%		S\$13.00	S\$12.00	1200.00%
Ipoh / Tg. Intan		S\$10.00	S\$9.35	1438.46%		N/A	N/A	N/A
Taiping / Rantau		S\$13.00	S\$12.35	1900.00%		N/A	N/A	N/A
Penang		S\$14.00	S\$13.35	2053.85%		N/A	N/A	N/A
Alor Star / Hatyai		S\$16.00	S\$15.35	2361.54%		N/A	N/A	N/A

Annex 3

Name of Ordinary Members	Total Turnover	Total Relevant Turnover	% of Total Relevant Turnover/ Total Turnover
Five Stars ⁹²⁸	S\$[...]	S\$[...]	[...]%
GR Travel ⁹²⁹	S\$[...]	S\$[...]	[...]%
Grassland ⁹³⁰	S\$[...]	S\$[...]	[...]%
Gunung Raya ⁹³¹	S\$[...]	S\$[...]	[...]%
Konsortium ⁹³²	S\$[...]	S\$[...]	[...]%
Lapan Lapan ⁹³³	S\$[...]	S\$[...]	[...]%
Luxury ⁹³⁴	S\$[...]	S\$[...]	[...]%
Regent Star ⁹³⁵	S\$[...]	S\$[...]	[...]%
Sri Maju ⁹³⁶	S\$[...]	S\$[...]	[...]%
Transtar ⁹³⁷	S\$[...]	S\$[...]	[...]%
WTS ⁹³⁸	S\$[...]	S\$[...]	[...]%
Average			[...]%

⁹²⁸ Financial year ending 2007 figures.

⁹²⁹ Financial year ending 2007 figures.

⁹³⁰ Financial year ending 2006 figures.

⁹³¹ Financial year ending 2007 figures.

⁹³² Financial year ending 2007 figures.

⁹³³ Financial year ending 2007 figures.

⁹³⁴ Financial year ending 2008 figures.

⁹³⁵ Financial year ending 2007 figures.

⁹³⁶ Financial year ending 2008 figures.

⁹³⁷ Financial year ending 2007 figures.

⁹³⁸ Financial year ending 2007 figures.

Annex 4

Name of Associate Members	Total Turnover	Total Relevant Turnover	% of Total Relevant Turnover/ Total Turnover
Nam Ho ⁹³⁹	S\$[...]	S\$[...]	[...]%
Travelzone ⁹⁴⁰	S\$[...]	S\$[...]	[...]%
Average			[...]%

⁹³⁹ Financial year ending 2008 figures.

⁹⁴⁰ Financial year ending 2007 figures.